



Photo: CPBN

CPBN members with President Hage Geingob and Finance Minister Calle Schlettwein shortly after their appointment.

## CPBN attempts to reboot

### **Board casts governance, operational challenges as growing pains and refutes leadership dysfunctions**

At the end of April 2019 the Central Procurement Board of Namibia leadership attempted to draw a line under issues that have come to mark impressions of its operations and the functioning of the entire public procurement system.

In a media release on 30 April 2019, the CPBN stated that implementation of the new public procurement dispensation has made “good progress” to date, while acknowledging that it was falling “short in other areas such as governance”.

Already in March 2019, at a meeting with media managers, deputy chair of the CPBN, Lischen Ramakhutla, had sought to cast happenings at the board as nothing more than teething problems of a new system and public entity.

However, questions remain around staffing challenges and the institutional structure of the CPBN.

### **Staffing**

Last year CPBN chair Patrick Swartz stated that an army of specialists in various fields was needed to ensure the public procurement system functioned optimally. To date, getting that army off the ground has proven to be a significant challenge to the functioning of the system, according to the CPBN.

In response to questions from Procurement Tracker Namibia, Swartz stated in May 2019 that on the issue of specialised personnel they had “requested for secondments from ministries and state-owned enterprises, which yielded a few candidates who were appointed on short term contracts. The contracts of these

candidates ended, and new secondments are slim given the employment requirements which requires a person to obtain a security clearance before working at the organisation (CPBN)”.

He added that in 2018 bid evaluation committee secretaries had been appointed on six-month contracts, but that these contracts ended on 31 March 2019.

“ NIPAM is currently assisting the organisation to review its mandate and to revise its organisational structure to execute its mandate.

”

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According to accounts, the issue of security clearances has become a major disruptor in the operations of the CPBN, and Swartz stated that “CPBN engaged the Ministry of Finance to seek their support to prioritise the process of obtaining security clearance for interviewed candidates. This partially materialised and the organisation could make offers to candidates who were successful”.

Procurement Tracker Namibia also sought comment from the Ministry of Finance on the issue of security clearances, but by the time of going to print no response had been forthcoming.

Swartz indicated that in order to build the ranks of qualified professionals to assist in procurement matters, the “CPBN engaged public entities and private institutions to avail senior professional staff to assist with interviews of candidates. CPBN is currently focusing on recruiting staff in areas such as procurement, finance, information technology and human resources”. Furthermore, the CPBN chair indicated that:

■ The organisation further advertised the remaining vacant positions and the Board engaged the Ministry of Finance to assist the organisation in fast-tracking the process of obtaining security clearance for the successful candidates;

■ NIPAM is currently assisting the organisation to review its mandate and to revise its organisational structure to execute its mandate;

■ Management has reviewed its processes and re-allocated work to the remaining staff to reduce the void left by the



Photo: The Namibian

CPBN chair Patrick Swartz.

**It is understood that the Ministry of Finance has looked into this, but its hands are tied as to what to do about the situation.**

staff whose contracts ended in March 2019.

Also, in March 2019, Ramakhutla had indicated that a five-year strategic plan had been drawn up and was to be implemented to deal with some of the staffing and governance issues hobbling the institution. However, when asked in May to clarify Ramakhutla’s statement and to provide the strategic plan for Procurement Tracker Namibia perusal, Swartz indicated that the strategic plan was still in draft phase and nowhere near implementation. He

stated that the “5-year strategic plan was approved as a working document, but the organisation must work with consultants to edit and review it in light of the economic and organisational challenges and submit it to the Board and the Minister of Finance for their approval before it can be shared with external stakeholders”.

## Leadership

In late April the CPBN also attempted to pour cold water on reports and impressions of leadership dysfunction by casting debilitating executive infighting as mere organisational frictions, while blaming the media for “negative reporting without obtaining substantiated information as this can be detrimental to the image of the CPBN”.

However, accounts from those within the system and government with knowledge of what is happening at CPBN very much backs up reports of damaging personality clashes and personal animosity at the highest levels – between Swartz and Ramakhutla specifically – being at the heart of some of the administrative weaknesses at the CPBN and even impacting the functioning of the entire public procurement system.

