



C O R O N A V I R U S

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COVID-19 emergency procurement

In times of crisis the need to accelerate procurement processes to hasten state responses is understandable, but should not come at the expense of transparency and accountability.

“In emergency situations, when lives are at stake, it is all too easy to rationalize the subordination of concerns about things like accountability and transparency, and to disregard or ignore any anticorruption infra-

structure that may currently be in place. It’s hard to focus on holding leaders accountable when government action is desperately needed to save lives. But ignoring the risks of abuse of power during a crisis would be a grave mistake,” writes Sarah Steingrüber, an independent global health expert and Global Health Lead for Curbing Corruption, in an article titled ‘Coronavirus and the Corruption Outbreak’ for the *Global Anticorruption Blog* (GAB).

“ It’s hard to focus on holding leaders accountable when government action is desperately needed to save lives. But ignoring the risks of abuse of power during a crisis would be a grave mistake. – Sarah Steingrüber ”

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With the imposition of a lockdown from 28 March to 4 May 2020, under the COVID-19 state of emergency declared by president Hage Geingob in mid-March 2020, all non-COVID-19 related public procurement was halted and emergency procurement (section 33 in the Public Procurement Act of 2015), using the method of direct procurement, was gazetted as the only means of procurement during the lockdown period.

However, emergency procurements, along with exemptions, have traditionally been abused (see ‘Emergency procurement – Problematic since 2017’ on page 2 and 3) in a governance environment largely lacking in adequate oversight and transparency mechanisms. Given this history, what happened during the lockdown period needs to be kept an eye on.

Lockdown buying

Successive *Market Namibia Tender Bulletins* since the lockdown ended on 4 May 2020 have flagged the issue of transparency around what transpired with emergency procurements during the just over a month stage one period of the state of emergency.

Procurement Tracker Namibia has also attempted to get information about emergency procurements out of relevant state authorities, with some being more forthcoming than others. For instance, the Ministry of Industrialisation, Trade and SME Development was surprisingly quick to provide a list of SME face mask makers across the country identified and supplied by the government with fabric to make face masks for stage two of the state of

emergency, which commenced on 5 May 2020. However, it was unclear where the material was sourced from that was supplied to the mask makers.

On the other hand, despite repeated requests, the Office of the Prime Minister (OPM) has to date not furnished *Procurement Tracker Namibia* with a list of suppliers of emergency food relief and the amounts spent, and households assisted, by the disaster risk management division in the OPM as part of the COVID-19 response.

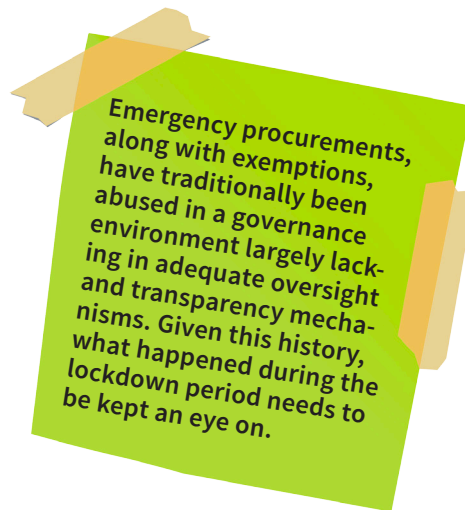
Similarly, it is unclear how all the money and goods that have been donated to the state to fight the COVID-19 pandemic have been spent to date.

The Ministry of Health and Social Services (MoHSS) advertised a number of emergency procurements during the lockdown period, with *Market Namibia Tender Bulletin* reporting in May 2020 that 17 COVID-19-related emergency procurements were advertised by the health ministry and the Namibia Institute of Pathology (NIP) from the start of the lockdown to end May 2020.

However, it is unclear how or to whom these contracts have been awarded (and some only closed in early June 2020).

For its part, the Procurement Policy Unit (PPU) in the Ministry of Finance has indicated to *Procurement Tracker Namibia* that it would only be able to report comprehensively on emergency procurements done under lockdown in July 2020, as it was still seeking information from various public entities about procurement activities during the lockdown period.

Procurement Tracker Namibia will continue to follow up on this issue and will provide an update in the August 2020 edition.



Few procurement reports drip in

Public entities are supposed to regularly report on procurement activities and transactions throughout the financial year.

