

PPU admits system problems

Details of systemic challenges have come to light in the first annual report tabled recently in parliament.

The lid has been lifted on the problems that have bedeviled the public procurement system since its inception in April 2017 with the operationalising of the Public Procurement Act of 2015.

The issues and challenges besetting the public procurement system are multi-faceted, as *Procurement Tracker Namibia* has been reporting since 2018.

These challenges and issues are contained in a report tabled in the National Assembly on 13 October 2021.

Interestingly, the combined report of the 2017/18, 2018/19 and 2019/20 financial years states that there are 192 procuring public entities – *Procurement Tracker Namibia* has up till now worked with a figure of just over 170 procuring public entities based on a document available through the Procurement Policy Unit's (PPU) website.

Furthermore, the combined report concludes: "This report affirms that there is generally low compliance with the Act by

the public entities. This phenomenon is largely due to limited procurement proficient personnel at the public entities, limited understanding of the Act, lack of information technology facilities at public entities, lack of implementation of compliance measures and sporadic releasing of funds among other challenges."

THE FAULTS

The combined annual report goes in detail in listing a range of challenges and problems affecting the functioning and efficiency of the public procurement system. Following are the challenges or problems listed in the combined annual report:

- Lack of capacity at the PPU to fully execute its mandate and functions as provided under Section 6 and 7 of the Act;
- Limited capacity at the CPBN due to stringent employment requirements, has affected operational efficiency of the Board;

- The secretariat to the Review Panel has no standing structure and is composed of staff seconded from the Ministry of Finance. Lack of a staff structure presents risk of institutional memory and capacity loss to the secretariat and Review Panel in general, due to staff turnover;
- The periodic release of funds to public entities by Treasury has affected planning and has introduced uncertainties in the execution of public procurement by the public entities;
- Lack of procurement structures in some public entities as required in terms of Section 25 of the Act, leading to over-spending by public entities and unaccounted for expenditures;
- Some public entities have not developed annual procurement plans citing budget cuts as a reason, and some do not have internal procurement structures as mandated by the law;
- Frequent non-compliance with the bidding procedures as provided by the public procurement regulatory framework, particularly unjustified deviation from open advertised bidding as a default method of procurement, record keeping requirements, etc.;
- Implementation of procurements whose funding is obtained from foreign sources usually carry conditions that are incompatible with the Act;
- Poor contract management by public entities resulting in lost value due to lack of enforcement of remedial measures in the event of breach of contract by contractors or suppliers;
- Absence of preferential guidelines to ensure Namibians benefit from bids awarded;
- Lack of the E-government procurement system to speed up the procurement process and enhance transparency and procurement process integrity;
- Absence of some standard bidding documents (SBDs) have slowed down some procurement processes;
- Lack of technical capacity and understanding of the new SBDs by public entities.

THE SOLUTIONS?

At the end of the combined annual report, the PPU makes the following recommendations towards overcoming these challenges and problems:

- The PPU has limited capacity both in number of staff and expertise required to execute some of its functions. More staff should be recruited to fill the structures of the Unit as well as provide opportunities for qualified training in the field of procurement to form the nucleus of the procurement system in Namibia;
- Expedite the employment process for staff at the CPBN to ensure capacity of the Board;
- Establish a staff structure for the secretariat to the Review Panel in order to attract and retain personnel responsible for this function;
- The PPU should develop all standard bidding documents and improve existing bidding documents to enable public entities to carry out various procurements as is allowed in terms of the Act;
- The PPU to prioritise development of a comprehensive monitoring framework to form the basis of the development of future reports on the Namibian public procurement system, and possible changes to the Namibian public procurement system;
- Public entities need to be capacitated further to ensure full compliance with the provisions of the Act, including development of procurement plans, development of internal procurement structures, maintenance of procurement



Photo: The Namibian
Iipumbu Shiimi

- records, etc.;
- 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 on the modalities for establishing long-term contracts for the procurement of frequent procurement items. PPU should enhance its monitoring oversight with the intention to timeously detect the prevalent misuse of

procurements under the emergency procurement method and make recommendations on the appropriate methods of procurement;

- As part of the effort to enhance Namibia's public procurement system, the PPU should continuously engage stakeholders in public procurement with a view to understand the prevailing challenges and devise actions to address them, including proposals to amend the existing legislation, among others;
- Public entities are advised to consult the PPU during negotiations for funding by external parties to ensure harmony between the terms of contract by the funding foreign institutions and the Act to ensure ease of procurements emanating therefrom;
- PPU to coordinate the development of preferential guidelines for implementation by public entities across the board;
- The PPU should expedite the development and implementation of an E-government procurement system;
- The PPU should develop SBDs for every category of procurement and values;
- The PPU should develop guidelines to assist the public entities in preparing bidding documents.

