

Why are municipalities not publishing procurement information on their websites and the eTender Portal?¹

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Key findings

- Out of the five key pillars of public procurement in South Africa, as provided in section 217(1) of the Constitution, transparency receives the least attention.
- Municipal procurement is not transparent towards the general public. This is not because municipal officials do not understand or appreciate the importance of transparency.
- There is fear, secrecy, underperformance and irregular conduct in many municipalities. This challenging environment undermines transparency in municipalities.
- Some municipalities do not even have functional municipal websites.
- National and provincial governments exercise oversight but this does not focus on all aspects of procurement transparency.
- Supply Chain Management and Informational Technology units in municipalities are often under-capacitated, particularly in smaller and poorer municipalities. As a result, they are often unable to publish procurement information on municipal websites.
- Municipal procurement is often not automated. Uploading hard-copy documents to online platforms, such the municipal website, is a challenge for many municipalities.
- Departments within municipalities often work in silos, which compromises the publication of procurement information on municipal websites.
- There is value in publishing procurement information on the National Treasury's eTender Portal. However, many municipalities do not do this because it is not required or they simply lack the appetite to do so.

1. Introduction

This report presents the findings of a study conducted by the Dullah Omar Institute (DOI) in partnership with the International Budget Partnership South Africa (IBP-SA). The study examined the state of transparency in local government procurement, in particular the reasons why municipalities do not publish key procurement information on their websites and National Treasury's eTender Portal timeously and consistently. Procurement information in this context includes tender notices, tender specifications, and tender awards.

The findings of this qualitative study show that many municipalities are not publishing this procurement information on their websites and the eTender Portal due to a variety of reasons. Out of the five key pillars of procurement provided in section 217 of the Constitution – namely fairness, equitability, transparency, competitiveness and cost-effectiveness – it appears that, in practice, transparency is given the least attention.

This report is organised into five parts. It starts by providing background information to the study followed by an overview of the methodology. The major findings of the study are discussed before conclusive remarks are given. The last part provides recommendations for consideration by relevant stakeholders.

2. Background

Since 2020, the Dullah Omar Institute (DOI) and the International Budget Partnership South Africa (IBP-SA) have been assessing the state of transparency in local government procurement. The research have focused on the publication of procurement information on municipal websites and National Treasury's eTender Portal.

This study is underpinned by the notion that municipal residents should be able to turn to their municipality's website for information about municipal procurement affecting them. Easy access to this procurement information and the length of time that this information remains available on the municipal website are key for transparency, public participation and accountability. Legislation recognises this by requiring municipalities to establish functional websites and publish information such as tender notices and awards on municipal websites.⁴

⁴ See section 21B of the Municipal Systems Act, 2000; section 75 of the Municipal Finance Management Act (MFMA), 2003; Regulation 22 of the Supply Chain Management Regulations, 200;, and National Treasury MFMA Guidelines on Transparency, 2013 and 2016.

This research was not mainly driven by an interest in legal compliance. Instead, it is about promoting a culture of transparency and citizens' access to the information they require to participate in local governance, and to hold accountable municipal officials and private service providers who have been awarded contracts. The overall objective of our assessments is to produce credible research that can be used by stakeholders to improve transparency in municipal procurement through advocacy.

As part of their ongoing research, the DOI and IBP-SA conducted two surveys of municipal websites and the eTender Portal in 2020 and 2021. The findings of these surveys revealed a lack of transparency in municipal procurement.⁵ Given that the lack of transparency in municipal procurement impacts adversely on citizen participation and accountability in local government, it became important to investigate why municipalities are not publishing procurement information on their websites and the eTender Portal timeously and consistently. A study was thus conducted to help understand why municipalities fail to publish procurement information within the prescribed timeframes.

3. Methodology

This study sought to answer the following question: *Why are municipalities not publishing procurement information on their websites and the eTender Portal?* Given that this question could not be answered solely on the basis of a literature survey and legislative review, a qualitative research methodology was adopted. After obtaining ethical clearance from the University of the Western Cape's Ethics Committee, a series of key informant interviews was conducted with stakeholders in local government to collect their views on the subject, in particular on the reasons for not publishing procurement information on municipal websites and the eTender Portal. We interviewed municipal officials working in supply chain management (SCM) and information technology (IT) or communications departments of municipalities, as well as officials working in the relevant space in provincial treasury or National Treasury. In total, 13 participants were recruited from the national government (three), provincial treasuries (three) and municipalities (seven).

⁵ Dullah Omar Institute and International Budget Partnership South Africa (2021): *How transparent is municipal procurement?*; Dullah Omar Institute and International Budget Partnership South Africa (2020): *How transparent are municipal websites about the goods and services that municipalities procure?*

At national level, we interviewed senior managers at National Treasury whose roles intersect with that of municipalities. At provincial level, we interviewed senior managers of two provincial treasuries responsible for SCM affairs in municipalities. At local level, our sample included municipalities from all categories: metropolitan, district and local. More than 90% of the interviews were conducted with senior officials working in SCM. This report is built on more than ten hours of conversations on transparency in municipal procurement with government officials at all levels. The interviews were conducted in line with the Ethics Policy of the University of the Western Cape.

4. Findings

Section 217(1) of the Constitution outlines the five key pillars of public procurement in South Africa, namely fairness, equitability, transparency, competitiveness and cost-effectiveness. The procurement system of every organ of state must comply with these strategic pillars. Based on the information gathered from the interviews, transparency in municipal procurement receives the least attention of the five key pillars. One interviewee stated that the focus in local government is on what is considered “imperative issues”. The interviewee further exposed that “councillors always query development issues, but not transparency issues” and referred to “huge debates in council on BBEE but nothing on transparency”. The interviewee concluded that “unless key structures such as the council take [transparency] seriously nothing will move”.

