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Unethical leadership in the South African public sector tender processes through the lens of game theory

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Abstract: The study examined the challenges of unethical leadership in the South African public sector tender processes after majority rule in 1994. Empirical research unravelling challenges of the South African public sector tender processes is limited and fragmented. The tendering process assists the public sector in promoting fairness, transparency and efficiency; it also assists in mitigating unethical behaviour associated with public procurement. This study employed a qualitative approach using a thematic analysis and drew upon secondary sources. The findings of this study highlighted the multifaceted challenges facing South Africa's public sector tender processes, including bribery, bid rigging, ghost payments, discrimination, financial misconduct, lack of impartiality and transparency, and patronage. These affirm the assumptions in game theory, notably rationality, self-interest, strategic behaviour and perfect information. Addressing these challenges requires a comprehensive approach involving legislative reforms, strengthened oversight mechanisms, enhanced transparency and accountability, and a commitment to ethical leadership and good governance.

Keywords: ethical leadership; governance; tender; procurement; public officials; South Africa.

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1 Introduction

In the post 1994 era, ethical leadership in the South African public sector has been critical for fostering trust, accountability and organisational effectiveness; these elements are essential for promoting robust tender processes. Work on ethical leadership has revealed that its absence in the tender process leads to unfair competition and distortion of the procurement process, which can lead to substandard project delivery (Zulu and Muleya, 2019; Aduwo et al., 2020; Yap et al., 2020). Furthermore, unethical leadership erodes trust in institutions, damages stakeholder relations and hinders economic development (Mozumder, 2022).

Most research has argued that ethical leadership in public institutions is critical in reducing unethical behaviour in tendering processes (Benlahcene et al., 2022; Hassan et al., 2022; Procházka and Jirásek, 2023). However, recent scholarship has shown that ethical behaviour can change quickly when public sector values are undermined or if public institutions become associated with illegitimate or fraudulent acts (Bowen et al., 2007; Mbandlwa et al., 2020; Klaaren et al., 2022; Makhadi, 2022; Gan et al., 2023). While numerous scholars have focused on ethics in the public sector, past research has paid much less attention to the challenges of unethical leadership in procurement in the South African public sector (Mostafa and El-Motalib, 2020; Bayley and Egle, 2021; Mozumder, 2022). To expand our understanding of this phenomenon, this study examines the challenges of unethical leadership in the South African public sector tender process.

We adopt the definition of ethical leadership proposed by Mostafa and El-Motalib (2020, p.113). The authors describe ethical leadership as the representation of what is considered acceptable behaviour through one's actions and interactions with other people and fostering the adoption of these behaviours with participants through mutual communication, reassurance, and decision-making.

Past work has argued that the most common source of unethical leadership in tendering comes from financial misconduct, misrepresentation, a lack of knowledge, skills, and capacity, non-compliance with policies, inadequate planning, accountability issues, and inadequate monitoring and evaluation. Scandals at Eskom, Arms deal and Siyenza Toilet tenders are some of the more egregious examples of public companies

engaging in tender fraud that caused the loss of billions of rands in public funding (Myburgh and Serrao, 2016; Karrim, 2019; Corruption Watch, 2023). The aftermath of unethical leadership in procurement processes (such as tendering) can cause financial losses, reputation damage, loss of stakeholder trust, poor supplier relationships, inefficiency and waste, negative organisational culture and diminished public trust (Mazibuko, 2018; Lekubu and Sibanda, 2021).

It is believed that this study offers several contributions to the literature. First, past studies are complemented, as they have tended to examine ethics in the public sector (Bowen et al., 2007; Mbandlwa et al., 2020; Klaaren et al., 2022; Makhadi, 2022; Gan et al., 2023). Drawing on game theory, the study shows how unethical leadership contributes to unethical practices in the tendering process – exemplified by the exploitation and manipulation of institutional systems for personal gain. Interestingly, the study also reveals non-obvious findings, such as how informal norms and networks become more powerful than the formal rules governing tenders, for example, brown envelopes and facilitation fees have become common even though they are illegal. Additionally, this research illustrates the various forms assumed by unethical leadership in the South African public sector after 1994. However, the study is cognisant of the fact that unethical leadership was also rampant in the apartheid era, as the minority regime enforced a discriminatory and an oppressive system (Sebola et al., 2024).

This paper is structured into several sections. With the introduction and background now presented, the next section will discuss the theoretical framework. This is followed by the literature review, the methodology, findings, discussion and finally the conclusion.

