

# PROCUREMENT TRACKER NAMIBIA



Issue No. 24

May 2024



## Data deficits undermine governance & oversight

### Producing accurate data underpins the principles upon which the public procurement framework is founded

The Public Procurement Act of 2015 states that the public procurement system is founded on the principles of "integrity, accountability, transparency, competitive supply, effectiveness, efficiency, fair-dealing, value for money, responsiveness, informed decision-making, consistency, legality".

As with any complex system, to ensure that the system lives up to and exemplifies these principles it would be necessary to study the data being produced by the system.

However, almost 10 years after the enactment of the Public Procurement Act of 2015 and seven years since the start of its implementa-

tion, accurate and timely data on the workings of the system remains significantly lacking.

This is, in fact, a finding of the recent Methodology for Assessing Procurement Systems (MAPS) study that was conducted throughout the public procurement system from mid-2023 to early 2024.

### MAPS assessment

The MAPS study was led by World Bank (WB) consultants, with support from the African Development Bank (AfDB), under the guidance of a MAPS Assessment Steering Committee coordinated by the Procurement Policy Unit (PPU) in the Ministry of Finance and Public Enterprises.

FROM PAGE 1

The findings, contained in a draft report, of the MAPS assessment were validated during a series of meetings in April 2024. At the time of writing, in late May 2024, a final report had yet to be issued.

That said, the findings in the draft report are illuminating.

Without going into much detail, considering that the final report still had to be issued at the time of writing, the assessment found that there were major information and data gaps within the system that significantly undermined compliance monitoring and management.

In fact the study found there was a lack of a national monitoring and evaluation (M&E) framework for public procurement “which would help to guide the information and reporting needs” of the government. Under one of the study indicators, the assessment team looked at whether “public procurement is embedded in an effective information system” and found significant gaps.

In this regard, it was found that the government’s e-procurement portal was “rudimentary, with limited options for data analysis and insights generation, hampering informed decision-making”.

*Procurement Tracker Namibia* will report further on the findings of the MAPS study once the final report is made available.

Suffice to say, though, based on the available information, the public procurement system has major challenges, and a big part of the problem is the lack of accurate data that is not being reported out of the system.

### Data gatherer

A big part of the reason why the system is not kicking out the data it should is that the primary data gatherer, the Procurement Policy Unit (PPU), is not appropriately and optimally capacitated and resourced to fulfil its system monitoring and compliance enforcement mandate.

In terms of its data gathering mandate, the PPU is supposed to do the following:

- “monitor, report on the performance of the public procurement systems in Namibia”;
- “develop and implement procurement performance assessment system”;
- “facilitate the use of information and communications technology in procurement”;
- “set a list of services and supplies in common use by more than one public entity for centralised procurement”;
- “design and maintain a roll of suppliers of goods, works and services, including their profiles”.

All of these functions speak to data gathering and analysis for system monitoring and management. Yet, years into the framework and system implementation, most of this is still largely not happening or not happening the way it should.

### Universal problem

The absence of accessible, accurate public procurement data is a global concern, and a major corruption risk factor.

The absence of accurate, accessible data is recognised to undermine or hinder transparency, accountability and integrity in public procurement systems.

The issue has become such a major global concern that at the 15th Conference of States Parties (CoSP) to the UN Convention Against Corruption (UNCAC), held in Atlanta, USA, in mid-December 2023, the first high-level resolution was passed that specifically dealt with the issue of transparency within and around public procurement.

The resolution, titled [‘Promoting transparency and integrity in public procurement in support of the 2030 Agenda for Sustainable Development’](#), calls on states to improve their data gathering.

Specifically, it “encourages States parties, in accordance with the fundamental principles of their domestic law, to design and make use, where appropriate and within their means, of integrated electronic procurement systems that collect, manage, simplify, standardize and publish open data on the whole procurement cycle, in a timely manner and in a user-friendly format”.

