



ZELNA.JANSEN  
CONSULTANCY

Bringing Stakeholders together to find Solutions

**NATIONAL TREASURY**

**16 April 2020**

Email: [commentsdraftlegislation@treasury.gov.za](mailto:commentsdraftlegislation@treasury.gov.za)

Dear Sir or Madame

**Re: Comments on the Draft Public Procurement Bill, 2020**

## **1. Introduction**

My name is Zelna Jansen and I am the Chief Executive of Zelna Jansen Consultancy, a lobbying and advocacy firm, bringing people together to find solutions and assisting people to have more effective conversations with their law and policy-makers. I also advocate for active citizenry through community talks, writing opinion editorials, videos and a school pilot project about how the law and policy making process works, how it can be influenced and how political and public office bearers can be held accountable.

## **2. Comments**

Other than intending to regulate public procurement and to prescribe the framework for the procurement policy, the bill notably wants to ensure integrity and credibility in governments procurement system. There is a desperate need for this. A single framework will also eliminate uncertainty and confusion and be easier to monitor and hold officials accountable.

I applaud the bill for aiming to use the procurement system to advance economic opportunities for previously disadvantaged people and women, the youth and people with disabilities; small businesses; and promote local production.

I submit my opinion editorial on analysing the draft bill and how it fits into South Africa's democratic system of checks and balances, as part of my submission and can also be accessed at the link here: <https://www.voices360.com/economy/the-public-procurement-bill-do-we-need-it-46772649>. My further comments and suggestions are as follows:

### **2.1 Clause 13 – Instructions inconsistent with the Act**

The clause places an obligation on an official to not comply with instructions inconsistent with the bill and must inform the Minister in writing of what is taking place. The official raising the alarm must not be subjected to any disciplinary measures due to the non-compliance or failure to comply with the instruction of his or her senior.



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However, to give the official more protection, a clause can be included to make reference to the Protected Disclosure Act of 2000. In that way, the official will be protected from intimidation and may even request a transfer.

## **2.2. Clause 21 – Undue Influence**

Officials and the public intending to defraud the state, will find innovative ways and loopholes. It is therefore important to give guidance through defining what undue influence, interest and impeding the process means? This guidance will assist the official and also the public as to whether there is undue influence being exerted or interference. The legislature must take into account lawful advocacy and lobbying efforts by interest groups. It is therefore necessary for legislatures to deliberate and give guidance and certainty on this topic.

## **2.3 Clause 104 (1)(b) – Conflict of Interest**

Does an interest include a donation or sizeable donation made to a political party? My view is that this should be disclosed and a decision taken by other members in terms of clause 104(2) to determine whether that member can perform his or her functions in a fair, unbiased and proper manner.

## **2.4 Clause 121 – Regulations**

It is very encouraging that Parliament will be given time to scrutinize the regulations to the bill. Given the importance of the bill and its impact on the public's trust with government, I suggest that the regulations be made in consultation with Parliament. This will give the people a say in how regulations are being implemented and what amendments needs to be made for regulations to work effectively.

## **3. Conclusion**

Given the findings of commissions and ongoing allegations, there is a desperate need for an institution that will ensure credibility in governments procurement system. I therefore submit that the bill be implemented speedily, however, that the public participation process be thorough to ensure as much buy in from all affected stakeholders.

Yours sincerely,

**Zelna Jansen**  
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