Another interviewee argued that the “publication of procurement information was never fully enforced before, although it is a legal requirement”. Yet another interviewee stated the following:

“Our problem now is that there is too much focus on getting clean audits. What is the value of a clean audit when [there is no transparency]? There is a significant focus on audit and less on transparency ... Some municipalities are where they are because of failure to share information with the public. When you hide information about procurement you bring about certain perceptions that you are hiding certain things or money is being stolen or tenders are being given to friends.”

The views of these interviewees suggest that little attention is being given to transparency, which contributes to entrenching a culture of secrecy in local government. As will become

clear in this report, there are a variety of reasons for the lack of transparency in municipal procurement processes. However, before discussing these, the report presents the views of the participants regarding the concept of transparency in procurement and why this is important.

Why is transparency in municipal procurement important?

We asked the interviewees about their understanding of transparency in municipal procurement. As put by one of the interviewees, transparency is about “putting [information] out there, making it known, understandable and accessible”. Another interviewee stated that transparency is about the “openness of the public procurement process”.

Asked why municipal procurement processes need to be transparent, some interviewees referred to section 217(1) of the Constitution which imposes an obligation on all organs of state to be transparent when procuring goods and services. Thus, they explained that municipalities, like any other organ of the state, must respect the Constitution by, among others, making procurement information publicly available. Others argued that since municipalities spend public money, they have to be transparent about, and accountable for, how this money is spent. As voiced by one interviewee:

“Everything must be known. If you are procuring using public funds, why should such procurement happen in secrecy? The problem is that we only make information available when someone challenges a tender award.”

Commenting on the importance of transparency, one interviewee linked transparency to “the integrity of the procurement system” while another had this to say:

“Procurement information is supposed to benefit both the public and businesses. The public will be able to know how municipal finances are being used, and this enhances accountability. Businesses will have a clear view about which companies were appointed, and it helps businesses to see that processes were not by-passed.”

While transparency is “important for public scrutiny of a municipality’s procurement process”, one official argued that it is not just about the municipality but also about service providers contracted by a municipality to deliver services directly to communities. Another interviewee stressed that transparency is important in the fight against corruption: “It gives participating bidders the comfort that whatever we are doing is above board because they

need to see what is happening, whether with regard to advertisement, opening and awarding of tenders.” Another interviewee explained that the publication of procurement information on municipal websites has become even more important given that “citizens are not attending bid adjudication committee meetings which are open to the public”.

Thus, the lack of transparency in municipal procurement is not because officials do not understand or appreciate the concept of transparency and its importance in municipal procurement. It seems that, when asked about it, municipal officials appreciate the value of transparency in public procurement for the benefit of both service providers and the general public.

Where are municipalities publishing procurement information?

It matters where municipalities publish their procurement information because this has implications for transparency and citizen participation. Findings from this study indicate that municipalities are using different platforms to publish procurement information. Some municipalities are only making use of their websites while others use of both the municipal website and the eTender Portal. Industry-specific procurement information is also published on the Construction Industry Development Board website, for example. In addition, some municipalities have been struggling to maintain functional websites for a while. One of the interviewees stated the following in this regard:

“Currently, procurement information is being published in the local newspaper, notice boards, and the eTender Portal. There was no municipal website in 2020. The host server crashed and the host lost all information and backup. The municipality developed a new website in July 2021 over a period of six months, and that is why the information was incomplete on the website – the new host was still developing the website. The contract of the host has since expired, and a new tender was awarded for 2022. The new host has various IT-related duties, including hosting the municipality’s website. However, there are issues with the new contract, and the matter is currently in court. The municipality resolved to not advertise for a new host for the website until the current matter is resolved in court. So, the municipality currently does not have its own website.”

Another interviewee indicated that their municipality does not have a website, also due to a contract dispute:

“At the moment, the municipal website is down because we have an issue about the service provider who won the tender. The matter is currently in court. But, we are publishing procurement information on the eTender Portal, and advertising it in the national newspaper.”

What emerged from the research is that municipal procurement information is scattered across various platforms. In addition, there is no consistency in the publication of procurement information by municipalities. Some municipalities deliberately publish their procurement information only on certain platforms, such as their own website, and not on platforms such as the eTender Portal. In cases where the municipal websites were down, no procurement information was communicated via such websites. In our sample, municipal websites were down (ironically) because of procurement difficulties. In those cases, the municipalities published information on other platforms such as local newspapers. The lack of an obvious and accessible place where municipal procurement information can be found undermines citizen access to critical information.

Are municipal procurement processes transparent?

The findings of our 2020 and 2021 surveys, which exposed a lack of transparency in municipal procurement, were endorsed by various interviewees. One interviewee claimed that “the findings of both your 2020 and 2021 surveys are reflective of the lack of transparency not just in municipalities which were part of these surveys but also in almost all other municipalities in the country. Thus, I can relate to the outcome of your surveys.” This view was supported by another interviewee who stated that, while the level of transparency varies from one municipality to the next, municipalities generally do not publish key procurement information timeously and consistently. Some interviewees maintained that municipal procurement processes are generally transparent even though there is room for improvement. This is how one interviewee voiced this:

“I would say that municipalities are transparent to a certain extent. If we were to put [it] on a scale I would say that they are reasonably transparent. Municipalities publish certain tender information on their websites but there might be navigation problems.

You might not find all the tender information there. Some tender documents might not open while others do, et cetera.”