And, it further “encourages States parties, within their means and in

accordance with their domestic laws, to make use of integrated electronic procurement systems supporting analysis of procurement data and automated risk indicators, such as early warning methodologies or other means of detecting and reporting potential suspicious activities”. Considering this, the MAPS assessment is supposed to provide a roadmap for improving the public procurement system, and it is hoped that the implementation of recommendations related to constructing an “effective information system” are prioritised going forward.

### Public procurement data is necessary for:

- Governance oversight and insight
- Public service delivery monitoring
- Budget and procurement planning
- Contract and financial management
- Compliance management and enforcement
- Corruption risk management and monitoring
- Supplier and service provider monitoring and management
- Procurement system performance monitoring and management

### Should Namibia use the Open Data Contracting Standard?

The Open Contracting Data Standard (OCDS) offers several advantages for transparency, accountability, and efficiency in public contracting processes:

1. Transparency and Accountability:
  - OCDS promotes transparency by making procurement data publicly accessible. Citizens, journalists, and civil society organisations can scrutinise contracts, detect irregularities, and hold governments accountable.
  - It ensures that information related to procurement planning, tendering, awarding, and implementation is available in a structured format.
2. Data-Driven Decision Making:
  - OCDS allows for data analysis and visualisation. Researchers, analysts, and policymakers can gain insights into procurement trends, identify inefficiencies, and make informed decisions.
  - By standardising data, it becomes easier to compare contracts across different entities and countries.
3. Improved Competition and Fairness:
  - When procurement data is open, potential suppliers have better visibility into opportunities. This encourages competition and reduces the risk of favouritism or corruption.
  - Standardised data ensures fair treatment of all bidders and helps prevent bid rigging.
4. Efficiency and Cost Savings:
  - Accessible data streamlines processes. Governments can identify bottlenecks, optimise procurement cycles, and reduce administrative costs.
  - Better data quality reduces errors and minimises rework.
5. Innovation and Collaboration:
  - Developers can build tools and applications using OCDS data. These innovations can enhance procurement processes and create value for stakeholders.
  - Collaboration between governments, businesses, and civil society improves overall procurement practices.
6. Global Harmonisation:
  - OCDS provides a common language for procurement data. This facilitates cross-border analysis and harmonisation of practices.
  - International organisations and donors can align their efforts using a shared standard.

For more [about Open Contracting advocacy and how it can drive reform and measurable improvements in public contracting](#), you can visit the [Open Contracting Partnership website](#).

# What is Cabinet’s role in the appointment of a CPBN CEO?

Namibia’s civil service has a credibility and trust problem. Part of this reputational problem is the perception that the civil service, especially the senior ranks, is politicised and that people are not appointed based on merit and performance, but because of political connections and associations.

Recently the appointment process of a chief executive officer (CEO) for the Central Procurement Board of Namibia (CPBN) has been mired in allegations of impropriety.

First, it was implied that the only reasons why the leading candidate for the position was leading was because of unfair discrimination against the other candidates, and because he is a relative of the Namibian president.

Second, it was widely reported that the Namibian Cabinet had apparently rejected the appointment of the leading candidate as the CPBN CEO, because of allegations of unfair discrimination against other candidates.

## Governance concern

Leaving aside the allegations of unfair discrimination, the episode raises an interesting governance question: Reporting had it that Cabinet had initially rejected the leading candidate.

Now, while it would and should be expected that the finance minister would notify Cabinet about the outcome of the recruitment process for a CEO of the CPBN, given the significance and profile of the entity, there is strictly speaking nothing in law that gives Cabinet the mandate or power to approve or reject the appointment of the CPBN CEO. The Public Procurement Act of 2015, as amended in 2022, is clear that a CEO is appointed following a recruitment process, and agreement on the successful candidate between the board of the CPBN and the minister. Not the CPBN board, the minister AND the Cabinet. The fact that an entity, albeit the highest decision-making entity in

the state, has an overriding say in the appointment of state functionaries without that power being laid down in the law governing a specific sectoral entity is surely a rule of law concern.