2 Theoretical framework

Game theory borrows from economic literature and seeks to provide rationales for unethical decisions by public officials. In particular, research suggests that unethical behaviour is part of a rational calculus, often a deeply rooted method by which people make decisions (Macrae, 1982). It is in this context that Goldsmith (2001, p.77) posits that African leaders usually “choose actions that appear to them to produce the greatest benefit at least cost, after making allowances for the degree of risk involved”. Game theory relies on several key assumptions to model strategic interactions effectively. A fundamental assumption is the concept of rationality, where players are assumed to act in a manner that maximises their utility (Liu et al., 2015). This assumption of rationality is crucial in game theory as it forms the basis for predicting and understanding the decisions made by individuals in various strategic situations. Additionally, the assumption of common knowledge of rationality is often accepted in game theory models, where all agents are assumed to be rational (Gintis, 2010). Another key assumption in game theory is the idea of perfect information, where players have complete knowledge of the game, including the strategies chosen by others and the payoffs associated with each possible outcome (Rong et al., 2011). This assumption allows for the analysis of games under conditions where all players have full information, enabling the prediction of optimal strategies and outcomes.

Moreover, game theory often assumes that players can make strategic decisions without any constraints, known as perfect rationality (Larkey et al., 1997). This assumption implies that players have the cognitive ability to process all available

information and make decisions that maximise their expected utility. However, in reality, bounded rationality is a more common assumption, acknowledging that individuals may have limited cognitive abilities and information-processing capacities (Roy et al., 2010).

Applying game theory to assess challenges related to unethical leadership in the South African tender process involves analysing the strategic interactions and incentives that influence the behaviour of leaders and stakeholders involved in procurement decisions. For example, strategic interactions wherein players shape any decision-making outcomes, in this case, the tender process. Second, when looking at payoffs, each player has different payoffs depending on their choices. In this context, game theory can help identify opportunities to redesign incentive systems to discourage unethical behaviour and promote compliance with ethical standards and regulations. Finally, information availability shapes decision-making outcomes. In the context of this study, information asymmetry between players may create opportunities for unethical behaviour.

3 Tendering and ethical leadership – an overview

Tendering plays a crucial role in the procurement process, influencing various aspects of public sector acquisitions. Research by Machirori et al. (2022) highlights that tendering positively influences the cost, quality, and security of supply for public entities. Additionally, a study by Namagembe et al. (2021) emphasises the importance of tendering capabilities, including procedural and relational capabilities, in determining success in tendering processes. Moreover, the study by Ameyaw et al. (2021) discusses the cost efficiencies achieved through competitive tendering and its disciplining effect during procurement processes.

Tendering is a developmental tool used by the government to ensure that there is economic growth to redress historical socio-economic imbalances (Oyebanjo et al., 2021). Tendering has been crucial for infrastructure development involving public buildings, bridges and roads and plays a key role in ensuring that these initiatives are completed promptly and to the required standards. All these can lead to efficient service delivery (Modisakeng et al., 2020). Anthony (2018) also adds that tendering helps the government to comply with the laws that are put in place to empower people of colour, for example, the broad-based black economic empowerment (BBBEE). Ellis et al. (2021) state that tendering provides additional opportunities for small and medium businesses to be exposed to opportunities for growth. Fourie and Malan (2020) indicate that tendering is a major and necessary part of the economy in ensuring economic development. Further to this, “transparent or open contracting is a powerful tool that can be used to combat corruption and ensure good governance, value for money and good quality service delivery” [National Treasury, (2015), p.22].

Additionally, tendering plays a pivotal role in enhancing competition and overall market share (Doulos et al., 2019). Tendering also helps to provide reasonable prices, which cuts the government’s expenditure on goods and services. This is crucial for the efficient delivery of public services. Further, tendering serves as a motivating factor for growing businesses and allows different enterprises to hire more employees. Thus, tendering is an important task that the South African Government needs for the enhancement and empowerment of citizens.

Goldsmith (2001, p.77) observes that better leadership will significantly contribute towards Africa’s development. To realise the benefits of tendering, the public sector must

promote ethical leadership. These benefits include transparency and fairness, avoidance of corruption and favouritism, cost-effectiveness and value for money, enhancement of competition and innovation, accountability and trust as well as compliance with laws and regulations.

