



Finance Minister Calle Schlettwein

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Prime Minister Saara Kuugongelwa-Amadhila

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– Finance minister Schlettwein ”

Trying to fix the system

A recent high level meeting trod problematic ground to find cures for a breaking system

During his National Budget speech in parliament in March 2019 finance minister Calle Schlettwein said a “stakeholder meeting” would be convened in the first half of the current financial year to address issues around the implementation of the Public Procurement Act of 2015 since 2017. This meeting took place on 15 July 2019 at the Namibia Institute for Public Administration and Management (NIPAM).

Since the law was operationalised at the start of the 2017/18 financial year it has been plagued by controversy and challenges.

At the recent one-day high level gathering, both prime minister Saara Kuugongelwa-Amadhila and finance minister Schlettwein exhorted the

assembled policy makers and government executives to find solutions to the problems in the system. This article captures the highlights of their statements at the meeting.

Saara says ...

The prime minister started off by highlighting why the Public Procurement Act of 2015 was necessary, stating:

“Allow me to point out at the onset, some underlying reasons why our procurement law was reformed. These are: i) To promote integrity, accountability, transparency, competitive supply to and effectiveness in the procurement of assets, works and services; ii) To harmonise public procurement policies, systems and practices, maximise economy and efficiency in public procurement to obtain value for money and

engender public confidence in public procurement; and iii) To strengthen measures to better leverage the strategic importance of public procurement in achieving government’s socio-economic objectives.

She said: “The workshop is expected to review progress made and look into challenges encountered in the implementation process of the new public procurement system with a view to design measures to improve the situation.”

In her view: “The workshop is therefore expected to assess the extent to which the Procurement Policy Unit has performed its role.”

She concluded that: “For us to make progress in the implementation of the law, we need to strengthen our capacity at all levels of our institutions.”

Schlettwein says ...

The finance minister delved into the challenges by stating that “certain provisions of the Act are ambiguous, giving room to different interpretations and practices; in some other instances, the subsidiary regulations, standards and guidelines are still to be developed, resulting in difficulties to implement the relevant provisions; arising from this experience, amendments to the current Act and formulation and adoption of the remaining subsidiary legislation become urgently necessary to better enable the smooth implementation of the law.”

Concerning institutional level challenges, Schlettwein said: “the management and administrative structures, particularly the Central Procurement Board and Policy Unit continue to face inadequate staffing, with a cascade effect on their capacity for timely deliverables and delays in evaluation, assessment and contract awards, and; similarly, procuring entities consistently cite the need for capacity building to understand their obligations and the new procurement process; non-compliance with regulations and statutory provisions by procuring entities results in time consuming back and forth correspondence, lengthening turnaround times unnecessarily”.

He outlined the operational level challenges as: “lengthy processes as a result of, mainly, capacity challenges across institutional levels; complex documentation and absence of key bidding documents, standard contracts and regulations; and inadequate information systems and monitoring and evaluation frameworks to assess the impact of public procurement on service

delivery and the developmental objectives in general”.

Schlettwein said the aim of the workshop was: “Specifically, the objective is to ensure that a turnaround in the management and administration of public procurement function is achieved by providing short-term alternative measures for immediate implementation in terms of the law as well as guidance on medium to long-term proposals for which the implementation modalities require more time to develop.”

And he stressed that: “This is not a workshop to undo the law, but to render it more amenable to speedy implementation and to define the modalities to that end.”

Why this matters

The workshop sends a clear message that the problems that have been experienced with the implementation of the Public Procurement Act since 2017 can no longer be set aside or diminished as ‘growing pains’, but have consistently been undermining statewide service delivery and raised the twin spectres of waste and mismanagement through non-compliance with the law.

Interesting note

In the combined 12 pages of their statements at the NIPAM workshop, the word ‘corruption’ was not mentioned once by either the prime minister or the finance minister.

Begging for plans

Non-compliance on procurement plans remains a headache.

During her statement at the start of the 15 July 2019 public procurement workshop, prime minister Saara Kuugongelwa-Amadhila variously addressed the issue of public entities compiling, submitting and publicising their annual procurement plans, in line with the provisions of the Public Procurement Act of 2015.

This was a statement of recognition that the handling of annual procurement plans has from the start been troublesome.

Kuugongelwa-Amadhila pointed out that public entities had to “submit annual procurement plans to the Procurement Policy Unit”.

“I applaud public entities who complied with this requirement, but I am disturbed by reports that some public entities do not have internal organisational structures in place and some did not submit their annual procurement plans to the policy unit. This non-compliance needs to be rectified,” she said.

And added: “The workshop is therefore expected to assess the extent to which the Procurement Policy Unit has performed its role in this regard. Public entities are required

to submit annual procurement plans to the policy unit for analysis and approval. It is expected from the policy unit to grant approval in a timely manner to avoid delays in implementation.

Since April 2017 ...

The Ministry of Finance has attempted to get public entities to adhere to the law in terms of annual procurement plans.