This is arguably what contributes to fueling perceptions of politicisation and negative perceptions of the competence and credibility of senior public sector appointees – that due process can simply be set aside by an entity with no legally ascribed role in a matter.

What this matter exemplifies is how for the longest time political motivations and interference, including and especially in appointments to senior government offices, have contributed to weakening public sector governance systems and processes, and consequently undermined public trust.

The way this situation has now played out publicly has probably already influenced how the CPBN CEO appointee will be viewed, and thereby the CPBN itself going forward. And it is probably not a positive impression either way.

If the Namibian government wants the public to have trust in its systems, processes and institutions, then it needs to operate, and to be seen to do so, within the rules and procedures as set down in law.

At the time of writing, the CPBN CEO appointment process had not been finalised, but irrespective of the outcome, the damage had clearly already been done.

The Cabinet involvement issue aside, the CPBN has maintained that the recruitment process for a CEO was fair, competitive and followed the law. *Procurement Tracker Namibia* has not seen any evidence that suggests otherwise. The CPBN’s response to allegations of impropriety and irregularity regarding this issue can be found in [a media release from 12 April 2024](#), which can be accessed on the CPBN website under the Media Centre tab.

## ATI and public procurement

**The Public Procurement Act framework already makes provision for quite a lot of access to information, even if there is considerable shortfall and non-compliance in implementation and practice to date.**

Now, with the Access to Information Act of 2022 framework set to be implemented, transparency, as provisioned for in the Public Procurement Act, should get a significant boost over the long term.

The Access to Information (ATI) Act, in article 32, states that the law “is intended to complement and not replace the procedures for access to information existing under any other law”.

Also, it “is not intended to limit access to any type of information under the control of a public or private entity that is normally available to the general public”.

The law also does not prevent any other legislation that prohibits or limits the disclosure of information held by a public or private entity. However, if a conflict arises between the ATI Act and another law, the one that is more favourable to granting access is the one that should prevail.

It should also be noted that public entities are under an obligation to proactively (without being asked) disclose quite a lot of information.

According to article 33 of the ATI Act, public entities should proactively disclose the following information within 30 days of having created it:

- Manuals, policies, procedures, rules used by staff for handling complaints, making decisions/recommendations, providing advice to third parties;

- Prescribed forms or arrangements that exist for public engagement or consultation;
- Whether or not meetings (at each level) are open to the public and if not, make available submissions and decisions taken;
- Detailed information on subsidy programmes, i.e. amounts, beneficiaries, etc.;
- Licences, contracts, permits, etc. granted;
- Study, survey, assessment reports/results;
- Governing laws/policies;
- Staff directories including outsourced staff, recruitment procedures and vacancies and appointment process;
- Detailed budget, revenue, expenditure and indebtedness;
- Annual reports.

Added to this, public entities have to make sure that they have websites, that their websites are secure and that all the prescribed information is accessible and downloadable on their websites.

Some of the documents or records that should be accessible include the annual procurement plans and the summaries of the bid evaluation reports, as well as contracts entered into with suppliers and service providers.

The ATI Act and the Public Procurement Act appear to speak very well to each other.


However, given how public entities have struggled to comply with the transparency inducing provisions of the Public Procurement Act, it probably will be the case that compliance with the ATI Act will also be a challenge for most public entities for quite some time once the law is fully operationalised.

# Finally, a public procurement resolution

At the tenth session of the Conference of States Parties (CoSP) to the United Nations Convention Against Corruption (UNCAC), that happened in Atlanta, USA, in mid-December 2023, a resolution was passed which elevates recognition of the significance of public procurement as a primary location of corruption.

The resolution, titled 'Promoting transparency and integrity in public procurement in support of the 2030 Agenda for Sustainable Development', is groundbreaking in that it is the first resolution that specifically casts the spotlight on the corruption risks surrounding public procurement. The resolution was fittingly adopted as the UNCAC framework turned 20.