Central to ethical leadership is transparency, integrity and accountability. According to Kohler and Dimancesco (2020, pp.5–6), accountability is when a person is required to notify other parties about their past or future activities and choices, defend these choices, and face consequences in the event of misconduct. It is in this regard that Lekubu and Sibanda (2021, p.5) state that ethical leadership is needed to prevent the abuse of entrusted authority for personal benefit, and it is also needed to promote good governance.

Ethical considerations include the appropriateness or inappropriateness of intentions, the methods used to execute such as well as the goals that they seek to achieve (Ogbu and Asuquo, 2018). Being ethical means doing the right thing and always discouraging unethical behaviours. Al Halbusi et al. (2021, p.303), state that “interest in ethical leadership has grown, raising important questions about the responsibility of leaders in ensuring moral and ethical conduct”. That is why Mostafa and El-Motalib (2020) believe that countries should prioritise ethics and ensure that the officials are ethical leaders. Mostafa and El-Motalib (2020) further state that “ethical leaders are personally committed to moral values such as integrity, honesty, fairness, and altruism”. Sarwar et al. (2020) also add that ethical leaders should be fair, trustworthy, and honest and should take responsibility for their work. Given this, public servants need to be regularly informed about ethical standards in the hope that they will remain professional (Yap et al., 2020).

Leadership influences how an organisation typically does things (Yap et al., 2020). It can shape the culture of the organisation; therefore, good leadership can reinforce ethical behaviours. This means that public officials must be ethical because integrity is important in public procurement, tendering and the public sector in general. Van Staden et al. (2022) argue that ethical public servants could enhance public administration and guarantee that its citizens receive a substantial standard of living. However, an absence of ethical leadership promotes unethical behaviours such as corruption, fraud, dishonesty, and a lack of accountability, integrity and transparency among other concerns (Elbaek and Mitkidis, 2023).

Unethical leadership relates to behaviours conducted and decisions made by public leaders that are illegal and/or violate moral standards, and those that impose processes and structures that promote unethical conduct by subordinates (Mitchell et al., 2022). Coetzee (2018) highlights that tendering provides opportunities for unethical conduct which, in turn, fosters misconduct such as accepting bribes and being involved in corruption and fraud. Public officials often involve themselves in this misconduct when motivated by personal gains. Oyebanjo et al. (2021) also state that public money is set aside so the economy can grow; however, the money sometimes mysteriously ends up in the public officials’ pockets. This is a recurring issue regarding tenders.

Officials tend to shift their conduct away from ethical standards due to greed and the love for money (Hochstetter et al., 2021). Brunette et al. (2019, p.546) state that public officials continue to act unethically, even though these unethical practices in tendering are detrimental to South Africa, as they benefit personally. This unethical conduct is characterised by corruption which is “exploiting one’s public position, the

commonwealth and power for personal benefits” [Yap et al., (2020), p.17]. These practices are perpetuated by leaders who are public officials and in charge of deciding who is awarded a tender. Coetzee (2018, p.26) and von Holdt (2019, p.9) observe that the more money a tender has, the more the bribe money increases. Therefore, it can be seen that when it comes to tendering, public officials are always eager to know how much they are going to get from awarding a tender. Such unethical practices of management in the public sector can limit the effective administration of tenders (Lukhele et al., 2022).

Unethical conduct in the tendering process can occur at any stage, from creating the public procurement documents, to the bidding, as well as the awarding of the tender (Rabuzin and Modrušan, 2019). Rabuzin and Modrušan (2019, p.335) conclude that officials have so much power that they can create a criterion that can only be met by those they favour, which eliminates competition. Similarly, Bereziuk and Yaremchuk (2020, p.12) argue that unethical conduct by top officials is economically motivated, which is why government measures have not yielded satisfactory results.

Table 1 Types of unethical practices

<i>Reference</i>	<i>Unethical conduct/tendering practice</i>
Amoah and Steyn (2022)	Kickbacks, overpricing, tender manipulation, fraud, and nepotism.
Modipa and Motseki (2022)	Bribery, fraud, nepotism, extortion, and patronage.
Lekubu and Sibanda (2021)	Embezzlement of funds, illicit enrichment, disposal sale and allotment of government property.
Abiodun-Oyebanji (2021)	Coalition of vendors, extortion, embezzlement, kickback schemes, ghost suppliers, shell companies, cronyism, bribes and bid rigging.
Mbandlwa et al. (2020)	Hiring of unqualified workers, maladministration, fraud, malpractice, bribes, officials soliciting bribes and nepotism.
Fourie and Malan (2020)	Not advertising bid documents, lack of transparency, bribes, malpractice, and fraud.
Odeku (2018)	Patronage, fake invoices, nepotism, bribes, and acceptance of gifts from bidders.

