

Enforcing Ethical Practices in the Public Procurement Process in Namibia: Impact on Socio Economic Objectives

Ms Fransiska Hamutenya

(Ministry of Gender Equality and Child Welfare, Rundu, Namibia)

Prof Samuel Mensah

(Polytechnic of Namibia, Windhoek, Namibia)

Abstract

Discussions around the public procurement system in the local media have been largely negative. Many articles have revealed mismanagement in the system. The emphasis of these articles has been on the need to uphold transparency and accountability in the way public procurement is conducted in Namibia. The Namibian experience is that the tendering process seems transparent on the surface, especially in connection with the sending out of tender invitations. However, the process becomes less transparent during the awarding process, which has in some instances necessitated recourse to the courts. As a result of these court cases, it could be said that the Namibian community has reached a point where the weaknesses in the current public procurement system can no longer be ignored. This study sought to address some of the flaws in the public procurement system, by interviewing people who have some knowledge of the system.

Findings of the study confirm that there are weaknesses in the current system which needs to be addressed. The results further show that the control mechanisms that have been put in place are seriously ineffective. After reviewing the control mechanisms in place, suggestions are made to strengthen them. In terms of socio-economic development, the findings indicate that the public procurement system could contribute to job creation and poverty reduction. The study also reveals that there is no comprehensive code of ethical conduct for Board Members and staff in the public procurement establishment.

The researcher suggests that further research be conducted on areas that were not touched on in this study, such as the practice of exemptions, to evaluate the impact of exemptions on the image of the Tender Board, on the Secretariat, and on the tender process – in the context and spirit of anti-corruption.

Key words: Public procurement, Tender Boards, ethical standards, corruption, nepotism, best practice

1. Introduction

The public procurement system is said to be generally weak in developing countries. Roos, (2012) attributes the poor performance and diminished trust in the system to lack of adequate procurement legislation as well as insufficient transparency and accessibility of the public

procurement system. This throws some light on the negative image of the public procurement system in the Namibia media – with many articles on mismanagement in the system (Business anti-corruption portal, Windhoek Observer, 2013, Namibian Sun, 2012). These articles have emphasised the need for transparency and accountability in the conduct of public procurement in the country. The Namibian experience has been that the tendering process begins in a transparent manner when tender invitations are sent out, but the process becomes less so during the awarding phase, which has, in some instances, resulted in court cases. The picture painted in the media is that, for now, the Public Procurement process is fraught with conflict of interest, delays, favouritism, abuse of office and outright corruption. These are among the situations that the loopholes in the legislation have perpetuated. Further, Ellmers (2011) and Maamberua (2005) have argue that the current procurement Act, i.e. the Tender Board Act of 1996, is not aligned with the development policy stance of the Government, in which procurement is seen as a central tool to achieve socio-economic objectives – the public procurement process is expected to enhance the reduction of poverty and inequalities and improve the livelihood of formerly disadvantaged groups. This suggests the need for a new piece of legislation that will both strengthen and improve the system and be in tune with the current thrust of policy (Maamberua, 2005; Links and Daniels, 2011). In fact, a new Tender Board Bill has been drafted to replace the Tender Board Act of 1996, but both parliamentarians and members of the public do not think the draft bill goes far enough.

Another gap that Links and Daniels (2011) identified in the legislation is the lack of a proper monitoring system for finding the extent to which approved tenders are in line with the socio-economic objectives of the country. Also, auditing is done only on an annual basis, and there is no systematic periodic assessment during the year. They therefore, suggest introducing a more effective audit system as a way of monitoring and controlling procurement. In addition, effective supervision and internalisation of the standards of ethical behaviours could enhance overall effectiveness in the procurement system. Tjirera (2011) has pointed out that the Namibian community has reached a point where the weaknesses in the current public procurement system can no longer be ignored; remedial action needs to be taken.

The composition of the Tender Board is another source of problem: the 20 members each representatives a government office, ministry and agency, or a government Institution – each heading the agencies they represent – and two Namibian citizens nominated by the Minister of Finance. This composition is a good recipe for conflict of interest – since those should be supervising and monitoring the operations of the Tender Board are on the Board. Representatives from Ministries are mainly Permanent Secretaries who are both political employees and civil servants. This link in itself also constitutes a degree of conflict of interest. The new Tender Board bill should address this problem.

