

COSATU & SACTWU REPORT TO PARLIAMENT ON PPE PROCUREMENT



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UPFRONT COMMENTS

The story of COVID PPE procurement is a horror story of the State wasting precious and scarce finances on corruption and unnecessary middlemen during the worst economic crisis of our lifetimes.

It is a story of the betrayal of the safety of healthcare workers who are being placed at risk due to the supply of substandard products.

It is a shameful story of missed opportunities to buy and produce locally many products which are not normally needed in such large quantities by the State, and by so doing not doing everything possible to support factories and workers in a struggling economy.

COSATU's interest in this matter is due to the its bearing on public finances and the integrity of the State.

But such procurement also impacts our members on the frontline of the fight against COVID, public sector healthcare workers, and our members in the manufacturing industries - such as Plastics, Chemicals and the Clothing, Textile, Footwear & Leather (CTFL) sectors.

Unfortunately the problems we identify in this report are not unique to lockdown. But they are much more pronounced currently during lockdown.

Essentially these problems arise out of a procurement system that is fundamentally flawed: the architecture is not designed to mitigate fraud and abuse.

By virtue of its size and scope, its decentralised nature and the lack of transparency, there are simply too many holes in the system that allow too many places for shadows to hide.

There are 100s of decentralised supply chain departments with 10 000s of supply chain officials across the breadth of the State who conduct millions of procurement transactions valued at almost R1 trillion annually.

While there are rules that govern transactions, one cannot easily determine if the rules are being broken because there is so little transparency and so little open data to trigger alerts and risks and consequences.

The system in its present form effectively prevents real monitoring and enforcement.

The flaws with public procurement have also turned the industrial policy State-driven localisation lever into a gamble:

The odds are heavily stacked against successfully driving industrialisation and job creation.

Instead of billions of Rands being pumped into the local productive economy, including into Black owned factories, it is flowing into the pockets of middlemen, politically connected individuals and offshore.

To fix all of these problems, we must urgently fix the system of public procurement.

PPE PROCUREMENT: WHAT IS IT?

What is PPE?

- The COVID-19 crisis offers very few silver linings for the economy generally. However the local manufacturing industry – such as plastics, chemicals and clothing, textile, footwear and leather (CTFL) - have been presented with an opportunity to repurpose and supply many billions of Rands worth of personal protective equipment (PPE), and therefore find new markets to supplement losses in traditional markets like retail & the industrial sector
- PPE includes a wide range of products such as
 - Masks - cloth masks, surgical masks and various forms of respirators
 - Other forms of face protection - like face shields
 - Medical gowns, aprons, scrubs, coveralls, overshoes, hoods and other products
 - Gloves
 - Sanitizers
- When these products are purchased by the State, many are required to be 100% local content

What Should PPE Procurement Have Offered?

- Supply chain integrity
- Prudent and transparent use of public monies
 - If locally made products were bought, it could have saved the State money: e.g. local N95 equivalent masks cost R20 per mask while imported versions cost R40 per mask.
- Sufficient & quality products that protect healthcare workers
- Significant demand injection into local industry supporting factories and jobs

What Has Actually Happened?

- Tender abuse, corruption and enrichment of political elite.
- Non-transparent supply chains: information about tenders and awards has been kept secret and under wraps.
- Unaccountable State officials: senior officials have overwhelmingly ignored and frustrated our repeated requests for transparency.
- Waste of public finances: middlemen & corruption have siphoned scarce State monies during our most dire financial crisis.

What Has Actually Happened?

- Frantic buying & unscrupulous suppliers have allowed sub-standard products into government supply chains placing healthcare workers at risk.
- Local content laws have been undermined: a flood of imported products have created jobs in other countries when needed most in SA.
- A race to the bottom has been stimulated in SA: Even where localisation has occurred, predatory middlemen have usually placed the products into the informal economy and illegal sweatshops (not tax compliant, not labour compliant, not paying UIF, not health and safety compliant etc.), with dire consequences for worker health and quality of products, and prejudicing law-abiding factories.

VARIOUS INTERVENTIONS & FINDINGS

Government Flip-Flopping on Procurement

- We believed government should centralise all PPE procurement under National Treasury in order to coordinate procurement and supply chains. This is not because we love National Treasury (NT) or think they would not make any mistakes. It is because by limiting procurement to one entity, it would be easier to spot mistakes and try to quickly correct them.
- 8 April 2020: NT released a statement indicating procurement would be centralised.
- 28 April 2020: But then Instruction Note 5 of 2020/2021 was published and procurement was decentralised and devolved.