It is understood that the Ministry of Finance has looked into this, but its hands are tied as to what to do about the situation.

An attempt to get clarity from the Ministry of Finance on this issue for this edition of Procurement Tracker Namibia has been unsuccessful, but answers will be sought for the next edition of Procurement Tracker Namibia.

## How to strengthen integrity

The integrity of officials involved in public procurement should be above board and beyond suspicion, but reports abound of officials falling short of integrity standards, even the limited ones set by the Public Procurement Act of 2015.

The United Nations Convention Against Corruption (UNCAC) of 2003 calls for appropriate integrity ensuring measures to be incorporated into public financial management frameworks, and the Namibian Public Procurement Act goes some way in setting some standards – in Part 10 (Procurement Integrity) – for official conduct in the public procurement realm. Part 10 also defines standards of conduct for bidders and suppliers.

With the Public Procurement Act set for some sort of amendment, this is an area that could be significantly strengthened.

Concerning conflict of interest, Part 10 states:

“A staff member referred to in subsection (1) must

- (a) disclose his or her interest or the interest of his or her close relative, if any, in terms of section 76, and in this paragraph, “close relative” means parent, sibling, spouse, child or grandchild, having substantial financial interest in the bidding entity;

- and(b) withdraw from the procurement process if there is a potential conflict of interests, unless the Board or public entity decides that the conflict is trivial to affect the impartiality of the staff member. As illustrated, according to the law conflict of interest only exists where a “close relative” is involved.

This section could be strengthened to include a reference to friends and associates, which would be inline with the provisions of the Charter for the Public Service in Africa, which refers to “family members and friends”.

Going even further, the code of conduct for US government officials refers to “any family member or other personal or professional acquaintance”. Furthermore, the section that reads “unless the Board or public entity decides that the conflict is trivial to affect the impartiality of the staff member”, should be deleted entirely, as unnecessary questions could arise as to what is “trivial” and what is not in the context of a society grappling with corruption and pervasive negative perceptions of the integrity of public officials.

This is low hanging fruit for amendment that could have an immediate impact.

## ADJUDICATION OF BIDS

Month	Total Decisions made by the Board	Approved	Conditionally Approved	Referred Back	Declined/ Rejected	Cancellation/ Other
April	25	6	12	3	4	0
May	5	2	2	1	0	0
June	14	3	6	4	1	0
July	27	5	15	5	2	0
August	13	3	3	6	0	1
September	75	33	9	27	4	2
October	25	12	2	2	1	8
November	26	9	2	6	5	4
December	18	2	52	3	2	6
January	20	6	1	5	0	8
<b>Total</b>	<b>248</b>	<b>81</b>	<b>104</b>	<b>62</b>	<b>19</b>	<b>29</b>

**DODGY DATA** ... While the CPBN claims 248 decisions were made, the figures add up to 295 decisions.

## A messy numbers picture

**Public procurement data and information on the CPBN website are not well presented, do not speak to each other and do not create a coherent picture of what is happening**

Trying to determine what is actually happening in the public procurement space continues to be a confusing endeavour, not least because despite the stated intent of the system being to introduce transparency and accountability in government purchasing and contracting, the practices and activities of relevant authorities continue to fall short.

Not only are state departments, agencies and enterprises still not being as transparent as they should be, in keeping with the intent and spirit of the Public Procurement Act, but the agency at the heart of the system, the Central Procurement Board of Namibia (CPBN), appears to be misinforming the public with questionable data and information about what is actually happening.

For instance, a table (see accompanying 'Adjudication of Bids') posted on the CPBN website indicates that the board has issued 248 decisions on public procurement actions from April 2018 to January 2019. However, the figures do not add up, as according to the figures

totalled the actual number of decisions comes to 295 for the period. No explanation is given for this discrepancy.

On top of that, no mention is made of exempted public procurement transactions, even though the Ministry of Finance is responsible for issuing exemptions.

The CPBN is still notified of or consulted on proposed exemptions from standard procurement processes, so the information is available, but not made public, obscuring the picture and continuing to raise questions about the appropriateness of the use of exemptions in public procurement, contrary to international best practices.

