



## Compliance concerns cloud 2020/21

### **Practices during the financial year underscore why public procurement remains a problematic governance space, despite some positive initiatives.**

Since 2017 compliance with the Public Procurement Act of 2015 has been a major challenge throughout the public procurement system.

One of the areas that *Procurement Tracker Namibia* (PTN) has been monitoring from the beginning is to what extent public entities have been giving force to some of the core principles of the law, and especially the principle of transparency.

Since the start, the best way of tracking whether the principle of transparency was being enlivened, was by monitoring whether public entities compile and provide access to their annual procurement plans as per the legal prescripts.

For financial year 2020/21 many public entities have complied with the law in terms of submitting annual procurement plans and quarterly procurement reports to the Procurement Policy Unit (PPU), in the Ministry of Finance, thus providing a level of transparency, while still problematic in many aspects, that has not been seen on the public procurement landscape to date.

### **Plans & reports**

For the 2020/21 financial year 128 public entities, out of 178, appear to have submitted annual procurement plans to the PPU.

That means roughly 72% of public entities have been compliant with the law.

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While the compliance is somewhat high, that nearly a third, or about 28%, of public entities appear to not have filed plans remains concerning.

And while many public entities have submitted plans to the PPU and the PPU has made these plans available through its webpage, many of them still do not have these plans on their own websites, and some don't even have websites to start with.

The procurement guidelines state that "The Public Entity should post its procurement plan on its website", but many state entities do not have functional or updated websites.

This lack of meaningful access to procurement information clearly violates the spirit of the Public Procurement Act.

As for quarterly reports, for the first quarter of 2020/21, just 62 public entities appear to have submitted quarterly reports. That's 35% of public entities.

For the second quarter, just 58 public entities appear to have submitted quarterly reports. That's 33% of public entities.

For the third quarter, again just 58 public entities, or 33%, appear to have submitted quarterly reports.

And for the fourth quarter, just 42 public entities appear to have submitted quarterly reports. That's just about 24% of public entities.

So, while there's somewhat high compliance with submitting annual plans, there's still seemingly consistently low compliance with submitting quarterly reports.

In the next issue of PTN, coming out in October 2021, we intend to visualise the available data from 2020/21.

### COVID-19 impact

On 11 June 2020, the PPU requested all state entities to account for COVID-19 emergency procurement actions undertaken between 27 March and 4 May 2020. In August 2021, *Procurement Tracker Namibia* requested information related to this PPU request and whether a report was produced.

However, by the time of publication the Ministry of Finance had not yet responded to our request for information, so it is largely unclear what the situation was regarding emergency procurement practices during the 2020 state of

## Recurring governance issues

The 2020/21 year in public procurement was marked by:

- A lack of transparency – reporting on the state of the public procurement system is still not happening adequately and as per the law;
- Red flags around pandemic procurement practices;
- A lack of accountability for non-compliance with the Public Procurement Act of 2015;
- Widespread use of the emergency procurement method;
- Some positive moves to improve transparency, accountability, integrity and capacity in public procurement.

emergency and lockdown period.

Even so, in November 2020, PTN published a briefing paper on the red flags fluttering over pandemic public procurement practices, finding that during the March–September 2020 state of emergency period, the following concerning practices were observed: "Short tender periods; very few bidders or only one bidder invited to tender; few contracts awarded competitively".

At the same time there have been numerous reports of high profile pandemic emergency procurement actions that appear to have been tainted by suspicions of corruption.

As indicated, there has as yet been no official accounting for what transpired in the public procurement space during pandemic-hit 2020/21.

### Positive moves

While these concerns considerably cloud the public procurement landscape, it has to be noted that there have been some positive moves on the landscape.

For one, amendment proposals for

the Public Procurement Act include some that speak to enhancing and strengthening transparency, accountability and integrity provisions in the law.

For instance, one proposal seeks to put a timeframe on when annual procurement plans should be compiled and submitted by public entities – the PPU proposal is that plans should be completed three months before the start of a new financial year.

In another positive move, in late January 2021, the PPU issued the 'Public Procurement Code of Ethics and Conduct' as a mechanism to enhance ethical conduct within public procurement.

