



# EASTERN CAPE PROVINCIAL LEGISLATURE

## PORTFOLIO COMMITTEE ON FINANCE AND PROVINCIAL EXPENDITURE

Tel: 040 6091543 / 066 4749787

Fax: 086 734 4803

E-mail: [tmdledle@ecleg.gov.za](mailto:tmdledle@ecleg.gov.za)

Date: 11 March 2024

Enquiries: Ms T Mdledle

Ref: Public Procurement Bill

### NEGOTIATING MANDATE

**To** : The Chairperson:  
Select Committee on Finance

**Name of Bill** : Public Procurement Bill

**Number of Bill** : [B 18B—2023]

**Date of Deliberation** : 14 March 2024

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### Vote of the Legislature

The Committee designated by the Legislature supports the Public Procurement Bill [B18-2023] and mandates the Eastern Cape Permanent Delegate to the NCOP to vote in favour of the Bill. The Province, however, has the following comments:

- (a) Technical tender documents must be user friendly and must be in different languages for people to understand what is required.
- (b) There is an urgent need for the National Treasury and Provincial Treasuries and other relevant government institutions to conduct empowerment, capacitation, and development of black people in the construction industry for them to be upgraded to higher grades (7-9) as most of the work in this industry is outsourced.
- (c) Regulations must be developed as soon as possible to ensure the implementation of the Bill once it becomes an Act.

Negotiating Mandate Public Procurement Bill [B 18B—2023]



HON. M NDABENI (MPL)  
CHAIRPERSON OF PORTFOLIO COMMITTEE  
ON FINANCE AND PROVINCIAL EXPENDITURE

15 March 2024

DATE

Report of the Portfolio Committee on Finance and Provincial Expenditure dated 14 March 2024 as follows:

1. *Terms of reference*

The terms of reference of the Committee were to consider the **Public Procurement Bill [B18B—2023]**, which was referred by the National Council of Provinces to the Eastern Cape Provincial Legislature, solicit public inputs on the Bill and consolidate the Province's Negotiating Mandate and report to the House.

2. *Method of Work*

The Committee conducted eight (8) public hearings in six (6) District Municipalities and two (2) Metros around Eastern Cape from 27 February to 01 March 2024.

3. *Public Consultation and Education*

The Committee invited stakeholders to participate in the public hearing and to make written submissions. The stakeholders include local and district municipalities, Eastern Cape Chamber of Commerce and its branches, Provincial Treasury, Office of the Premier and all Provincial Departments, Ward Committee Members and Community Members. Stakeholders who attended the Public Hearing were +- 950 in all the six (6) District Municipalities and two (2) Metros. (Registers attached)

The Committee conducted desktop notification of stakeholders in all districts Municipalities and Metros including stakeholders. The Committee's publicity on the Bill were also done using radio and social media.

**Twitter and Facebook:**

- Public notice and a call for written submissions on the Bill were made using Twitter and Facebook.

**Radio**

- The Committee Chairperson was scheduled to present the Bill on various radio stations and other community radio stations.

4. *Public Hearings*

**4.1 Sarah Baartman District Municipality Newton Hall**

- The Bill was supported but the following concerns were raised:-

- Stakeholders appreciate the Tribunal process not to appeal to Courts, resolved the conflicts within the government so as not to halt the processes.
- Stakeholders especially the upcoming entrepreneurs need assistance when completing the tender documents so that they are done correctly.
- There was a concern about geographic location as the stakeholders wanted clarity on what does local referred to.

#### **4.2 Nelson Mandela Metro Babs Madlakane Hall, Kwa-Nobuhle**

- The Bill was supported but the following concerns were raised:-
  - There was a concern that women always get less than that 30% and they need assistance to get tenders as their papers expire because they are not given opportunity to work.
  - Stakeholders urged for the establishment of Ombudsman on the Procurement issues.
  - There was a suggestion that timeframe to wait for the results from Tribunal should not be long including the investigation period by the Tribunal should not take time.
  - The Stakeholders appreciate that the Bill favours the disadvantaged so they urged for the quick implementation of the Bill.
  - There was a concern that the validity period has no consistency and there is no feedback on the tender advertised so that the other Stakeholders can be able to know what they did wrong.

