

PROCUREMENT TRACKER NAMIBIA



Issue No. 1

July 2018



Members of the Central Procurement Board of Namibia (CPBN) with Finance Minister Calle Schlettwein at the inauguration of the board in April 2017. Photo courtesy of The Namibian

Overview of the implementation of the Public Procurement Act

In mid-June 2018, in what was the first formal media engagement of the Central Procurement Board of Namibia (CPBN), chairperson of the board, Patrick Swartz, basically said that the first year of operation of the board had been a hard learning experience.

This self assessment was backed up by anecdotal evidence that demonstrates that public sector procurement in Namibia continues to struggle to become efficient and still labours under thick clouds of controversy.

While the Public Procurement Act of 2015 was supposed to be a turning point in public procurement governance, by mid 2018 all the evidence pointed to a system still in deep

crisis, at a time that the country was experiencing enormous fiscal and economic challenges. The Public Procurement Act was supposed “to promote integrity, accountability, transparency, competitive supply,

effectiveness, efficiency, fair-dealing, responsiveness, informed decision-making, consistency, legality and integration in the procurement of assets, works and services”.

It is against these objectives that the workings of the new public procurement system now have to be measured.

And at this juncture it has to be questioned whether the implementation and operationalising of the law has laid the groundwork to date for achieving these objectives over the medium to long term, or whether the new public procurement dispensation has already been considerably undermined by long standing governance weaknesses within the state sector.

It should be borne in mind, as Transparency International states, that “every year huge sums of taxpayers’ money are spent by governments on goods and services.

“ The CPB’s disappointing performance in its first year is clear evidence of poor policy formulation and incompetent administration at central government level concerning procurement

”

UNCAC and Namibian public procurement

Between 2016 and 2020 Namibia will be assessed in terms of its compliance with chapters II (Preventive Measures) and V (Asset Recovery) of the United Nations Convention Against Corruption (UNCAC).

One of the chapter II assessments will look at to what extent Namibia’s public procurement system is in compliance with UNCAC. The relevant UNCAC provision in this regard is Article 9.

Article 9 (Public procurement and management of public finances) states:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application ...

For a procurement system to achieve its goals, Article 9 requires:

- (a) the establishment of a sound procurement system;
- (b) transparency in procurement;
- (c) objective decision-making in procurement;
- (d) domestic review (or bid challenge) systems;
- (e) integrity of public officials; and
- (f) soundness of public records and finance.

Why track issues in public sector procurement?

In every society the state plays a significant role in the economy through purchasing and contracting using tax revenues. These tax revenues are ideally spent in furthering the public interest.

Over the years, since Namibian independence in 1990, however, the public procurement system has become a source of increasing concern not just within government, but also within the private sector and civil society.

When corruption infiltrates and attaches to public procurement it undermines the public interest and gradually undermines public confidence in government.

As Transparency International states in its guidebook on 'Curbing Corruption in Public Procurement': "Corruption in public procurement means public funds are wasted on an enormous scale, and the benefits these funds should have brought are lost. Taxpayers' money to pay for hospital equipment, books for schools or safer roads, for example, ends up sitting in the pockets of the corrupt.

"The cost of corruption in public contracting is not only measured by money lost. Corruption distorts competition, can reduce the quality, sustainability and safety of public projects and purchases, and reduce the likelihood that the goods and services purchased really meet the public's needs. When procurement is corrupted by private interests and not directed by the public good, trust in governments is eroded."

In light of this, the launch of this project happens against the backdrop of the Namibian public sector procurement system long being shrouded under thick clouds of suspicion of rampant corruption and administrative mismanagement.

The promulgation and implementation of the Public Procurement Act of 2015 was supposed to turn the page on such issues and concerns, but to date has not, as the spectre of corruption in public procurement only seems to have grown and been amplified since the operationalising of the law as from 1 April 2017.

It is in this climate that the need for a civil society initiative to monitor and track developments in the public procurement sector was identified, and within which the Procurement Tracker, as a collaboration between the Institute for Public Policy Research (IPPR) and the Hanns Seidel Foundation (HSF) has now been born.

With so much money changing hands, few government activities create greater temptations or offer more opportunities for corruption".

Accountability and transparency

By July 2018, the new public procurement dispensation was struggling to even appear accountable and transparency remains an enormous challenge, as over the first year of the operationalising of the Public Procurement Act almost the entirety of procurement within the state sector has bypassed the new system.

This appears to have been the consequence of public sector entities struggling for the whole of the 2017/18 financial year to create the internal procurement structures and mechanisms required for compliance with the law. In fact, by July 2018, many public sector entities still appeared in the

process of setting up such structures and mechanisms.