And near the end of the financial year, in March 2021, the Ministry of Finance signed a cooperation agreement with a consortium consisting of the University of Namibia, the Namibia University of Science and Technology and the Namibian Institute of Public Management and Administration to provide public procurement training programmes.

*Procurement Tracker Namibia* will monitor these developments as they are implemented.

<p><b>MANDATE</b></p> <p>The monitoring of compliance with this Act, directives, code of procedures and guidelines issued under this Act The reviewing of the procurement system and proposal of mechanism for improving the implementation of government policies by public entities; The assessing of the impact of the procurement system on the socio-economic policy objectives of the Government The promotion of the fundamental principles of procurement governing the administration of procurement; and the reviewing of, monitoring and assessing methods of disposal of assets</p>	<p><b>LATEST UPDATES</b></p> <p>Amendments to the Procurement Act</p> <p><a href="#">DOWNLOAD</a></p>
<p><b>Functions</b></p> <p>THE FUNCTIONS OF THE PROCUREMENT POLICY UNIT INCLUDE AMONG OTHERS:</p> <ul style="list-style-type: none"> <li>To propose thresholds to the Minister relating to public procurement or disposal to be applied by all Public Entities</li> <li>To advise the Minister on policy for introducing e-procurement</li> <li>To prepare guidelines regarding procurement matters</li> <li>To advise public entities on all public procurement policies, principles and practices</li> <li>To monitor, report on the performance of the public procurement systems in Namibia including preparing an annual report to be tabled in the National Assembly</li> <li>To prepare and conduct training programmes and approve training curriculum on public procurement</li> <li>To set mandatory training standards, capacity building and competence levels, certification requirements and professional development paths for procurement practitioners in Namibia</li> <li>To prepare, update and issue directives, instructions, guidance notes or manuals for mandatory use by Public Entities</li> <li>To issue authorised versions of the standardised bidding documents, standard forms of contracts, pre-qualification documents, procedural forms, requests for proposals and other similar documents for mandatory use by every Public Entity</li> <li>To develop and implement procurement performance assessment system</li> <li>To facilitate the use of information and communications technology in procurement</li> <li>To inspect or cause to be inspected any procurement activity to ensure compliance with a procurement award by Public Entity</li> </ul>	<p><b>Reference Guide (Booklet)</b></p> <p>which is a simplified version of: Public Procurement Act, 2015 (Act No. 15 of 2015) Public Procurement Regulations and Public Procurement Guidelines with frequently ask Questions and Answers.</p> <p><a href="#">DOWNLOAD BOOKLET</a></p> <p>More Docs on </p>

To view available annual procurement plans and quarterly reports, as well as other public procurement-related documents, you can click on the Dropbox icon (circled in red) on the Procurement Policy Unit (PPU) webpage on the Ministry of Finance website.

## Annual procurement plans & quarterly procurement reports 2020/21

For the **2020/21** financial year ...

... out of **178** public entities ...

... about **128** public entities appear to have submitted annual procurement plans to the PPU.

That means roughly **72%** of public entities have been compliant with the law ...

... with about **28%** of public entities not having filed plans.

The procurement guidelines state that **“The Public Entity should post its procurement plan on its website” ...**

... but many state entities **do not have functional or updated websites.**

For the first quarter of 2020/21, just **62** public entities appear to have submitted quarterly reports ...

... that’s just **35%** of public entities.

For the second quarter, just **58** public entities appear to have submitted quarterly reports ...

... or just **33%** of public entities.

For the third quarter, just **58** public entities, or **33%**, appear to have submitted quarterly reports.

For the fourth quarter, just **42** public entities appear to have submitted quarterly reports ...

... that’s just **24%** of public entities.

While there’s somewhat **high compliance** with submitting annual plans, there’s still seemingly consistently **low compliance** with submitting quarterly reports.

# Where are the plans and reports for 2021/22?

Compliance with the Public Procurement Act of 2015 and its regulations on transparency continues to be a serious shortcoming across the state sector.

In the last issue of *Procurement Tracker Namibia* we reported that by the end of April 2021 only five (5) annual procurement plans were available for public scrutiny via the webpage of the Procurement Policy Unit (PPU) in the Ministry of Finance.

That amounted to just three percent (3%) of procuring public entities, of which there are roughly 178, having been compliant by that stage.

