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Photo: flickr

TransNamib 'procurement irregularities' flagged

An investigation report paints a concerning picture of management and governance practices at the national rail operator

State-owned railway operator TransNamib Holdings has been a perennial governance 'problem child' for the longest time and a recent report further underscores the state's inability to harness this valuable and strategic national asset appropriately and optimally.

Concerns around the governance and management practices at the parastatal have been heightened following the circulation of a leaked report by auditing and consulting firm Ernst & Young Namibia (EY).

The report had been compiled following an independent investigation by EY that commenced in early August 2021 of allegations and perceptions of poor governance and mismanagement at TransNamib.

The report was submitted to then public enterprises minister Leon Jooste in late February 2022, who subsequently passed it on to finance minister Iipumbu Shiimi in March 2022.

It appears Shiimi then forwarded the report to the TransNamib board for a response at some point in 2022.

At the end of March 2023 it was reported that the TransNamib board, chaired by Theo Mberirua, had earlier in the month resolved that it had "found no matters from the report that require disciplinary action" and expressed "full confidence" in the TransNamib management team, then still led by CEO Johny Smith. Smith left the parastatal at the end of March to take up a private sector position in South Africa in April this year.

Mberirua was also reported to have said that a detailed response to the report had been forwarded to finance minister Shiimi.

Procurement Tracker Namibia has been afforded access to the EY report, and other documents, by various sources. The report surfaces and spotlights significant alleged "procurement irregularities" as part of flagged governance and management shortcomings at TransNamib between 2018/19 to 2020/21.

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‘Procurement irregularities’

The EY report notes that one of the frameworks that informed the scope of the investigation was the “Public Procurement Act, No. 1 of 2019”, which is a wrong reference to the Public Procurement Act, No. 15 of 2015.

Act No. 1 of 2019 is the Public Enterprises Governance Act.

The procurement matters spotlighted in the report primarily concern procurement conducted within TransNamib’s contractual relationship with Tradeport Namibia, the Namibian subsidiary of a South African company that is exporting manganese through the port of Lüderitz, and procurement done by the TransNamib property division.

With regard to the Tradeport-related procurement issues, the EY report found that TransNamib “appear to have bypassed requirements in terms of the Procurement Act” in that, as per the “principal agreement” between the entities, Tradeport was “allowed to procure most of the required services on behalf of TN [TransNamib] and as such also managed most of the required Namibian Rail transport services in terms of the said agreements”.

The “required services” being referred to include “the rolling stock (locomotives, wagons and support staff) to be able to move the bulk of the manganese transported on the Namibian rail network”.

In terms of procurement management in the property division, the report observes that based “on the information provided to us by the Executive: Properties, we also did not find sufficient evidence to suggest that she followed prescribed procurement procedures when she procured certain services for maintenance and/or upgrades to certain TN properties”.

This allegation relates to “the installation of a boom gate, renovation and painting of the TN office building”.

Expanding more on these issues, with regard to the installation of the boom gate, the report notes that “the third party that was used for the installation of the boom gate at the TN Head Office at a cost of N$30,369 was also required to link the gate to the biometric system used by TN at some stage. This meant that this was not a once-off procurement and the procurement department was not made aware of this at the time of the initial procurement”.

With respect to the renovations and upgrades of the TransNamib head office, the report notes that the investigators “also did not find three quotations for these services, which suggests that the procurement of these services and subsequent payment thereof could be irregular”.

The investigators also found that “some of the procured renovations at the Head Office Building did not pass through the procurement unit and that there were some items on certain invoices that required further investigation as they appeared to be questionable”.

Another procurement-related matter that was assessed by the EY investigators was the relationship between TransNamib and D&M Rail.

However, the report notes that there were “no contracts” between TransNamib and D&M Rail and that the Ministry of Works and Transport had “also indicated that they did not suspect any irregularities in terms of the tender processes followed and/or contracts awarded to D&M Rail and, as such, we therefore did not perform any further probes into the allegations of irregularities”.

Consequence management

In its final analysis, the EY report notes specifically with regard to the TransNamib/Tradeport agreement, that by “following the prescribed procurement requirements as envisaged in the Procurement Act, TN could have ensured that they acquired the necessary rolling stock (that did not require continuous maintenance as noted with the TP agreements) and other essential required equipment at the most cost effective prices possible, which would in turn have enhanced their revenue generation and collection ability in this regard”.