Source: Adapted from Ogbu and Asuquo (2018, p.4)

Amoah and Steyn (2022) add that unethical practices in tendering abound, as politicians and officials have continuously awarded tenders to their connections knowing that they will benefit financially. Lukhele et al. (2022) highlight that despite the legislative framework warning them, officials take part in government tenders but do not declare their conflict of interest and even falsify declarations. Sibanda et al. (2020) also shed light on government tenders being awarded to individuals who have a link to public officials, which increases unethical behaviours. Such a link manifests itself as fraud, nepotism and ‘kickbacks’. This eventually leads to government funds being used for private gain. Table 1 shows the different unethical practices that various sources have highlighted.

Table 1 captures the unethical procurement practices which public officials knew about and underlines the diversity of these practices. The following section describes the methodology used in the paper to uncover the challenges of unethical leadership within the tendering processes in South Africa.

4 Methodology

This article employed a qualitative approach. Aspers and Corte (2021) define qualitative research as a continuous procedure that advances scientific knowledge by establishing new, significant differences as a result of drawing nearer to the phenomenon under study. Data were collected through the extensive use of secondary sources that include government and public documents, academic publications, and legislation. To obtain credible sources, keywords were used to search for relevant articles. The keywords used were ‘ethics and tender’, ‘unethical practices in tenders’ and ‘ethics and tender or public procurement’. This was done to gain access to different articles that speak generally about public procurement and those that focus specifically on tenders. Duplicate articles and some articles focusing on other countries were removed, especially for the findings section. This was done to allow the researchers to only focus on unethical practices occurring in South Africa. Articles were filtered so that only articles which focused on the unethical practices of government employees remained. Thematic analysis was used to analyse the data and to develop relevant themes for the study. Braun and Clarke (2021) state that thematic analysis can be used to uncover rich information from the data, as it is a relatively straightforward method that can be carried out in a short period.

5 Findings and discussion

The purpose of this study was to examine the challenges of unethical leadership in the South African public sector’s tendering processes. Following a qualitative approach, thematic analysis was used to analyse the data and to develop relevant themes for the study. The themes that emerged from the study are discussed below. Challenges of unethical leadership in the South African public sector tender processes were analysed through the lens of game theory.

5.1 Bribery

Bribery of public officials is primarily regulated under the Prevention and Combating of Corrupt Activities Act, 2004 (PCCAA), which criminalises corruption and bribery. PricewaterhouseCoopers’ (PwC) 2020 Global Economic Crime Survey reveals that 42% of South African companies have been victimised by bribery and corruption compared to the global average of approximately 30%. Local respondents also rank bribery and corruption as the most disruptive/serious economic crime to impact their business in the 24 months which followed the survey. Some studies reveal that there are many instances of bribery in the South African tendering system, both by public officials and private individuals as well as by private entities and public entities (OECD, 2016). Wouters et al. (2019) investigated pharmaceutical tendering over 14 years (2006–2016) in South Africa, finding that bidders usually pay bribes to officials to get a tender. Another case of bribery was revealed by the eNews Channel Africa (eNCA) (2023) which highlights that Popa Maja (the head of the National Department of Health) handed himself in after being accused of irregularly awarding a tender to Digital Vibes. According to eNCA (2023), Maja is said to have received a bribe from Digital Vibes which got a tender of approximately R140 million. Prosecutors believed that in 2019, Maja was paid R15,000

by Zweli Mkhize's spokesperson (the then-Minister of Health), who ran Digital Vibes (Sithole, 2024). In another example, the former Bosasa chief operations officer Angello Agrizzi testified at the Zondo Commission in March 2019 that Bosasa spent between R4 million and R6 million a month on bribes to help it win lucrative contracts with the government (Quintal, 2019). These findings underline the extent of bribery in the South African tendering system.

5.2 *Bid rigging*

The second challenge experienced in the South African public sector tender processes is bid rigging, which contravenes Section 4(1)(b) of the Competition Act 89 of 1998. Standard bid rigging behaviour involves potential bidders agreeing amongst themselves to collude and coordinate their bids to determine the winner at a particular price. In essence, collusion seeks to prevent, restrict or distort competition by the sharing of markets and customers (OECD, 2016). Huber et al. (2020) indicate that bid rigging occurs when opposing parties conspire to choose the winner of a bidding procedure. Burger-Smidt and Mathebula (2022) observe that bid rigging consists of an agreement between competitors not to compete on the bids they submit after being invited to tender. This can take the form of:

- Complementary bidding, where competitors agree to have one of them submit the lowest bid or only bid containing acceptable terms.
- Bid suppression, where some competitors agree to refrain from bidding, thus having an identified preferred firm awarded the tender.
- Bid rotation, where competitors submit undesirably high bids (cover pricing) to ensure that a predetermined bidder wins the tender. Through such a practice, competitors take turns to win bids in a series of tenders.