In short, there is no doubt that key municipal procurement information is not readily and publicly available, particularly when citizens have to rely on municipal websites. However, the extent to which municipalities fail to make procurement information public varies.

Why are municipalities not publishing procurement information timeously and consistently?

Various reasons were given for the lack of transparency in municipal procurement processes. One interviewee cited uncertainty regarding what should be published and when: “... it was never clear in terms of what procurement information should be published and how often. It was never clear. It was left to the Auditor General.” Some interviewees cited the challenging municipal environment which discourages transparency. For instance, an interviewee stated that procurement information is not publicly available out of “fear that people may label you that you have given a tender to your friend”. Another interviewee revealed, rather cryptically, that there is a fear of “over-exposure”, which could be interpreted as a fear of publishing information that could put people in harm’s way. It was argued that this is why some of the information is not published on websites or other platforms. The interviewee gave an example of infrastructure projects where information – such as the name of the contractors, the project description, the monetary value of the project, and the project manager – is supposed to be published on the project board for the duration of the project. In practice, this is not done out of fear. The interviewee had this to say:

“For the safety of everyone involved in the project, including the project manager, they have opted not to put that information on that project board because doing so would put their lives at risk. The community would know, for example, that this three-month project is worth R4 million, and this would affect someone’s professionalism, and if the project fails to deliver. The community will know that lady XYZ is sitting on R4 million [while] the water is not connected.”

Another interviewee also raised safety concerns:

“The way that criminal elements have entered the government space is such that people would not fulfil their fiduciary duties because of fear. In Bloemfontein, for instance, there was a report about a gentleman, who, people went to his house to say: ‘We are aware that you have recommended someone else and not this company. So, if you value your life you will appoint this company’.”

These observations raise two issues: First, it suggests that municipalities may become tight-lipped because they fear a possibly violent community backlash or violence meted out by criminals. Second, while the safety of individuals is a genuine concern, the withholding of information also means that the municipality and/or the service provider cannot be held accountable by the community in cases of poor performance.

Sometimes, officials are not comfortable with making procurement information publicly available because they are uncertain about the legalities. They then choose secrecy over transparency because they feel that they cannot predict whether there will be a legal fallout or not. While acknowledging that the municipal website should be the platform on which a municipality makes information available, one interviewee noted that some municipalities publish notices of where to obtain the information but not necessarily the documents themselves. The interviewee further noted that one has to request the documents from the municipality. However, even if one requests the documents there is no guarantee that the municipality will make the information available. For this interviewee, this is a challenge not only in local government but also at other levels of government:

“I don’t think government institutions, not only municipalities, have developed that particular comfort of putting contracts in the public domain because of the legalities around procurement. That is my honest opinion. I haven’t seen people that are so eager to disclose information ... This is what I think. It’s probably one of the [reasons] why municipalities are not publishing [some of the procurement information].”

This reason for choosing secrecy over transparency as a “default” to avoid any possible (but not defined) legal fallout points to a lack of understanding of the law pertaining to public contracting.

The (ab)use of public procurement information for nefarious reasons was also cited as a reason for withholding information from the public. An interview revealed that procurement information on the municipal website "... can be used by other suppliers of municipalities [to] make the lives of people very uncomfortable". Another interviewee mentioned that making procurement information easily available on municipal websites can be abused by "guys with bad intentions". This interviewee further highlighted that "some have committed fraud on the basis of procurement information made available on municipal websites. Others use the information for frivolous legal proceedings which consume a municipality's time and resources." While the abuse of procurement information could be a problem in local government, it cannot be used as a justification to withhold such information or not to publish it. This problem should be tackled but not at the expense of transparency.

We also asked the interviewees whether there is political interference in municipalities working against the publication of procurement information. One of the interviewees replied: "Political interference is not there or is limited." This interviewee attributed the non-publication or inconsistent publication of procurement information to the "lack of supervision of officials that are supposed to do the work [i.e. to publish the procurement information]." This was not surprising as some municipalities do not have SCM or IT managers to superintend the procurement or IT processes. In contrast, another interviewee stated that political interference is present in some cases: "This is a difficult one. I would say 50-50. There is procurement done, shaped or necessitated by promises made by councillors." The interviewee argued that, in general, tender information relating to such procurement is not publicly available.

Are municipal websites designed appropriately with well-organised information?

Our surveys established that some municipal websites are poorly designed and that the information on them is not well organised, adversely affecting transparency. Reasons for this include the lack of requisite IT or web design skills in the municipality or the appointment of service providers who lack those skills. Information gathered during the interviews supports this finding. One of the interviewees commented:

"Some municipal websites are just chaotic. They have tabs with no information while some tabs have information that is not properly organised. I feel sorry for people that

rely on these websites for information. It is a headache to visit some of the municipal websites. The worst part is that these municipalities want to attract investors and if any investors visit their website ... their confidence level will just drop by merely going through the municipal website. It is a deal breaker, right on the spot ... [One of the municipalities] still has the picture of the old mayor of 2008. How serious is the municipality? They don't update their website."

Another interviewee also observed the poor state of municipal websites:

"My view as an outsider is that most municipalities are still battling with connectivity challenges and others still do not have properly functioning websites. Websites are sometimes down. Where websites are functioning, there is a navigation problem to get to the relevant document. On some websites, you can't find documents that was published last year or the year before. There is always a complication in accessing tender information in one way or the other."

What also emerged is that information or documents on certain municipal websites are not well organised. For instance, an interviewee revealed that "in some cases, IDP and procurement information is mixed". This makes it difficult to access relevant documents easily.

Do municipalities see value in publishing procurement information and is it a priority for them?