#### **4.3 Nelson Mandela Metro Raymond Mhlaba Sports Center, Motherwell**

- The Bill was supported but the following concerns were raised:-
  - Stake holders indicated that the tendering process is not helping, as it is having a lot of favours.
  - There was a suggestion that Government should employ people to do all the work and no tendering process will take place.
  - Sub-contracting must be monitored closely, projects should be spread not given to one person as that person ended up not being transparent about the actual amount of the tender awarded.
  - Small businesses took part in tendering processes, but they are left outside, they are not given a chance.
  - There was a suggestion that expectation of interest must be opened.

#### **4.4 Sarah Baartman District Municipality BB Zondani Hall**

- The Bill was supported but the following concern was raised: -
  - Government must assist and mentor small businesses for sustainability.

#### **5. Alfred Nzo and Or Tambo District Municipalities**

##### **5.1 St Patricks' Hospital Hall – ANDM**

- The Bill was supported but the following concerns were raised:-
  - Small businesses request assistance from the department because when they submit quotations, they do not receive any response to correct where they failed for the next submission.
  - There was a suggestion that South African minerals must be processed in South Africa.
  - Stakeholders are grateful about set-aside particularly black people who are youth, black women, and black people with disability.
  - Small businesses request support as they are unable to supply cleaning material to bigger businesses.
  - Raw material must not go outside the country and local material must also be considered e.g. from one district to another as it will assist with job creation.
  - Fronting must be considered, local and district companies are using it, lifestyle audits are required to prevent the situation.
  - Stakeholders are grateful of being involved in law making, their concern was that government are big buyers, but they don't know where they buy their commodities. They feel that small businesses should be allowed to supply big businesses.
  - Subcontractors must not be managed by main contractors, and there must be monitoring.
  - The bill is appreciated, and the stakeholders wanted it to be expedited.

##### **5.2 Alfred Nzo DM Conference Centre – ANDM**

- The Bill was supported but the following concerns were raised:-

- Stakeholders appreciated the establishment and composition of the tribunal as courts are costly and matters take long time to be finalised.
- As per geographic location does local means district or South Africa.
- There is a need to conduct supplier workshops to empower them when the bill is passed, and the regulations are issued (e.g. compliance matters local content requirements)
- There is a mechanism that will deal with disagreements between the Bid Evaluation Committee (BEC) and Bid Adjudication Committee (BAC) and wanted to know if the final decision still resides with the Municipal Manager or the Accounting Officer.

### **5.3 St Elizabeth Hospital Resource Centre – ORTDM**

- The Bill was supported but the following concerns were raised:-
  - Stakeholders are grateful of the bill, small businesses are not employed, and the disabled people are ignored.
  - The stakeholders are grateful for the initiative as women and youth, procurement processes are not followed the quicker the implementation of this bill the better.
  - Stakeholders feel that they need workshops so that they can be empowered.
  - Thirty (30) day payment is not adhered by most departments, it needs to be re-addressed.
  - Ngquza women are grateful of the bill, however, there is a problem of officials who are not serving them well when they visit their offices.
  - The feel that departments request their quotations just to accompany those they want to appoint.
  - Appreciates the visit and the absence of procurement officials was worrisome.
  - Small businesses lack skills, so training will be required.
  - It should also be noted that people from other provinces are skilled, so EC Province people must be skilled to fully participate in the procurement processes.
  - Stakeholders feel that their capacity is not built, schools hire outside locality (for example schools prefer to hire from East London for uniform sewing)

### **5.4 Mthatha Town Hall – ORTDM**

- The Bill was supported but the following concerns were raised:-
  - The bill focusses on job creation only, however, focus on productive capacity of black people is also needed.
  - Selling to another black person that's dilution. There must be an exclusive right to black people.
  - Defining of value for money should consider the transformation as well as the inclusion of social imperatives of the country.
  - The set-aside should apply to everybody in business, should not focus only on women, youth, and disabled people.
  - There is a challenge of tenders that are taking too long to be considered, what is in the constitution is not practised.
  - Exportation of raw material and natural resources that goes out of South Africa should be monitored.
  - Technical tender documents must be user friendly, and blacks must be empowered. There must be different languages to properly understand what is required.
  - Black people are not benefitting in building schools as most of their construction companies do not qualify for the Construction Industry Development Board (CIDB) Grade 7, capacitation is really required.
  - There was a challenge of SITA transversal contractor who is contracted for three years but selected once in that period, feels that black people are not benefitting hoping that the bill will resolve such challenges. The extension of three (3) year contract to five (5) years should be considered.
  - Compliance is ignored as payment is not done within 30 days and this kills black businesses.
  - Local manufacturers are not hired in the local municipality (e.g. all clothes are made in China)
  - There is an urgent need of empowerment, capacitation, and development of black people to be upgraded in higher grades (7-9) as most of the work is being outsourced.
  - There is a need of strengthening social facilitation particularly in the villages when dealing with bills.