According to the procurement regulations, public entities are to submit annual procurement plans for a new financial year (which starts 1 April) to the PPU, but the law, regulations or guidelines do not say within what time-frame the plan should be submitted.

And public entities vary quite considerably in terms of when they submit their annual plans.

## Annual plans

By the start of September 2021, almost half-way through the 2021/22 financial year, just 58 public entities, out of the roughly 178, appeared to have submitted annual plans to the PPU.

That means just about 33% of public entities had filed plans five months into

**These shortcomings of the plans suggest that some public entities continue to not approach the compiling of the plans with the appropriate seriousness and consideration, but merely put something together because it is required by law.**

the financial year.

Some, like the Communications Regulatory Authority of Namibia (CRAN), had already submitted their plans in March 2021, before the new financial year started on 1 April 2021. Some submitted their plans shortly into the financial year, in early and mid April 2021, such as the Namibia Special Risk Insurance Association (NASRIA) and the Office of the President.

Others, such as the Office of the Judiciary, submitted their plans in May 2021, while many, including the industrialisation and trade ministry, submitted in June 2021 and some others, such as the home affairs ministry only submitted in late July 2021, with already a quarter of the financial year gone.

And still many remain outstanding

with nearly half the financial year gone. There's also considerable variance in the quality of the plans submitted.

For instance, some plans do not provide adequate descriptions of the goods, works or services to be procured during the year, or what procurement method would be used, or the estimated value of a specific procurement.

Some submitted plans have not even been signed by accounting officers, with the PPU noting on some: "The APP should bear signature of the Accounting Officer to signify approval thereof."

These shortcomings, and others, of the plans suggest that some public entities continue to not approach the compiling of the plans with the appropriate seriousness and consideration, but merely put something together because it is required by law.

## Quarterly reports

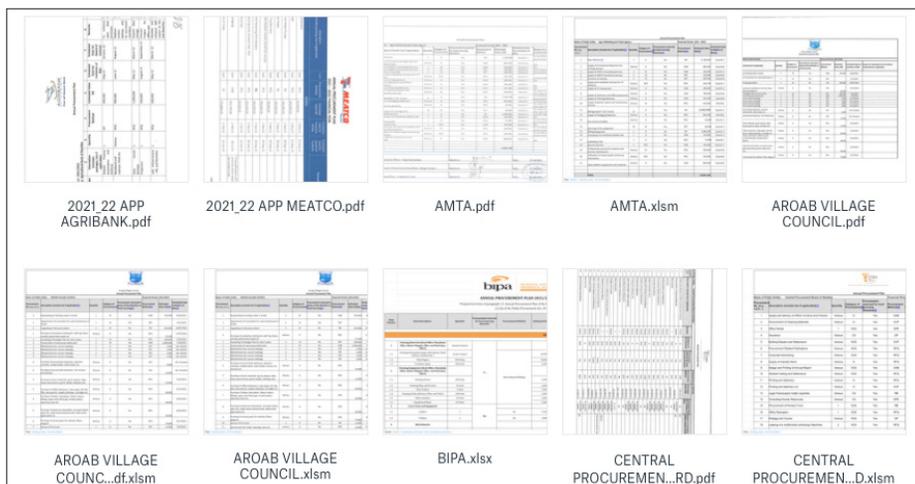
The same variance in time frame of submission and quality of reporting can be seen in the quarterly reports submitted to the PPU.

With the second quarter of the 2021/22 financial year drawing to a close, only about 45 public entities appear to have submitted quarterly procurement reports for the first quarter (April – June) of the year.

That's just about 25% of public entities that appear to have submitted reports. According to the procurement guidelines, quarterly reports "are due to the Policy Unit by the end of the month following the end of the quarter". In other words, first quarter reports should have been submitted by the end of July 2021.

At the same time, the quarterly reports available to view on the PPU webpage suffer from the same quality shortcomings as annual plans – some show a lack of detail and rigour in ensuring accurate reporting.

Once again, this points to some public entities compiling reports hastily in order to meet the submission deadline.



Annual procurement plans as they appear in the Dropbox folder on the Procurement Policy Unit webpage.

# Annual procurement plans & quarterly procurement reports 2021/22

Almost half-way through the  
**2021/22** financial year ...

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out of the  
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have submitted annual procurement plans to the PPU ...

