

PROCUREMENT TRACKER NAMIBIA



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Photo: Contributed

Ministry of Finance

Where are the annual procurement plans?

The way annual procurement plans are handled indicates that significant transparency and accountability gaps remain in the public procurement sector

When he delivered his parliamentary statement on the operationalising of the Public Procurement Act in the National Assembly on the eve of the new dispensation going live on 1 April 2017, Finance Minister Calle Schlettwein said: “We are hopeful that with the new Public Procurement Act, coming into effect on the 1st of April 2017, there will be improvements in terms of governance structures, and the application of the principles of transparency, accountability and value for money.”

Almost a year and a half later, indications are that state entities still appear to be struggling considerably to make “improvements in terms of governance structures” and “the principles of transparency, accountability and value for money” remain significant and

worrisome challenges on the state procurement landscape.

Symptomatic of these struggles and challenges is the way government entities have been handling their annual procurement plans.

According to law, annual procurement plans are to be drawn up by internal procurement management units in state sector entities, laying out their procurement intentions, practices and methods for every upcoming financial year (see side-bar).

In this regard, procurement guidelines issued by the Procurement Policy Unit in the Ministry of Finance in August 2017 state the following in chapter 1 (Procurement Planning):

“1.5. Annual Procurement Plan

1.5.1. Each Public Entity should file its annual procurement plan with the Procurement Policy Unit (Policy Unit). Throughout the year, the Public Entity should give the Policy Unit notice of changes in the annual

“The widespread non-compliance is indicative of a situation in which most state sector entities are enormously challenged to implement prescribed procurement governance structures internally.”

”

Procurement plans – What the law says

According to Part 3 (Internal Organisational Structures) of the Public Procurement Regulations, every state sector entity has to compile an annual procurement plan. The broad details of what such plans are supposed to include are stipulated in section 8 (Procedures and processes for procurement management unit) of Part 3. In this regard, the regulations state the following:

“(2) The procurement management unit must -

(d) prepare an annual procurement plan that a public entity intends to carry out during the financial year which includes -

(i) types and quantity of the goods, works or services to be procured by the public entity;

(ii) a schedule of the planned delivery, implementation or completion dates for goods, works or services required by the public entity;

(iii) an indication of whether goods, works or services are procured within a year or under a multi-year arrangement;

(iv) an indication of possible packages of procurement and the value or an estimate of the value of each package of goods, works or services required to be produced;

(v) an indication of possible pre-qualification proceedings;

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Why this matters

The fact that annual procurement plans of state sector entities and authorities are not publicly available on prescribed websites means that transparency and the public's ability to hold state authorities accountable for their spending of taxpayers' money is undermined significantly.

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procurement plan. Further, quarterly reports detailing the progress of implementing the procurement plan should be filed. These reports are due to the Policy Unit by the end of the month following the end of the quarter. The Public Entity should post its procurement plan on its website."

This is where the proverbial tyre goes off the rim when it hits the road, for public sector entities are largely not complying with these guidelines.

Disregarding guidelines

Our investigations reveal that out of the 30 ministry level government portfolios, only 14 annual procurement plans for the 2018/19 financial year appear on the website of the Ministry of Finance.

Out of 58 local authorities – 13 municipalities, 26 towns, 19 villages – only eight (8) annual procurement plans for the 2018/19 financial year appear on the ministry's website.

As for state-owned enterprises, regulatory bodies and statutory agencies, out of about

70 such entities, only 21 annual procurement plans for the 2018/19 financial year appear on the website.

According to sources at both the Procurement Policy Unit and at various state departments and agencies, many more appear to have submitted their annual procurement plans to the finance ministry, but they apparently have not been put online yet.

However, in many other cases, the fact is that almost halfway through the 2018/19 financial year, annual procurement plans had yet to be submitted to the Procurement Policy Unit.

Prominent amongst those entities of which no procurement plan is publicly available on the Ministry of Finance website is the Ministry of Finance itself and the Central Procurement Board of Namibia (CPBN). The Anti-Corruption Commission's (ACC) annual procurement plan is also not up yet, and according to someone spoken to at the ACC, the commission's procurement plan hasn't even been submitted yet.

When we looked at how many annual procurement plans were available and accessible on the websites of the various government ministries, offices and agencies, as well as state-owned enterprises, as per the procurement guidelines, the picture becomes even more dismal.

Out of 101 websites looked at, the annual procurement plans of only five (5) state sector bodies – Office of the Prime Minister, Office of the Auditor-General, Namibia Ports Authority, Namibia Qualifications Authority and the Development Bank of Namibia – appear on their websites.

Notable in this non-compliance is the Office of the President and once again the finance ministry and the CPBN, and the ACC.