In his mid-year budget speech on 3 November 2021, finance minister Iipumbu Shiimi did briefly acknowledge (see page 3) some of the prevailing issues affecting the functioning of the public procurement system and steps underway to mitigate these issues.

Public procurement in the 2021 Mid-year Budget Speech

“

... the Public Procurement Amendment Bill has progressed and is currently at the legal drafting stage with anticipation to table the bill in the National Assembly during the next session. Concurrently, the Government has developed the Codes of Good Practices to be issued in terms of Section 70(1) of the Public Procurement Act, 2015 to support businesses owned by the youth, women, and local producers. The Code of Good Practices was gazetted a few days ago on 29 October 2021 for public comments. We urge all Namibians to study the Code and provide inputs. Furthermore, steps have been taken to address critical capacity challenges identified in both the Procurement Policy Unit (PPU) and the Central Procurement Board (CPB) as well as to exempt key public enterprises with adequate capacity to manage their own procurement functions such as Nam-Power ...

– Finance minister Ipumbu Shiimi, 3 November 2021



Photo: Eagle FM

Darkness around the ‘iron curtain’

Around mid-year 2021 a black metal high-fence was erected around the parliament precinct. However, it could not be determined whether the fence is in the 2021/22 annual procurement plan of the National Assembly as the plan is not available or viewable on the website of the Namibian Parliament and neither is it viewable through the Procurement Policy Unit (PPU) webpage on the Ministry of Finance website. There are also no quarterly procurement reports for the National Assembly viewable for the first and second quarters of the 2021/22 financial year through the PPU website. The fence also does not feature in the 2020/21 National Assembly annual procurement plan, which is viewable through the PPU webpage, but also not available

on the Namibian Parliament website. The only development budget item that appears in the 2020/21 annual procurement plan of the National Assembly is the replacement of the conference system in the National Assembly chamber. The fact that the public does not have access to the annual procurement plan of the National Assembly, more than halfway through the 2021/22 financial year, to ascertain whether the fence was actually planned and budgeted for (as well as when and to whom the contract was awarded), demonstrates how key public institutions are not in compliance with transparency and accountability fostering provisions of the Public Procurement Act of 2015.