The report concludes by calling for further, more comprehensive, investigations of both the TransNamib property department and the rail parastatal’s agreements with Tradeport and other entities. Significantly, the report notes that aspects of the relationship with Tradeport “appear to constitute *prima facie* evidence of potential fraud and theft”, which should be investigated.

That said, the report was forwarded to the Anti-Corruption Commission (ACC), but in October last year it was reported that the ACC had declined to investigate based on the report, rather advising the finance minister to address the issues in the report administratively.

It remains to be seen how the TransNamib board and management have responded to the myriad of allegations of poor governance and mismanagement at the state-owned enterprise in their responses to the report that appear to have been submitted to the finance minister in March 2023.

However, it should be remembered that there have been a number of forensic audits and investigations of governance and management matters at TransNamib under various CEOs (Titus Haimbili and Sara Katiti nee Naanda) or acting CEOs (Hippy Tjivikua) over the last decade or so, and that the various boards and management teams implicated in poorly and wastefully governing and managing the entity have largely escaped any accountability to date.

What should happen now

- Finance minister Iipumbu Shiimi should publicly release both the EY report and the TransNamib board and management’s responses to the report, whether in whole or redacted / summarised form;
- At the same time the “procurement irregularities” surfaced by the EY report should be investigated by the Procurement Policy Unit with a view to understanding and remedying internal procurement processes and practices at TransNamib;
- Aspects of the relationship between TransNamib and Tradeport that have been flagged as “prima facie evidence of potential fraud and theft” should be thoroughly investigated by relevant law enforcement agencies;
- Similarly, the EY report should form the basis of a National Assembly public accounts committee investigation of the matters raised in the report and the subsequent proposals to deal with these matters.

Local content carries procurement risks

Photo: Business Financial

On 11 and 12 May, the Ministry of Mines and Energy (MME) held a National Workshop on developing a local content policy for the oil and gas industries. It was clear from the contributions from participants that there is a huge appetite among Namibian entrepreneurs to be involved in the supply chains for the burgeoning oil and gas sector in Namibia.

Since Shell and TotalEnergies announced oil discoveries off the southern coast in early 2022, the question on many people's lips has been: how will Namibians benefit from an industry that will be dominated by international oil companies (IOCs)?

The main benefit will be a huge cash infusion into government coffers. It has already been estimated that government's revenues will at least double once production starts - from taxes and royalties paid by the IOCs. But Namibians will also want to see citizens participating in meaningful ways as the suppliers of goods and services for the oil industry.

The text of the policy document released in advance of the National Workshop acknowledges that "poorly designed local content policies can inadvertently lead to non-compliance, value leakage, and rent seeking activities."

Mines and Energy Minister Tom Alweendo recognised the risks when he opened the workshop: "We must be fair and transparent with our employment procedures, procurement processes, and in exercising oversight over the policy implementation. The more we are transparent in our operations, the higher the chance of realising the objectives of this local content policy."

The policy requires oil and gas licence holders to produce an annual local content plan which will include a section on procurement detailing the involvement of local firms in supplying goods and services.

The definition of 'local' in the policy is that at least 51 percent of the equity in a business must be owned by Namibians. Some participants at the workshop wanted the words 'previously disadvantaged' to be inserted to ensure that benefits flow to black-owned businesses.

The local content policy is likely to result in revisions to the Petroleum Act and its regulations as well as the model petroleum agreement that the MME signs with IOCs.

Risks galore

It is now widely acknowledged that local content requirements create a number of significant corruption risks.

According to Transparency International, politicians and officials can abuse their power and influence to use local content procurement requirements to benefit their associates and family members. At the same time IOCs could pay bribes and kickbacks to local companies to serve as 'fronts' and make it look like they are meeting targets for local involvement. Such arrangements can be used to channel funds to politicians, government and public enterprise officials, their families, or affiliates. Sometimes the companies selected by IOCs include politically connected people who are essentially being paid to seek favours from ruling politicians.

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>
> - Tom Alweendo

Photo: Shell

IOCs can end up contracting a local content provider for overpriced or even non-existent goods and services. Local content policies are often seen as fertile ground for rent-seeking middlemen who contribute nothing of value but are only interested in getting rich quick.
Preventing corruption in local content requires a set of measures aimed at strengthening transparency and accountability systems. Transparency International has recommended action in the following areas:

-Anti-corruption clauses in contracts that spell out the behaviour expected from the contracting partners and send a strong signal with regard to the government's or company's commitment to fight corruption.

-Dedicated and independent oversight bodies for local content policy including overseeing the selection of pre-approved local suppliers that can be vetted to ensure they have clean track records and are not linked to the politically connected.