Asked whether municipalities see any purpose or value in publishing procurement information, one interviewee simply answered: "Honestly, no. The municipality does not see any value." This is despite the fact that tender information often draws significant traffic to municipal websites. Another interviewee revealed that an analysis of traffic to the website of their municipality showed that "the most accessed information is employment followed by tenders". In cases where the municipalities did not advertise any jobs, "people look at tender information more often than anything else". This suggests that members of the community often make use of the municipal website to access tender information. In short, both service providers and the general public are interested in procurement information.

Some interviewees indicated that municipalities do see value in publishing procurement information. One respondent remarked: "It is not being done but we see value in publishing

procurement information.” Another interviewee indicated that while the municipality sees value in publishing procurement information, in practice “it is not being done”. When asked whether the publication of procurement information is a priority for the municipality, an interviewee answered, “Not at all”. The interviewee indicated that municipalities focus mostly on getting tenders awarded and delivering services. The interviewee further stated that, “Publishing procurement information is seen as an added burden. No one enforces transparency in municipal procurement, not even the council, provincial treasury or National Treasury.” Hence, the interviewee argued that this is why there is a lack of transparency in municipal procurement. Other interviewees indicated that key stakeholders in municipal procurement are not turning a blind eye to the issues of transparency. At the very least, these contradictory responses suggest that key oversight bodies – such as municipal councils, provincial treasuries and the National Treasury – are not consistently and comprehensively overseeing procurement transparency. As explained below, while their focus may be limited to certain procurement issues, transparency remains a key part of their agenda.

Why are tender notices, specifications and prices not published consistently and timeously?

The surveys of 2020 and 2021 established that municipalities are not publishing tender notices, specifications and prices on their websites consistently and timeously. Asked why municipalities are not doing so, one interviewee answered:

“You find that the tender specifications and terms of reference are not uploaded on the municipal website or the eTender Portal. However, the non-publication of these specifications and TORs does not mean that the documents are not there. In most cases, the documents will be there in a physical form at the municipal office. The reason is that our procurement systems in local government are not fully automated. So, there is still a sizable chunk of procurement that is being done manually. This is why you may struggle to access these documents on the municipal website or eTender Portal ... You may also struggle to find tender registers on the municipal website or eTender Portal where the respective tender prices are recorded. But these registers will in most cases be available at the municipal offices in hard copy.”

This suggests that many procurement transactions in municipalities are still being conducted manually. Converting and uploading the hard copies to the municipal website becomes a challenge, especially when SCM capacity or IT infrastructure is lacking.

Asked why municipalities are not making contract prices publicly available on municipal websites, an interviewee explained that this is in part because municipal procurement has evolved. Attaching a specific value to a contract is easy in some cases. However, there are cases where this is not possible because of the nature of the contract. The interviewee explained that the National Treasury permits municipalities to contract on an “as and when” basis where all the factors that determine the contract value or a quantity are not known at the time of procurement. The interviewee gave an example: “Sometimes we ... want to procure services for informal settlements, and you and I know that informal settlements grow by the day, and it is then difficult to cap a contract because once the informal settlement is established ... it needs to be serviced.” The interviewee indicated that, in the past, municipalities could only vary a contract up to 15% or 20% which sometimes is not enough to meet the identified needs. Hence, the National Treasury issued a circular to allow municipalities to contract on an as-and-when basis. For such contracts, tender awards will be published but without contract prices.

Why do municipalities charge fees to access tender documents?

Municipalities often charge for access to certain bid documentation, usually at the municipal office. The charge is imposed to recoup the administrative costs involved in making the documentation available. Our 2021 survey established that these non-refundable fees ranged from as little as R100 in Buffalo City Metropolitan Municipality to as high as R3 049 in Ngaka Modiri Molema District Municipality. Commenting on this practice, an interviewee argued that it is not fair. The interviewee further stated that, “The cost element of making bulk physical documents, such as tender specifications, available is no longer applicable or justifiable since procurement information can be made available online”. The interviewee concluded that charging the public “even a fee of R100 is too much”. Another interviewee commented: “It is not justifiable to charge the public to access tender information. Tender information should be accessible freely.”

There is a strong argument for making tender information available free of charge on municipal websites and it ought not to be difficult for municipalities to do so. The

exorbitant fees that some municipalities charge cannot possibly be justified based on the administrative cost and hence these fees seem to be part of a strategy to conceal information from the public. It is difficult to escape that conclusion if exorbitant fees are combined with little or no access to online information.

There is some progress, however. Since we conducted the survey, some municipalities started making tender information available on their websites free of charge. One municipal official confirmed that, before 2021, a charge of about R250 was imposed to access tender information. However, following the review of the SCM policy, full tender documents can now be accessed free of charge online while a fee is still imposed for hard copies obtained from the municipal office.

Another interviewee stated that tender documents published on the eTender Portal can be downloaded for free. However, hard copies of tender documents can be accessed at the municipal office at a charge. The interviewee had this to say:

“We are selling the [tender] documents to recoup our costs. There is a standard price which takes into account the National Treasury Guidelines, and inflation. Currently, the price is R533.00. The public has to go to the cashiers at the municipality and pay for the tender specifications, and immediately receive them from the cashier.”

Why are municipalities not publishing service level agreements?

Our surveys established that municipalities do not publish service level agreements (SLAs). One interviewee stated that legislation requires the following: “As soon as a service level agreement is signed, it becomes a public document that must be shared publicly, most especially with the communities that are going to benefit from the relevant contract or that are going to pay tariffs towards that contract.” However, the interviewee admitted that SLAs are not readily being published and in cases where they are, the agreements are not published consistently and on time. Asked why this is the case, the interviewee responded: “I am not sure why municipalities are not publishing service level agreements, whether it is because of the sheer size of these agreements that is making it difficult for municipalities to publish them on their website.” However, the size of the documents cannot be an excuse for not publishing them. Large documents can easily be compressed to a fraction of their original size and made available online without compromising the website. The small cost of adding additional

memory on a municipal website more than outweighs the public benefit in transparency. What's more, most municipal websites are not particularly busy.