For example, the case of bid rigging and collusion against Power Construction (Western Cape) (Pty) Ltd (Western Cape) and Haw and Inglis (Pty) Ltd (Haw and Inglis) that specialise in industrial, commercial, residential and construction sectors, relating to the tender issued by the South African National Roads Agency (SANRAL) to maintain a section of the N1 national route. In this case, it was alleged that Haw and Inglis instructed Power Construction to submit a bid with no intention of rendering the services but to ensure that SANRAL received enough bids to award the contract in terms of its tender processes. The tender project was awarded to Haw and Inglis. Both companies were found guilty and paid R45.3 million in penalties. Similarly, in 2017, the CCSA charged seven companies for price fixing and collusion in a tender to provide stationery to the Free State Provincial Government. Moreover, in 2019, furniture removal company Stuttaford Van Lines was charged with 649 counts of collusive tendering relating to hundreds of government tenders issued for furniture transportation (Makube, 2019). From the findings, different manifestations of bid rigging characterise South Africa's public sector tender process.

5.3 *Ghost payments*

In the context of the tender process, a 'ghost payment' typically refers to a fraudulent or corrupt practice where payment is made for goods or services that are not delivered, paid

to vendors that are not on the approved vendor list, vendors who are not listed in business or telephone directories or for invoiced goods or services that cannot be located, verified or are of substandard quality (Makhadi, 2022). Ghost payments can also take the form of fake invoices submitted by a fraudster who is not a supplier to the contracting authority (ESAAMLG, 2019). These payments may appear legitimate on paper but in reality, they benefit individuals or entities who are not entitled to receive them. Ghost payments can occur through various means, including collusion between insiders and external parties, falsification of documents or manipulation of the procurement process.

Ghost payments in the tender process in South Africa have been a significant concern, with various practices prevalent in the public sector. Most ghost payments have violated provisions of the Municipal Finance Management Act (MFMA). For example, a Matlosana Municipality chief financial officer Mercy Phetla paid Variegated (Pty) Ltd almost R3 million for electrical equipment without the knowledge nor approval of the municipal manager, as per the requirement of Section 79 of the MFMA. Further, the payment was made for goods which Variegated (the purported supplier) had not delivered to the municipality (Makwakwa, 2024).

In another case of ghost payments, Marakalala (2023) states that Madibeng Municipality made payments to Tlou Integrated Tech, which did not have any construction industry development board grading. The tenders in question were also not advertised as per requirements of the Public Finance Management Act (PFMA) and MFMA. Further to this, Tlou Integrated Tech had submitted invoices totalling R200,869.57 for work that was never done. Similarly, Mashego (2022) notes that Madibeng Municipality paid Ba Poloborwo Construction R2,778,409 for which there was no proof of work done. These unethical practices undermine the fairness and transparency of the tender process, leading to financial losses for the organisation issuing the tender and potentially depriving legitimate suppliers of business opportunities.

5.4 Discrimination and favouritism

Decisions regarding tender awards in the public sector are subject to written rules and regulations stipulated in policy or law [Suzuki and Demircioglu, (2019), p.5]. This is meant to increase fairness in the award process. However, the study finds that there has been discrimination and favouritism in the tendering process which exemplifies unethical leadership. Khamis (2020) states that bidders must be treated equally without any form of discrimination or favouritism. This provides equal opportunity to all bidders – no bidder should have an unfair advantage over the other.

Unfortunately, Mbandlwa et al. (2020) highlight that discrimination and favouritism have particularly manifested through nepotism, patronage and cronyism in South Africa. This is supported by Manaka (2021), who asserts that political influence on tender awards and awarding of tenders to officials, relatives and friends exist in the South African public procurement system.