A Warning to Government

- After Instruction Note 5 was issued, COSATU warned National Treasury in a letter and a subsequent series of meetings with the Minister, DG and senior officials that the procurement system they were setting up would, amongst other things:
 - compromise quality,
 - lead to overinflated prices and the loss of scarce State revenues to unnecessary middlemen,
 - facilitate imports, and
 - where local production occurred it was likely to lead to the informalisation of the economy
- To prevent such outcomes, in a letter of 30 April 2020 we recommended that only genuine manufacturers should be awarded contracts, not agents or distributors. Our advice was ignored.

Compelled to Intervene

- Since the threat of lockdown, the economic meltdown and the collapse in retail demand posed huge risks to local manufacturing workers and factories, unions had to take every opportunity to defend our members and workers and support manufacturing, regardless of whether the procurement system was in our favour or not.
- E.g. From early May 2020 COSATU & SACTWU began to intervene in the tender market to try and determine its dynamics and nudge Departments and suppliers towards local content in the interests of supporting and creating jobs.

Daily Tender Alerts

- SACTWU's daily tender alert system was activated and extended.
 - On a daily basis it monitors advertised tenders across 100s of State Entities and the open tenders are brought to the attention of 100s of local CTFL manufacturers, including black-owned manufacturers, micro-businesses, other SMMEs and large companies. The intention is that such companies are enabled to bid for tenders and provide 100% local content. Feedback is that such tenders go to intermediaries.
- Over 500 CTFL PPE tenders have been advertised since the beginning of lockdown. Most are advertised by only a few Departments.
 - It showed us early on that most contracting was probably not happening through open tender processes

Engagement With Procuring Authorities

- We wrote to Departments urging them to take local content seriously, and ask them what steps they'd take to ensure 100% local content integrity in their supply chains.
 - We prioritised Departments we deemed to be the largest procurers in the State during lockdown
 - Provincial Treasuries,
 - Provincial Health, and
 - Provincial Education.
- We have also written to almost 100 other organs of State urging the same during lockdown.

Engagement With Procuring Authorities

- We also asked them for:
 - The outcomes of all PPE and clothing mask tenders issued since the beginning of lockdown,
 - The names of all suppliers awarded contracts,
 - The value of each contract, and
 - The details of pending or upcoming PPE contracts so that we could monitor them.
- The public has a right to this information. For instance Treasury Regulation 16A.6.3(d) - Paras 3.7.1. and 3.7.2 – indicate it should be published.

Worryingly senior State officials threw a blanket of secrecy over their procurement and repeatedly frustrated our attempts to seek transparency.

e.g. Eastern Cape

May 12	We email Treasury and Health asking for details of all PPE and cloth mask procurement in province, in particular for Health Dept.
May 13	We send reminder email to Health and Treasury re specific large health tenders: 'will it be local content?'
May 21	We send email to Education to determine cloth mask procurement outcomes.
May 22	We send reminder email to Health and Treasury.
1 Jun	We send reminder email to Education again.
3 Jun	We send reminder email to Education again.
3 Jun	Education finally responds: they provide us copy of letter they have provided to suppliers but not supplier details or names.

3 Jun	We respond to Education: still seek clarity on details of awarded suppliers because these have not been shared. We also query how suppliers can provide locally made products if the Department gives them 48 hours to deliver.
3 Jun	We send reminder email to Education.
10 Jun	Education responds: refer matter to their legal dept.
10 Jun	Education legal tell us to use a PAIA for info.
11 Jun	We email Education Legal and indicate PAIA not necessary as this is public information.
8 July	We send reminder email to Education.
Outcome	Education has stayed silent and has still supplied nothing. Health has recently shared info with us. But most suppliers are ignoring our requests for local content clarity.

e.g. KZN

May 12	We email Treasury and Health asking for details of all PPE and cloth mask procurement in province, in particular for Health Dept.
May 15	We send email reminder to Treasury & Health.
May 15	Response by Treasury: They indicate large tenders haven't been issued yet.
May 15	We respond & highlight 90 contracts from KZN Health to date with over 600 000 products that have been advertised: 'who won these? Were they 100% local content?'
May 21	We send email to Education re cloth mask procurement outcomes.
May 22	We send further reminder email to Treasury & Health.