That means **just 33%**  
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**“are due to the Policy Unit by the end of the month  
following the end of the quarter”.**

# Public procurement in the news

State procurement practices have again been in the news for all the wrong reasons over recent months

## Enviro minister unilaterally awards Sossusvlei concession

At the end of August 2021 it was reported that environment and tourism minister, Pohamba Shifeta, had unilaterally awarded a transport concession at the world-renowned Sossusvlei to an operator with no tourism experience, but lots of experience in tendering for and getting lucrative government contracts.

According to a report, in April 2020, the state-owned Namibia Wildlife Resorts (NWR) was informed out-of-the-blue by environment and tourism executive director, Theofilus Nghitila, in April 2020 that a transport concession at Sossusvlei had been handed to a six-month old company called Sky Eye Hospitality and Tours, majority owned by politically connected Laban Kandume.

It was reported that no tender had been put out to award the concession and that an exemption had been granted by the finance ministry for the contract award to side-step the normal procurement rules.

The report states that the Kandume company was “hand-picked” to partner with the NWR, which had been operating the transport service at Sossusvlei, and that the state-owned entity stood to lose revenue of about N\$10 million per year as a result of the minister’s unilateral move.

It is unclear from the report to what extent the concession has been operational, given the severe shocks to the tourism sector over the last year and a half due to the Covid-19 pandemic. (– *The Namibian*)

### HPP2 monitoring contract awarded without competitive bidding

In a similar way, in August 2020 it was reported that the contract to monitor implementation progress of the president’s Harambee II plan was awarded to a joint venture of two consulting firms, without the contract having been put out to tender.

The Harambee monitoring contract was awarded to a joint venture between Mondjila Project Advisory & Management and Lithon Project Consultants by the National Planning Commission (NPC) in early August 2021.

According to the report on the matter, the NPC “went as far as obtaining treasury approval to sign the deal without putting



Pohamba Shifeta

it out on tender”.

The report states that even though the contract with the NPC was only signed in August 2021, the consultants had already been working on the project since April 2021.

Neither the NPC nor the Office of the President provided satisfactory answers as to why the consultants were necessary to do a job normally done by the NPC.

The bypassing of normal procurement rules to award the Harambee monitoring contract was apparently also criticised at Cabinet level, according to the report on the matter.

The presidential economic adviser, James Mnyupe, justified the awarding of the contract by stating that the consultants were the only ones with the skills to do the monitoring required.

It is unclear how much the consultancy contract is worth, but the annual procurement plan for 2021/22 of the Office of the President does make provision for “Rendering of professional services for economy and media tools” at a cost of N\$2,5 million. (– *Namibian Sun*)

## And something positive ...

In May 2021 the Procurement Policy Unit (PPU) produced a ‘Reference Guide to Public Procurement’ to assist all stakeholders, including the general public, to gain an understanding of the workings of the public procurement system.

## PPU not compliant

Compliance with the Public Procurement Act, 15 of 2025, has been a challenge within government from the moment the law was implemented in April 2017.

But it’s not only public entities outside the Ministry of Finance (MoF) that have been struggling with compliance.

In a very important and core aspect – transparency – the public procurement regulatory mechanism within the MoF, which is supposed to enforce compliance with the law, has

also significantly faltered in compliance.

According to the law, the Procurement Policy Unit (PPU) in the MoF has various functions, including:

“To monitor, report on the performance of the public procurement systems in Namibia including preparing an annual report to be tabled in the National Assembly”

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# Matters arising ...

In *Procurement Tracker Namibia* (PTN) issue 12, launched in May 2021, questions around certain procurement matters remained outstanding at the time of the launch. Since then PTN has reached out to relevant authorities for responses to some of these matters. Both the Central Procurement Board of Namibia (CPBN) and the Ministry of Finance (MoF) were approached with questions. At the time of going to print with this issue of PTN only the CPBN had responded to the questions addressed to them. The MoF has indicated that it will respond to the questions submitted to them, and these responses will be published in PTN 14, in October 2021. That said, here are the questions to and answers from the Central Procurement Board of Namibia (CPBN):

**PTN: According to the bid cancellation notification of 2 December 2020 by yourself, the PSEMAS administration tender is / was supposed to be re-advertised. What is the status of this process?**

**CPBN:** The Central procurement Board of Namibia (CPBN) confirms that this procurement was indeed cancelled in line with section 54 (1)(a) of the Public Procurement Act, 15 of 2015 (PPA) on 2 December 2020. Subsequently, all the stakeholders (bidders and MoF) were informed of this Board decision.

