



## Transparency concerns dog 'largest tender in nation's history'

### Questions swirl around the procurement process and award that kicks off Namibia's green hydrogen initiatives.

At the 26th UN Climate Change Conference (COP 26), that ran from 31 October to 12 November 2021 in Glasgow, UK, Namibian president Hage Geingob announced that his government had "just designed, floated and are about to award the largest tender in our nation's history in record time" to initiate a green hydrogen production project.

Shortly afterwards, Hyphen Hydrogen Energy was announced as the winning bidder of a 40-year concession to kickstart the Namibian government's multi-billion

US dollar green hydrogen project. And towards the end of the year, Hyphen was contracted by the National Planning Commission, in the Office of the President.

The *Republikein* newspaper quoted presidential adviser James Mnyupe as stating in November 2021 that the government had "raised N\$1 million just from the [bidding] documents and N\$50 000 per set. It gives you an indication of how many people bought the documents just to look at it". That amounts to about 20 sets of documents having been bought by potential bidders.

Mnyupe also described the procurement process that led to the emergence of Hyphen as the winning bidder as "inde-

pendent, objective, and transparent".

However, this is where things become murky - over four months since the announcement of Hyphen as the preferred technical partner to kick-start Namibia's green hydrogen project, transparency around the procurement process involved remains decidedly lacking.

On 8 March 2022, *Procurement Tracker Namibia* sent a number of questions related to this procurement matter to the Office of the President, specifically to James Mnyupe, the Green Hydrogen Commissioner and presidential adviser on economics.

At the time of publication of this bulletin, these questions remained unanswered, despite a follow-up request and reminder being sent on 15 March 2022.

The questions were also forwarded to the Namibia Investment Promotion and Development Board (NIPDB), which also resides in the presidency and which had handled the procurement process.

The Ministry of Finance and the Central Procurement Board of Namibia (CPBN) had also been approached for comment on this procurement matter, but both entities referred questions to the Office of the President.

## Swirling questions

The questions around this procurement matter relate to how a six-month-old company with no track record was able to achieve the best bid for the "largest tender in the nation's history".

The production of green hydrogen is a highly technical, specialised and expensive industrial activity and a potential multi-billion US dollar contract would have attracted the interest of established firms in renewable energy or green hydrogen production, such as Australia's Fortescue Future Industries which had been on an exploratory visit to Namibia in early 2021.

The track record of Hyphen is pertinent because the Public Procurement Act (15 of 2015) states in sections 35(4) and (5) that when assessing bids sourced through the request for proposals method, the "relevant experience of the supplier" is a significant consideration.

To be fair, one of the entities involved in Hyphen has an established track record in renewable energy production.

However, there is no transparency about who the other bidders were. To date, the executive summary of the bid evaluation report of this tender has not been made public.

According to the public procurement regulations, a public entity is supposed to publish on its website a notice of procurement and the summary of the bid evaluation report within seven days of the procurement award.

No such notice or summary has been published on the websites of the National Planning Commission or the Office of the President, over four months after the award was made.

According to examples that have been published by the CPBN, a summary of the bid evaluation report would include the bid dates and deadlines, the number and names of bidders, how many bidders were Namibian or joint ventures, each bid's basics, the justification for award, the contract amount and contract deadlines, as well as the procurement method used.

*Procurement Tracker Namibia* has asked the Office of the President why the request for proposals method was used in this instance, instead of the open bidding method, but has not received an answer yet.

The procurement of Hyphen's services should also appear in the third quarterly procurement report of the National Planning Commission, as the contracting authority, for the 2021/22 financial year, but the relevant quarterly report (October - December 2021) was not yet accessible through the Procurement Policy Unit's webpage by the end of March 2022.

**Notice of procurement award**

39. (1) For the purposes of section 55(8) of the Act, a public entity must publish on its website and on any other print media widely circulated in Namibia a notice of every procurement together with the executive summary of the bid evaluation report within seven days of the procurement award.