Another interviewee commented as follows:

“The Municipal Finance Management Act requires the publication of service level agreements but [the] National Treasury has directed that municipalities only publish the names of successful bidders and price of the contract, etc. This causes confusion regarding what should be published and what should not.”

Whether the National Treasury indeed issued this instruction or not, there is no doubt that transparency and citizen participation in local government are enhanced when municipalities do publish SLAs. This is because SLAs and related documents enable communities to know exactly who is responsible for delivering which services in their areas, how often these services will be delivered, and more.

Could the publication of SLAs reveal sensitive information such as trade secrets or confidential information, and could this perhaps explain the reluctance to publish them? In response to this suggestion, an interviewee argued that since “there is no sensitive information in such agreements to be concerned about” they should be made public. This view was supported by another interviewee:

“The structure of a service level agreement is guided by general conditions of contract; it does not have any space for trade secrets. It is an agreement to protect the rights and obligations of the two parties. It is about how the service provider is going to meet the milestones that are contained in the agreement and in the tender that was advertised ... So, I don't see how company-specific information is going to be contained in there.”

Another interviewee explained that the municipality does not publish SLAs because the general conditions of contract, which are published together with bid document, suffice as SLAs. This is how the interviewee reasoned:

“Service level agreements are not published because we already publish the general conditions of contract [GCC] with the bid documents, which are signed by all the bidders when they respond, which are applicable throughout the term of the contract. So, that element we have covered through the GCC process ... Normally when an SLA is signed,

it will deal with operational issues that we want to monitor as part of our contract management, which do not really require the community, or add any value to the community, but are rather there to enhance our processes of holding bidders accountable in terms of what we need them to deliver on the contract. But the general conditions of contract will be published with the bid documents in most cases that suffices as an SLA.”

The remark that “operational issues do not really require the community, or add any value to the community” ignores the fact that the “operational issues” are often precisely the issues that matter most to communities. It is not just for officials to monitor the performance of service providers. The communities in whose areas these public services are delivered must also be empowered to monitor the performance of service providers. Municipalities must therefore publish these SLAs, including the operational details, on their websites.

Remarkably, provinces pay little attention to ensuring or supporting municipalities to do this. The responses by the interviewees suggested that there is little to no provincial oversight over the non-publication of SLAs by municipalities. An interviewee, representing the provincial government, remarked as follows:

“I must confess that as far as the publication of SLAs [goes], we haven’t focused on that with the municipalities. There is a reason for that. Municipalities are on different levels, and some of them don’t even have the capacity to develop SLAs ... [Thus] we want the tender specifications or terms of reference to have the standards in there and how they will be measured. The specifications must be as clear as possible. When you put that in the specifications the company knows what is expected of them. It becomes a key tool for monitoring performance. Those are the terms of reference. Our focus is more on tender specifications being as clear as possible. The tender specifications must be advertised. But, you’re supposed to advertise all tender specifications as part of your bid invitation documents. Sometimes, the specifications are not clear, which means that companies submit their proposals, sometimes unclear, and then build requirements into the SLA, and you’re not supposed to do that if it has not been included in the tender specifications.”

Are municipalities publishing all contract extensions, variations and deviations?

The interviews also brought to light that contract extensions, variations and deviations are often not published. According to an interviewee, while legislation requires that contract extensions and variations are published, this often does not happen: “This is one of the areas where we are not seeing satisfactory traction.” When a municipality deviates from the normal procurement process, MFMA Circular 83 requires that the relevant awards be published on the eTender Portal and municipal website. As put by an interviewee: “More often again you find that the picture is not as complete.” This suggests that there is also a lack of transparency regarding deviations, which deserves further investigation.

What has been the role and focus of the National Treasury and provincial treasuries?

Section 216 of the Constitution requires the National Treasury to ensure transparency and expenditure control across all spheres of government. Provincial treasuries undertake a similar role at provincial level. An interviewee observed that, in practice, the National Treasury “... reviews the level of transparency in line with legislative requirements ... but it is never specific on how it should be done and for how long. That is where the gap lies.” Another interviewee observed that National Treasury’s role is not implementation; it sets out the norms and standards that municipalities must adopt and implement. Thereafter, the National Treasury must monitor and report on compliance.

Commenting on whether provincial treasuries review the publication of procurement information on municipal websites and the eTender Portal, one interviewee, representing the provincial government, stated the following about the provincial treasury:

“... review[s] the procurement processes of municipalities and provide[s] support. Our focus is on overall compliance with the SCM processes. So far, we have not done a specific review on transparency [particularly focusing on municipal websites]. When we do the review, we also provide recommendations to the accounting officer towards addressing the identified SCM non-compliance issues.”

Another interviewee, representing a different province, indicated that part of the provincial treasury’s technical engagement with municipalities is to assess whether municipalities have websites, the information that they are publishing on these websites, and the information that municipalities send to the provincial treasury. The interviewee revealed that the provincial treasury was “looking at some of the areas [targeted by the surveys], but not all of

them”. The interviewee further stated that the provincial treasury is particularly focused on the publication of tender invitations by municipalities.

