

OF “BEN 10S” AND STATE ICT PROCUREMENT: GETTING IT RIGHT THE FIRST TIME

Category: Commercial Law, Privacy Law, Infosec, and POPIA, Technology Law
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The Department of Water and Sanitation has been under fire for its alleged unlawful ICT procurement procedures. Part of the furore related to the allegation that Minister Nomvula Mokonyane’s alleged “Ben 10’s” firm was contracted to advise on ICT related procurement projects (as a *defamation lawyer, I’m not saying that his or his firm’s appointment was unlawful*). The State, by virtue of the State Information Technology Agency (SITA) and the SITA Act, has provided for the regulation of its procurement of IT related goods or services to avoid similar Ben 10 episodes in the industry.

What is the State Information Technology Agency?

This is a mouthful – SITA was established in 1999 to consolidate and coordinate the State’s IT resources in order to achieve cost savings through scale, increase delivery capabilities and enhance interoperability. SITA is registered as a schedule 3A private company however the Government is the only shareholder and client, and the rights attached to the shares are to be exercised by the Minister of Public Services and Administration on behalf of the State.

In a byte size explanation, SITA is responsible for leveraging IT as a strategic resource for Government, managing the IT procurement and delivery process to ensure that the Government gets value for money, and using IT to support the delivery of e-Government services to all citizens.

Avoidance of future “Ben 10” episodes

In terms of the 2005 SITA regulations, a municipality or municipal entity may not award IT procurement tenders as it pleases. Section 31 provides that the accounting officer may request SITA to assist the municipality or municipal entity with the procurement of IT related goods or services through a competitive bidding process. The parties must then enter into a written agreement to regulate the services rendered by SITA.

Should the value of the goods or services required exceed R50 million for a financial year, or the transaction value of a contract to be procured by the municipality or municipal entity for one or more years exceeds R50 million, the accounting officer must inform SITA together with a motivation of the IT needs of the municipality or municipal entity.

It is possible that a municipality or municipal entity may disagree with the SITA's comments on its submission. Should this happen, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

The IT industry is highly regulated and for good reason, the mismanagement of funds and abuse of power is a threat to the development and furtherance of fair and adequate infrastructure for South African citizens - be it water and sanitation or information technology.

If you are in the process of engaging in an IT related project with the State and the procedure above is not followed, your contract may be void. It is a harsh reality that failure to consider the applicable requirements will result in your contract being equivalent to nothing and your losses are your penalty for not being prudent, as you may incur millions of rands in costs spent on resources in preparation for the contract.

For more good, clear, precise advice on SITA and responsible procurement of IT related goods and services, contact us.