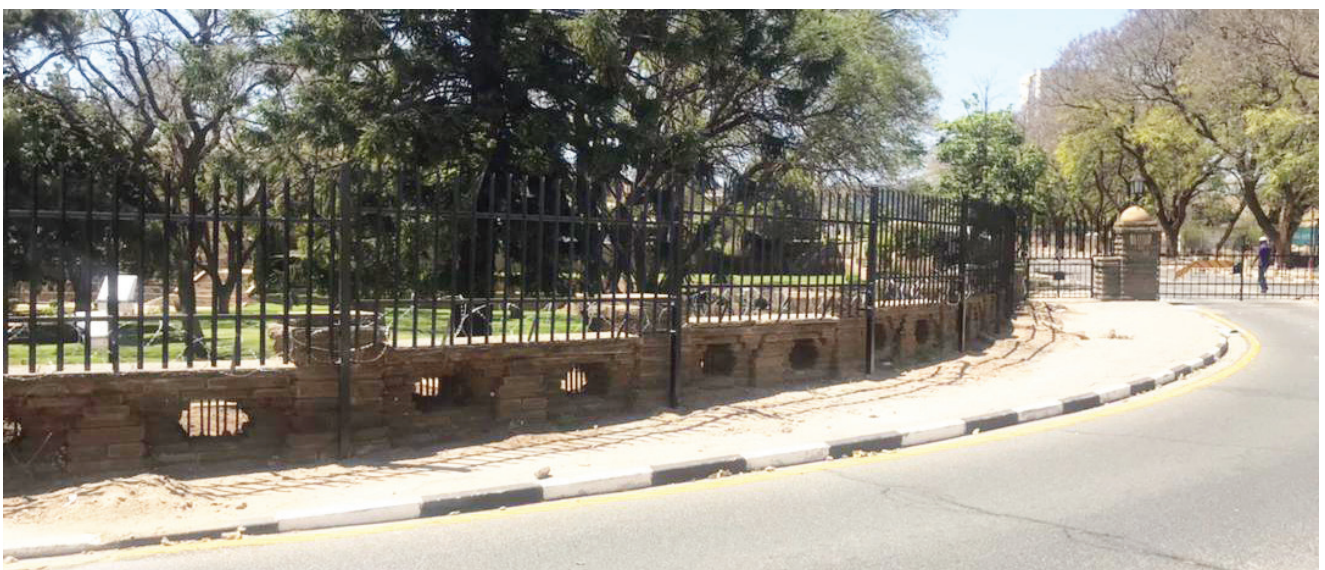


Photo: Contributed

Matters arising ...

In mid-August 2021 *Procurement Tracker Namibia* (PTN) sent questions around certain procurement matters to the Ministry of Finance (MoF).

The questions were sent to acting MoF executive director, Francois Brand, who is also the head of the Procurement Policy Unit (PPU) in the ministry, through

former finance ministry spokesperson, Tonateni Shidhudhu, who joined the Namibia Revenue Agency in 2021, but also acted as finance spokesperson until recently.

That said, following are the questions and answers received from the finance ministry:



PTN: It's been over four years, when will the Procurement Policy Unit submit an annual report to the National Assembly detailing the performance of the public procurement system?

MoF: The 2017/18 – 2019/20 report was tabled in the National Assembly on 13 October 2021.

PTN: In *Procurement Tracker Namibia* #12, of May 2021, on page 3, the featured article lays out a suspicious procurement action within the Ministry of Defence. Is the PPU looking into / investigating this procurement action?

MoF: The Unit is yet to take a decision on whether to investigate or not. This has been a challenge due to limited human resources, but we are seized with the matter and will announce the way forward in the near future.

PTN: In March 2021, the issue of a suspicious procurement action at the Namibia Airports Company (NAC) was raised by PDM MP Nico Smit in the National Assembly? Is the PPU looking into / investigating this procurement action? (Please see 'NAC sanitiser procurement in the spotlight' in *Procurement Tracker Namibia* #12)

MoF: Please refer to the response to question No. 2.

PTN: 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. Can you share a report on what was received in this regard from public entities?

MoF: We are still busy with internal consultations, once that is exhausted we will then give a pronouncement regarding this report.

PTN: When will the consultation phase around the proposed amendments to the Public Procurement Act be completed and what is the timeline for effecting the amendments going forward?

MoF: Public consultations were undertaken during 1 March – 30 March 2021. The inputs from the consultations were incorporated into the draft amendment bill during April-June 2021. The draft amendment bill was submitted to Cabinet and has been approved in principle. The layman's draft is currently with the Cabinet Committee on Legislation CCL. The Bill is anticipated to be passed early next year (2022).

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

MoF: The existing contract has been extended till March 2022. We have decided to put the tender process on hold pending the investigation on PSEMAS reforms. We are trying to avoid committing to long-term arrangements before the finalisation of the reforms. We are hoping that this process will be finalised by the end of this financial year. One of the issues that we are looking at currently is whether PSEMAS will be able to handle self-administration.

Steady improvement in transparency compliance

In *Procurement Tracker Namibia* #13 we wrote about how the Procurement Policy Unit (PPU) in the Ministry of Finance (MoF) was failing to live up to its mandate of ensuring that the values and aims of open, trans-

parent and accountable public procurement, as articulated in the Public Procurement Act 15 of 2015, were being embedded in the public procurement system since April 2017.

We wrote that in a very important and core aspect the public procurement regulatory mechanism within the MoF, which is supposed to enforce compliance with the law, has also significantly faltered in complying with the law, according to which the PPU, among its various functions, has 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”.

The significance of this transparency mechanism cannot be overstated, for it is primarily through such reporting by the PPU that the public is afforded any meaningful scrutiny into whether and how the public procurement system is functioning optimally.

For the first time, on 13 October 2021, a PPU annual report – a combined report of the 2017/18, 2018/19 and 2019/20 financial years – was tabled in the National Assembly.