The law requires municipalities to publish the name of the successful bidder and the price of the contract within five days of awarding the contract. Our surveys established that not all municipalities are complying with this requirement. When asked about the provincial approach to this non-compliance, one interviewee had this to say:

“In terms of reporting, we have a lot of reporting requirements. Some of it we’re strict on and others we’re not that strict on. The issues you highlighted – we are not strict on them. We focus heavily on bid publications, and the results after the decisions have been made. If municipalities do not adhere to the time frames, we do not concentrate heavily on that if municipalities come back and say they’ve published it. That’s what municipalities normally do. You follow it up, and then they publish it. Then they say they have published it. But we don’t necessarily pick that up each and every time, and say those are six days instead of five days. Those are choices we make as provincial treasury as to where we put our resources. We have a small [team] ... In our SC component that deals with all the related issues on SC, we make decisions on how we are going to spend our time.”

The information gathered from the interviews suggests that intergovernmental supervision with regard to this aspect of procurement transparency is often limited and rather focused on tender invitations and awards.

Capacity limitations in SCM and IT units

A commonly cited reason for the lack of transparency in municipal procurement processes is the lack of capacity in SCM and IT units, particularly in smaller municipalities. One interviewee said the following in this regard:

“One municipality has two or three people in the SCM. These two or three people are forever bombarded with producing tenders and RFQs. So, for them the publication of procurement information is not really their priority ... It boils down to people [SCM officials] being choked down with work. So, they concentrate on bigger tenders which they put on the website to avoid being flagged by the Auditor General.”

This view is supported by an interviewee who stated that, “If we look at our rural municipalities, some of them don’t even have fully fledged SCM units ... They don’t have the basics.” Another interviewee revealed that one of the municipalities has a budget close to a billion rand but have only four people who handle close to 50% of this budget. Thus, these SCM officials are “forever under pressure and transparency in municipal procurement is often the victim of this under-capacitation, especially in smaller municipalities”. The interviewee highlighted that, at the end of the day, the SCM unit is often preoccupied with checking the compliance of tenders or contracts with the law at the expense of transparency.

The high turnover of staff in SCM units also creates challenges, not just for transparency but also for other SCM issues. Another interviewee had this to say:

“Local government is also affected by high staff turnover, especially in management positions. This adversely affects the internal control environment. This affects the ability of the municipality to be consistent in terms of its compliance with legislation, in this case, legislation relating to transparency. As long as local government continues to struggle with this challenge we will always have inconsistencies in terms of compliance matters.”

Another interviewee lamented the underfunding of the SCM unit when compared to other municipal units or departments. The interviewee stated that while municipalities are of different sizes and have different organograms, “it is clear that other departments are prioritised in terms of resources”. Yet, procurement is the main vehicle for the achievement of the strategic objectives of municipalities, as outlined in the Integrated Development Plan (IDP) and in accordance with the monetary value indicated in the budget. The interviewee further argued that, “If you have inefficiencies in the procurement department, that is the start of failure in that municipality”. Capacity limitations are not only prevalent in SCM units but also in IT units, as observed by an interviewee:

“While publishing procurement information is a priority for the municipality, both the IT and SCM departments are understaffed. SCM has mostly interns: one member of staff, and one manager, the other member of staff is currently suspended. In IT, there are two members of staff and no manager.”

Another interviewee echoed these sentiments:

“We have outdated infrastructure such as websites, IT ... There is a lack of resources. The IT Department is often not prioritised when resources are being allocated which leads to its under-capacitation ... Many municipalities do not even have dedicated IT managers.”

On the other hand, another interviewee disagreed that capacity constraints are behind a culture of lack of transparency in municipal procurement. The interviewee argued that “capacity is there but there is no interest in publishing procurement information”. While there may be lack of interest in some municipalities to publish procurement information, capacity constraints cannot be underestimated. When there is limited capacity, the limited resources are often invested in the contracting of service providers. Transparency, particularly with respect to implementation of the contracts, is relegated.

The hosting of municipal websites by private parties

Municipalities often rely on private companies for IT support services, including the hosting of the municipal website, communication, and the publication of information. These municipalities mostly do not have internal capacity to run a fully functional IT department that is able to administer a municipal website and publish information on it. Outsourcing these services could also save the municipality costs. One of the interviewees stated that some municipalities “do not have competent personnel to develop and maintain their websites”, hence the reliance on private parties.

When there is a contractual dispute between the municipality and the service provider, or when the municipality fails to meet its payment obligations, the service provider often simply withdraws the relevant service. One interviewee revealed the following: “In one of the municipalities ... its website was not functional because it had appointed a service provider and the matter was in court, so the website was switched off pending the court case.” As a result, the municipality could not publish procurement information on its website. How can this be resolved? One interviewee suggested: “Fire the guy who appointed a website provider. Fire the chairperson who approved that the communication is handled by an outside provider.” The interviewee argued that the municipal website is an important channel of communication for the municipality. It is a “domestic affair” and “you can’t outsource your domestic duties”.

Another interviewee commented that regularly publishing procurement information requires “foremost the maintenance of a functional website”. The question of who is hosting the website is therefore important. The interviewee further reasoned that, given that many municipal websites are hosted by private parties, there is no consistency in the design and maintenance of municipal websites nor the publication of information on these websites. Thus, the lack of transparency is closely tied to how municipal websites are being managed.