(2) The notice referred to in subregulation (1) must include the subject matter of the procurement or disposal, the name and address of the successful bidder and the contract price.

The Public Procurement Regulations on how information should be made public.

# Spotlight on Principle Capital's Myerson

In early March 2022, *Procurement Tracker Namibia* asked James Mnyupe in the Office of the President whether and what due diligence had been conducted on the entities and officials involved in Hyphen Hydrogen Energy.

Of specific interest was Principle Capital Group and its officials, especially executive chairperson Brian Alan Myerson, a South African businessman.

A Google search of Myerson almost immediately reveals that in 2010 he was banned by the UK's Takeover Panel - The Panel on Takeovers and Mergers - an independent body that regulates company takeovers and mergers to ensure shareholders are treated fairly. The Takeover Panel ban meant that Myerson could not participate in company mergers and acquisitions for three years.

Similarly banned was Principal Capital's managing director, Brian Sean Padgett. Both men were banned for what was reported to be collusive and misleading conduct, as well as covering up, their attempt to gain control of a firm they were involved in.

Articles also come up of Myerson losing court cases in property disputes in South Africa from as recent as 2020, as well as his non-compliance with a court order to compensate a former employee over unfair dismissal a few years ago.

However, most of the reports that Google offers up about Myerson concern sordid details of his acrimonious and costly divorce, which made tabloid headlines, around 2009 over his leading of a double-life, involving the maintenance of a second-home with a mistress and second family in close proximity to his primary home and family in London, UK.

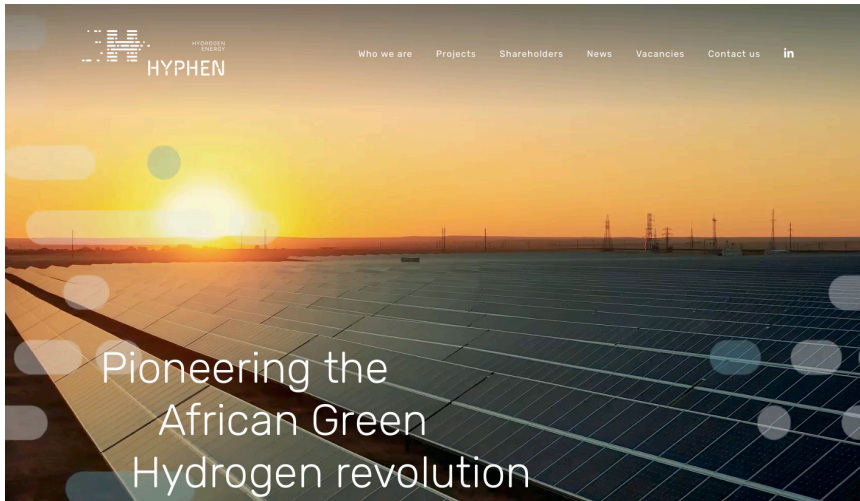
Myerson and Padgett appear in the Offshore Leaks data-base of the International Consortium of Investigative Journalists (ICIJ), with both men said to be operating primarily out of Geneva, Switzerland. Myerson also appears to be operating out of Cape Town, South Africa.

The Paradise Papers, of the Offshore Leaks data-base, indicate that Myerson and numerous of the entities he is linked to operate out of notoriously secretive tax and banking havens, such as Switzerland, the British Virgin Islands and the Isle of Man.

Secretive tax and banking haven jurisdictions have become synonymous with tax avoidance and evasion, as well as enabling illicit financial flows around the world, by facilitating the shielding from scrutiny of the wealth and financial activities of the rich and powerful who make use of law firms and company registries operating out of these jurisdictions.

To be clear, none of this means that Brian Alan Myerson or the companies he is linked to, are engaged in illegal or corrupt activity because of their appearance in the Offshore Leaks data-base.

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## The Hyphen enigma

Against this backdrop, as indicated, at the heart of the concerns and questions surrounding the “largest tender in the nation’s history” is the company awarded the tender, Hyphen Hydrogen Energy.