## **6. Joe Gqabi and Chris Hani District Municipality**

### **6.1 Nqanqarhu Town Hall –Nqanqarhu**

- The Bill was supported but the following concerns were raised: -
  - The Bill was overwhelmingly supported and welcomed by the business sector and community members.
  - The Bill is good, and aims to allow the previously disadvantaged black women, youth and people living with disability. The main concern of the people was that the Government must assist those identified beneficiaries practically in terms of business plans and having access to funding.
  - As the Bill provides that government employees are prohibited from doing business with governments, people would like to know if which effective monitoring tool that will be used to ensure that this habit does not occur.
  - In Clause 19 the Bill provides for only South African citizens to qualify for procuring government goods and services, people would like the Minister to ensure that Foreign Nationals are strictly prohibited.

### **6.2 Bhunga Hall, Sterkspruit**

- The Bill was supported but the following concerns were raised:-
  - The public welcomed the establishment of the Tribunal Committee and advised that it must reinforced by people with expertise.
  - The public also suggest that the department must empower the designated group to ensure that they participate effectively.

### **6.3 Indoor Sport Centre, Engcobo**

- The Bill was supported but the following concern was raised:-
  - The Bill is good, and aims to allow the previously disadvantaged black women, youth and people living with disability. The main concern of the people was that the Government must assist those identified beneficiaries practically in terms of business plans and having access to funding.

### **6.4 Tobi Kula Indoor Sport Centre, Komani**



- The Bill was overwhelmingly supported and welcomed by the business sector and community members. The people suggested that there should be a Tribunal structure locally.

## **7. Amathole District Municipality and Buffalo City Metro**

### **7.1 Butterworth town hall**

- The Bill was supported but the following concerns were raised: -
  - Companies from other Provinces are benefiting more than the companies in the province, they get huge contracts.
  - It is a serious concern that, main contractors are from far and outside areas and local businesses only benefit from sub-contract.
  - The department must take into consideration the issue of SMME's that are not benefiting in local tenders.
  - The Government must ensure that advertisement of tenders is accessible to every interested group or business.
  - It is also appreciated that this bill attempts to address local bottlenecks.
  - The government's pursuit of trying to redress the past by prioritising the previously disadvantaged groups like women and disabled people, ends up giving rise to an unintended consequence of further disadvantaging the young males.
  - Further young males do have ideas of venturing into business like that of construction, but the financial background becomes a serious barrier, and the terrain is very expensive.
  - There is a challenge of insufficient funds to start business.
  - The bill fails to clearly reflect on regulatory bodies like CIDB.
  - Another point of concern is that one would work on a project as a contractor from grade 1 to grade 4 but when comes to having to get a tender on a higher grade like 7, there would be a requirement of experience and that becomes a barrier.

### **7.2 Alice Town Hall**

- The Bill was supported but the following concerns were raised: -
  - Bidding process of tenders should be centred so that all business should be able to benefit.

- It is alleged that; Coloured people are given preference when it comes to bidding for subcontracting by the main contractor eg WHBO company.
- Senior citizen business-people need to be trained on how to deal with SARS.
- Businesses from outside tend to benefit huge chunk of tenders, leaving the local business worse off.

### 7.3 Mdantsane NU 10 Community Hall

- The Bill was supported but the following concerns were raised: -
  - The bill must ensure that at least 60% job content is ringfenced to benefit locals. It is so unfair that most contracts are being given to people from far areas outside the Buffalo City Metro. Specific reference is contracts on stationery, lost money is leaving the province every year.
  - Another challenge comes from the thing of three-year contracts, then when one goes to the bank for funding, the bank is not willing to give you funding because maybe the repayment period will exceed the three years of your contract.
  - When the department appointed the contractors, it must consider physically challenged people and young people so that they are capacitated.
  - SMME's in the Buffalo city Metro do not grow because of not benefiting in the main contracts.
  - The definition of local content must be clearly expressed to start from ward level.
  - The bill is assisting however the issue of 30% of the local SMEs is still confusing due to information gap.
  - Need clarification about other regulations.
  - Bodies like CIDE's should be involved in all construction projects because they are appointing the contractors starting from grade 1 to grade 4.
  - The advertisement requirements and experience from the municipality or the institution wants Grade 4, and it should show five projects that have completed while businesspeople completed tenders from Grade 1-Grade 4.
  - The stakeholders were concerned about the clarity on how these regulations work.