1 June	We send email reminder to Education.
1 June	We send further reminder email to Treasury & Health.
3 June	We send further email reminder to Education.
9 June	We send further email reminder to Education.
17 June	We send further email reminder to Education. But our email also raised serious concern that a bid for 400 000 cloth masks (ZNE06/01/COV/2020/2021) closed after 48 hours (1 day was a public holiday).
Jun-July	A further almost 30 emails sent to Health.
Outcome	Both KZN Health and Education have ignored virtually every correspondence, and they have not outlined their bid winners despite us requesting this for almost 330 bids and tenders.

e.g. Gauteng

May 12	We email Treasury and Health asking for details of all PPE and cloth mask procurement in province, in particular for Health Dept.
May 15	We email reminder to Treasury & Health.
May 19	We send further email reminder to Treasury & Health.
May 21	We send email to Education asking for details of all cloth mask procurement.
May 29	We send email reminder sent to Education.
May 29	We send further email reminder sent to Treasury & Health.

June 1	Provincial Treasury Responds: indicates all procurement is centralized under them and they offer to provide info in 1 week.
June 6	Provincial Treasury supplies some information. But the info supplied consists only of R370m worth of contracts. This is not all the contracts as we now know.
Outcome:	Many suppliers have not responded to our queries about where they get their products. We suspect silence means they may be importing. A few have responded.

Other Departments

- This lack of disclosure has been generalised.
- Some better examples:
 - Limpopo Health: but their information provided didn't provide values of the contracts awarded.
 - Western Cape Education: they were the only Department to identify the local factories actually making their masks, but contract still went to an intermediary. Concerns with pricing of other PPE procured.

If the State does not disclose its procurement information publicly, its actions and integrity cannot be monitored.

Challenges Following Up With Suppliers

- Since Departments have been unwilling to reveal their suppliers, this has hampered our ability to determine who is winning contracts and what is happening in supply chains.
- Where we have received information about suppliers, many are difficult to identify and contact because they do not have public profiles or public contact details.
- Where we have found contact information, many suppliers practice radio silence and have ignored our requests for details on the origins of their products. We interpret this as a warning sign.

If suppliers cannot be quickly identified or traced by the market or key interest groups, it makes it easier to de-fraud the system.

Lack of Transparency Even Evident Within Provinces

- The system of decentralised procurement is so opaque that even Provincial Treasuries can struggle to determine what is happening with tenders.
 - E.g. Mpumalanga Treasury:
 - Indicated that Departments were buying their own PPE and that the Provincial Treasury did not have access to this information; it would need to seek it. An official was requested to assist us, but the lack of responses from the colleagues led to nothing.
 - E.g. Eastern Cape Treasury:
 - Indicated that details of awarded contracts and suppliers sat with relevant Departments.
 - E.g. Western Cape Treasury:
 - Any procurement which occurs outside the centralised procurement systems requires a manual process of following up with Departments.

If Departmental procurement outcomes are so hidden even to other actors in the State, then State-led monitoring and enforcement is made harder and fraud is made easier.

Findings: Suppliers Overcharging State

- Middlemen often charging 100% - 300% mark ups, if not higher.
 - E.g. Cloth masks:
 - Legal manufacturers paying proper wages, tax and using locally made fabrics as per law could produce around R10 – R16 per mask, depending on quality.
 - Middlemen sought masks for around R8 – apparently based on price of illegal Chinese products, and price of local products made in informal economy as well as illegal economy using (illegally) imported fabric.
 - Middlemen sold products to State for R20 – R25 or even more.
 - E.g. Gowns:
 - Local manufacturers estimate they could have charged the State less than 50% of the prices charged to the Gauteng Dept of Health for items like gowns.
- The State could have saved billions of Rands by buying directly from factories, but factories - including many black owned factories - are not winning the bids from government. E.g. Factory testimony: *“I am a 100% black owned factory that employs over 400 people and can make PPE products to national standards. I haven’t received a single order from any tender that we’ve applied for, and not even orders from middlemen”*

Findings: Suppliers Providing Poor Quality

- Middlemen supplying poor quality products.
 - E.g. already problems with imported KN95 masks which have been withdrawn in many hospitals.
 - E.g. gowns not meeting tests and standards.
 - E.g. some imported gowns are too small: anecdotes that doctors have to wear two gowns to cover themselves.
- Lives of Health Care Workers (HCW) and their families are being put at risk. Some are now dying as a direct consequence.

