



Category 2 entities also largely non-compliant on publishing plans and bid summaries

Public entities just below central government level are mostly also still struggling to meet transparency compliance obligations for the current financial year

The October 2022 issue of *Procurement Tracker Namibia* showed how the highest government offices and ministries were non-compliant when it came to publishing their annual procurement plans and bid award summaries on their websites.

However, the picture is not much different with what are classified as category

two public entities in the Public Procurement Regulations of 2017.

For this edition of *Procurement Tracker Namibia*, 22 category two public entities were similarly assessed, and while more of these entities appear to be compliant with the transparency provisions in question, compliance of those assessed still falls well below 50%. This assessment underscores the findings of Procurement Policy Unit (PPU) audits and assessments over the years that have found that most public entities struggle with compliance on the critical transparency and account-

ability provisions of the Public Procurement Act of 2015.

With the 2022/23 financial year halfway gone, and with public entities now more than five years into having to comply with the law, the fact that so many continue to not adhere to the law and regulations underscores the weak rule of law situation which has come to mark the public procurement sector since the new dispensation was rolled out on 1 April 2017.

To reiterate, section 8(1)(d) of the Public Procurement Act of 2015, states that a public entity has to produce an annual procurement plan, which, according to section 1.5 of the Public Procurement Guidelines, should be submitted to the Procurement Policy Unit (PPU) and posted or published on the website of that public entity.

Also, according to regulation 39 (1) “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”.

What we found

To be clear, not all public entities that are classed as category two were assessed – just one municipality and two regional councils were looked at – as some have ceased to exist (SME Bank) or become largely defunct or dormant (Minerals Development Fund and Roads Contractor Company) since the law and regulations came into effect.

That said, of those assessed, only nine had their 2022/23 annual procurement plans up on their websites, while only six consistently published summaries of bids awarded in the manner as called for in the regulations.

On this last point, while the assessed public entities that had their annual procurement plans posted on their websites had listed quite a number of procurement actions to be

undertaken in the current financial year, only the bid report summaries of some or few undertaken procurement actions are viewable on their websites.

The conclusions that can be drawn from this are that either these public entities are not engaging or have not engaged in as many procurement activities as they have listed or that they are selectively publishing the bid summaries of some of the procurement actions undertaken during the first half of the current financial year.

Either way, the significant compliance shortfalls in living up to legally prescribed transparency obligations is something that remains of critical concern on the public procurement landscape.

Table: Transparency compliance of category 2 public entities

Category 2 public entities	Annual Procurement Plan 2022/23 on website	Executive summaries of procurement awards (2022/23) on website
City of Windhoek / Windhoek Municipality	Yes	Yes
Khomas Regional Council	No	No
Erongo Regional Council	Yes	Some
Namibia University of Science and Technology (NUST)	No	No
University of Namibia (UNAM)	No	No
Namibia Tourism Board	No	No
Namibia Wildlife Resorts Company	No	No
Windhoek Country Club Resort	No	No
Agricultural Bank of Namibia	No	No
Development Bank of Namibia	Yes	No
Motor Vehicle Accident Fund	Website not accessible	Website not accessible
Namibia Financial Institutions Supervisory Authority	No	Some
Namibia Institute of Pathology	Yes	Some
Namibia Broadcasting Corporation	No	No
Telecom Namibia	Yes	No
Electricity Control Board	Yes	No
Epangelo Mining Company	No	No
Roads Authority	Yes	Some
Namibia Sports Commission	No	No
National Youth Council	No	No
Namibia Statistics Agency	Yes	No
Namibia Institute of Public Administration & Management	Yes	Some

Attempting to enhance efficiency and compliance

Interesting insights and observations emerge from the latest PPU annual report

About a month ago, around the start of October 2022, the annual report of the Procurement Policy Unit (PPU) for the 2020/21 financial year was published on the E-procurement Portal.

The report provides quite significant insights into the workings of the public procurement system for that year as it surfaces and spotlights the myriad of challenges that continue to plague the system.