Following is the complete text of this ground-breaking resolution:

United Nations	CAC/COSP/2023/L.13/Rev.1
	Distr.: Limited 15 December 2023
<b>Conference of the States Parties to the United Nations Convention against Corruption</b>	English only
<hr/>	
<b>Tenth session</b> Atlanta, United States of America, 11–15 December 2023 Agenda item 4 <b>Prevention</b>	

**Australia, Brazil, European Union, France, Honduras, Lebanon, Morocco, Norway, Peru, Switzerland and United Kingdom of Great Britain and Northern Ireland: revised draft resolution**

## **Promoting transparency and integrity in public procurement in support of the 2030 Agenda for Sustainable Development**

*The Conference of the States Parties to the United Nations Convention against Corruption,*

*Convinced* that transparency and integrity in public procurement can serve as an enabler for implementing the United Nations Convention against Corruption<sup>1</sup> and achieving the Sustainable Development Goals, in particular in sectors that have a heightened risk of corruption in procurement,

*Recalling* the Convention against Corruption, in particular its articles 7 (Public sector), 8 (Codes of conduct for public officials), 9 (Public procurement and management of public finances), 10 (Public reporting) and 13 (Participation of society),

*Recalling also* that Member States, in the political declaration entitled “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation”, adopted by the General Assembly at its special session against corruption held in 2021, recognized that public procurement was at serious risk of corruption and emphasized the importance of strengthening open data, transparency and accountability, in accordance with domestic laws, during the whole public procurement cycle,<sup>2</sup>

*Noting* resolutions adopted and decisions made by States parties at the ninth Conference session, held in Sharm el-Sheikh, Egypt, from 13 to 21 December 2021, particularly Resolution 9/1 paragraph 5, which urges States parties to establish and, where necessary and appropriate, further strengthen, through the whole public procurement cycle, transparent, competitive and objective public procurements systems and Resolution 9/3, which recognises that the implementation of the Convention, other anti-corruption commitments undertaken by the States parties, and the Sustainable Development Goals, among other factors, may benefit from the effective use of new developments in technology,

<sup>1</sup> United Nations, *Treaty Series*, vol. 2349, No. 42146.  
<sup>2</sup> General Assembly resolution S-32/1, annex.



CAC/COSP/2023/L.13/Rev.1

*Noting* the significant gaps, identified through the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, in establishing appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective in preventing corruption,

*Concerned* by the impact that corruption in public procurement has on fair competition as well as the potentially exclusionary and other negative effects it has on access to economic opportunities for small businesses, and for businesses owned by women as well as for people in vulnerable situations,

*Highlighting* the use of technology as a means of preventing and countering corruption, and encouraging States parties to adopt digital policies, where appropriate and consistent with their domestic legal system to promote transparency and public reporting in areas such as public procurement, the management of public finances and asset and interest disclosure with a view to facilitating the reporting and detecting of acts of corruption in public procurement and in order to improve the efficiency and effectiveness of public administration and international cooperation, as well as enhance accountability, transparency, integrity and public participation,

*Noting also* the role that international financial institutions and multilateral development banks can play in assisting States parties, upon request, in the technical implementation of procurement reforms and improvements, data and digital transformation and legal frameworks,

*Recognizing* the value of the technical assistance provided by States parties, the United Nations Office on Drugs and Crime and other international and regional organizations in supporting the development of transparent, competitive and objective public procurement systems, including in emergencies, in particular for the benefit of developing countries, upon request, as part of their respective plans and programmes to prevent and combat corruption, including through the provision of material assistance and training,

*Taking note* of widely used references and diagnostic tools such as the United Nations Commission on International Trade Law Model Law on Public Procurement<sup>3</sup> and the Methodology for Assessing Procurement Systems, aimed at assisting States parties in the implementation of relevant articles of the Convention against Corruption, and encouraging States parties to make use, where appropriate and in accordance with their domestic laws, of such tools in contributing to the domestic implementation of effective procurement systems,

*Strongly urging* States parties to refrain from promulgating and applying any unilateral economic, financial, or trade measures not in accordance with international law and the Charter of the United Nations that impede the full achievement of economic and social development particularly in developing countries,