The online company name-search interface of the Business and Intellectual Property Authority (BIPA) shows that Hyphen was registered with the agency on 5 May 2021, roughly six months before it was awarded the “largest tender in the nation’s history”.

According to the company’s website it is a joint venture between an off-shore entity called Nicholas Holdings Limited and the South African subsidiary of German renewable energy company Enertrag AG, Enertrag South Africa.

While Enertrag South Africa has been in operation since 2017, and the German mother company has been in business since the early 1990s, and there is much information available online about its business and activities over the last three decades, Nicholas Holdings Limited is something of a mystery.

According to online reports it is registered in the British Virgin Islands, an offshore tax haven that has attracted considerable scrutiny over the last decade or so as a secrecy jurisdiction that has enabled tax avoidance and evasion by the global rich, famous and connected.

Because of the secrecy surrounding company registrations in off-

shore tax havens such as the British Virgin Islands, it is unclear who the beneficial owners of Nicholas Holdings Limited are. The brief description of Nicholas Holdings Limited on the Hyphen website states that it is “a strategic investor and project developer in Europe and Africa primarily through its subsidiary, Principle Capital”.

The link arrow on the brief description of Nicholas Holdings Limited on the Hyphen website clicks through to a website of Principle Capital Group. The website appears to have last been updated in 2011.

According to its website, Principle Capital Group “was founded in 2004 and is a private investment group holding a number of significant strategic investments”. The website lists five entities in which Principle Capital Group appears to hold stakes, some of which are also registered in the British Virgin Islands or another British offshore tax haven, the Isle of Man.

From the information available on the entity’s website, there is no indication that Principle Capital Group has any experience in funding, developing or managing a large-scale renewable energy project of the potential scale of Namibia’s green hydrogen project.

*Procurement Tracker Namibia* will provide an update if and when the Office of the President eventually does respond to the questions sent in early March 2022.

# Public Procurement Amendment Bill - an analysis

On 17 March 2022, finance minister lipumbu Shiimi tabled the Public Procurement Amendment Bill in the National Assembly for discussion and enactment. When tabling the Bill, Shiimi said:

“That leave be given to amend the Public Procurement Act, 2015, so as to insert certain definitions and substitute certain definitions; to provide for the appointment of the Chairperson and the chief executive officer of the Central Procurement Board of Namibia; to clarify certain methods of procurement; to provide for joint procurement of goods and services; to provide for the application for reconsideration of the decisions of the Board or public entities; and to provide for incidental matters.”

In April 2022, *Procurement Tracker Namibia* will publish a special briefing paper reviewing the Bill.



Finance minister lipumbu Shiimi



Photo by Myriam Zilles on Unsplash

# Addressing a pattern of poor governance

**A recent initiative attempts to break with the health ministry's history of bad management, waste and corruption around medical supplies procurement.**

As COVID-19 was raging through Namibia in 2020 and 2021 a mid-crisis attempt was underway to improve the governance of procurement processes within the Ministry of Health and Social Services (MHSS).

According to a document that recently came into the possession of *Procurement Tracker Namibia*, the long-standing poor management of the procurement function within the ministry was responsible for "inefficiencies in pharmaceutical and clinical supplies procurement" that "often result in sub-optimal purchase prices and stockouts of essential medicines, thereby disrupting service-delivery, particularly at the local level and for underserved communities".

In other words, the continuous practice of buying overpriced medications and other clinical supplies significantly contributed to the Central Medical

Stores (CMS) regularly running low on or out of medicines and other health supplies.

This maladministration was characterised by a "high number of emergency local tenders" and "limited international tenders impacting on value for money and increased frequency of stock-outs".

The report – of a study led by the Procurement Policy Unit in the Ministry of Finance, with assistance from local and international partners – makes 19 recommendations across nine areas of concern, on how to improve the governance of procurement within the MHSS.

Following are the areas of concern and the recommendations that speak to each area:

## **Improving the regulatory framework**

1. Amendment of the Public Procurement Act, to add pooled procurement by third parties, as procurement method under Part 5 of the law.