According to the report, the PPU's strategic objective for the 2020/21 financial year was to 'Enhance efficiency of the public procurement system and compliance with the Public Procurement Act'.

The report captures activities, progress made and challenges encountered in the roll out of this strategic objective.

Plans and reports

The PPU report notes that for the 2020/21 financial year 78% of public entities (135 out of 173) had submitted annual procurement plans.

As for the submission of quarterly procurement progress reports, the report notes that while compliance was still generally low, the levels of compliance across categories of public entities had gone up, even if only slightly.

Category 1 public entities showed the highest level of compliance, with 73% of entities submitting quarterly reports during the year.

As for categories 2 and 3, the combined compliance level was just 26%.

Despite this the report states: "While compliance on publication of reports continues to be low, overall compliance rose from 17% overall compliance in 2019/20, to 38% compliance in 2020/21."

The report indicates that 263 quarterly reports were submitted by public entities and concerningly they showed that "public entities continue to utilise the least competitive methods of procurement".

"A close look into the specific reports unveils that public entities are making use of non-competitive methods without justifications for deviating from the competitive method of open national bidding. This phenomenon has a direct impact to the achievement of outcomes expected of competitive procurement processes of procurement," the report finds.

Similarly, the report notes that, based on public entity reporting, during the COVID-19 state of emergency period, from 27 March to 4 May 2020, "95.2 percent of procurements were conducted through direct procurement as 1009 of the 1060 procurements did not involve any form of competition as not more than one bidder participated".

Capacity building

Large sections of the PPU report deal with capacity building related issues, laying out how the PPU is attempting to up-skill and educate officials across the state sector in the correct application of the Public Procurement Act.

During the year under review the PPU implemented its 'Capacity Building Strategy for 2020/21', "to establish a framework aimed to address prevailing procurement issues which exists as a result of capacity constraints in the procurement system, by addressing PPU's capacity, public entities capacities and bidders' capacity challenges".

To further assist both public entities and bidders, the PPU developed both a 'Public Entity User's Guide' and a 'Public Procurement Bidder's Guide for the Procurement of Goods and Services'.

In 2020/21 the PPU also conducted 32 training workshops through which 1,210 officials from a variety of public entities were trained on the substance and implementation of the Public Procurement Act.

At the same time, during 2020/21 "the PPU provided legal advice to 100 public entities on various aspects of public procurement and its implementation".

In terms of its internal capacity building, the report notes that during the year under review "staff members of the PPU have taken up studies with the Chartered Institute of Procurement and Supply (CIPS)".

Also, the report states that: "In addition, the PPU has held fifteen (15) training sessions internally aimed at capacitating staff on various subjects pertaining to public procurement in Namibia."

Audits and investigations

The PPU report states that during the 2020/21 financial year the unit audited the internal procurement system and processes of 10 public entities, namely: "Nampower, Namwater, City of Windhoek, Namibian Competition commission, Transnamib, Ministry of Finance, Otjozondjupa Regional council, Tsumeb Municipality, Otavi Municipality and Otjiwarongo municipality".

The report does not provide any details as to what the audits found at these public entities.

As for investigations of alleged cases of irregular procurements or maladministration, the report notes that "the PPU conducted 4 investigations to establish whether the provisions of the Act have been complied with, and made recommendations thereon. Reports in respect of each investigation were drafted and submitted to the Minister of Finance".

No further information on which entities were investigated or what the investigations found was provided.

Decongestion project

An interesting section in the PPU report deals with what is called the 'Public Procurement Decongestion Project', that is described as "an undertaking which was born out of the Recommendations by the High Level Panel on the Namibian Economy (HLPNE)" that were publicly released in 2020.

The objectives of this project were: "Increased efficiency and effectiveness of the CPBN and PPU; Simplify documents and requirement use in public procurement; Improve operational efficiencies of CPBN and PPU; Foster closer working relationships amongst key stakeholders in public procurement."