Similarly, while the CPBN website records that 12 direct procurement transactions had been concluded from April 2018 to January 2019, in March 2019 deputy chair of the CPBN Lischen Ramakhutla stated this was only for the three-month period of July to September 2018. Her statement is available on the CPBN website.

Even more confusing, on the CPBN website it indicates that only six of the transactions were approved, whereas Ramakhutla had indicated that all 12 had been approved. Equally concerning is that the information, beyond the basic figures, concerning these transactions is being held confidential, without

any reason being offered, with the CPBN stating that it needed board "approval to share" the information. No other data or information is provided about direct procurement transactions beyond the mentioned three-month period of 2018.

On the whole, the data and information on public procurement activities available on the CPBN website are not well presented and do not speak to each other and do not create a coherent picture of what is happening in the public procurement space.

When Ramakhutla made her comments in early March she said that a detailed report of public procurement data would be available for public scrutiny by 15 March 2019. Such a report was not available on that date and still has not seen the light of day by end May 2019. In response to a query, the CPBN stated that "the detailed report on the statistics is not available yet", without indicating when it would be available.

However, it was indicated that an annual report for the 2018/19 financial year was being compiled and would be submitted to relevant authorities.

The public procurement data and information picture is even more murky when looking at or seeking answers on the websites of other state departments, agencies and enterprises.



What we managed to gather

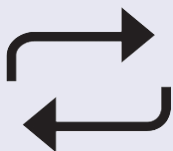
For the 2018/19 financial year the CPBN adjudicated on 338 procurement actions by government departments, agencies and enterprises ...



**112**  
were approved



**19**  
were declined



**68**  
were referred back

This is an average of



decisions per month for the 2018/19 financial year



**33**  
were cancelled

With the highest number of decisions,

**75**,  
taken in September 2018

And the lowest number of decisions,

**5**,  
recorded in May 2018.

**106**  
were upheld

Source: CPBN

# Propose procurement amendments and reforms

## CPBN governance issues lead as amendment review gets underway

Since mid-2018 there has been talk of amendments being made to the Public Procurement Act of 2015 in the context of the public procurement system struggling to get off the ground in various aspects.

Chief among the struggles of the system appear to be operational and administrative issues at the Central Procurement Board of Namibia (CPBN).

In response to questions about areas of the law it would like to see amended, the CPBN replied as follows in May 2019:

“The process of amending the Act is driven by the Ministry of Finance and the CPBN highlighted a few areas for consideration of which the following is key for the organisation:

- The duality role and position of the Chairperson/Administrative Head, and the Deputy Chairperson/Deputy Administrative Head, emanating from section 11 of the Act, must be separated. This is contrary to good corporate governance principles which requires the roles of the Chairperson and the CEO be separated;

- The Act requires evaluations to be completed within 30 calendar days according to regulation 7. This requirement was found challenging when CPBN evaluates large and complex bids as it easily exceeds this timeline, hence approval granted by the Minister of Finance for CPBN to exceed this requirement. The Act should rather refer to working days and the timelines should be discretionary to allow for more time where it is deemed appropriate;

- Similarly, regulation 34(3) requires CPBN to respond to clarifications within 3 working days. This timeline is found challenging because the CPBN is a procuring agent and requires input from the public entity to respond to the technical clarifications sought. Luckily, CPBN managed to stay within this tight timeline with the full cooperation of the public entities. The timeline could be revised, especially for large and complex bids.”

From sources it is understood that these are not the only areas of the law being considered for amendment, but that the separation of oversight and administrative powers at the CPBN was a priority, along with finding ways to regulate the professional and interpersonal relations and conduct of board members and executives, against the backdrop of the much publicised frictions and skirmishes

between the chairperson and deputy chairperson of the CPBN, a situation which has been blamed for much of the leadership and decision-making dysfunction at the state's procurement centerpiece.

Among other potential areas of amendment could be the standardising of bid documentation across government; the cancellation of the bid process; and aspects of the review process.

Aspects of the preferential procurement provisions of the Public Procurement Act have also been mentioned in the past as being up for discussion for possible reform.

It is understood that proposed amendments will be submitted to Cabinet for a decision in the second half of 2019.