What the report showed about transparency compliance is what *Procurement Tracker Namibia* has been spotlighting since 2018 – public entities have largely been non-compliant on transparency.

According to the PPU, transparency compliance has seen steady improvement over the three years reported on, but still falls significantly short of the standards set by the law.

The areas where this non-compliance is primarily playing out are providing access to and submitting annual procurement plans and quarterly procurement implementation reports by public entities, of which there are 192, according to the PPU.

ANNUAL PLANS

The PPU combined annual report paints a picture of public entities failing to ensure access to information and openness by firstly not ensuring public access to their an-

Annual procurement plans

	2017/18	2018/19	2019/20
Category 1	8 of 48 (16.6%)	31 of 48 (64.5%)	41 of 48 (85%)
Category 2	3 of 52 (5.7%)	19 of 52 (36.5%)	19 of 52 (37%)
Category 3	4 of 92 (4.3%)	27 of 92 (29.3%)	35 of 92 (38%)
Total	15 (8%)	77 (40%)	95 of 192 (49%)

Table 3 Annual Procurement Plans Received

What are the categories?

The public procurement regulations, in Annexure 1, lists 89 public entities divided in three categories. Regulation 2(3) states in this regard: “For the purposes of procurement, public entities are categorised into Category 1 to Category 3, as specified in Annexure 1, to enable the [Central Procurement] Board to conduct the bidding process on behalf of public entities for the award of contracts of different procurement values.”

nual procurement plans, although this seems to be improving.

In this regard the PPU states:

“It is encouraging to note that the number of public entities with Annual Procurement Plans somewhat increased overall, from eight (8) percent in 2017/18 to 49 percent in 2019/20. Notable surge in compliance is observed among category 3 public entities which improved to 38 percent in 2019/20 from the lowest of 4.3 percent in 2017/18 and 29 percent in 2018/19, respectively.”

Notably, by the end of 2019/20, the compliance rate, as per the PPU, was still less than 50% of procuring public entities.

According to what *Procurement Tracker Namibia* has been able to establish, during the 2020/21 financial year the level of compliance appears to have moved above 50%, even though the quality of access and of the plans themselves remains questionable.

QUARTERLY REPORTS

Similarly concerning has been the level of compliance with submission of quarterly procurement reports by public entities.

According to the Public Procurement Guidelines of 2017, issued under the public procurement regulations, procuring public entities are supposed to submit detailed quarterly procurement reports to the PPU.

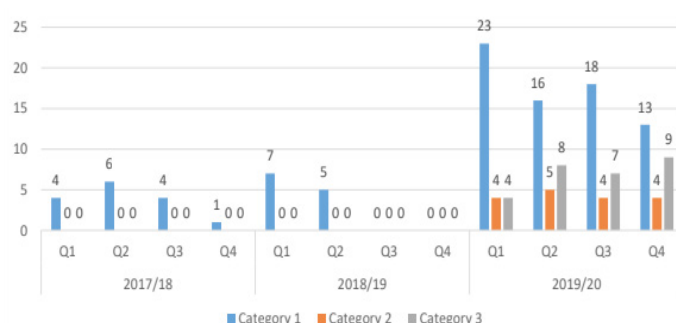
In this regard, the PPU combined annual report states:

“This has been the highest area of non-compliance by the public entities. This is however to be expected considering the low number of public entities which had submitted Annual Procurement Plans. The trend regarding submission of progress reports has however improved from non-submission by most categories of public entities during 2017/18 and 2018/19 to some level of submission during 2019/20.”

According to what *Procurement Tracker Namibia* has been able to establish, the rate of non-compliance with submitting quarterly procurement reports has hardly improved for the 2020/21 financial year.

Quarterly procurement reports

Quarterly Procurement Implementation reports



Graph 2. Quarterly Procurement Implementation Reports Submitted

Public procurement in the news

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

Amupanda accuses Kandjii-Murangi of procurement corruption



Photo: Eagle FM

Job Amupanda



Photo: The Namibian

Itah Kandjii-Murangi

In September 2021 it was reported that Windhoek mayor Job Amupanda had levelled allegations of procurement corruption against higher education minister Itah Kandjii-Murangi.

Over the course of a number of days in September, Amupanda took to social media and accused the minister of attempting to corruptly hijack a student village construction project.