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2. Ministry of Finance in consultation with stakeholders and high-level policy makers to develop mechanisms and regulations to facilitate advance payments for pooled procurement.

3. Make additional instructions to regulations and guidelines capturing the outline of market analysis, the requirement of publishing bid prices per item, development and adoption of detailed multiyear procurement planning, adoption of a special threshold for procurement of

pharmaceuticals and clinical supplies, and the use of freely convertible currencies such as US dollar or Euro, commonly used in international health procurement.

4. Develop and adopt new standard bidding documents (SBDs) and procedures for 2-step tender process with pre-qualification of suppliers and products in pharmaceutical and clinical

supplies procurement and use of framework agreements and related purchase orders.

### Improving governance and oversight

5. In line with good standard practice, MHSS to establish a specialised procurement management unit (PMU) based at CMS, and procurement committee for pharmaceutical and clinical supplies procurement whose membership should include representatives of the MHSS central procurement committee.

### On human resources

6. Conduct an HR capacity audit for the institutions involved in public procurement and financial management of the pharmaceutical and clinical supplies within MHSS-CMS, PPU and CPBN. This should include HR planning, staffing (number and skills), job analysis and recruitments. For CMS, this should be based on the recommendations and aspirations of the turnaround strategy already underway.

7. Develop and implement training for CMS and PMU on Public Procurement Act and State Finance Act and related regulations and guidelines.

### On IT infrastructure for procurement and financial management

8. MHSS to link the integrated financial management system (IFMS) with SYSPRO – a business resource and supply management software system – to allow for efficient financial planning, purchasing and budget monitoring, to avoid issuing manual purchase orders outside IFMS.

### On procurement planning and financial management

9. MHSS to revise procurement planning for pharmaceuticals and clinical supplies to a rolling 3-year plan, in line with the medium term expenditure framework (MTEF). Annual update of the 3-year procurement plans should include the different MHSS programmes to ensure changes in treatment regimens are taken

into consideration.

10. MHSS accounting officer to provide a finance certificate to ensure availability of funds over 3 years, to allow for establishing 3-year framework agreements under which purchase orders may be placed (reducing workload for procurement staff by limiting the number of procurement cycles and decreasing procurement cycle times).

11. In line with the CMS turnaround strategy Phase 2 report, MHSS to adopt provisions for health products tracking, improving storage infrastructure and introducing an essential clinical supplies list, all of which, will increase pharmaceutical procurement efficiencies considerably.

12. MHSS to implement measures to control ordering by health facilities, including allocating budgets per district, inserting allocated budgets into the Facility Electronic Stock Card (FESC) system – a medical stock monitoring software system – and assigning responsibility for monitoring pharmaceutical expenditure at district and regional level.

### On financial resources and management

13. In line with improvements in fiscal space, MHSS to lobby for more resources for pharmaceutical and clinical supplies, whilst CMS should develop and implement a debt

reduction strategy.

14. Need to ensure timely release of budgets for purchase of pharmaceuticals and related supplies, through better cash flow planning and coordination between MHSS and MoF.

15. MHSS to conduct routine internal financial audits at CMS and ensure that recommendations are fully implemented.

### On pharmaceutical and clinical supplies procurement threshold

16. PPU, informed by the on-going analysis, to consult with the Reference Group

and agree on an appropriate threshold and attendant conditionalities to ensure efficiency.

### On competitive procurement

17. Put in place three-year framework agreements based on budgets from indicative MTEF estimates, consider the use of freely convertible currencies (USD or Euro) and item-price publication to attract international bidders.

### On coordination, accountability and oversight

18. Set-up a Reference Group to promote dialogue and consensus building on health sector procurement solutions. Membership to include PPU, CPBN and MHSS (CMS, PMU, Finance) and accountable to the accounting authorities of the respective institutions.

19. In line with the statutes, PPU and MHSS need to undertake routine performance and compliance audits for pharmaceutical and clinical supplies procurements.

