



PUBLIC SERVICE ACCOUNTABILITY MONITOR (PSAM) SUBMISSION ON THE PUBLIC PROCUREMENT BILL

Rhodes University, Makhanda www.psam.org.za/ @PSAM_AFRICA

Lisa Higginson, Budget Advocacy Coordinator: lisa.higginson@ru.ac.za

Zukiswa Kota, Programme Manager: z.kota@ru.ac.za

ATTENTION: PARLIAMENT'S SELECT COMMITTEE ON FINANCE, NATIONAL COUNCIL OF PROVINCES

Submitted via email to: Mr Nkululeko Mangweni nmangweni@parliament.gov.za

Date: 25 March 2024

The Public Service Accountability Monitor (PSAM) appreciates the opportunity to summarise our position, and reaction to the National Treasury's response to our submission to the Select Committee on Finance (NCOP). We remain concerned with various aspects of the Bill, as per our previous submission and endorsement of the Public Procurement Reform Working Group (PRWG) input. We would like to take this opportunity to reiterate our concerns with the transparency provisions in the Bill. We believe that this Committee recognises the importance of disclosure of procurement information to prevent corruption but also to improve oversight and efficiency.

We appreciate the response from National Treasury, and recognise that *The Bill contains several transparency provisions, e.g. clauses 2(2)(b) (objects), 15(6) (debarment register), 30(2)(a) and (b) (access to procurement services and open data), 32 (access to procurement processes) and 33 (disclosure of information) and 64 and 65 (process to make regulations and instructions).*

We further note that the revised Bill(B18B) before the NCOP, states that the Minister must prescribe the disclosure requirements via **regulations** into s.33 and that s.64 details the obligations of the Minister when making regulations, which we believe is an improvement from the earlier Bill, in which the PPO had the power to issue **instructions** for disclosure which arguably would have less likelihood of being adhered to.

We believe that the disclosure requirements should be fully contained within the Bill to avoid subsequent likely arguments over the adequacy of regulations and whether they go far enough, as well as to limit the potential for varied interpretation of regulations yet to be promulgated. We also believe this will increase adherence to mandatory disclosure requirements.

In the current framework, mandatory reporting prescribed by instructions has often been ignored, evident in the assessment of information currently available on the central portal. Without significant and certain legislative reform, we are not convinced that the current practices will change and transparency obligations advanced to support actual accountability.

Our concern is that the National Treasury appears to be of the view that the public already has access to adequate procurement information. In the feedback session, Mr Willie Mathebula referred to the publication of procurement plans as an example of existing transparency measures. We must reiterate our concerns with the adequacy of the existing system. The Methodology for Assessing Procurement Systems (MAPS) assessment team, in their preliminary findings on the South African procurement system found that only 12% of procuring entities registered on eTenders had published procurement plans.

Overall, preliminary findings stated that *“while the e-procurement system offers some access to procurement data”* they found *“strong limitations in access to e-procurement data for oversight purposes*. Further gaps/findings include:

- *Publication of mandatory and critical information such as contract award notice is extremely low (3% in FY 2023/2024).*
- *For publication of tenders, the data shows that 73% of organs of state have published tenders and only 3% published contract notices)*

Given the various challenges with the procurement system, and unresolved challenges related to the Public Procurement Bill, we believe that the transparency provisions can and must be improved.