-Procurement regulations in local content requirements should guarantee fairness throughout the procurement process and include measures to avoid overpricing, bid rigging, and cartel activity.

-Disclosure of beneficial ownership is instrumental to ensure that local content contracts are not awarded to political groups and that 'front' companies are not being used to circumvent local content requirements.

-Transparent reporting on local content covering the number of local personnel employed, goods and services procured by foreign and local companies, and beneficiaries of local content policies are essential to assess whether local content rules are implemented in a way that supports the achievement of their objectives and whether corruption, mismanagement or other wrongdoing took place.

Licence holders, including IOCs, must also take a series of actions, including, carrying out their own due diligence and risk assessments of local content suppliers and signing up to and supporting anti-corruption provisions in contracts.

Five ways to mitigate risks in local content procurement:

- Clear procurement rules
- Independent oversight bodies
- Anti-corruption clauses
- Beneficial ownership disclosure
- Transparent reporting

Further reading:

https://knowledgehub.transparency.org/helpdesk/local-content-and-corruption-in-the-oil-and-gas-industry

https://www.covafrica.com/2018/10/compliance-risks-from-local-content-requirements-considerations-for-doing-business-in-africa/

Questions swirl around rate-based pharmaceuticals tender

The Central Procurement Board of Namibia (CPBN) awarded pharmaceutical suppliers rate-based contracts on behalf of the health ministry in late April 2023, it emerged in early May 2023.
The information released by the CPBN about the awards under bid number G/OIB/CPBN-01/2022 – for "Procurement of Supply and Delivery of Pharmaceutical Products" – contained only the names of the the successful bidders and the unit prices for the items, but no contract values.
The rate-based awards were questioned and criticised because while successful bidder names and unit prices were made public, quantities to be procured from specific bidders were not released, thus it was unclear what the actual size of individual contracts would be that would be awarded to the successful companies. In this way, the critics (including *Procurement Tracker Namibia*) felt transparency was diminished around this major health tender.
In a report in *The Namibian* newspaper on 11 May, a CPBN official, Immanuel Kambinda, was quoted justifying the rate-based procurement of pharmaceuticals as follows: "The Ministry of Health and Social Services will purchase items on the unit rates offered by the bidders within the amount provided for on the financial certificate by the ministry and based on consumption. The purchaser reserves the right to increase or decrease the quantity of goods originally specified, depending on the demand for the products."
And the CPBN spokesperson, Johanna Kambala, said in the same article that the information released showed enough transparency.

The questions

However, questions remain, such as why was it appropriate to award bidders on unit price quoted and not on total bid value?
Globally, health procurement is one of the two – second only to infrastructure and construction procurement – sectors most prone to corruption. So, it is important to understand why a specific procurement approach is being used.
The explanations provided by the CPBN for why a rate-based approach was adopted for awarding the pharmaceuticals supply and delivery tenders would hold water if the health ministry had no idea of how much of a specific pharmaceutical product it needed or used during a given financial year.
But here's the thing, historical data – how much of a given product was used in prior years and how patterns or trends of consumption have evolved – should be guiding decisions around quantities of goods potentially needed in subsequent years. To be clear, the health ministry should be able to forecast or project how much of any given pharmaceutical product it would consume or use in the current financial year and the next. Which means it would be possible to generate a hard quantity of specific products to procure, along with a total quantity value, with the option to procure more or less within reasonable need and demand fluctuation limits.
So, the question really is whether the rate-based approach adopted for bid number G/OIB/CPBN-01/2022 reflects a lack of adequate needs assessment and poor procurement planning by the health ministry? It could also reflect a failure to budget realistically.
These are all red flags in public procurement.
And so is partially obscuring procurement information, which is what is happening with the rate-based approach for procuring pharmaceutical products.

Slow flow of annual plans continues

Most public entities are still not submitting their annual procurement plans before the start of the financial year, judging by what is available on the e-procurement website of the Procurement Policy Unit.
By 15 May 2023, there were still just 25 annual procurement plans available for viewing on the e-procurement site.
Almost two months into the 2023/24 financial year and only about 13% of the roughly 190 public entities appear to have submitted their annual plans to the PPU.
Time is running out on public entities with regard to how they approach compliance with the law regarding the handling of the annual plans, for as from this financial year, all procuring entities will have to have finalised and submitted their plans three months before the start of the next financial year.
According to the Public Procurement Amendment Act of 2022, in section 25(4), that an "accounting officer must – (a) engage in procurement planning, plan each step of the procurement process and prepare an annual procurement plan, and must submit the plan to the Policy Unit at least three months before the commencement of each financial year".
In other words, by the end of December 2023, all public entities should have finalised and submitted annual procurement plans to the PPU for the 2024/25 financial year.
As we have previously stated, strict enforcement of this deadline by the PPU will of course determine to what extent compliance is achieved.
With regard to compliance liability, the amended procurement law states: "(4A) An accounting officer who fails to submit the annual procurement plan on time may be held liable for non-compliance in terms of section 7(4)(a)."