According to the Public Procurement Guidelines of the Public Procurement Act of 2015, public entities are required to submit “quarterly reports detailing the progress of implementing the procurement plan” to the Procurement Policy Unit (PPU).

Quarterly reports are to be submitted a month after the end of each quarter.

On 5 August 2019, the acting head of the PPU, Phineas Nsundano, wrote to all public entities, reminding them that they were supposed to be submitting such quarterly reports and requested that all the reports for the

2019/20 financial year be submitted in a timely manner.

Nsundano also reminded the heads of these public entities that “non-submission of the above-mentioned documents is a matter of non-compliance in terms of the Public Procurement Act, 2015”.

The response

It should be noted that, according to the PPU, there are over 170 procuring public entities that should be filing regular reports under law.

However, the responses to the request to submit quarterly reports has by all indications been underwhelming.

According to documents viewable on the PPU webpage, for the first quarter of 2019/20 only 33 public

entities submitted reports, while 38 reports were filed in the second quarter, and 22 and 19 reports each for the third and fourth quarters, respectively.

The reporting rate is roughly on average about 20% per quarter.

With the first quarter of 2020/21 almost at an end, it appears roughly 80% of public entities are non-compliant in their reporting.

Additionally, with the 2020/21 financial year almost three-months in, the annual procurement plans of only nine (9) public entities are publicly available on the PPU webpage.

With this, indications already are that public entities will continue to flout the transparency mechanisms of the Public Procurement Act of 2015.

Emergency procurement – Problematic since 2017

Evidence indicates that government departments and entities have been abusing emergency procurement provisions, exposing the corruption risks of such practices.

The COVID-19 state of emergency that has been in place since mid-March 2020 has seen government introduce emergency procurement as the preferred way of procuring under the lockdown conditions that prevailed from 28 March 2020 to 4 May 2020.

However, government departments and agencies have been engaging in emergency procurement practices for a long time, even as no real emergencies have existed, and even before the new procurement law of 2015 became operational on 1 April 2017. But it has now become clear that emergency procurement processes have been or are being abused, according to the findings of a report by the Procurement Policy Unit (PPU) in the Ministry of Finance.

The background to this report is that in May 2019 the PPU requested all category 1 public entities – listed in the regulations of the Public Procurement Act of 2015 – to submit reports on the emergency procurements conducted for the financial years 2017/18 and 2018/19.

At the time there were 46 category 1 public entities – the number of ministries have been decreased in 2020/21 – but only 30 submitted reports for 2017/18 and only 32 for 2018/19.

The findings

According to the PPU, in 2017/18 of the 30 public entities that had responded to the request for information, only 12 reported conducting emergency procurements and between them reported engaging in 125 individual emergency procurement transactions, using the direct procurement method.

The total value of such procurements for that financial year amounted to almost N\$80 million.

Table 1. Emergency procurements in 2017/18

Category of public entities	Reports submitted	Number of Procurements	Value of Procurements
1	30	125	N\$79,779,226.33

For 2018/19, the PPU found that of the 32 public entities that had responded to the request for information, 16 were responsible for 92 individual emergency procurement transactions, costing the state almost N\$60 million.

Table 2. Emergency procurements in 2018/19

Category of public entities	Reports submitted	Number of Procurements	Value of Procurements
1	32	92	N\$58,837,371.59

For both years, given the incomplete data (due to the non-responsiveness of many entities), the PPU stated that “the premium cost paid for using direct procurement as opposed to competitive methods of procurement cannot be determined”.

The PPU concluded that emergency procurements were done whenever an urgency situation arose, and stated:

“Most of such procurements cannot be justified in terms of section 33 of the Act and therefore could have been undertaken through other competitive means. On close inspection, the subject of procurement undertaken includes: purchase of air tickets, stationaries, catering services, replacement parts, service parts, legal services, repair and maintenance, etc. Most of such items are procured to satisfy regular operations and therefore could be purchased competitively by establishing contracts under competitive conditions through which such goods, works or services could be delivered whenever they are required.”