Nepotism – or the practice of favouring family and friends – in the procurement process, is a major problem in South Africa. This has led to the awarding of contracts to inexperienced or unqualified individuals, resulting in substandard goods and services. For example, in 2013, Corruption Watch exposed nepotism at the JS Moroka Municipality, when procurement officer Rabelani Thukwana illegally awarded a contract worth R24,000 to their spouse (Pillay, 2013). Elsewhere in South Africa, Blackman and Dall

(2021) reveal that during the height of the coronavirus disease 2019 (COVID-19), the husband of presidency spokesperson Khusela Diko was implicated in crooked tenders to supply personal protective equipment (PPE). Baloyi (2021) reveals that Khusela Diko, who was the presidency's spokesperson, advocated for schools to remain open during lockdown. It was later found that their spouse received a tender of R125 million to provide PPE to schools (Baloyi, 2021). Although the argument was that there was no irregularity, the money went to the family business and Khusela as a public official was not supposed to do any business with the state.

Additionally, a company linked to a family friend and former private secretary to Health Minister Mkhize scored irregular communications contracts worth R82 million from the Department of Health. Further to these, Mbandlwa et al. (2020) highlight that the Pietermaritzburg High Court found eThekweni public officials guilty of the R864 million tender to the Western Aqueduct. According to Mbandlwa et al. (2020), the public officials in eThekweni municipality awarded a tender to incompetent people simply because they were friends. Such favouritism impedes the fairness necessary in the awarding process.

5.5 Financial misconduct

This article noted that there seems to be a gap regarding financial integrity in tendering processes. Financial integrity can be described as a person's conduct being consistent with moral values; when an individual is honest and can be trusted regarding managing the finances of an organisation (Mello et al., 2020). To prevent financial misconduct in the tender processes, South Africa introduced the PFMA, the MFMA and the Treasury Regulations of 2002, which make it unlawful to engage in corruption and other unethical behaviour. The PFMA, read with Chapter 4 of the Treasury Regulations, 2002, compels all public service departments to report on finalised cases of financial misconduct to the Public Service Commission (PSC). According to the Treasury Regulations, 2002, an accounting officer must, as soon as a disciplinary case on financial misconduct is completed, report to the PSC (amongst others).

However, Oyebanjo et al. (2021) indicated that half of the country's money that is allocated to tendering is embezzled by unethical public officials. This is confirmed by Baloyi (2021), who points out that in 2021, more than 90 tenders were being investigated. The MFMA and PFMA give provisions for accounting officers to procure in emergencies or disasters (but did not specify COVID-19). However, the National Treasury issued an instruction (National Treasury Instruction No. 7 2020/21) specifically related to COVID-19, where a total of R500 billion was allocated for emergency procurement. Unfortunately, the Auditor General South Africa (AGSA) (2020) highlighted that there were irregularities in the procurement process regarding the R500 billion package. During the same process, as Sitto and Lubinga (2020) note, the special investigating unit was tasked to investigate the embezzlement of the R500 billion which was stolen by top officials. As a result, government officials were arrested after evidence was found that they had unethically awarded tenders due to kickbacks.

Rules are in place regarding the disclosure of benefits, specifically in the Code of Conduct for Municipal Staff Members contained in the Municipal Systems Act 32 of 2000. The code stipulates that a staff member of a municipality who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose (in writing)

full particulars of the benefit to the council. Despite these provisions, there are many cases of failure to adhere to these provisions in the tendering processes. As an example, in the tender fraud and corruption case committed at the Nketoane Local Municipality in the Free State, the then-chief financial officer Vincent Mkhefa awarded tenders to Sakhingomso, a company in which they were a director (Dlamini, 2021). While working for Bitou Municipality, Mkhefa is also said to have been involved in the awarding of tenders to friends whose companies were not even on the municipality's database.

5.6 Lack of impartiality

Impartiality relates to the making of decisions and providing advice on merit and without bias or self-interest (Suzuki and Demircioglu, 2019). The code of conduct for supply chain management practitioners, practice note number SCM 4 of 2003, stipulates that all SCM practitioners must be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group of individuals. They should not abuse the power and authority vested in them. Further, the National Treasury is required by Section 76(4)(c) of the PFMA to create and publish guidelines concerning the creation of a structure for an impartial, open, competitive, and economical procurement system. However, in current public sector tender processes, existing evidence suggests that there is a disregard for impartiality among public officials. This directly affects the transparency, fairness and legitimacy of the procurement process.