After the cancellation, the matter was then referred to the public entity (MoF) to amend the bidding document as per the reasons that led to bidders being non-responsive and/or make a resubmission to the Board for approval in terms of section 9 (1)(f) of the PPA. Instead, MoF opted to engage in the PSEMAS reform process anticipated to be finalised by the end of November 2021.

Meanwhile, a contract extension was requested by MoF in terms of the PPA for a period of nine (9) months starting from 1 July 2021 to 31 March 2022 to the value of N\$74,138,718.60, under the same terms and conditions. The Board then adjudicated and approved the contract extension as substantiated in the Board decision dated 20 May 2021 on our website under 'Board Decisions'.

**PTN: In March 2021 the CPBN released its 2017/18 annual report. When will the 2018/19, 2019/20 and 2020/21 annual reports be released?**

**CPBN:** The Covid-19 pandemic negatively impacted on the operations of the CPBN thus causing a delay in the completion of some projects. The above-mentioned annual reports are some of the projects that have been affected by the pan-

demic. However, CPBN is working towards having all three outstanding annual reports completed as per the table below:

Annual Report	Expected Completion Date
2018/2019	30 September 2021
2019/2020	4 November 2021
2020/2021	15 December 2021

**PTN: On 18 March 2021, the Review Panel set aside the awarding of a multi-year, almost N\$3,6 billion school food supply contract awarded by the Central Procurement Board of Namibia (CPBN) on behalf of the Ministry of Education, Arts and Culture. In April 2021, *Confidente* reported: "The Central Procurement Board of Namibia (CPBN) is allegedly refusing to advertise a N\$3 billion five-year schools food and catering tender for the Ministry of Education, Arts and Culture, which resulted in the ministry renewing the contracts of mostly South African-linked catering companies for the fifth time without going to tender."**

**What has transpired and what is the status of this procurement matter?**

**CPBN:** The allegations made by *Confidente* are unfounded and a deviation of the truth.

The bid in question closed on 7 September 2020 and ninety-six (96) bids were received. Eighty-seven (87) of the bids were disqualified due to various reasons as indicated in the attached executive summary. The remaining nine (9) bids were selected for award as per the Notice of Selection of Award issued by CPBN on 23 February 2021, in terms of section 55 of the Public Procurement Act, read together with Regulation 38 of the Public Procurement Regulations.

During the standstill period, eleven (11) bidders submitted their applications to the Review Panel to review and set aside the decisions of the CPBN. The Review Panel made an order on 18 March 2021, for the CPBN to:

- Re-evaluate bids that contained Social Security Commission Good Standing Certificates;
- Re-evaluate as per the criteria, methodology and instruction to the bidders as set out in the bidding document; and
- Only re-evaluate bidders who consented to the bid validity extensions in accordance with sections 49 (2) and/or 43 (c) of the PPA.

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This annual report is supposed to be an important transparency tool, giving the public an overview of the performance and functioning of the public procurement system.

To date the PPU has not submitted such an annual report to the National Assembly, with nearly five government financial years in the rear-view.

In August 2021, *Procurement Tracker Namibia* (PTN) questioned the MoF about this serious compliance issue. However, at the time of compiling this issue of PTN the MoF had not yet responded.

We will endeavour to provide an update on this matter in the next issue of PTN, issue 14.

# Procurement guide to raise awareness

Earlier this year the Procurement Policy Unit (PPU) finalised and released a 'Reference Guide to Public Procurement' and distributed it electronically to stakeholders operating on the public procurement landscape. *Procurement Tracker Namibia (PTN)* recently questioned former finance ministry spokesperson, Tonateni Shidhudhu (TS), about the guide. (Shidhudhu joined the Namibia Revenue Agency recently, but still acts in the finance spokesperson role until his former position is filled later in 2021)

**PTN: Why was it necessary to create this guide?**

**TS:** There is a growing need to create awareness and to promote citizen oversight around the Public Procurement Act (Act No. 15 of 2015), the Public Procurement Regulations and the Public Procurement Guidelines. Both among bidders and suppliers and the general public. The aim was also to simplify the Public Procurement Act in layman's language, and to build capacities of public entities, bidders/suppliers and the general public.