Douh (2009) reveals lapses in the public procurement process in Chad and suggests how they may be eliminated. Since, as indicated above, similar lapses also exist in the Namibian system, the suggestions for improvement would apply here as well. The Chad system had no structured mechanism for verification of documents' authenticity, nor was there an established procedure for measuring performance. Recommendations included making concerted efforts to establish the quality of tender documents and the qualifications of contractors. There was also need for improvements in the competence and experience of procurement officers. Further, a computer-

based system for performance measurement of tender evaluation processes was recommended. In addition to the problems mentioned earlier, the Namibian public procurement system also lacks proper monitoring procedure for approved tenders; and the system is not yet computerized. The public sector authorities must consider these suggestions in drafting the new Tender Board Bill.

In 2012 an attempt was made to strengthen the procurement system through training workshops on procurement for several public institutions to enhance awareness of procurement regulations and practices. The malpractices continued unabated, indicating that the cause of the problem was deeper than ignorance of procurement regulations and practices. In view of its importance and the public's interest in it, this paper attempts to diagnose the problem in the public procurement system and provide guidelines for dealing with it. The ultimate goal of the focus on the public procurement system is to improve the general service delivery to the public, create efficiency and effectiveness by making the system more transparent and by introducing performance evaluation based on clearly articulated organizational objectives.

The rest of the paper is in three sections. Section 2 presents the research design and methodology; Section 3 provides and discusses the findings; and Section 4 summarises the main findings and concludes with recommendations.

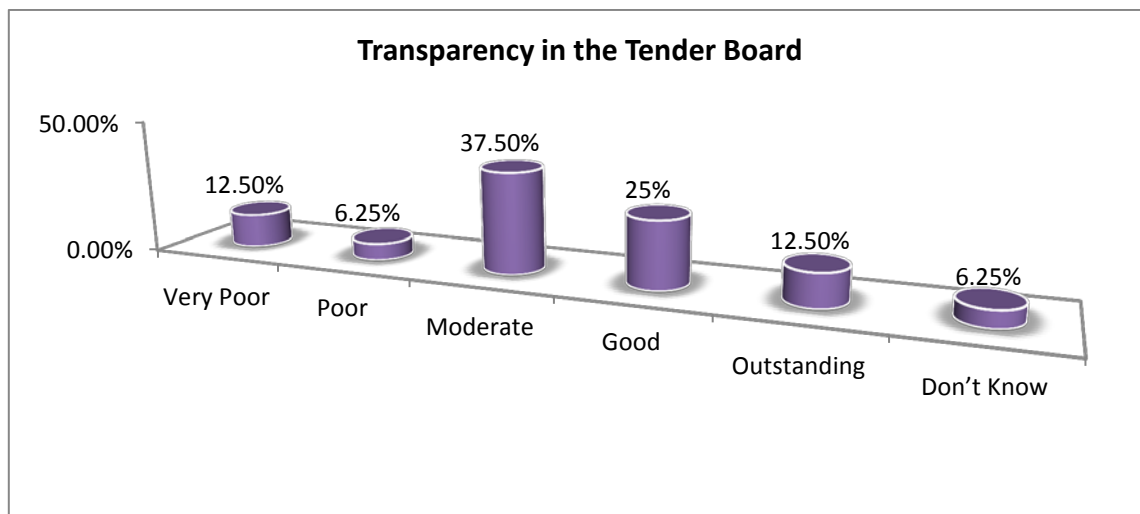
Research Design and Methodology

The mixed design of qualitative and quantitative approaches is adopted for this study – with more emphasis on the former. As Welman, Kruger and Mitchell (2005, p. 188) have argued, the qualitative design allows for in-depth “description and interpretation” of human actions in a setting that ignores ethical practices and the impact of this on the public procurement process in Namibia. The descriptive and interpretive approaches shed light on the real causes of the problems and the challenges that exist in the Namibian public procurement system. The quantitative design, in spite of the small base, adds some numerical dimensions to the discussion. Purposive sampling techniques were used in selecting sixteen respondents drawn from the Kavango Regional Council, Rundu Town Council, National tender Board, tenderers and community members for interview. This non-probability sampling technique is considered “most effective when one needs to study a certain cultural domain with knowledgeable experts within” (Tongco, 2007). The respondents were therefore persons who had some knowledge and information on the public procurement system in Namibia – Government officials responsible for procurement, tenderers and suppliers from the general public. Face to face interviews and self-administered questionnaires were used. The data were analysed using narrative methods – particularly thematic analysis. Content analysis was applied to responses to open-ended questions. The views of each respondent were given equal weight during analysis. The proportions of respondents who expressed a particular view on the close-ended questions were presented in the quantitative style.