# Multiple issues emerge from audit of GRN's COVID-19 response

The Auditor-General's report once again underlines how non-compliance with the procurement law and governance standards undermines government's efforts.

Towards the end of 2021 a report by the Auditor-General was tabled in the National Assembly that sheds some light on the governance of the Namibian government's interventions in the early stages of the COVID-19 pandemic in the country.

The report relates to an audit done for the period March to June 2020, which was when a state of emergency and a countrywide lockdown was instituted. It was also the period during which the government introduced economic stimulus measures.

Under the state of emergency basically all public procurement shifted to emergency mode, with most being conducted through the direct procurement method.

The audit report underscores that concerns about public procurement system abuses during the COVID-19 pandemic period were well-founded.

## Non-compliant practices

The audit zoomed in on how the direct procurement method was used by selected state departments and offices.

In particular, the audit found that the OPM and MHSS had transgressed in terms of sections 36 (2) (a) and (b) of the Public Procurement Act of 2015.

**Direct procurement**

36. (1) A direct procurement method allows a public entity to procure goods or services from a single source without competition.

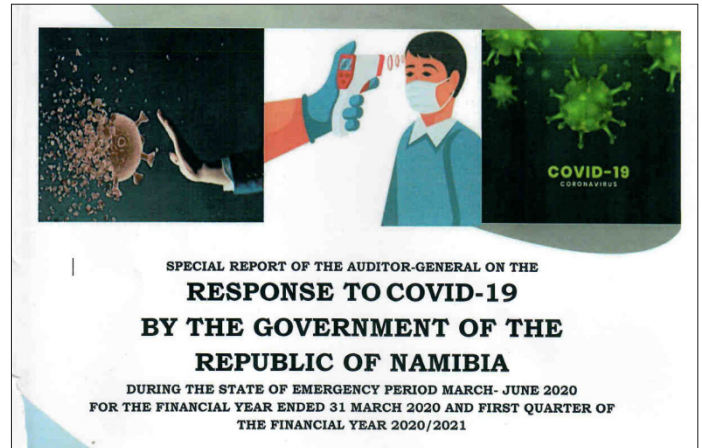
(2) A direct procurement is permitted -

- (a) where only one supplier has the exclusive right to manufacture the goods or to supply the goods, works or services to be procured, and no suitable alternative is available;
- (b) within the prescribed limits, for additional deliveries of goods by the original supplier which are intended either as partial replacement or extension for existing goods, services, or installations and where a change of supplier would compel the public entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or service;

Section 36 (2) (a) and (b) of the Public Procurement Act of 2015.

According to the audit, the OPM spent an amount of almost N\$1,4 million on the non-compliant procurement of services, while the MHSS spent nearly N\$4,6 million in a similar manner.

In this regard the audit report states: "There was not sufficient evidence to prove that the chosen suppliers had exclusive right to supply the services procured or were the only suitable alternatives available."



The audit report recommended that the "Executive Directors should provide evidence to confirm that section 36 (2)(a) and (b) of the Public Procurement Act, was complied with".

Non-compliance to Section 36 (2) (a) and (b) can lead to the following risks;

- The services rendered may not meet the required quality and quantity;
- Lack of transparency and competitiveness in the procurement process;
- Unfair procurement practices;
- Fraud.

Risks posed by non-compliant procurement.

For its part, MHSS acknowledged that its procurement of services had been non-compliant with the law, but blamed the pandemic state of emergency for having engaged in such conduct.

In its overall conclusion of the situation the audit report states: "Compliance with the Public Procurement Act was unsatisfactory, based on our findings. In a disaster situation, O/M/As needed to act swiftly, however, the emergency appointment of service providers led to contravention of the Public Procurement Act".

On a related aspect, concerning the MHSS's procurement response to the COVID-19 outbreak, the audit found that: "The MOHSS could not provide documentary evidence to prove that they proactively planned the procurement of key equipment such as ventilators prior to the COVID-19 outbreak to reduce the risk of higher prices."