According to sources, the widespread non-compliance is indicative of a situation in which most state sector entities are enormously challenged to implement prescribed procurement governance structures internally.

Questions related to the apparent challenges to implement the structures of the Public Procurement Act were sent to the Procurement Policy Unit, but no answers were received by the time of going to print.

We will endeavour to publish the responses to the questions in the next edition of Procurement Tracker Namibia.

What we found

All state departments, agencies and entities are supposed to submit annual procurement plans to the Procurement Policy Unit in the Ministry of Finance, as well as displaying the plans on their websites. However ...

Less than

50%

of ministry level portfolios' annual procurement plans are publicly available on the Ministry of Finance website

Out of

58

local authorities – 13 municipalities, 26 towns, 19 villages –

only 8

annual procurement plans are publicly available

Out of about

70

SOEs, regulatory and statutory bodies,

only 21

annual procurement plans were on the Ministry of Finance website

Out of

101

websites looked at, the annual procurement plans of

only 5

state sector bodies appear on their websites.

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What the law says

- (vi) an indication of which items can be aggregated for procurement as a single package or for procurement through an applicable arrangement for common-user items;
- (vii) an indication of the budget available and source of funding for the procurement of the goods, works or services;
- (viii) an indication of the appropriate procurement method for each procurement requirement; and
- (ix) such other information as may be required by the accounting officer or the Policy Unit;

- (3) In addition to an annual procurement plan referred to in subregulation (2), the procurement management unit must prepare an individual procurement plan for each individual procurement ..."

Public Procurement in the News

SOE executives under fire

Public procurement practices regularly make headlines – mostly negatively – which contributes to perceptions of the system. Following are brief descriptions of some of the more compelling and high profile stories that were covered by the media in August - September 2018.

TransNamib's Tjivikua saga

A corruption cloud continues to hang heavily over long suspended TransNamib senior executive Hippy Tjivikua from his time as acting CEO, from 2014 to 2017.

In August it was reported that Tjivikua has been implicated in a scheme that paid out N\$24 million

through contracts that were only supposed to cost the parastatal N\$3 million (for fuel spill clean ups). Investigators have advised works and transport minister John Mutorwa that Tjivikua should be held accountable for "corruption, fraud and collusion" with a private contractor, businessman Rodney Hanganda.



Tjivikua has now been implicated by two separate investigations into his conduct as acting CEO.

At the time of writing it was still unclear what Tjivikua's fate would be.

Aochamub ousted at NAC

It was reported in early August that the termination of acting Namibia Airports Company CEO Albertus Aochamub's contract was linked to lucrative aviation sector tenders.

Sources were quoted saying that "Aochamub's removal was linked to tenders that are set to be awarded. One of the tenders which is being hotly contested is the N\$145 million



renovation project of the Hosea Kutako International Airport", the bid deadline of which closed at the end of June this year.

Aochamub was accused by the board of privately meeting with potential bidders over some of the proposed procurements, including around the airport project.

Speculation in the media suggested that various factions at senior government levels were trying to influence the awarding of tenders at the NAC.

Charges follow Namcor's Mulunga

Controversy plagued Namcor CEO Immanuel Mulunga and two other executives face disciplinary and potential criminal charges, according to media reports in late August.

Amongst the charges levelled at Mulunga by an investigating firm, were the "failure to act in the public interest in accordance with the Public Procurement Act, gross negligence and neglect of duty and failure to disclose interest and withdraw from the procurement process", which relate to his dealings with a Malaysian company, Hyrax Oil, in late 2017.



The charges followed a forensic investigation by consultancy Deloitte, which also found that Mulunga had allegedly intentionally misrepresented himself to a commercial bank in order for an associate to get a loan with the bank.

Mulunga's fate remained undetermined at the time of publication.

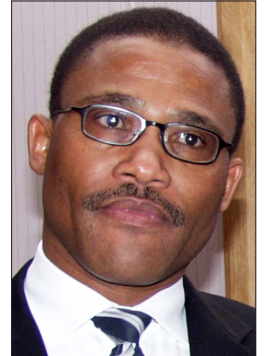
Katiti booted by NIP

Former Namibia Institute of Pathology (NIP) CEO, Augustinus Katiti, was fired by the parastatal's board at the end of August over alleged corruption.

Katiti and five other senior NIP executives have been suspended over recent months, since June 2018, over alleged financial irregularities, large scale maladministration and tender corruption.

Katiti's firing followed his alleged obstruction and delaying of disciplinary processes against him.