Setting credible procedures

Due to questionable approaches the policy unit has had to issue clarity on how it should be approached for advice

On 1 March 2022 the head of the Procurement Policy Unit (PPU), Francois Brand, sent a letter to all public entities laying out how requests for guidance and advice on the procurement law and regulations should be made.

The letter, labelled an "Instruction Note", was apparently necessitated because the policy unit had noticed that such requests in many cases did not follow the correct channels of communication within government.

In this regard, Brand states in the letter that "we have observed that in most instances the accounting officers being the accountable persons responsible for the full compliance with the Act and the heads of procurement in public entities are kept in the dark on the issues requiring the Policy Unit's advice".

He goes on to state that they have also observed that "in a number of cases a single public entity may request advice on the same issue several times", due to a lack of internal consultation at public entities.

He also "noted with concern" that in some instances "certain public officials request advice in the name of public entities", but then it emerges that the official actually made the request "for their own private interests".

Brand also states that in some cases advice was sought from the PPU by some officials via telephone, only for the advice not

being followed and the processes not complying with the law and regulations, and for the officials then claiming that this was what they had been advised by the PPU. He states that this has led to instances in which "the Anti-Corruption Commission had to investigate officials involved to determine the nature and credibility of advice".

Correct procedure

Brand then goes on to describe the correct procedures that should be followed when seeking advice from the PPU.

First off, public entities are instructed to first seek clarifications from the internal procurement committee, which can then approach the internal procurement management unit or the PPU through the accounting officer of the particular public entity.

Furthermore, all requests for advice or guidance should be made in writing – either in an email or hand-delivered official correspondence – and should come from the accounting officer of the public entity, and should be addressed to the head of the PPU.

In response, all advice or guidance from the PPU will be addressed at the accounting officer of a particular public entity, and all such advice or correspondence is to be appropriately filed or archived by the public entity for future referencing purposes.

Brand ends his "Instruction Note" by calling on accounting officers to make sure that these procedures are transmitted to all officials involved in procurement in their respective entities.

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The report states that "to implement the recommendations and deliver the above objectives, a Decongesting Committee consisting of staff members of the PPU and CPBN was appointed to steer its implementation".

As part of this, "15 subprojects were identified and assigned champion implementers to deliver on them".

According to the report, by the end of the financial year, the project had achieved a 72% project completion rate.

Recommendations and conclusions

The PPU report ends off by listing challenges, recommendations and conclusions emerging from its monitoring of the public procurement system during 2020/21.

The challenges are identified as: "Continued use of non-competitive methods by public entities without justification; Lack of an integrated public procurement system to provide data; Limited compliance on production and publishing of Annual Procurement Plans and procurement implementation reports; Delays in crafting and implementing requisite regulations; Absence of a public procurement performance assessment mechanism; Slow uptake and compliance with ministerial directives and requests; Lack of instrument for assessing impact of the procurement system on the socio-economic policy objectives of the Government;

Absence of key bidding documents and standard contracts".

As for the recommendations, the following: "PPU to continue to educate public entities on the correct use of procurement methods to support achievement of the objectives of the Public Procurement Act; The E-government procurement system should be fast tracked to support need for information on the procurement system and performance; PPU should publish regular information on non-compliant public entities to prompt compliance action; In order to reduce the misapplication of the direct procurement method under guise of conducting procurements on an emergency basis, the PPU, in terms of 25 section 7(1)(p), should provide guidelines or information briefs on the correct procedures for undertaking emergency procurement and direct procurement; PPU to develop mechanism for assessing of the impact of the procurement system on the socio-economic policy objectives of the Government; PPU to facilitate the drafting of requisite regulations to ensure full implementation of the Public Procurement Act".

The report concludes by stating that while compliance has improved in some aspects, "compliance by public entities remains low, including response to request for submission of reports and adherence to directives".

Some of what has been spotlighted in the PPU report will be unpacked in greater detail in upcoming editions of *Procurement Tracker Namibia*.