



## **Transparency in local government procurement during COVID-19**

by

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### **1. Introduction**

Municipalities procure goods and services from private entities almost daily. These goods and services are often essential for ensuring the provision of basic amenities such as water, sanitation, electricity, and refuse removal.

To procure from a private entity, municipalities must: (1) design and advertise a project, (2) select a service provider through a fair bidding process, (3) conclude an agreement with the successful bidder which includes the details of what must be delivered, (4) monitor the actual delivery as specified in the contract, and (5) only pay when the goods or services are delivered as per the contract.

Far too often there are problems in the way projects are designed and in the way service providers are appointed, or there are problems with the content of the agreement. Similarly, service providers are often paid for substandard delivery, or even for delivery that did not take place at all. This has a direct impact on basic services, because the service that the community is entitled to, and that was promised (e.g. the resurfacing of a road, delivery of water tanks, regular cleaning of toilets, or street lighting) is not provided. The municipality ought to have systems in place to prevent and address these problems.

However, communities are equally important here; they are well placed to assess whether a service is being delivered or not. If the municipality is transparent and shares key information about the above five phases (procurement information), communities can assist the municipality in holding the service provider accountable and can, in the process, hold the municipality accountable. This can be illustrated by looking at an area of municipal service

delivery that is most critical in ensuring dignity and combating inequality, namely the delivery of basic services to informal settlements.

Most basic services in informal settlements are delivered by service providers appointed by municipal authorities through the public procurement process. Procurement information is one of the only sources of information about the level of service that the municipality provides. Water and sanitation facilities are often communal and shared between many households. Bid specifications or contract information indicate how often these communal facilities<sup>1</sup> should be serviced and cleaned. For example, where informal settlements do not have access to piped water and receive water directly from water distribution trucks or from Jojo tanks that have to be refilled regularly, the bid specifications should indicate how often water should be delivered.

The [work](#) of the Social Audit Network and others has illustrated that informal settlement residents can be an important partner in monitoring the delivery of services. As services to informal settlement residents have scaled up during the COVID-19 pandemic, the monitoring role of residents has become even more important. But they can only play this role if they know what services are supposed to be provided. As we will show below, procurement information has unfortunately been even harder to obtain during the lockdown than is normally the case.

## **2. What public procurement information do communities need to help monitor government service delivery?**

Procurement information tells communities about the exact nature of the service they should receive and how often a service should be delivered. The most important information communities need in order to monitor the procurement and delivery of contracted services includes:

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<sup>1</sup> Outsourced sanitation services include a range of technologies. Ventilated Improved Pit (VIP) toilets are usually provided through one contract and then desludged (and to some extent cleaned) by another service provider. A single contract (but often awarded to multiple service providers) usually covers the provision and servicing (including cleaning) of chemical and portable flush toilets. The contract specifications should prescribe how often toilets should be serviced and cleaned.

- **tender notices** and the full set of **bid specifications**;
- **tender awards** (including the names of all winning bidders and the total contract amounts);
- any additional **service delivery agreements** or **schedules** negotiated after the award of the contract;
- **contract monitoring information**; and
- information about **extensions** to and **deviations** from existing contracts.

The **bid specifications** are a critical source of information as they should provide detailed information about exactly what a service provider should be delivering on the ground. For example, the specifications for the cleaning of chemical toilets should tell residents which days of the week their toilets should be cleaned, as well as exactly which parts of the toilets should be cleaned. In addition, the bid specifications should provide information on the chemicals to be used in this process as well as the Personal Protective Equipment (PPE) that should be provided to workers. The timely publication of **tender awards** will tell residents who has been awarded the contract for the delivery of a service.

In many cases, bid specifications explicitly indicate that after the award of the contract a further **service agreement** will be negotiated, or a **service delivery schedule** will be drawn up. These additional documents often include more specific information about the service provider responsible for the delivery of the service to a particular area, how often and on which days the service should be delivered, and more detail about the scope of the service.