Results and Discussions

The results and discussion in this section are organised around four themes: Efficiency and Transparency, Monitoring and Supervision, Enhancing the Public Procurement Code of Ethics, and Impact of Public Procurement on the Socio-economic Development of Namibia

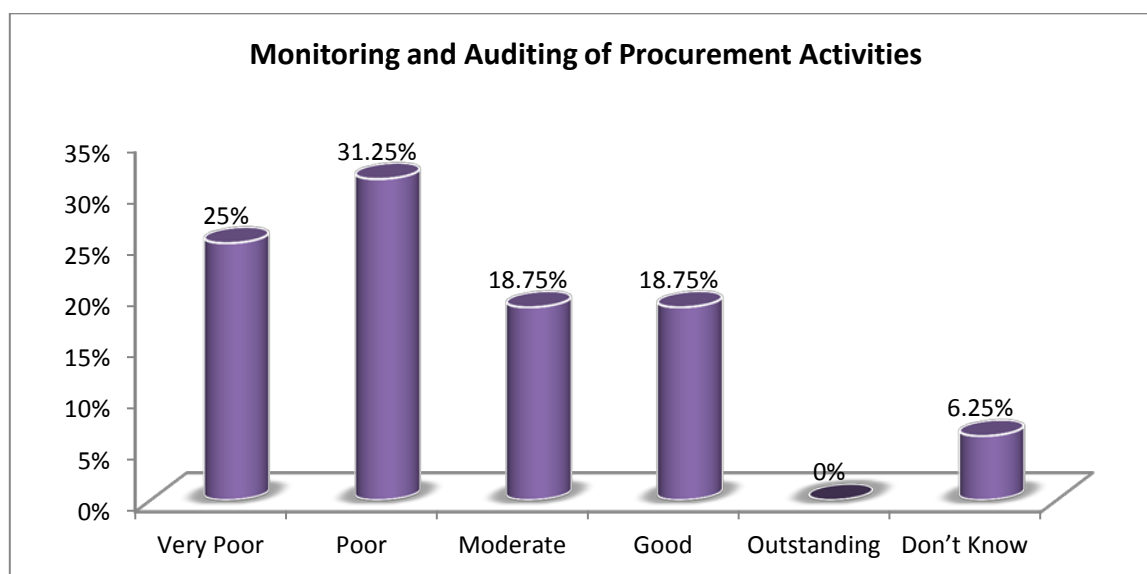
Figure 1: Perceived Transparency within the Tender Board



Transparency in the context of public procurement requires that information on all operations and transactions be readily available (Kotoka 2012). According to Ayoti (2012) unethical practices in public procurement are facilitated by a lack of transparency in the system. Ayoti (2012) further argues that the participation of public officials in private enterprises involved in supplies to the public sector has been a key source of corruption in public procurement, since the rules established to guard against conflict of interest are breached – those charged with enforcing the law may be the ones breaking it. Easy access to information will quickly expose such practices. Figure 1 presents perceptions of respondents on transparency in the public procurement system.

The results in Figure 1 indicate that, as a group, respondents who consider the system to be moderately transparent constitute the majority (37.5%). If “Good” is taken as the minimum acceptable standard for transparency, then less than 40% of the respondents – most of whom may not be unbiased in view of their public sector and political connections – give this endorsement; and a not insignificant 20% rate transparency to be poor or very poor. These views of insiders give some credence to rumours of conflict of interest, corruption, favouritism and abuse of office in the public procurement process. As Ayoti (2012) notes, improving transparency may be the main way of decreasing corruption, inefficiency and outright theft of state resources through the public procurement process. Odemba (2012) also suggests, among the methods for combating such corruption, civic education of ethics, reform of the legal and political system, and engagement of civic organizations in the war against corrupt practices, some of which may take considerable amount of time to carry through.

Figure 2: Monitoring and Supervision



As part of its internal control mechanisms, the procurement activities of tender organisations need to be monitored and audited regularly. Figure 2 presents the views of respondents on institutional control of the tender authorities that will help to enhance their accountability. In this instance the “Poor” verdict is pronounced by a majority of more than 56% of the respondents. The laxity in monitoring and auditing practices implied by this verdict shows that safeguarding of assets, detection of errors, and prevention of fraud in the procurement process had been compromised. Stemele (2009) reports similar results from a study conducted at the Lejweleputswa District Municipality in South Africa. He revealed that there was non-compliance with the law, absence of adequate monitoring and policy reviews, absence of an efficient internal control system, failure to uphold policies and keep to procedures, non-compliance with regulations, incomplete tender registers, and poorly defined roles of key players. These findings would suggest that laxity in monitoring public procurement agencies, and especially their processes, and in auditing their activities may be a post-apartheid problem in the two countries – if not in the region. To bring the public procurement system back on course, therefore, attention must be given to institutional control measures such as supervision, auditing, and enforcement of the general standards of ethical behaviour in the procurement system.