Table 3. Values of types of emergency procurements conducted

Procurement Type	2017/18	2018/19
Goods	22,683,348.26	23,217,259.21
Works	54,182,444.96	17,188,917.79
Services	2,913,433.11	18,431,194.59
Total	79,779,226.33	58,837,371.59

The recommendations

Given the justifications for engaging in emergency procurements, the PPU recommended: “In order to reduce use of the direct procurement method under the pretext of executing procurements in terms of section 33 of the Act, more training should be provided to the public entities with specific attention to the modalities for establishing long-term contracts for the procurement of frequent procurement items. PPU should enhance its monitoring oversight with the intention to detect timeously the prevalent misuse of procurements under the emergency procurement method and to make recommendations on the appropriate methods of procurement. A proposal has been made to [amend] the regulations to include a reporting template for each individual emergency procurement conducted, as part of monitoring the use of the emergency procurement method.”

Public entities which had not submitted reports

1. Ministry of Health and Social Services
2. Ministry of Home Affairs and Immigration
3. Ministry of Industrialisation, Trade and SME Development
4. Ministry of International Relations and Cooperation
5. Ministry of Mines and Energy
6. Ministry of Safety and Security
7. Ministry of Urban and Rural Development
8. Namibia Central Intelligence Service
9. National Planning Commission
10. National Assembly
11. Municipality of Swakopmund
12. Municipality of Walvisbay
13. Municipality of Windhoek
14. Namibian Ports Authority
15. Namibia Student Financial Assistant Fund
16. Air Namibia



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Procurement Briefs

CPBN appointments controversy

In early May 2020 the Central Procurement Board of Namibia (CPBN) was once again drawn into controversy following the announcement of new appointments by the board.

The announcement was immediately controversial as commentators accused the board of demonstrating ethnic bias in the 14 appointments, as 13 of the 14 new officials were of the same ethnic group.

The issue became political when the National Unity Democratic Organisation (NUDO) issued a statement condemning the appointments as tribalist.

“Whoever appointed the mentioned employees at the CPBN had ulterior motives, was negligent and had a very clear agenda of advancing a particular tribe,” said NUDO secretary general, Josef Kauandenge, in a statement in early May, in which the party called for an investigation into the appointments.

Following this the NUDO laid a complaint with the Ombudsman John Walters and Walters announced that he would investigate the matter.

On 29 May 2020 the CPBN chairperson Patrick Swartz briefed the media and stated: “CPBN strongly condemns the allegations made by the public that the recruitment of the 14 staff members was done to favour a particular ethnic group. These allegations are unfounded as the outcome of the recruitment process was rather unintended and all Namibians were allowed to apply for the positions.”

(The Namibian, New Era, CPBN)

PPU seeks reports

At the start of June 2020, the Procurement Policy Unit (PPU) in the Ministry of Finance issued a call for reports from public entities on their procurements during the stage one of the state of emergency, which has been in place since mid-March 2020.

“In line with the provisions of section 7 (2)(a) of the Public

Procurement Act, the Public Procurement Unit is sending out request for information to Public Entities to submit reports on all procurements carried out under stage one of the lockdown,” said finance ministry spokesperson Tonateni Shidhudhu.

“The requested information is needed to allow the Procurement Policy Unit to conduct evaluation and audits as well as compliance issues. This will place us in a better position to ascertain whether ethical behaviour was adhered to,” Shidhudhu explained.

Procurement Tracker Namibia will follow up on this issue in July 2020 for the August edition of the newsletter.

(Namibian Sun)

GRN sponsors mask makers

In April 2020 the Ministry of Industrialisation, Trade and SME Development identified SMEs across the country to make masks on behalf of government. The masks would be distributed to pensioners, marginalised communities and other vulnerable groups in the country.

The SMEs were reportedly provided with material to make the masks.

However, it was soon reported by *Market Namibia Tender Bulletin* that: “The ministry did not issue a public tender for the procurement of suitable materials for mask production.” No information was available on where the ministry had gotten the material that was distributed to mask makers, but it was reported that the material was valued at N\$40 000.

It was also reported that masks were to be provided for between N\$15 – N\$25, but since the start of stage 2 of the state of emergency the prices of masks have been increased drastically by some of the state-sponsored mask manufacturers and the public has been complaining about this.

Mask makers have said that the material provided by government was not of a good quality and that they had to buy better fabric, which pushed up the price of masks.

(Market Namibia Tender Bulletin, Namibian Sun)