**PTN: How long did it take to create the guide and was it done internally (PPU) or was someone contracted to compile it?**

**TS:** It took about six months and the compilation was done internally by PPU staff members.

**PTN: How much did it cost to create the guide?**

**TS:** There was no financial cost involved.

**PTN: Will it be printed and distributed and what will the cost be or will it be disseminated as a digital document?**

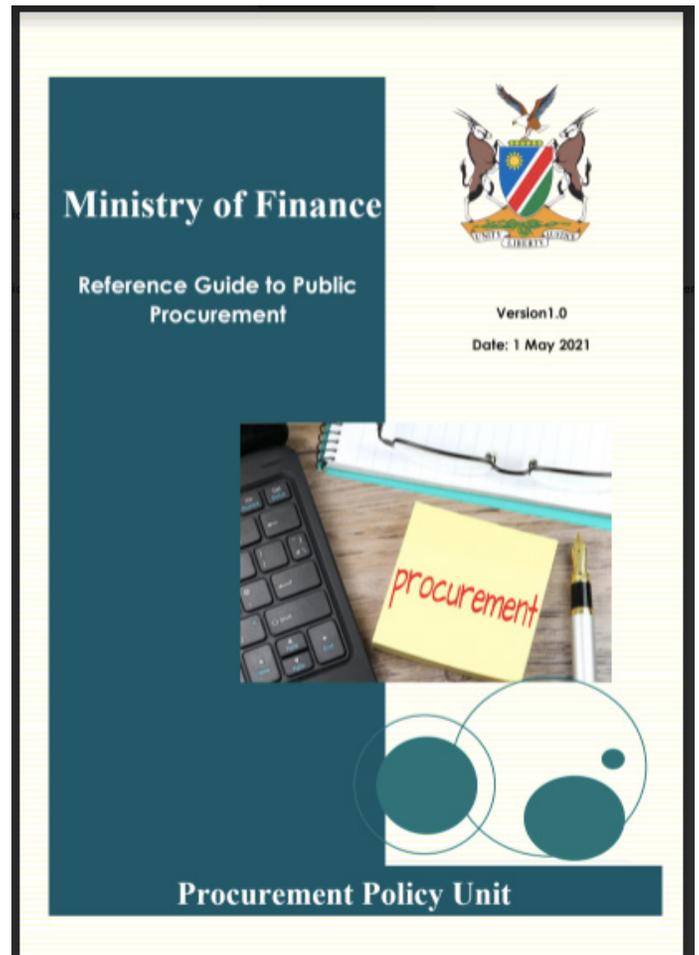
**TS:** Due to Covid-19 it will only be distributed digitally for now. However, public entities and the general public may print the electronic version for their own use.

**PTN: How has the guide been received?**

**TS:** We have received very positive feedback from all stakeholders, including bidders and suppliers. Many of them said they now understand the law and its regulations. It is something they wanted. We are proud of the feedback received.

**PTN: What other informational materials are in the pipeline?**

**TS:** We have already developed posters on the bidding process, evaluation of bids and bid opening. We have many projects in the pipeline e.g. information materials on E-procurement; development of simplified versions of bidding documents; study guides for training; and radio adverts for NBC Radio services.



The reference guide booklet can be accessed on the PPU webpage at <https://mof.gov.na/PPU>

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In view of the above, kindly note that this procurement is actively still under re-evaluation having been impacted by Covid-19 pandemic in terms of the Bid Evaluation Committee (BEC) members getting infected, isolated and even succumbing to the disease. Despite these impediments, the re-evaluation process is going smoothly and is expected to be concluded on or before end of August 2021. From this perspective and context, we, therefore, haven't refused to advertise the procurement. CPBN did not refuse

to re-advertise the bid as the initial procurement process was neither cancelled nor finalised, and as mentioned at the onset, the process is ongoing and the BEC report will soon be re-tabled for consideration/adjudication by the Board.

**NOTE:** At the time of finalising this issue of PTN on 5 September 2021, the outcome of this particular procurement matter was not publicly available.