Public procurement in the news

NIPAM CEO suspension linked to procurement

In late March 2023, the Namibia Institute of Public Administration and Management (NIPAM) executive director, Maria Nangolo, was suspended by the entity's Governance Council.

Photo: LinkedIn

Maria Nangolo

Among the reasons mentioned for Nangolo's suspension was her failure to procure the services of an auditing firm to conduct a forensic audit of the institution.

The suspension played out in full public glare between Nangolo and the Governance Council chairperson, George Simataa.

In her defence for not concluding the procurement of an auditor, in a letter to Simataa, Nangolo is reported to have stated that in 2022 bids were twice advertised to procure auditing services, but on the first occasion all of the bids received were too expensive and on the second occasion the most responsive bid in terms of price was suspiciously close to the determined contract price, suggesting "price fixing", according to her.

Apparently, the audit services procurement matter has been referred to the PPU for investigation.

The governance issues at NIPAM have attracted the attention of the National Assembly, with an opposition parliamentarian tabling a motion in the April 2023 to discuss "the current state-of-affairs at Namibian Institute of Public Administration (NIPAM), as far as it pertains to its administration and governance architecture, financial operations, procurement processes and internal politics. Further, that this Motion be referred to a relevant Parliamentary Standing Committee for proper consultations and report back to this Assembly". This is a developing story.

Conflict of interest dogs Mathews

Even before he was set to take the reins on an acting basis at NAMCOR, following the suspension of CEO Immanuel Mulunga in early April 2023, former banker Lionel Mathews was embroiled in a conflict of interest controversy.

Mathews eventually pulled out of negotiations to act as CEO at NAMCOR over a failure to agree to a pay package with the board, but only after it had come to light that he was an adviser to a joint venture that had been awarded a billion dollar tender to construct NAMCOR fuel storage facilities at locations around the country.

If he had taken up the action CEO position at NAMCOR, it would have meant that Mathews would have overseen the implementation of a contract with entities that had been paying him up until he took up the NAMCOR job, and possibly again after the acting period had ended.

The matter of Mathews' conflict made a turn in parliament, but was ultimately moot as he withdrew his interest in becoming acting NAMCOR CEO.

CPBN attracts parliamentary scrutiny

In April 2023 a motion was tabled in the National Assembly by the Popular Democratic Movement (PDM) to debate the carrying out of a "comprehensive inquiry into all aspects of the procedures dictating the tender awarding processes of the Central Procurement Board of Namibia".

By the end of the month the motion had been adopted and it was reported that the National Assembly's public accounts committee would conduct the inquiry, which would include a public hearing, according to the PDM's Nico Smit.

The motion to investigate the CPBN came in the wake of the January 2023 revelations of the handling and awarding of clinical supplies tenders on behalf of the health ministry by the board in December 2022 that raised a lot of questions about procurement governance and decision-making at the board.

Further strengthening calls for an inquiry, around the time the motion was being debated in the National Assembly, the Review Panel found that the cancellation of the controversial clinical supplies tender by the CPBN in February 2023 was "unlawful", following an appeal by one of the successful bidders. This is a developing story.

Pharmaceutical tender also in spotlight

In April 2023 the CPBN awarded segments of a pharmaceuticals supply tender to various suppliers on behalf of the health ministry.

This tender has also since attracted attention for what is missing from the summary bid evaluation report that was made public in early May 2023.

The summary of the report did not contain any contract values for the various suppliers that had been awarded the supply contracts for various medications and pharmaceuticals.

The CPBN tried to explain away this issue by stating that it was apparently impossible to determine the value of medicines and pharmaceuticals that the health ministry would need over the course of the financial year and procurement would occur on a needs based basis from the successful bidders based on the prices they quoted.

The criticism of this approach has been that it undermines transparency to not have a value attached to the supplier contracts. This is a developing story.

(For a discussion of this matter see page 5)

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