1. *Urges* States parties to develop easily and publicly accessible, clear, transparent and consistent public procurement laws, regulations and procedures, within their means and in accordance with the fundamental principles of their legal systems, to consolidate them domestically, as appropriate, and to make them available online in a timely;

2. *Calls upon* States parties, in accordance with article 5 of the United Nations Convention against Corruption and the fundamental principles of their legal systems, to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability;

3. *Encourages* States parties to take measures, as necessary and in accordance with the fundamental principles of their legal system, to promote the

<sup>3</sup> Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17), para. 192 and annex I.

integrity, transparency, accountability and effectiveness of their systems of procurement, during the whole public procurement cycle, and among personnel responsible for procurement, and further calls upon States parties to endeavour to establish measures adequately addressing and preventing conflicts of interests such as disclosing of private interests that could improperly influence the performance of official duties;

4. *Encourages* States parties to develop, within their means, the skills and capabilities of officials participating in public procurement processes, through adequate training and tools to support the regular execution of their functions, including through effective international cooperation, capacity-building and technical assistance;

5. *Urges* States parties to implement or improve, as may be necessary, periodic training programmes for public officials, in particular those in positions vulnerable to corruption, inter alia, in the field of public procurement, to enhance their awareness of the risks of corruption inherent in the performance of their functions, with specific reference to resolving real-life situations, and to enable them to meet the requirements for the correct, honourable and proper performance of public functions;

6. *Calls upon* States parties to take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective in, inter alia, preventing corruption in accordance with article 9, paragraph 1, of the Convention against Corruption;

7. *Emphasizes* the need for States parties to ensure open, equitable and fair competitive tendering processes by publishing clear selection criteria and methods for awards, and recommends that strict and limited criteria be established to delineate exceptions to competitive tendering processes and that such exceptions be publicly disclosed;

8. *Encourages* States parties, in accordance with the fundamental principles of their domestic law, to design and make use, where appropriate and within their means, of integrated electronic procurement systems that collect, manage, simplify, standardize and publish open data on the whole procurement cycle, in a timely manner and in a user-friendly format;

9. *Further encourages* States parties, within their means and in accordance with their domestic laws, to make use of integrated electronic procurement systems supporting analysis of procurement data and automated risk indicators, such as early warning methodologies or other means of detecting and reporting potential suspicious activities;

10. *Encourages* States parties to take measures, in accordance with their domestic laws, to ensure that complaints pertaining to specific procurement processes are addressed in an impartial, expeditious, effective and transparent way, and further invites States parties to endeavour to provide adequate resources, where and when appropriate, within their means, to the competent authorities handling these complaints;

11. *Urges* States parties to incorporate and implement corruption risk management processes, in particular in institutions responsible for or concerned with crisis response and recovery, to help identify and mitigate potential corruption risks when designing, administering and managing the whole cycle of public procurement and relief measures, in accordance with the fundamental principles of their legal systems;

12. *Encourages* States parties, where appropriate and consistent with their domestic legal frameworks and the need to protect the rights or reputations of others, national security or *ordre public*, to seek to utilize information and communications technologies to strengthen the implementation of the Convention against Corruption,

to strengthen public awareness and to promote transparency and public reporting in areas such as public procurement, the management of public finances and asset and interest disclosure, with a view to facilitating the reporting and detecting of acts of corruption and to supporting the criminal prosecution of corruption-related offences;

13. *Encourages* State parties to ensure availability of laws, regulations and policies and to raise awareness within the private sector on these frameworks, to foster and assist legal entities to establish and implement anti-corruption ethics and compliance programmes or measures in order to prevent, detect and remediate issues that might arise in public procurement and the interaction with public administration, including in supply chains;

14. *Calls upon* States parties to encourage private sector efforts to contribute to non-tolerance of bribery and corruption related to public procurement including through promoting good practices for ethical business conduct and to raise awareness of the risk of bribery, among businesses that engage and particularly who contract with governments;