The Central Procurement Board of Namibia has itself struggled to find its feet since officially starting work on 1 April 2017, with the influential Tender Bulletin describing the entity's teething troubles in severe terms as follows: "The CPB's disappointing performance in its first year is clear evidence of poor policy formulation and incompetent administration at central government level concerning procurement".

In its overview of the public procurement sector for 2017/18, the Tender Bulletin found that "of 1,491 tenders issued at all three tiers of government during the CPB's first nine months of existence between April and December last year, 87 were cancelled, mainly due to the non-compliance with the Procurement Policy Unit's complex new regulations".

TO PAGE 4

In the words of the chairperson

The role of the board is to ensure that the specifications and the evaluation criteria encourages fair competition and compliance with the Act.

To strengthen and enlarge the capacity of the CPBN to evaluate bids across the spectrum of procurement required, we require a pool of approximately 1,000 professionals, from where the board could elect the desired mixture of skills and appoint them as an ad hoc bid evaluation committee in terms of the Act to evaluate procurement bids and submit and to submit a bid evaluation report to the board for consideration and approval.

The specific areas in which the organisation will require manpower are in the core functional areas of the CPBN, being procurement officials and professionals in certain technical fields. The first round of adverts closed on Friday, 8 June 2018, and more will follow soon.

The principal objects of CPBN are to conduct the bidding process on behalf of public entities for the procurement that exceeds the thresholds prescribed in Categories 1, 2 and 3 as defined in the regulations, enter into contracts for the procurement and direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the board. The CPBN, therefore, does not grant exemptions to any public entity as it is not mandated to do so.

Allow me to assure stakeholders that the CPBN will work tirelessly to execute its mandate, and we will foster stronger working relationships with all the stakeholders whilst remaining within the ambit of the Act.

The staff complement of the organisation has been sufficient for the workload CPBN had to deal with in 2017/18, however, the current influx of individual procurement plans has necessitated the organisation to revisit its recruitment strategy and accelerate the recruitment process of staff.



Chairperson of the Central Procurement Board of Namibia Patrick Swartz

2017/18 **public procurement** in numbers

By the time it ceased operating at end March 2017, the Tender Board had issued just

±10%

of public procurement contracts for 2016/17

According to Tender Bulletin data,

1,729

public procurement awards were issued at all levels of government in 2017/18

Just 5

of the public procurement contracts awarded in the 2017/18 financial year were awarded by the Central Procurement Board

The Central Procurement Board also approved

17

procurement plans in 2017/18 ...

... and extended

18

procurement contracts in 2017/18

This means

less than 5%

of public procurement initiatives of 2017/18 were sanctioned by the Central Procurement Board

N\$35 million

- the highest threshold above which all awards are supposed to be made by the Central Procurement Board

The Central Procurement Board apparently needs

±1,000

professionals and experts in various fields for it to operate efficiently

N\$10.2 billion

- the amount set aside for public procurement in 2018/19

“ With exemptions seemingly having become the order of the day since 1 April 2017 and aside from public entities publishing tender notifications in some newspapers, by some estimations, the transparency situation is even worse now than what it was under the old Tender Board of Namibia system. ”

‘System failure’ on transparency

As an act of transparency, the Central Procurement Board of Namibia chairperson’s media briefing in mid-June 2018 didn’t reveal much about the general state of public sector procurement, aside from emphasising the point that capacity constraints were hampering the optimal implementation of the Public Procurement Act.

The fact that it was the first CPBN media briefing in its first 15 months of operation also didn’t escape notice.

That said, as of July 2018, transparency in the public procurement realm remains an immense concern, even as the new procurement dispensation was meant to inject greater transparency into public procurement practices. In fact, transparency is a core objective of the new landscape.

However, with exemptions and other forms of discretionary decision-making reportedly having become the norm in public procurement since 1 April 2017 and aside from public entities publishing tender notifications in some newspapers, by some estimations, the transparency situation is even worse now than what it was under the old Tender Board of Namibia system.

According to Tender Bulletin, “Namibia’s new procurement dispensation has reduced what little was left of transparency in publicly funded procurement to an unprecedented low”.

While the Public Procurement Act calls for the implementation of various transparency inducing mechanisms, at this stage such mechanisms are hardly visible across the public sector, such as a reasonably detailed accounting of procurement practices on public entities’ websites, through listings and summary reports.

Even the CPBN seems to be struggling with maintaining a functional website, for despite CPBN chairperson Patrick Swartz claiming at his mid-June 2018 media briefing that information was available on the agency’s website, a normal Google search could not connect to the website, raising doubts about the accessibility of information concerning the workings and activities of the CPBN.