Montsho (2023) highlighted that lack of impartiality resulted in Dr Lydia Sebege, the former North-West director general, being arrested for their involvement in an R86 million hospital tender fraud. During 2008 to 2009, the North-West sought to build two hospitals in Ledig (Moses Kotane Hospital) and Vryburg (Joe Morolong Hospital). A tender was subsequently awarded to the company MR Property (Pty) Ltd, belonging to Mabe, as well as a different company belonging to another suspect who is yet to be arrested. Service-level agreements were signed between the two companies and their directors regarding services that had to be rendered to the two hospitals. The services were, however, not rendered; yet these companies reportedly submitted fraudulent invoices which were paid by the department. Sebege had signed the service-level agreements with the knowledge that the two companies were not compliant and did not meet requirements (Montsho, 2023). In another example, Madonsela (2019, p.120) indicated that the Gupta representatives' bid for tenders in Transnet was due to their relationship with Brian Molefe, (then Transnet's chief executive officer) and they received tenders to supply locomotives at inflated prices. If true, such partiality undermines meritocracy.

5.7 Lack of transparency

The South African public officials lack transparency and accountability in tender processes. Ball (2009, p.298) states that "transparency constitutes the demand for information, the ability of citizens to obtain information, and the supply and actual release of information by government". Transparency regards telling citizens in advance about a matter of public interest [Androniceanu, (2021), p.151]. As such, there should be

transparency in all public procurements except tenders concerning security or low-value procurement [Kohler and Dimancesco, (2020), p.6].

Townsend (2017) argues that it has become increasingly difficult to find tender information in the South African public sector. The author notes that previously, it had been compulsory for state entities to advertise their calls for tenders in the local newspapers on Fridays so that bidders could easily find most tenders. Increasingly, tender advertisements are providing very little information. Townsend (2017) provides an example of the Hessequa Municipality at Riversdale in Western Cape which started placing their tender advertisements in *Die Burger* and *Cape Times* with only the tender title, referring the reader to the Hessequa website for more information. However, the website had no available information.

Positively, the introduction of e-tenders by the National Treasury is a welcome development. However, the website is a massive database of tenders which makes it impossible to see when a new tender appears. Further to this, most government entities have largely moved to advertise bids only on their websites. The challenge with this arrangement is that potential bidders who want to know about new tenders have no way of knowing *when* the tenders have been published. This is problematic because timing is paramount when tendering – as it has to be done within set days and closing dates. As such, transparency is an essential element as it enables integrity throughout the tendering process.

5.8 Patronage/tenderpreneurship

The phenomenon of the *tenderpreneur* is characterised by private patron-client networks linking bidders to local-level gatekeepers in the party, rather than it being a neutral, impersonal process in the public interest (Magang and Magang, 2021). Piper and Chapman (2020) reveal that *tenderpreneurship* is a South African colloquialism for businesspeople who use political contacts to get government procurement contracts, often as part of a reciprocal exchange of favours or benefits. The term is a portmanteau of ‘tender’ (to provide business services) and ‘entrepreneur’. In *tenderpreneurship*, tender awards are influenced by informal interests and/or political affiliation, instead of formal procedure requirements. Dassah (2018) highlights that “*tenderpreneurship* involves collusion among government employees, politically connected people, family members and friends of politicians to flout supply chain management procedures in order to win government tenders for which they are often not the most qualified”.

For example, Sobuwa (2022) highlights that Tembisa Hospital is said to have awarded 55 tenders worth R14.5 million to an African National Congress (ANC) high official for cleaning products, safety gear, healthcare equipment, and workplace equipment. Former provincial Member of the Executive Council (MEC) Dr. Nomathemba Mokgethi informed the Gauteng assembly in writing that three firms affiliated with Sello Sekhokho, the former treasurer-general of the ANC’s Ekurhuleni area, were awarded a tender.

Similarly, when Mkhize was Kwa-Zulu Natal’s (KZN) premier, Bookize Supply Corporation CC (a company in which Mkhize’s wife, May Mashego, and daughter, Nokulinda Mkhize, were directors) secured a government tender worth R3.3-million from the Correctional Services Department (Gerretsen, 2010). The company previously had a tender with the South African Police Service (SAPS). Further, Gerretsen (2010) reported that members of the KZN legislature argued that although such an award was lawful, it

was not ethical as companies connected to the spouses and relatives of prominent politicians would stand better chances of winning tenders than other companies.

In another case, then Minister for Public Works, Gwen Mahlangu-Nkabinde, was removed from office for their role in the awarding of two tenders worth R1.116 billion and R604 million, respectively. These tenders were awarded to a politically well-connected businessperson, Roux Shabangu, for the lease of new premises for SAPS at well above market-related prices (Kinnes and Newham, 2012).