**Contract monitoring information** includes monitoring reports (such as time sheets, job cards, access control sheets), contractor invoices, and contractor payment sheets (documents signed by municipal officials to authorise payments). This information is valuable in that it tells communities what information regarding service delivery the municipality considered before making payments to service providers. Communities can compare this contract monitoring information with what they observe on the ground in terms of the actual delivery of the service.

In many cases the contracts for the delivery of basic services are extended beyond the contract's initial end date, through a **deviation** or an **extension**. Information about deviations

or extensions informs residents for how long the contract has been extended and with which contractors. It enables communities to continue to hold the relevant contractor and the municipality accountable for the delivery of the service.

Armed with relevant procurement information, communities can monitor whether services are being delivered according to the contract specifications, which can be considered a minimum standard in the current context. Communities can also advocate changes to these specifications where the minimum standard is inadequate in response to the COVID-19 pandemic.

Information about the emergency procurement of water delivery, for example, will tell residents if their settlement has been included in a specific contract, who is responsible for the provision of water in their settlement, and how often this should happen. Again, access to this information will help residents to engage with the relevant municipality if they do not have access to water or if water is not being delivered regularly.

### **3. Transparency in municipal emergency procurement: laws and regulations**

The [Municipal Supply Chain Management Regulations](#), issued in terms of the Local Government: [Municipal Finance Management Act of 2003](#) (MFMA), guide procurement at the local government level. However, these regulations provide very limited guidance on what procurement information should be made public, and how this should be done. They require municipalities and municipal entities to implement a supply chain management that is “fair, equitable, transparent, competitive and cost effective” (see Regulation 2(1)(b)). Regulation 22(1) provides guidelines on information to be included in a public advertisement of a tender. Regulation 23(a) requires the supply chain management policy to stipulate that bids should be opened in public. The rest of this provision sets requirements for making the names of the bidders, and if practical the prices of the bids, publicly available.

Regulation 36 (1) states that such a policy “may allow the accounting officer” to “dispense with the official procurement processes established by the policy” in a number of instances including “an emergency”. It is silent on whether, and if so, what procurement information must be made publicly available during “an emergency”.

After the introduction of the eTender Publication Portal in 2016, the National Treasury published a [MFMA Circular No 83](#) which sets out the requirements for the publication of procurement information by municipalities and municipal entities on the portal. This circular provides detailed guidelines regarding the advertisement of tenders and the publication of awards, cancellations, deviations, and extensions to contracts on the portal. The circular specifically states that all bids over the threshold value of R200 000 advertised on the eTender Publication Portal must include the bid documents, which includes the specifications or Terms of Reference and any other relevant documents.

Since the declaration of the national state of disaster on 15 March 2020, the National Treasury has issued a number of MFMA circulars to guide emergency procurement. A recent circular is [MFMA Circular No 102](#), which replaced [MFMA Circular 101](#), which in turn replaced [MFMA Circular 100](#)). Circular No 102 requires municipalities and municipal entities to put in place additional procurement and expenditure measures to monitor interventions taken to combat the spread of COVID-19. In particular, they must undertake to:

- a) establish an internal system for financial control, risk management, and reporting in order to account for the funds used for the COVID-19 disaster;
- b) ensure that officials committing any expenditure are duly authorised or properly delegated;
- c) avail internal audit functions to conduct audit checks in order to pick up and prevent irregularities pro-actively; and
- d) monitor expenditure regularly and generate frequent expenditure reports (at least weekly) including monitoring any risks that may arise.

These measures relate mainly to the internal control and monitoring of COVID-19 expenditure. Where is the requirement for transparency in the expenditure of COVID-19 funds? How are communities expected to track the use of these funds?

Circular No 102 also deals with the procurement of PPE items and cloth masks. It provides maximum prices for these items in bids to ensure that municipalities achieve value for money.