The tender corruption charges against Katiti, and the other executives, concern financially strained NIP's dealings with transport company, ST Freight Service CC, which was awarded contracts to transport NIP goods across the northern parts of the country, as well as the alleged irregular purchase of furniture and the disregard of procedures to terminate an NIP investment.



Simana, NCAA in procurement spotlight

The Namibia Civil Aviation Authority and its boss, Angeline Simana, continue to attract negative headlines.

In late August it was reported that Simana had awarded an aviation security consultancy contract to a Zimbabwean aviation expert, Norman Sanyanga, to advise on airport security.

In what appeared to be a clear instance of conflict of interest, it was reported that Sanyanga, a former International Civil Aviation Organisation (ICAO) expert, had been the one who had initially recommended the creation of the consultancy – over 3 years at a cost of N\$3,7 million – which he was then awarded.

In another procurement related matter, it was reported in early September that a proposal by NCAA for British firm Westminster Aviation Security Services to take over airports security was rejected by Namibian security chiefs.

In 2016 it was reported that "the British security company offered to pay university fees for the son of the director of civil aviation, Angeline Simana, in what appears to be a blatant case of conflict of interest".





Photo: The Namibian

Kenandai Tjivikua

Review Panel seeks independence from minister's discretion

In August 2018 the members of the Central Procurement Board of Namibia and the Review Panel had a meeting with President Hage Geingob at State House.

While the meeting received very little coverage, it appears the procurement officials were there to give the President a status update on the operationalising of the new procurement dispensation under the Public Procurement Act of 2015.

The notable occurrence of the meeting was the expression of a call for greater independence for the Review Panel, with the Namibian Broadcasting Corporation (NBC) reporting shortly afterwards that "The Public Procurement Review Panel

wants to operate independently and not resort under the Ministry of Finance".

This suggests that another tension point has developed within the new system.

When approached for comment on this, Review Panel chairperson, Kenandai Tjivikua, was very circumspect about why and what exactly led to this call for independence and the CPBN did not want to comment on the issue. The Procurement Policy Unit had also not responded to questions by the time of publication.

Tjivikua pointed to section 58. (1) of Part 7 (Review) of the Public Procure-

ment Act. This section states: "When the Minister thinks it necessary on account of any of the grounds mentioned in subsection (3), the Minister may, subject to subsection (7), appoint five persons, from a list of persons referred to in subsection (4) to constitute a Review Panel ..."

The issue appears to be the phrases "When the minister thinks it necessary" and "the Minister may", which suggest that it is at the sole discretion of the minister whether any procurement award should be reviewed or not. In other words, only the minister of finance can decide whether a particular procurement award can be reviewed, which raises the question of the soundness of a system which operates at the prerogative of one individual.

The thinking of Tjivikua and others seems to be that the procurement review system should not operate at the discretion of the finance minister. Hence the call for independence.

Procurement Tracker Namibia will keep an eye on developments around this issue.

In other news ...

State House officials try to game the system

Attempts to irregularly side-step or subvert the public procurement system appear to be rife and go as high up as the Office of the President, reports indicate.

In August it was reported that senior officials in the presidency attempted to bypass the public procurement system in order to extend food supply contracts catering to marginalised communities.

It was alleged that there "are concerns that the officials want nine hand-picked companies to continue supplying food for a year, despite worries that some of the companies are owned by people close to State House officials".

"Documents show that the government has set aside N\$36 million for the special food programme of marginalised communities in 10 regions this year," it was reported.

The reports had it that deputy director in the marginalised communities' department in the Office of the Vice President, Gerson Kamatuka, wrote on 27 July 2018 that the Public Procurement Act "has proven on numerous occasions to be cumbersome and bureaucratic, thus not responsive and soluble to our situation".

The attempt to bypass procurement rules appears to have been stopped by permanent secretary in the presidency Samuel Goagoseb.

Situation analysis

The state-owned enterprises (SOE) and statutory state agency sector remains the locus of much of the corruption in public procurement.

It has been proposed that this is because political interference in the workings of sector bodies is based in and enabled by the various establishing laws in the sector, a situation which has created an environment in which politically connectedness and alignment is an apparent primary consideration in the appointments of boards and chief and senior executives.

At the same time, statutorily enabled political interference (through vesting a ministerial portfolio with enormous discretionary powers) has seemingly created a situation where SOE and statutory state agency boards and chief executives, sometimes in competition with each other, arguably are not and do not see themselves as accountable to the public, but rather to a single line minister.

Against this backdrop, it seems clear that corporate governance in the state-owned enterprises (SOE) and statutory state agency sector will continue to suffer as long as arms length relations are not legally enabled that would limit the extent to which politically appointed ministers can involve themselves in the affairs of SOEs and other statutory state agencies.

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- Delving into procurement plans
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