Similarly, on the issue of medical supplies, the audit found that such supplies "were not procured economically" and that "no documentary evidence was provided at the time of the audit to determine how the MOHSS economically, efficiently and effectively proactively planned the procurement of key medical supplies".

# Public procurement in parliament

On 15 February 2022, Nico Smit of the Popular Democratic Movement (PDM) asked finance minister **lipumbu Shiimi** in the National Assembly (NA) about the status of the Public Service Employee Medical Aid Scheme (PSEMAS) administration contract, that *Procurement Tracker Namibia* has written about on several previous occasions. On 3 March 2022, the deputy finance minister, **Maureen Hinda-Mbuende**, responded on behalf of the finance minister.



Photos: mof.gov.na and The Namibian

Nico Smit (left) of the Popular Democratic Movement (PDM) and deputy finance minister Maureen Hinda-Mbuende.

## Hinda-Mbuende's (deputy finance minister) response:

I previously announced to this August House that PSEMAS has become unsustainable and it is a situation that warrants an overall reform. In this regard the Office of the Prime Minister has appointed a consortium of consultants with the following terms of reference, among others:

- To analyse different options available to the Government regarding the sustainability of PSEMAS with particular reference to examining the sustainability of open and

closed medical aid options including an option for PSEMAS members joining private medical aid schemes.

- To provide auxiliary services on PSEMAS membership, demographics, benefits, contributions, tariff design, and expenditure patterns and recommend sustainable alternative models, and;

- To review and propose alternative operational efficiency and recommend the most suitable governance and administrative arrangements for PSEMAS.

In this regard the consortium has submitted its preliminary report which is currently being discussed by relevant structures of Government. Honourable Speaker, Honourable Members, you will agree with me that undertaking a fresh procurement process for a new administrator to manage the scheme in its current form will defeat the objectives of the reform process.

The focus is to fix PSEMAS before any procurement process can be undertaken.

Finally, Honourable Smit, I have taken note of the insinuation you have made in your question regarding the alleged relationship of the ruling party in the matter. I should indicate to you, Honourable Member, that the Ministry of Finance contracted the service provider in question after an open competitive bidding process.

I think in the effort to answer I gave background to create understanding that it is a complex matter. However, like I said, the initial report has been made available that suggests the way forward. I must admit that a medical scheme is an employment benefit and we cannot just discuss and decide. So even if there are suggestions on the table the unions will have to be engaged before one can conclude on how to move forward.

But in terms of timeline, allow me to use this opportunity to alert the House and hopefully get the understanding from the Members that we envisage, because of circumstances, to extend for another six months the [Methealth] contract. We are hopeful that within that period we will get to a solution for PSEMAS. I think the six months is from the end of March. That is the plan on the table at the moment, but it is a negotiation process. I hope that we will definitely come back to the House if the six months timeline appears not to be feasible.

## Smit's (PDM) question:

According to Procurement Tracker, Methealth Namibia has been awarded the PSEMAS administration contract worth some N\$300 million six times over the past 18 years.

This contract is renewable every four years. In the last round of bidding in 2020 questions were raised around the bid specifications, which appeared to have been designed to favour Methealth, thus raising the spectre of bid design corruption.

This led to an investigation and an extended bidding process, and the eventual disqualification of all bidders in November 2020.

Although Methealth did not bid for the PSEMAS administration contract in 2020, Methealth still remains the administrator at this time.

I thus ask the following:

1. Can the Minister tell this August House how far the mentioned investigation into the 2020 bidding process for the administration contract has progressed?
2. Why was the contract handed to the ruling party-connected Methealth for 18 years in a row?
3. Will the Minister agree with me that the ruling party and/or its affiliates have been lining its pockets from this contract for the past 18 years?
4. Can the Minister explain to this August House why the ruling party and/or its affiliates should be allowed to benefit from the state-run PSEMAS at the cost of similar administrators in the private sector?
5. How much money has the ruling party and/or its affiliates garnered from this contract to run the affairs of the party over the past 18 years and what percentage of the N\$300 million per annum does this represent?
6. Why should this state of affairs not be judged to be state capture as well as a clash of interest?
7. Why should the ruling party and/or its affiliates not be required to repay the money paid to it via its affiliated entities connected to Methealth?
8. Will the Minister agree with me that this process undermines the credibility, fairness and competitiveness and decision-making processes of strategic state resources by ruling party affiliated persons and entities such as Zebra Holdings?