The circular reiterates that municipalities may deviate from the competitive bidding process for goods and services not covered by the circular but necessary to combat COVID-19, and

this must be done in terms of Section 36 of the Municipal Supply Chain Management Regulations. It states specifically that “the COVID-19 pandemic is a situation that justifies the use of emergency procurement provisions”.

MFMA Circular No 62 allows for municipalities to expand contracts for goods by up to 15 percent. Circular No 102 increases the threshold to 30 percent or R30 million for construction-related contracts, and 25 percent or R25 million for the period of the pandemic to prevent or minimise the effects of COVID-19. Section 166(3) of the MFMA states that a contract can only be amended if the reasons for the proposed amendment have been tabled in council, and if the local community has been given notice of the intention to amend the contract and invited to submit representations to the municipality. Are communities invited to make such representations and do they do so in practice?

Circular No 102 (as well as the previous two circulars) does not make any specific mention of the publication of tender notices and bid specifications for emergency procurement. This circular does, however, require municipalities to upload a schedule of questions and answers related to specific tenders on their website to ensure that all bidders receive the same information. Finally, Circular No 102 states that any public bid openings must comply with the regulations published in March 2020, under the Disaster Management Act of 2002.

On 27 May the National Treasury released [MFMA Circular No 103](#) which deals more broadly with preventive financial measures and internal financial controls. Section 7 of the circular focuses on emergency procurement control measures. While the section highlights that the principles of fairness, equity, transparency, competitiveness, and cost-effectiveness must be maintained, no specific reference is made to ensuring the public availability of procurement information such as bid specifications.

Finally, the Directions issued by the Minister of Cooperative Governance and Traditional Affairs in terms of Section 27(2) of the Disaster Management Act contain an important provision that may assist in holding municipalities accountable, but only *after* the end of the state of disaster. Direction 6.7.3.(h) provides that municipalities must "report all procurement undertaken during the period of the state of disaster to the first council meeting after the lapsing or the termination of the state of disaster". Reporting to the council will ensure that

the information is publicly available. It is not clear what type of information must be included in the report, but communities and councillors can insist that it contains the full and detailed information, including the expansion of contracts.

#### **4. What is local government providing in practice?**

Accessing local government procurement information was a challenge even before the onset of the COVID-19 pandemic.

Civil society organisations and communities have struggled in the past to access procurement information, such as **bid specifications**. Many municipalities still do not publish the full set of specifications with the tender notices on their website, or do not submit this to the eTender portal. In addition, once a contract has been awarded, the bid specifications are often no longer publicly available. Municipalities tend to remove this information shortly after the bid closing date, and usually before the award of the tender. In the case of the eTender portal, the information ceases to be available on the portal on the same day as the bid closing date. The specifications form the foundation of the contract but are no longer available once the contract has been awarded and the service is being delivered (or not).

Additional **service agreements** or **service delivery schedules**, as well as **contract monitoring information**, are never published.

While some municipalities follow the [legal requirement](#) of making **tender award** information public within seven working days on their websites or on the eTender Publication Portal, others do so infrequently. Many municipalities follow the same lax practice when it comes to publishing information about **extensions** to and **deviations** from existing contracts.

In our experience during the lockdown, where civil society organisations and the communities they work with were looking for information, for example, on tenders awarded and specifications for the provision and transport of water using water trucks and tankers, it was found that in particular during the Level 5 and 4 lockdown periods, municipalities were slow in adding any tender information (notices, specifications and awards) to their websites or submitting it to the eTender portal. Many did not make any procurement information publicly available during this period. Some improvements have been noted during June.

## 5. International resources related to transparency in procurement during COVID-19

Ensuring minimum standards of transparency in a decentralised governance system can be challenging. The national state of disaster has obviously made this even harder. However, there are international experiences that we can learn from. The Open Contracting Partnership has put together a [resource page](#) which includes a ***Guide to collect, publish and visualize COVID-19 procurement data***, as well as a number of good practice examples from across the world.

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