Procurement Tracker Namibia will attempt to keep pace with these processes.



## GOVERNMENT GAZETTE OF THE REPUBLIC OF NAMIBIA

NS\$20.40 WINDHOEK - 31 December 2015 No. 5922

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### Government Notice

#### OFFICE OF THE PRIME MINISTER

No. 320

2015

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 15 of 2015: Public Procurement Act, 2015.

# Where's all the transparency?

Procurement Tracker Namibia has been tracking government procurement since the start of the 2018/19 financial year. On the whole, the public service is faring poorly in affording the public access to procurement information, with most government departments not bothering to provide updated information on their websites regarding their procurement activities. For the most part Procure-

ment Tracker Namibia has managed to trace advertised tenders by combing the newspapers since April 2018 and building a database out of the collected data. Most of the tender adverts were only available in secondary sources, such as newspapers. Ministries are not making full use of their websites to disseminate procurement information, if they have a website, that is.

Procurement Tracker Namibia has managed to trace 445 procurement actions across government ministries for the 2018/19 financial year.

<b>MoF</b> 5 tenders traced 1 not on the website No award info		
<b>MoEAC</b> 14 tenders traced None on the website No award info		
<b>MET</b> 9 tenders traced None on the website No award info		
<b>MHSS</b> 261 tenders traced All on website 18 awarded		
<b>MoD</b> 15 tenders traced All on website No award info		
<b>MME</b> 22 tenders traced 1 on the website No award info		
<b>MFMR</b> 10 tenders traced All on website No award info		
<b>MHETI</b> 0 tenders traced No website No procurement info		
<b>MGECW</b> 0 tenders traced No info on website		
	<b>MHAI</b> 0 tenders traced No tender info on website	
	<b>MAWF</b> 40 tenders traced 10 on website	
	<b>MoJ</b> 3 tenders traced Award info on website	
	<b>MIRCO</b> 1 tender traced No info on website	
	<b>MLR</b> 16 tenders traced 2 awards on website	
	<b>MICT</b> 12 tender traced 2 awards on website	
	<b>MITSD</b> 7 tenders traced No info on website	
	<b>MPESW</b> 0 tenders traced No info on website	
	<b>MLIREC</b> 3 tenders traced No info on website	
	<b>MSS</b> 2 tenders traced No info on website	
		<b>MWT</b> 11 tenders traced 7 on website No award info on website
		<b>MURD</b> 8 tenders traced 6 ads on website 6 awards on website
		<b>MPE</b> 1 tender traced No info on website
		<b>MSYNS</b> 2 tenders traced No award info on website
		<b>OPM</b> 2 tenders traced On website
		<b>OP</b> 0 tenders traced No info on website
		<b>OJ</b> 0 tenders traced No website found
		<b>OAG</b> 0 tenders traced No info on website
		<b>OAuG</b> 0 tenders traced
		<b>OPV</b> 1 tender traced No info on website

# Tracing the procurement of government agencies, regulators, enterprises and other statutory bodies

Procurement Tracker Namibia has been tracking procurement by 56 state agencies, regulators, enterprises and other statutory bodies for the 2018/19 financial year, and up to May 2019. In all we have managed to trace 367 tenders advertised by these entities.

