

Statement on the Draft Regulations under the Public Procurement Act Issued by the Procurement Reform Working Group (PRWG)

Integrity opportunities should not be missed in the regulations

Public procurement is central to service delivery and development in South Africa, but the system is characterised by pervasive corruption. This has been enabled, in part, by a lack of transparency. This limits meaningful oversight of public procurement by state and private actors (suppliers, NGOs, journalists, interested and affected parties). Recognizing this, the Public Procurement Act includes provisions for enhancing the system's transparency. The Act was officially published in 2024 but is not yet in effect. [Draft regulations](#) under the Act have been published for public comment (due 15 July 2026).

The Public Procurement Act seeks to provide for 'real-time' sight of procurement processes as they unfold: Section 30 of the Public Procurement Act provides for the public, civil society organisations and the media to have access to procurement processes in order to scrutinize and monitor the integrity of the system.

And in Section 31, the Act requires that government disclose procurement information to the public (such as information about bids, the award of bids, contract terms, and so on). This information must be published on a free, central, online portal. It must be provided in a format that enables tracking of information relevant to the entire process of a specific procurement event, and it must be interoperable (in other words, a user of the data should be able to download and analyse this data using other applications). And this procurement information must be *proactively* disclosed – in other words, those monitoring the system should not have to ask for such data to be made public.

Additionally, Section 28(2)(b) of the Act calls for “standardised and interoperable open data across the procurement cycle”. This is an important commitment not only in the context of enhancing digital public infrastructure but for deepening public access and oversight.

As civil society organisations long involved with public procurement reform and concerned to see an accountable and effective public procurement system developed for South Africa, we have welcomed these commitments.

We have raised concerns, however, in public deliberations on the Bill in 2024, that a provision in the Act which allows the Minister to remove from public access any information defined as confidential under PAIA may see officials limit meaningful access to procurement data and processes. We have further concerns that the regulations for the Act, recently published for public comment, do not give necessary substance to meaningful access and transparency – as they critically should.

For example, the regulations (see Regulations 35-36) appear to conflate two separate obligations in the Act: *access to procurement processes* and *disclosure of procurement information*. This conflation risks undermining the transparency obligations of the Act (and required by the South African Constitution). Access under section 30 refers to real-time sight of procurement processes (such as observing bid committee proceedings), and disclosure under Section 31 is about what procurement data the state must make available and share publicly (for example on a website or portal). These are related but different concepts, requiring separate regulation. Instead, the regulations are written as if meeting obligations under Section 31 (to disclose data on an online platform) and allowing the public to attend a briefing meeting on a tender is enough to meet the state's obligations under Section 30 (allowing public access to procurement processes for the purposes of real-time civic oversight). Because of this flawed assumption, the relevant regulation provides little detail on how "access to procurement processes" will be provided and managed, under what conditions, and by whom. Regulation 49(1), which allows for stakeholder consultation on infrastructure procurement, is welcomed, but it also does not amount to the kind of real-time oversight envisioned in the Act. Similarly, regulations allowing for user or beneficiary feedback provide a welcome addition to contract management, but do not deepen proactive access to the procurement processes preceding contract finalisation.

The regulations also fail to provide details about exactly what public procurement data points will be proactively disclosed under Section 31 of the Act. It is important that regulations clearly guide procuring institutions and the public on exactly what data should be provided by government without the public having to ask for it.

The regulations state that if the procurement information sought is not publicly available, access to procurement information must be granted under PAIA. We caution though, that those requesting data should not have to go through a PAIA process to access data that should be proactively provided in the first place.

There is an opportunity to meaningfully operationalise the open data and public participation provisions via the Regulations. Concrete steps could include the development of a national procurement data standard with clear timelines for progressive 'whole of government implementation'. The Office of the Chief Procurement Officer has made important progress in working with various expert bodies and could leverage lessons from standards such as the Open Contracting Data Standard and similar.

Regarding disclosure of procurement information under Section 31 of the Act, although regulation 35 caters for the creation of a publicly accessible, central, online portal for procurement information, it appears to leave it up to procuring institutions to publish their data on the central portal. It also affords procuring institutions the discretion to discern what is confidential and what is not, with little guidance and no centralised oversight. No role is specified for the Public Procurement Office to undertake quality control of this data, including ensuring that the data is consistently entered and what is considered confidential is truly confidential. This could create major challenges for ensuring quality data for proper oversight of the system.

As currently drafted, these Regulations fall short in meeting the transparency commitments in the Constitution and Act and will not contribute meaningfully towards developing institutional capacity for a more open and accountable procurement system. There are opportunities with section 30, for example, to enable the responsible use of civic witnesses (representatives of civil society, authorised by government to closely observe procurement processes) and social audits (community observation of service delivery processes). Appropriate safeguards can be fleshed out under this section's regulations to preserve candid internal deliberations, prevent abuse and intimidation of those in the process and protect *genuine* confidential information. But the need for safeguards must not render access and oversight toothless.

The Public Procurement Act currently faces several court challenges (two of these pending court decisions on the grounds of inadequate public participation). We hope that even if the Act is set aside, public comment on the regulations can be productively used to enhance the future regulatory framework for public procurement transparency. We would welcome the opportunity to constructively engage with the Office of the Chief Procurement Officer in the National Treasury towards a transparent and effective system that supports South Africa's development.

*The **Procurement Reform Working Group (PRWG)** is a South African coalition of civil society organisations, allied partners, researchers, and interested individuals concerned with public procurement integrity and efficacy in South Africa.*

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