# CPBN annual report for 2018/19

In January 2022 the Central Procurement Board of Namibia (CPBN) released its long overdue annual report for the 2018/19 financial year. Following are some of the notable statements, tables and graphics contained in the report.

## Contracts awarded

Procurement Contracts Awarded 2018/19 and 2017/18			
Procurement method	% Change	2018/19 N\$	2017/18 N\$
Competitive bidding	184.65%	317,034,271	111,377,518
- Open advertised bidding	68.17%	187,307,348	111,377,518
- Restricted bidding	100.00%	129,726,923	-
Direct procurement and entity to entity	123.78%	1,032,114,786	461,208,896
<b>Total</b>	<b>135.62%</b>	<b>1,349,149,057</b>	<b>572,586,414</b>

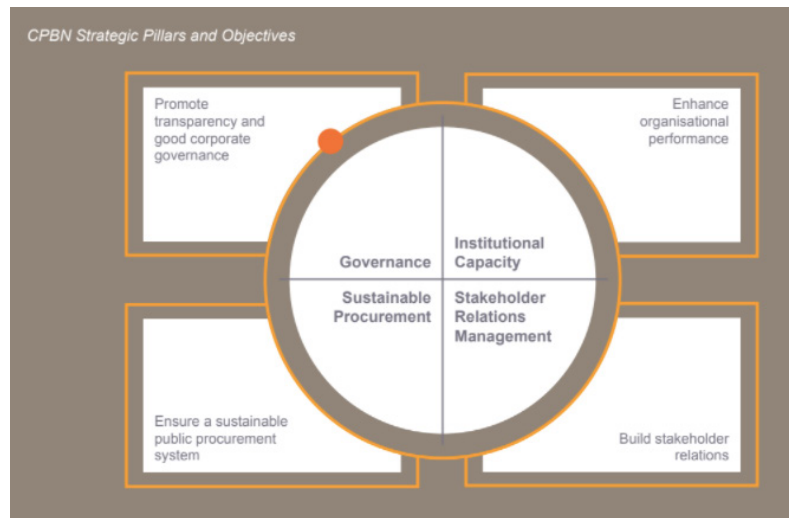
## Matters approved

Procurement Matters Approved 2018/19 and 2017/18			
Procurement matter	% Change	2018/19 N\$	2017/18 N\$
Variation orders	(0.19%)	23,913,210	23,867,158
Price increases	82.57%	40,870,242	22,385,469
Contract extensions	0.50%	1,521,826,132	1,514,404,182
<b>Total</b>	<b>1.67%</b>	<b>1,586,609,584</b>	<b>1,560,656,809</b>

## Strategic pillars

### Internal procurement

The CPBN executed internal procurement projects to the value of N\$1.7 million and awarded fifty-four (54) low-value procurement contracts to Namibian Small and Medium Enterprises (SMEs). This is an initiative that the CPBN will monitor as part of its goals to award more procurement contracts to Namibian-owned enterprises.



## Meetings attended

Adjudication Meeting Attendance 2018/19	
Name	Number of meetings attended
Mr. P.P. Swartz – Chairperson & Administrative Head	43/45
Ms. L. Ramakhutla – Deputy Chairperson & Deputy Administrative Head	36/45
Mr. J.L. Muadinohamba – Independent Member	40/45
Ms. M. Nakale – Independent Member	36/45
Ms. H. Herman – Independent Member	36/45
Mr. E.P. Shilongo – Independent Member	43/45
Ms. M. Iyambo – Independent Member	44/45
Mr. H.C. Lofie-Eaton – Independent Member	42/45
Mr. T. Ndove – Independent Member	42/45