**26 BoN**  
tenders traced

**2 AirNam**  
tenders traced

**1 AgriBank**  
tenders traced

**6 DBN**  
tenders traced

**3 NamDeb**  
tenders traced

**2 MVA Fund**  
tenders traced

**12 Namcol**  
tenders traced

**17 NAC**  
tenders traced

**1 NBC**  
tender traced

**0 NDC**  
tenders traced

**0 NDTc**  
tenders traced

**17 NPTH**  
tenders traced

**0 Nampa**  
tenders traced

**1 NQA**  
tender traced

**1 Epangelo Mining**  
tender traced

**2 NSA**  
tenders traced

**6 NSFAF**  
tenders traced

**3 NTB**  
tenders traced

**16 NUST**  
tenders traced

**8 NTA**  
tenders traced

**1 NWR**  
tender traced

**3 NIPAM**  
tenders traced

**0 NMFI**  
tenders traced

**1 NSI**  
tender traced

**8 NHE**  
tenders traced

**8 NamPort**  
tenders traced

**2 NYS**  
tenders traced

**0 NYC**  
tenders traced

**3 New Era**  
tenders traced

**15 RA**  
tenders traced

**8 UNAM**  
tenders traced

**8 TransNamib**  
tenders traced

**1 SSDF**  
tender traced

**2 Meatco**  
tenders traced

**75 Nampower**  
tenders traced

**1 RCC**  
tender traced

**10 RFA**  
tenders traced

**10 NIP**  
tenders traced

**10 SSC**  
tenders traced

**25 NamWater**  
tenders traced

**1 NSC**  
tender traced

**1 NaDC**  
tender traced

**1 NPC**  
tender traced

**9 CRAN**  
tenders traced

**3 ECB**  
tenders traced

**1 Meat Board**  
tender traced

**1 NBT**  
tender traced

**1 NCC**  
tender traced

**3 Namfisa**  
tenders traced

**1 NamFCPT**  
tender traced

**1 AMTA**  
tender traced

**2 CPB**  
tenders traced

**10 Namcor**  
tenders traced

**2 ACC**  
tenders traced

**7 Telecom Namibia**  
tenders traced

**8 GIPF**  
tenders traced

# Schlettwein's preferential procurement directive

In late May 2019 government announced, through a directive issued by finance minister Calle Schlettwein, that all government entities “north of the cordon fence/red line” would be required to procure fresh produce and meat from local suppliers in the respective regions concerned.

On the face of it the move nobly appears aimed at creating local markets for local suppliers and stimulating local economic growth, thereby spurring investment and job creation in low income sectors, such as agriculture and related industries.

The directive, issued in accordance with sections 72 and 73 of the Public Procurement Act of 2015, stipulates that local SME suppliers of meat and fresh produce should be 100%

Namibian-owned or at least 51% Namibian-owned – as well as joint ventures in which the entities are all at least 51% Namibian-owned – in order to qualify. The local suppliers should also bank with a Namibian bank. Additionally, suppliers in a specific region will be given preference in procurement actions in that specific region.

Not only does the directive prioritise local SME suppliers, but also local content, stipulating that goods, materials and services supplied should comprise at least 65% local content, while labour should be 100% local.

The directive took effect immediately, at the end of May 2019.

## Part 12 (General Provisions) of the Public Procurement Act (2015)

### Directives by Minister

73.(1) The Minister, pursuant to a policy of the Government or when he or she thinks it necessary or expedient, may direct in writing the Policy Unit, Board or public entity to attend to any aspect or matter of general application relating to procurement of goods, works or services, or to the letting or hiring of anything or the acquisition or granting of any right for or on behalf of the public entities, and for the disposal of their property.

(2) After having considered the directive under subsection (1), the Policy Unit, Board or public entity must give effect to or cause the policy directive to be implemented.

(3) A policy directive issued under this section is issued and executed in terms of this Act.



Finance minister Calle Schlettwein  
Photo: The Namibian

### Criticisms of the move

In response to the announcement, some have speculated that the directive could lead to market distortions and inefficiencies and price increases on consumable goods, as local producers and suppliers will be given preference over national and other suppliers not based or operating across the northern regions – “north of the cordon fence/red line” – seemingly even if the latter are cheaper.

The fear is that the government procurement market for goods, works and services could be captured by local middlemen, who could disproportionately increase prices on ‘local’ goods in order to supply government.

When the Namibian government introduced ‘Namibianisation’ criteria into public procurement a number of years ago it hardly led to a significant increase in Namibian production and supply of goods and services, but rather birthed even more ‘tenderpreneurs’ or briefcase businesses, which continue to cost the Namibian taxpayer dearly. To some this new directive smacks of a new iteration of an old practice that has not delivered what was promised.

On top of that, with all the governance challenges throughout the public procurement system, it has been questioned whether relevant authorities will implement and manage these preferential procurement measures any better than they have similar measures in the past.

At the end of the day it remains to be seen how this directive will impact the public procurement system and government finances, but those who have expressed skepticism do have a point about how similar initiatives have turned out not so long ago.