On 11 May 2017, a month after the Public Procurement Act of 2015 became operational, the Procurement Policy Unit issued a notice to all government departments, regional councils and local authorities, informing them of the template for compiling annual procurement plans and reminding them that the law and regulations required they submit “annual procurement plans to the Procurement Policy Unit and publish it on the public entity’s website”.

On 2 November 2017 another notice was sent out reminding public entities that according to law they were supposed to submit quarterly reports on the implementation of their procurement plans and that these quarterly reports had become overdue.

Revisiting the Neckartal Dam saga

Almost from the start, the procurement processes for the construction of the Neckartal Dam have been clouded by controversy.

When the construction contract was awarded in early 2012 to Italian firm Salini Impregilo it was costed at about N\$2.8 billion.

By the time it was reported that construction was completed in October 2018, the estimated cost of the project had more than doubled to about N\$5.7 billion.

However, government appears to not have stopped paying yet.

The same month – October 2018 – that it was announced that construction at the dam site was completed, the Central

Procurement Board of Namibia (CPBN) quietly approved an “Increase in Contract Amount for Construction of Neckartal Dam” of over N\$356 million.

And then in January 2019, the CPBN once again quietly approved an “Additional increase in consultation for Neckartal Dam” of almost N\$116 million.

We use the word “quietly” here because these procurement decisions and their details have not been made public to date and are contained in a spreadsheet of “Extensions and Increases in Contract Prices, Price Increases, Variations Orders, etc” received from the CPBN recently.

Given this information, it is likely that the final cost implications of the Neckartal Dam project have yet to emerge.

Why this matters

High costs and excessive cost overruns, and excessive time and project delays, usually point to poor and inappropriate project design and potentially corrupt activity, according to the literature on corruption in large scale infrastructure projects.

The Neckartal Dam

Photo: The Namibian



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Public entities were also reminded to “prepare your annual procurement plans for the upcoming financial year and to submit as soon as possible”.

Eight months later many had still not complied and on 29 June 2018, the executive director of the Ministry of Urban and Rural Development, Nghidinua Daniel, wrote to all regional councils and local authorities and requested them to submit their annual procurement plans for 2018/19.

However, a few months later non-compliance was still an issue,

and on 20 September 2018, the Procurement Policy Unit once again, six months after the start of the financial year, issued a reminder to all public entities to submit “their procurement plans for the 2018/19 financial year” and the first two quarterly reports for that year.

Since early 2018, Procurement Tracker Namibia has consistently pointed out that the absence of annual procurement plans has undermined the transparency and accountability aspects and intentions of the Public Procurement Act of 2015.

Why this matters

On 15 June 2019, prime minister Saara Kuugongelwa-Amadhila underscored why creating and publicising annual procurement plans was necessary: “Procurement plans should be published to enable potential suppliers to prepare themselves to participate in public bids and a database of local producers and suppliers of products should be established.”

TABLES

Procurement directives since April 2017

Directives have been issued in terms of Section 7(1)(h) of the Public Procurement Act of 2015, which states: “In executing any general or specific policy directives issued by the Minister to achieve the objects of this Act, the functions

of the Procurement Policy Unit, include among others – (h) to prepare, update and issue directives, instructions, guidance notes and manuals, including any other incidental documents for mandatory use by public entities;”

| Date issued | Subject | Duration |
|------------------|--|---|
| 18 October 2018 | Directive in terms of compulsory documents to be submitted (To ensure that valid original documents or valid certified copies of original documents accompany bids) | Permanent |
| 29 November 2018 | Directive in terms of the acquisition of legal services (“Public entities are directed to use section 36 of the Act to acquire the services of legal representatives”) | Unknown |
| 26 February 2019 | Procurement of meat, fresh produce, cereal and flour from local suppliers and abattoirs north of the cordon fence/Red Line. | Until supply is insufficient for the demand. |
| 23 May 2019 | Directive issued in terms of Section 73 of the Public Procurement Act, 2015 (Act no. 15 of 2015) on reservation to local suppliers. (This applies nationwide for all goods, works and services) | Until supply/capacity is insufficient for the demand. |
| 23 May 2019 | Directive issued in terms of Section 72 of the Public Procurement Act, 2015 (Act no. 15 of 2015) on reservation to local suppliers. (To reserve procurement of vehicles to Peugeot Opel Assembly Namibia (POAN)) | Until vehicles from Peugeot Opel Assembly Namibia (POAN) plant have been exhausted. |

General exemptions since April 2017

Exemptions have been issued in terms of Section 4(2) of the Public Procurement Act of 2015, which states: “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.”

| Date issued | Subject | Duration |
|------------------|--|--|
| 18 October 2017 | General exemption to all public entities with regard to disposal of assets // In terms of Section 64 of the Public Procurement Act, 2015. | Up to 31 March 2019 or effective date of disposal regulations, whichever comes first. |
| 14 March 2018 | Exemption to all public entities with regard to application of bid security (bank guarantee) // In terms of Section 45 of the Public Procurement Act, 2015. | Until such time that the codes of good practice have been issued in terms of Section 70 of the Public Procurement Act, 2015. |
| 29 November 2018 | Directive in terms of the acquisition of legal services (“Public entities are directed to use section 36 of the Act to acquire the services of legal representatives”) | Unknown |