



30 June 2020

Mr Dondo Mogajane  
Director General  
National Treasury  
Pretoria

Dear Director General,

***Commitment and political will needed to move forward with the Procurement Bill***

We write this letter jointly as Corruption Watch and the Public Affairs Research Institute (PARI) in response to National Treasury's call for comments on the draft Public Procurement Bill.

We have responded with detailed submissions to your important gazetted call for comments on the draft Public Procurement Bill. This letter addresses what we feel are important underlying issues regarding the Bill requiring collective action by government in consultation with a broad range of stakeholders, including civil society.

It is well recognised that public procurement is vastly significant to the South African state and society. As noted in one of our individual submissions, 2017 South African Reserve Bank statistics suggest that government channelled R967-billion through public procurement. Section 217 of the Constitution holds out the guarantee that this powerful instrument can be used to address the inequalities in our society and promises a system that is "fair, equitable, transparent, competitive and cost-effective". In addition public procurement must embody policies providing for "categories of preference in the allocation of contracts" and "the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination".

We recognise that the aspirations of our fundamental law are often not met. In our work and advocacy, we note the negative effects that ill-judged and corrupt procurement practices have had on our society – incurring losses and wasteful expenditure that our society simply

cannot afford. We also know that inequality remains pervasive, decades after the formal fall of apartheid.

This draft legislation represents one, if not the most, significant lever we can use as a society concerned with sustainable and inclusive growth and pursuing social justice. Despite the importance of public procurement to the fortunes of our collective society and despite the centrality of parliamentary legislation to this crucial state practice, we do not sense on the side of government the sort of urgency and necessary degree of focus of the public mind, which is immediately required on this issue. We welcome the appearance of this draft legislation in the public domain and we appreciate the work of its drafters and policy-makers in reaching this important stage. In our view, however, this important effort in the national interest is simply not happening with the necessary focus nor with the appropriate speed.

We have thus joined forces to articulate our sentiment that the national interest demands greater focus and much greater speed in this public process than we have witnessed to date.

We recognise that no piece of legislation on its own can address the full set of challenges currently facing South Africa. This is perhaps especially true in the current time of a COVID-19 pandemic and consequent economic slowdown. Legislation on its own – even legislation primarily directed in the first instance at regulating the actions of state officials and units of the public – needs mind-set changes, financial resources and bureaucratic initiatives to achieve its goals.

While procurement law cannot be a silver bullet, vigorous, swift and decisive debate over the shape and content of the Public Procurement Bill can be more than an important first step towards addressing current and persistent issues. This process can both free the South African economy of some of its constraints and internal obstacles and equip it with the tools to chart and pursue a growth path.

This potential step forward has no chance to happen without political will and direction at the highest and broadest levels on public procurement policy – which is what we call for.

As civil society organisations, we remain committed to working with National Treasury to strengthen the Bill in relation to transparency, accountability, enforcement and governance and that procurement becomes a vehicle to address the most basic needs of society, while being insulated from improper political interference. However, unless government shows the will and commitment necessary, no matter how hard civil society tries, the Bill and procurement will not move in the right direction of supporting the Constitutional requirements of our developmental state.



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