#### 7.4 Cambridge Hall.

- The Bill was supported but the following concerns were raised: -
  - The department must take into consideration the issue of SMME's that are not benefiting in local tenders.
  - The bill must promote local beneficiation.
  - There must be a way of advertising tenders so that sub-contractors are able to benefit in local business.
  - Bidding process must be checked and be a way of controlling big companies from sub-contracting.

#### WRITTEN SUBMISSION

The Portfolio Committee received written submissions from

- Public Affairs Research Institute (PARI)
- Joint Strategic Resource (JSR)
- Mr Eric Fetana
- Mr Monwabisi Rwexu - Black Business Council in the Built Environment
- Provincial Treasury

#### - **Public Affairs Research Institute (PARI)**

PARI indicated that the Bill exhibits continuing fragmentation, ambiguity, and incoherence. These issues have been greatly amplified by the late introduction of new and far-reaching preferential procurement provisions, which themselves create two frameworks that are poorly aligned within the broader Bill. This problem eludes easy rewriting and would ideally be addressed through rigorous optimisation of potentially competing operational imperatives, consultation between and accommodation of divergent interests, the formulation of a clear policy direction, and careful redrafting.

#### - **Joint Strategic Resource (JSR)**

The following recommendations are contained in the submission form JSR and are explained in the submission:

There is a need for necessary clarity, certainty and the Inclusion of price in provisions on targeted (aka Preferential) Procurement. There is a Need for Statutory Principles to be added in the Bill Including Those Linking to the Constitutional Principles of Section 217. The PPB Should Provide for the Independence and Effectiveness of Public Procurement Regulatory Function. B18B-2023 Needs Strengthened Anti-Corruption Enforcement Mechanisms and Strengthened Transparency. The PPB

Should Strengthen Its Debarment Provisions. The PPB Should Provide for Interim Incentivized Whistleblowing in Public Procurement. The PPB Should Adopt Transparency Standards (including Open Data and Open Contracting).

- **Mr Eric Fetana**

Mr Fetana urged the government not to hand out material to SMMES because the material is not tested if its working. He said money should be handed out as it will also help them to start the business because most of the small businesses do not have capital.

- **Author : Monwabisi Rwexu**

Inclusion of Transformation definition : A process that encompasses social and an economic revolution intended to heal the divisions of the past. Value for money must be defined to include social and economic redress to the injustices of the past South Africa, therefore value for money must include socioeconomic objectives. Definition : A value derived from every purchase or money spent by the purchaser when considering the best economic and social aspects while achieving maximum effective and efficient use of the purchase.

When calculating the tender evaluation scoring on allocation of contracts the weighting on preference must be more than the weighting of Price and Quality combined.

Chapter 4 under preferential procurement need to be reviewed and consider (1) Categories of Preference and (2) Targeted procurement. The categories of preference must defined as indicated in Section 217 (2) of the constitution. For Targeted procurement the state organ must set aside 80% of the total procurement budget towards the targeted group as envisaged by Section 217 (2) of the constitution through this bill. A database system and a roster allocation of work should be considers once the database of targeted suppliers have been created.

The National Treasury must consider developing construction contracts that are state owned and align them with the objectives of this bill.

Public Procurement Partnership (PPP) must be subjected to the terms of the Act in terms of Section 217 (2) of the Constitution

- **Provincial Treasury (PT)**

PT indicated that the introduction of the Tribunal as an alternate dispute resolution mechanism will reduce the frequency of litigation, associated costs and delays in service delivery.

However, the Tribunal, notwithstanding having the provision for panels, appears to be centrally located and this may affect turnaround times if there are large volumes of decisions that are to be reviewed at any given point in time. Consideration should be given to have provincially based tribunals.

The implementation/operationalisation of the Bill once passed may be delayed by the promulgation of regulations and issuing of instructions which need to be expedited.

Some stakeholders indicated that they needed adequate time to study the Bill thoroughly, as such their submissions/inputs will be submitted to the committee staff via email.

Signed by:



**HON. M NDABENI**

**CHAIRPERSON: PORTFOLIO COMMITTEE ON FINANCE AND PROVINCIAL EXPENDITURE**

15/03/2024

**DATE**