15. *Also encourages* States parties to take the measures necessary to ensure that providers of goods or services that have committed or are liable for an act of corruption, are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including where appropriate, debarment, in accordance with their domestic laws, and to facilitate, where appropriate, coordination and cooperation with other States parties, in accordance with the Convention;

16. *Requests* the United Nations Office on Drugs and Crime (UNODC) to make available, subject to the availability of extrabudgetary resources, in the Tools and Resources for Anti-Corruption Knowledge portal, relevant information provided on a voluntary basis by States parties, international financial institutions and multilateral development banks that maintain a debarment registry, together with information on how to make requests for such information;

17. *Further encourages* States parties to foster transparency through effective and inclusive public participation across the whole public procurement cycle to better understand public procurement and allow the public to monitor the use of public funds;

18. *Further encourages* States parties to consider offering training to suppliers and contractors participating in public procurement processes, as appropriate, on the rules and regulations with which they will need to comply in their roles;

19. *Calls upon* States parties to establish appropriate and effective measures that provide for audits across the whole procurement cycle and to ensure that the competent oversight authorities, according to their domestic law, including Supreme audit institutions, have the necessary resources for assessing, as part of their audits of public bodies, the governance, the processes implemented for public procurement and the quality of internal control, providing recommendations, acting upon public feedback and civic monitoring, and in the event of alleged corruption, investigate or report to the competent authorities for investigation;

20. *Encourages* States parties, in accordance with domestic law, to strengthen coordination and cooperation between procurement authorities and bodies involved in the prevention of and fight against corruption, including national competent oversight authorities, as proposed by Resolution 9/3 and taking note of the practical guide issued by the UNODC titled “*Enhancing collaboration between Supreme Audit Institutions and Anti-Corruption Bodies*” in this regard;

21. *Encourages* States parties to adopt procurement policies which, in accordance with their legal systems, promote fair competition in particular regarding the award of public contracts to micro, small and medium enterprises and businesses owned by women and persons in vulnerable situations,

22. *Strongly urges* States parties to refrain from promulgating and applying any unilateral economic, financial or trade measures not in accordance with

integrity, transparency, accountability and effectiveness of their systems of procurement, during the whole public procurement cycle, and among personnel responsible for procurement, and further calls upon States parties to endeavour to establish measures adequately addressing and preventing conflicts of interests such as disclosing of private interests that could improperly influence the performance of official duties;

4. *Encourages* States parties to develop, within their means, the skills and capabilities of officials participating in public procurement processes, through adequate training and tools to support the regular execution of their functions, including through effective international cooperation, capacity-building and technical assistance;

5. *Urges* States parties to implement or improve, as may be necessary, periodic training programmes for public officials, in particular those in positions vulnerable to corruption, inter alia, in the field of public procurement, to enhance their awareness of the risks of corruption inherent in the performance of their functions, with specific reference to resolving real-life situations, and to enable them to meet the requirements for the correct, honourable and proper performance of public functions;

# Public procurement in numbers

The following data has been gathered from information available through the e-Procurement Client System

## Annual Procurement Plans

There are about

**173**

public entities with a procurement function. All of these entities have to submit an annual procurement plan to the Procurement Policy Unit (PPU), which then publishes the plan on the e-Procurement Portal.

By 23 May 2024, only

**32**

annual procurement plans were viewable via the e-Procurement Portal.

That means only about

**19%**

of public entities had submitted their plans to the PPU almost two months into the 2024/25 financial year.

**Only 5**

of the 33 government offices, ministries and agencies (OMAs) had submitted plans to the PPU.

This means only

**15%**

of the plans of OMAs were accessible at the time via the e-Procurement Portal.

The most downloaded plan at the time was that of the Ministry of Agriculture, Water and Land Reform, with

**490**

downloads, followed by the Ministry of Health and Social Services, with 406 downloads.

Timely submission of annual procurement plans remains

**a major compliance issue**

in public procurement.