The proposed student village is apparently to be located in one of Windhoek's western suburbs and would be constructed under the ambit of the higher education ministry.

Amupanda accused Kandjii-Murangi of wanting to sidestep procedures under the Public Procurement Act of 2015 to award the contract for the student village.

For her part, higher education minister Kandjii-Murangi has denied the allegations levelled against her by the Windhoek mayor.

The student village saga continues, and Procurement Tracker Namibia will monitor the situation as it develops.

(– Various)

Accommodation procurement blunder sees NUST officials suspended

In early September 2021 it was reported that senior officials at the Namibia University of Science and Technology (NUST) had been suspended over the housing of students at a private accommodation establishment which cost the university millions of dollars.

According to reports, the private accommodation establishment had submitted a bill of about N\$2,5 million to the university, but the bill was disputed by the Namibia Training Authority (NTA), which was responsible for paying for the accommodation of technical and vocational education training (TVET) students at NUST.

The reason why the TVET students had been housed at a private accommodation establishment was because NUST had

been doing maintenance and renovation work at some of its student accommodation facilities.

More suspensions at NUST followed in early October 2021 in connection with the student accommodation saga.

There remain many unanswered questions around how this accommodation procurement was done and handled and how a bill of N\$2,5 million was allowed to build up over a period of months without the university's management noticing. The period in question appears to be February–June 2021.

The NTA has claimed that the procurement of outside accommodation for students had sidestepped procedures.

As far as the procurement of accommodation for TVET students goes, such a procurement activity does not appear in either the 2020/21 or 2021/22 annual procurement plans of the university, and neither is such a procurement reflected in the quarterly procurement report of the university for the period January–March 2021.

The procurement action is also not reflected in the first quarterly report of the 2021/22 financial year, for the period April–June 2021.

(– Various)

Government hostel food tender cancelled

On 12 October 2021 all bidders for the multi-year food supply contract for government school hostels were informed that the tender had been cancelled.

The cancellation came a year and four months after the tender was first advertised in mid-June 2020.

According to the Central Procurement Board of Namibia (CPBN), 96 bids had been received for the hostel food supply tender, and on 23 February 2021 it was announced that nine bidders had been approved for awarding food supply contracts.

However, this was almost immediately challenged by some of the unsuccessful bidders, who took the matter to the Review Panel.

Following review hearings in March 2021, the Review Panel “ordered CPBN to re-evaluate the bids”, citing as justification that the CPBN had acted unprocedurally in disqualifying bidders over the validity of their Social Security Good Standing certificates, and because the bid scoring guidelines had not been included in the standard bidding document.

On 12 October 2021, the CPBN issued a statement saying: “Considering the above, the Board directed the BEC to re-convene and implement the findings and directives from the Review Panel. However, the BEC informed the Board on 7 October 2021 that without the Scoring Guidelines, which were initially excluded from the Standard Bidding Document (and regarded by Review Panel as importation or introduction of new evaluation criteria and therefore not available to the bidders at the time of bidding), the BEC was not in a position to re-evaluate the bid. As a result and after much deliberations, the Board, at its meeting of Thursday, 7 October 2021, resolved to cancel the bid”.

As to the way forward, the CPBN stated: “CPBN is working with the Ministry of Education, Arts and Culture to revise the Standard Bidding Document and re-advertise the bid in due course.”

By early November 2021 this tender had not yet been re-advertised. Procurement Tracker Namibia will monitor the situation as it develops.

(– CPBN)

Highlights of the PPU combined annual report

In October 2021 a combined annual report of the Procurement Policy Unit (PPU) for the 2017/18, 2018/19 and 2019/20 financial years

was tabled in the National Assembly. Following are some of the more interesting sections of the report:

On stakeholder training:

During 2019/20, the PPU switched its training approach from large group trainings to public entity-level trainings, thereby affording public entities an up-close learning opportunity. As such, the number of trainees dropped largely due to this, considering the limited number that could be trained at each individual entity training session due to the Covid 19 pandemic. During 2019/20, a total of twelve (12) entity-based trainings, mainly inductions and comprehensive trainings were conducted benefiting 133 staff members from eighteen (18) public entities. The PPU also held three (3) large group trainings in Windhoek benefitting 483 staff members from 87 public entities countrywide.