Findings: Suppliers Providing Imports

- Imported products are flowing into State supply chains, against the law
- Claims from factories: *“middlemen are approaching companies offering to pay to re-label imported products as made in SA. They are offering R1 a mask to relabel and they have orders for hundreds of thousands of masks from the State”*.
- Some middlemen have admitted to providing imports.
- Some foreign factories have admitted to supplying PPE for contracts to the South African government (e.g. in eSwatini).
- Foreign-made products have been found in public hospitals.
- Some suppliers have admitted to not using local fabrics (without getting an exemption), which is against the law.

Evidence Suggests Surge In Imports

- A spike in imports occurred:
 - Temporary duty relaxation was given for medical grade face masks so that sufficient volumes would be available in SA.
 - Imports should only have gone to private sector, as public sector is supposed to buy local content.
 - But during April and May, over R6bn worth of products were imported under this dispensation. In practice it would mean that almost 4 billion masks were imported. But this is not possible. Instead import fraud was likely occurring. Due to the known decline in retail demand and the surge in demand for PPE, we suspect importers were bringing in other non-mask PPE, pretending they were simply masks, and providing many of these to the State.

Findings: Concerns Re Local Production

- Where local manufacturing appears to be occurring:
 - There is significant wastage in supply chains and we have found instances of middlemen who buy from middlemen who buy from factories. It is absurd.
 - Price pressure is leading to most orders flowing to illegal operations with no guarantee of standards for the products or protections for the workers.

Insights from Different Local Factories:

“I was approached by a gentlemen who got a contract directly from a govt hospital and he wanted me to sew an apron at R3.50. CMT's like myself cannot do those prices so the work goes to informal operations making PPE under unhygienic conditions. If the hospitals can insist on buying from manufacturers it will really help the industry”.

“Government is using brokers instead of purchasing directly from local factories thus inflating the price of the PPE. There are so many people in between who make a profit”.

“Tenders close almost immediately after they are advertised. How is it possible for bidders to bid like this? It seems rigged”.

“Suppliers are still importing cloth masks which take the jobs of locals even though the government wanted them to be produced in South Africa”.

Many Local Factories in Crisis

- Despite the booming demand for PPE products, the cracks in the tender system mean that many legitimate factories are struggling.
- We are receiving daily requests from factories pleading for help.
- Many factories which have made PPE before, and can do so to required standards, are not getting orders as middlemen channel orders elsewhere.

RECOMMENDATIONS

Recommendations:

- **One:** Procurement of all CTFL and PPE products in the entire State (national, provincial & local government, entities and SOEs) should be centralised under National Treasury for lockdown and beyond.
- **Two:** Contracts must be ring-fenced for local compliant manufacturers. State monies should not be rewarding and supporting companies that break the law
- **Three:** Government to pass regulation compelling all Public Organs and Entities to immediately electronically publish the details of all PPE contracts awarded, including the details of the bid, the names of all awarded suppliers, the products they are supplying, the value of their contracts, the volumes to be supplied, the origin of their products, the name of the manufacturers purportedly producing on their behalf, the mark-up charged to the State, and the contact details of all suppliers.

Recommendations:

- **Four:** Government to pass immediate regulation banning all political exposed persons (e.g. all politicians and their immediate family members) from doing business with the State
- **Five:** National Treasury to finalise the Procurement Bill and bring it to Nedlac within 30 days and Parliament by November and for Parliament to pass it by April 2021.
- **Six:** Investigations and prosecutions to proceed against cases of tender corruption.

Recommendations:

- **Seven:** Government exercise the full powers of the Auditing Act and hold offending officials and public representatives personally financially liable for their criminal and delinquent behaviour.
- **Eight:** The removal from office of Political Office Bearers whose departments are implicated in corruption and wasteful expenditure.
- **Nine:** The immediate establishment of rapid response courts to deal with corruption (based on the model used during the 2010 Soccer World Cup).
- **Ten:** Treasury to report fortnightly on the above recommended interventions implementation to Parliament.