These findings support Lukhele et al.'s (2022) argument, namely that those who received tenders unethically were those who had a connection with politicians and public officials. Thus, the tendering process is characterised by patronage instead of meritocracy.

6 Discussion

This study examined the challenges of unethical leadership in the South African public sector's tendering processes. The findings revealed that South African tender processes possess pervasive unethical challenges encompassing bribery, bid rigging, ghost payments, discrimination, financial misconduct, lack of impartiality, lack of transparency, and patronage. These challenges collectively undermine the integrity, fairness, and effectiveness of procurement practices, creating significant obstacles to achieving transparency, accountability, and equitable resource allocation. These challenges, in one way or another, affirm some of the key assumptions of game theory, such as rationality, self-interest, perfect information and strategic behaviour. This provides valuable insights into strategic decision-making and interactions among rational actors.

For example, the study finds that bribery and corruption are deeply entrenched within the tendering system, with instances reported involving both public officials and private entities. Despite legislative measures such as the PCCAA, bribery remains a prevalent concern, as evidenced by the high victimisation rates among South African companies compared to the global average. This finding confirms the game theory assumption of self-interest which postulates that individuals prioritise their interests over collective welfare when making decisions.

Bid rigging represents another critical challenge, compromising competition and inflating prices by colluding among potential bidders. The identified bid rigging practices, including complementary bidding, bid suppression, and bid rotation, highlight the complex strategies employed to manipulate the outcome of bidding procedures (Huber et al., 2020; Burger-Smidt and Mathebula, 2022). This discovery supports the idea of the rational economic man in game theory, where people are selfish and unscrupulous in pursuit of material interests. Thus, companies engaging in bid rigging work together strategically to improve their odds of winning tenders and making the most profit possible.

Ghost payments further exacerbate concerns regarding transparency and accountability in tender processes. Fraudulent practices result in payments for goods or services not delivered or of substandard quality. The cases of ghost payments highlighted in this study confirm the game theory assumption of the importance of information,

where players have complete knowledge of the game, including the strategies chosen by others and the payoffs associated with each possible outcome (Rong et al., 2011). In the tendering system, incomplete information can facilitate corrupt practices such as ghost payments, where fraudulent transactions are conducted in secrecy or disguised as legitimate business activities.

Furthermore, despite legislative frameworks aimed at promoting integrity, the study finds that discrimination and favouritism are still present in the tendering process, which goes against the principles of fairness and equality (Khamis, 2020; Mbandlwa et al., 2020). In addition, financial misconduct still poses significant risks to the integrity and credibility of tender processes, with widespread embezzlement and irregularities undermining public confidence in procurement practices (Mello et al., 2020; Sitto and Lubinga, 2020). Moreover, the lack of impartiality and transparency further compounds challenges within the tendering system, with personal interests and political affiliations often dictating procurement decisions (Townsend, 2017; Suzuki and Demircioglu, 2019). All the above findings align with the self-interest assumption of game theory. Game theory assumes that individuals prioritise their interests over collective welfare when making decisions.

Finally, the study revealed that patronage or tenderpreneurship exacerbates concerns regarding fairness and accountability, with political connections and personal relationships influencing tender outcomes. The prevalence of patronage underscores the need for measures to promote meritocracy and eliminate undue influence in procurement processes (Piper and Chapman, 2020; Sobuwa, 2022). This confirms the strategic behaviour assumption in game theory, which acknowledges that individuals may have limited or imperfect information about others' preferences, actions, and payoffs.

7 Conclusions

The findings of this study highlighted the multifaceted challenges facing South Africa's public sector tender processes, including bribery, bid rigging, ghost payments, discrimination, financial misconduct, lack of impartiality, lack of transparency, and patronage. These affirm the assumptions in game theory, notably rationality, self-interest, strategic behaviour and perfect information. Addressing these challenges requires a comprehensive approach involving legislative reforms, strengthened oversight mechanisms, enhanced transparency and accountability, and a commitment to ethical leadership and good governance. By promoting integrity in procurement practices, South Africa can foster a conducive environment for economic development, equitable resource allocation, and public trust in government institutions. The prevalence of bribery in the tendering processes requires designing and implementing effective and transparent procurement policies and procedures. The cases of ghost payments highlighted in this study underscore the need for enhanced oversight mechanisms to detect and prevent fraudulent invoicing and payments. Finally, patronage and tenderpreneurship demonstrate how political influence and personal connections can harm procurement outcomes. This highlights the need for measures to promote meritocracy and eliminate favouritism.

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