During the three years of existence, the PPU offered trainings to:

- Accounting Officers
- Public officials appointed under the internal procurement structures
- Members of the user departments
- Political Office-bearers
- Civil society and bidders/ Suppliers and consultants

TRAINEES	2017/ 18	2018/19	2019/20
Public entity officials, Accounting Officers, Political Office Bearers	4700	6900	616
Bidders	1267	980	0
Total	5967	7880	616

Table 2. Number of officials and bidders trained

On investigations:

In light of the above function, during 2018/19, the PPU investigated eight (8) procurements to establish whether the provisions of the Act have been complied with, and made recommendations thereon. Investigations were carried out at the following public entities: Social Security Commission (1), Ministry of Land Reform (1), Namibian Airports Company (1), Katima Mulilo Town Council (1), Omaruru Municipality (1), Ministry of Labour (1), Ministry of Health and Social Services (1), and Namibia University of Science and Technology (1). A report in respect of each investigation was drafted and submitted to the Minister of Finance.

On investigations:

Furthermore, during 2019/20, the PPU undertook ten (10) investigations to establish whether the provisions of this Act were complied with at the following public entities: Usakos Town Council (1); Swakopmund Municipality (2); Ohangwena Regional Council (1); Ministry of Land Reform (1); Ministry of Home Affairs (1); Ministry of Justice (1); Ministry of Health and Social Services (1); City of Windhoek (1) and Roads Authority (1). Reports in respect of each investigation was drafted and submitted to the Minister of Finance. Two (2) of the matters investigated were recommended to the Anti-Corruption Commission for further investigation and handling.

On public education and awareness:

The PPU has also developed a Public Education Strategy with the aim to educate the general public on matters of public procurement. The Strategy entails the use of various means and platforms to disseminate public information, educate, and raise awareness on all matters related to public procurement. Such includes the use of information leaflets, posters, booklets for dissemination and social media platforms such as Facebook, Twitter and WhatsApp/Telegram. The strategy also includes broadcasting adverts through the local broadcasters and radios with information to be disseminated in different Namibian languages.

FROM PAGE 7

On exemptions:

In terms of Section 4(2) of the Public Procurement Act, 2015, *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.* During 2019/20, the Minister received seven (7) requests for exemptions from applications of certain provisions of the Act. In this regard, six (6) of the requests for exemption were granted with one (1) being rejected.

On E-procurement:

E-Government Procurement will potentially provide several key benefits to the Namibian government, namely;

1. Increased transparency
2. Cost savings
3. Audit trails
4. Improved accessibility
5. Improved efficiency
6. Reducing waste and human error
7. Integration with others systems and frameworks
8. Automation of processes
9. Empirical data will be readily available to contribute to policy development and improved decision making

On PPU capacity:

The Chartered institute of Procurement and Supply (CIPS) qualification are recognized as setting the global standard for procurement and supply chain education worldwide. To address the capacity challenges at the PPU, it is the intention for staff members of the PPU to take up qualifying training course to improve their knowledge in matters of procurement starting during the 2020/21 financial year. In addition, the PPU has held fifteen (15) training sessions internally aimed at capacitating staff on various subjects pertaining to public procurement in Namibia.

On procurement methods used:

Based on the 15 percent submission of quarterly reports by the public entities during 2019/20, some 5697 procurements were awarded to the value of N\$882 837 951.92. Direct Procurement (DP) Method of procurement was the most utilised method of procurement at 38 percent followed by Small Value Procurement (SVP) method at 28 percent. The Open Advertised Bidding (OAB) method has only been used at three (3) percent frequency. It is important to note that public entities have mostly utilised the least competitive methods of procurement contrary to the requirement of the Act which provides for open advertised bidding as a default method to be deviated from only in certain circumstances as provided for in section 27 of the Act.

On emergency procurement:

The reasons for the choice of the emergency procurement method by the public entities, revealed that the majority of entities have procured on an emergency basis on grounds of the urgency to obtain the goods, works and services. Most of such procurements cannot be justified in terms of section 33 of the Public Procurement Act read with Regulation 18, and therefore should have been undertaken through 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 these items are procured to meet regular operation needs and therefore could be purchased competitively by establishing contracts under competitive conditions through which such goods, works or service could be delivered whenever they are required.