This is not a new situation though, for Namibian state authorities have historically struggled with transparency and access to information. In fact, an IPPR access to information survey from late 2017 found that most government departments and agencies were still largely closed off to the public in terms of basic information accessibility, despite government’s continuing claims that the situation has and is improving significantly.

In this regard, the following statement from Transparency International resonates applicably: “Transparency can imply additional time and cost in the short term but in the long run, ensuring transparency saves time as well as reduces costs. Projects prepared in secret, or with severely limited information available for stakeholders, increase risks of corruption and public resistance down the line, both of which cause serious delay and expense”.

The troubling two-headed spectre of exemptions and discretionary decision-making

The use of exemptions and other forms of discretionary decision-making in public procurement have long been contentious and concerning issues, given that such practices are considered highly prone to corruption.

Under the old Tender Board of Namibia system, the use of exemptions escalated dramatically between the 2006/07 and 2012/13 financial years, when exemptions for the first time accounted for over 66% (two-thirds) of state sector procurement.

By the time the Tender Board was wound up at the end of the 2016/17 financial year, exemptions appear to have accounted for well over 75%, and by some estimates as much as 90%, of public procurement.

Anti-corruption literature is clear about the corruption danger posed by the use of exemptions in public procurement. Even so, the Public Procurement Act makes provision for exemptions, stating: “The Minister may, with or without condition, as the Minister may determine, grant a general or specific exemption by way of a directive for specific types of procurement or disposal from the application of certain provisions of this Act that are not practical or appropriate for the purpose for which such goods are let, hired or disposed of, including goods, works and services being procured.”

To what extent exemptions have been used in the 2017/18

financial year is unclear, as procurement data was indeterminable for this issue of Procurement Tracker, but will be looked at in the next issue.

That said, besides exemptions apparently looming large over the procurement landscape, other forms of discretionary decision-making also appear to have featured prominently on the public procurement landscape in the 2017/18 financial year.

Reports have it that as many public entities were struggling to set up internal structures to comply with new procurement rules, the request for quotations method became the preferred procurement method across the public sector. According to reports, most such requests were not handled transparently, aside from limited and short-running publication, often obscurely, of such requests in some

local media.

These practices have set alarm bells ringing and already seem to have dented perceptions of the new public procurement dispensation. Tender Bulletin, in its own review of public procurement for 2017/18, characterised the situation as follows: “The Namibian government’s central procurement agencies virtually disappeared from the radar last year as public procurement transparency plunged to an all-time low in 2017.”

“ Besides exemptions apparently looming large over the procurement landscape, other forms of discretionary decision-making also appear to have featured prominently on the public procurement landscape in the 2017/18 financial year. ”

FROM PAGE 2

Competitive supply and fair-dealing

What the state’s procurement struggles have concerningly amplified is the use of exemptions and other discretionary decision-making across the state sector procurement landscape.

The issue has not been quantified in this Procurement Tracker, but will be looked at more deeply in the next issue.

That said, the apparent increased exempting of procurement from normal tender processes was one of the issues which bedeviled public procurement in the past under the old Tender Board of Namibia and arguably significantly informed perceptions of corruption around state procurement pre-2017.

Exemptions and calls for quotations appear to have been the norm in the 2017/18 financial year – with public procurement described as a “growing system of exemptions and quotations” by Tender Bulletin – meaning that the competitive supply and fair-dealing objectives have arguably already been severely undermined in the new system.

This raises the spectre of corruption, waste and mismanagement having attached to much of the procuring that was done by the state in the 2017/18 financial year.

Consistency, legality and integration

Given that while authorities were and are still struggling to adequately implement the Public Procurement Act, state sector procurement remains an ongoing activity, the question has to

be asked to what extent these public procurement initiatives are in line with the provisions of the law.

As already indicated, according to Tender Bulletin, quite a number of procurement contracts appear to have been revoked because of non-compliance with the law, which underscores systemic struggles with implementation of the law.

The suspected widespread use of exemptions and calls for quotations only raises more doubts about the legality of a lot of the state’s procurement practices, and certainly undermines any sense of consistency in rules application. And quite clearly, it would be superfluous to talk about integration in the current environment, as this objective still appears considerably far-off from being appropriately met.

Against the backdrop of these issues, it has to be remembered that Namibian conditions are such at the moment that the state hardly has enough money to keep its operations going optimally and as most Namibians appear to regard the state’s handling of the economy negatively. In light of this and considering all the shortcomings of the implementation of the Public Procurement Act to date, it can hardly be claimed that Namibia has a sound procurement system, as called for by the UN Convention Against Corruption (UNCAC), at this juncture.

IN THE NEXT ISSUE:

- Transparency under the spotlight
- Public entities’ procurement plans
- Taking a deeper look at exemptions and requests for quotations
- Public procurement in the news