Interdepartmental coordination challenges

In some municipalities, the inability to publish procurement information consistently and timeously is attributed to a lack of interdepartmental coordination. While SCM is responsible for administering the procurement system, the publication of procurement information is often handled by the IT or communication department. This means that the two departments must work closely together to ensure that procurement information is published on the municipal website on time. This synergy is not always there, which often results in delays in the publication of procurement information. This was confirmed by an interviewee who said that “there is often a distance between IT and SCM departments” while another interviewee revealed that the synergy between these two departments is “sometimes weak or missing”. Another interviewee stated that, “Sometimes the SCM department submits documents late to the IT department. For example, if a tender is due in seven days, the SCM department may sometimes submit the tender documents to the IT department on the fifth day, leaving only two days for the information to be published.” Thus, interdepartmental coordination challenges are adversely affecting the timeous and consistent publication of procurement information on municipal websites.

The utility of the eTender Portal

There was consensus among the officials who participated in this study that publishing procurement information on the National Treasury’s eTender Portal comes with several advantages. The eTender Portal is a national platform that enables a wider viewership of procurement information which could result in higher responses to tenders. Asked how the publication of information on the portal works in practice, an interviewee indicated: “All spheres of government were given user names. They can log in and load the information directly.” Asked what kind of procurement information can be published on the eTender Portal, the interviewee replied: “Everything. You advertise the tender, and after closing you

publish the report of the bids submitted, and also put the awarded price on the eTender Portal.” The interviewee stated that the refurbished eTender Portal is “... very easy [to use] ... Even someone who has not done the training can use it.” The interviewee further revealed that the National Treasury has provided training at no cost and is ready to provide support when requested. In practice, not all municipalities have capitalised on the advantages that the eTender Portal offers by publishing information on this national platform. An interviewee remarked: “We are catching up with a lot of things including the publication of information on the eTender Portal.”

Interviewed officials also noted challenges associated with the eTender Portal. One official commented as follows:

“The portal was always down but now it has been fixed. The uploading of procurement information was also problematic. When people move across municipalities it is always a challenge to change access. They have to organise access for the new person. But now they have been given access to municipalities. The uploading of information on the eTender Portal is also a bit technical but [the National Treasury has] addressed it [and provided training] to ensure that it is easier to upload information.”

Another interviewee stated that the municipality used to experience challenges with the eTender Portal: “For example, they add a description and upload a document, and sometimes the document does not get uploaded and they have to redo the process.”

Asked why municipalities are not publishing procurement information on the eTender Portal, one of the officials interviewed indicated that they are not obliged to publish procurement information on this portal. They have therefore taken a decision not to publish procurement information on the eTender Portal. This is how the official argued:

“The requirement to advertise on the eTender Portal is coming from a circular that was issued by the National Treasury. However, SCM Regulation ... requires us to advertise in a local newspaper, the website, and then it says, or any other platform. So, from where we are sitting as [a municipality], our SCM policy has included two mandatory platforms for advertisement, which is the website as well as a local newspaper, to comply with the SCM Regulations. And then the Treasury came, and issued the circular after the effective date of the Regulations, and said in order to enhance transparency,

municipalities must consider advertising on the eTender Portal ... How circulars work in local government is that, when Treasury issues a circular – because a circular is best practice and not the law – the municipality sits with the option of implementing the circular or not. And when the municipality decides to implement the circular, the circular is incorporated into the [municipality]’s policy, which is then tabled in the council for approval. So, because that particular circular was not adopted by [our municipality] through council approval and incorporation into the [SCM] policy, from where we are sitting, from a compliance perspective, we are not required to publish our bids on the eTender Portal, and that’s why you will see the disjuncture between our website and eTender Portal ... We have even done a technical consultation with Treasury to find out if it is a must for the [municipality] to comply, and Treasury has also indicated that where the municipality has not taken the circular to council, to incorporate it into [its] policy, then it is not mandatory for [that municipality] to comply. And that’s why you will not find some of our advertisements on the eTender Portal. We are in the process of amending the SCM Policy now. We are having discussions about the possibility of incorporating that particular circular to enhance transparency.”

The reality that National Treasury Circulars are not binding until adopted by the council is an important feature of the landscape of secrecy surrounding procurement. These circulars, as well intended and ambitious as they may be, do not guarantee transparency. There are municipalities that have not implemented the National Treasury’s Circular on the eTender Portal. In the words of one interviewee, “If is not a requirement we will not do it”, even though it might be best practice to do so. This explains why in many cases the municipal procurement information on municipal websites does not correspond with that on the eTender Portal.

An interviewee argued that the non-publication of procurement information on the eTender Portal demonstrates a lack of appetite: “I don’t see municipalities having the appetite to publish information on the eTender Portal. This could be for various reasons.” Another interviewee noted the “challenge” in getting municipalities to publish procurement information on the eTender Portal. For this interviewee, it is “more about change management ... That’s the challenge you will have.” Hence, there is a need to provide the necessary support so that this challenge can be overcome. In contrast, another interviewee had this to say: “For me, it is not about the lack of appetite but rather the lack of capacity to

perform. It is about the administrative burden that comes with publishing procurement information on various platforms.”

Another interviewee noted that municipalities have adopted different approaches to publishing procurement information on their websites and “sometimes this leads to confusion”. Hence, there is value in publishing procurement information on the eTender Portal. The interviewee said the following in this regard:

“My preference would be, and that is why we’re working with the national government ... Get all of this information published in a proper, uniform system. Because even on the websites, the way that municipalities are publishing their information is not the same and sometimes it leads to confusion. But if we have a particular format, in terms of particular procurement information, and we have got a system at the national level, and like the ePortal – we focus heavily with them on the ePortal – get the municipalities to publish all the information on the ePortal. This would be the best way to go about this for the country as well. But, we are not there yet. There are some things that the national government has developed. They also didn’t make it compulsory. That is why we believe that when it comes to procurement information, there needs to be a standardised approach that is in a system.”

Other interviewees also raised the question of the user-friendliness of the eTender Portal. How easy is it to find procurement information on this portal? If the portal is not user-friendly it will be difficult for citizens to engage. Thus, it was suggested that the eTender Portal should not only be about transparency but also about “accessibility to each and everybody”.

5. Conclusion

The findings of this study support the findings of the 2020 and 2021 surveys which established that municipalities are not publishing key procurement information on their websites and the eTender Portal on time and consistently. While the participants in this study strongly agreed that municipal procurement ought to be transparent, most municipalities are not transparent to the public about their procurement. The reasons for the lack of transparency in municipal procurement varied from one municipality to the other. Three reasons are particularly worth noting:

- a) **Transparency as a priority:** Many municipalities do not consider transparency a priority area. Hence, transparency is not receiving sufficient attention. Significant attention in municipal procurement is often given to the other pillars of public procurement in South Africa, namely fairness, equitability, competitiveness and cost-effectiveness. Intergovernmental oversight over municipal procurement also does not put a premium on transparency. It is often limited and focused mainly on tender invitations and awards.
- b) **Culture of fear:** The municipal environment can be “hostile” to transparent procurement. Local government is often engulfed by a culture of “fear”, “discomfort” and (mis)use of information. This culture is a disincentive to municipal officials who want to be transparent. Underperformance and irregular conduct are equally disincentives to transparency.
- c) **Capacity constraints:** Capacity constraints often stand in the way of transparency, particularly in small or low-capacity municipalities. Some municipalities fail to do the basics of establishing and maintaining functional websites while others do not have fully fledged SCM units or well-equipped IT units.

6. Recommendations

The participants of this study identified several challenges standing in the way of transparent procurement. We asked them how the challenges could be addressed. In this section, we summarise the recommendations emerging from our research for consideration by stakeholders.

Publish procurement information online

Procurement of goods and services in local government happens daily. However, not all relevant procurement information is published on platforms that are easily accessible to the public. In fact, in many municipalities procurement information is available in physical form at municipal offices, and at a cost. Against this background, an interviewee stressed that “There is a need for municipalities to improve from keeping hard copy procurement documents to uploading procurement information to the municipal website. Why? Because legislation requires that it be done that way.”

Publish procurement information on municipal websites

This study has revealed that municipal procurement information is scattered among municipal websites, the eTender Portal, newspapers, municipal notice boards, and other platforms. This makes it difficult for the public to access information. Hence, most interviewees called for the key procurement information of a municipality to be published on its website first before it is published elsewhere. This should not be interpreted to mean that the publication of municipal procurement information on the eTender Portal is not important.

Publish procurement information for the benefit of the public

The publication of procurement information by local government is generally oriented towards service providers. This suggests that the general public has little or no role to play. Yet, some of the goods and services that the municipality procures are directly delivered to communities by service providers. Thus, there is a need to move away from a service provider-oriented system of making procurement information available to a system that places the public at the centre of procurement.

Improve the functionality and design of municipal websites

The design of a website, which includes the organisation of information on it, impacts the accessibility of the content on the website. Municipalities typically use their websites to publish information ranging from budgets and plans to annual reports, policies and tenders. It is thus important that municipal websites are designed in a user-friendly way to enable easy navigation to relevant information. Ideally, the procurement section on a municipal website should have all the different categories of key procurement information: tender notices, specifications, tender awards, contracts, service level agreements, etc.

Elevate issues of transparency in key structures and processes

It is clear from this research that issues of transparency need to be taken more seriously in higher decision-making structures or offices in municipalities. One of the interviewees voiced this as follows:

“It starts from the top. Senior management or even the council must decide that the publication of procurement information is important. Thereafter, transparency in municipal procurement must be captured in performance contracts, monthly reports etc. Then it will be done. In short, make transparency in municipal procurement part of the system for performance, reporting, and compliance.”

In cases where procurement information is not published timeously on municipal websites, consequent management should immediately take effect.

Intergovernmental oversight over municipal procurement

Some of the officials who participated in this study were not sure which procurement information should be published. Thus, there may be a need for the National Treasury to clarify which procurement information should be published, how often it should be published, and where it should be published. The publication of all government procurement information on a single platform, the eTender Portal, should become an important part of the “SCM evolution”. This should be followed by close monitoring of whether the identified procurement information has been published.

Capacitate SCM and IT units

SCM and IT/Communication departments must be capacitated through, among others, sufficient budgetary allocations so that they can make procurement information available on the municipal website and other platforms timeously and consistently. An interviewee made the following comment regarding SCM units:

“They need competent people with the right skills rather than using SCM as the ground for cadre deployment of unskilled officials. If you do so, this will have a direct knock-on effect on whether the key pillars of procurement are actually met and transparency being one of them.”

This recommendation is in line with section 119 of the MFMA which requires that SCM officials be competent to do the job. Thus, it is not just a matter of numbers but of ensuring that SCM units are run by people with the right skills. We also need fully functional and capacitated IT and communication units that can support SCM to execute its function effectively.

Effective coordination between IT/communication and SCM units

There is a need for effective coordination between the SCM unit and the IT or communication units to ensure that procurement information is published timeously on the municipal website. This includes the timely sharing of procurement information between these two units.

The use of service providers to administer municipal websites

The relationship between service providers that administer municipal websites and municipalities requires improvement so that municipal websites remain functional, with procurement information published consistently. However, one of the interviewees made the following comment regarding transparency: “As long as municipalities continue to use third parties to host their websites, we will always have inconsistency in terms of compliance.” Thus, it is recommended that municipalities build the capacity of their IT departments so that they are able to maintain their own websites and regularly publish information on them. This will give municipalities much-needed control over an important platform for publishing information and communication.

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