With regard to monitoring and supervising the activities of the tender authorities, the Ministry of Finance has some oversight function, but it lacks the capacity and political will to perform it (Maamberua, 2005; Tjirera, 2011). Staff members of the Ministry do not have skills in procurement, which presents a challenge. Also, some senior officers in the Ministry sit on the tender boards, and this raises issues of conflict of interest and compromises the quality of any supervision efforts. Again, power is invested in accounting officers of various Offices, Ministries and Agencies of government (O/M/As) to make final decisions on tender awards, which blurs the role of the Ministry of Finance. Further, the Chairperson of the National Tender Board is not given much power over the

activities of the officers in charge of tenders in the O/M/As. Therefore there is a need for an independent body to be established to monitor the activities of Tender Board members.

Enhancing the Public Procurement Code of Ethics

A procurement process which is based on sound ethical practices can have tremendous impact on the economy of any country (Odemba 2011). The need to effectively regulate and monitor the ethics and ethical conduct of officials involved in the procurement system to ensure transparency and accountability is generally accepted (Kotoka, 2010). Respondents indicated that those who serve on the public procurement agencies should be fulltime employees coming from various professional backgrounds; and their appointment should be based on their expertise. This means that procurement should be seen as a profession that must be conducted by professional staff. Employment of professional procurement staff and clearly defining roles and giving job descriptions will minimise the incidence of conflict of interest, improve supervision and enhance ethical behaviour. There is also a need to develop a code of conduct manual for procurement officials who must be made to sign an undertaking to adhere to the code. This code must include declaration of assets and interest (Links and Daniels, 2011). Currently members of the Tender Boards are guided by the Tender Board Act of 1996. Links and Daniels (2011) also maintain that such a code will offer clear guidance to procurement officials on expected behaviours, as well as delineate potentially complex issues like conflict of interest. This will not only help restore the damaged perceptions of the public on the tender agencies, but also make the tender process a viable economic activity that will contribute to the socioeconomic development of the country – instead of being seen as an activity through which public assets are converted into private wealth.

Impact of Public Procurement on the Socio-economic Development of Namibia

Public procurement could be a tool for economic empowerment, poverty reduction, social and gender equality and environmental sustainability as it plays a big role in the distribution of resources and economic opportunities. The majority of the respondents believed that Public procurement can play a major role in employment creation, empowerment of previously disadvantaged Namibians and the Namibianisation of products and services by supporting made-in-Namibia products. However, respondent cited the awarding of tenders to Chinese and North Korean contractors as proof that the tender award process may have been derailed from such a course. Namibian-owned companies do not have the staff capacity or the financial resources to compete with bigger international companies in various industries. The way the tender process is currently ran results in Namibian-owned companies down sizing or completely closing down because of lack of support from government tender agencies. Enforcement of ethical practices in the procurement process will shift the emphasis to Namibia business, create demand for their products, boost their operations – and since all the benefits will be internalised, gross domestic product, gross national product and employment will rise and poverty will be reduced. This would be an important unanticipated consequence since the Fourth National Development Plan (NDP 4) is silent on the contributions of public procurement to poverty reduction, job creation and growth.

Conclusion and Recommendations

The Namibia media has been speculating that the current public procurement system in the country has many loopholes – inadequate disclosure by board members, laxity in supervision and auditing, conflict of interest, etc. – all of which make the system prone to abuse. This paper has provided evidence from informed members of the public and some practitioners in the public procurement process in Namibia that supports suspicions of malpractice in the tender award processes. The views of these insiders, most of whom may not be unbiased because of their public sector and political connections, show the existence of difficulty with access to information on all operations and transactions of the tender agencies. This admission is an indicator of lack of transparency. Also, the paper indicated that the verdict of respondents on institutional control of the tender authorities, usually an indicator of accountability, was “Poor”, and thus gave evidence of laxity in monitoring and auditing practices, which the literature associates with inability to safeguard assets, detect errors, and even prevent fraud. The paper also demonstrated that the Ministry of Finance is not a suitable candidate to referee the activities of tender awards agencies, since the Ministry is also a player in the tender award game.

The findings reported above support Links and Daniels (2011) suggested that Namibia needs to put in place a binding code of ethical conduct for procurement staff, which must include dealing with the disclosure of assets and interests of procurement officials. Efforts that enhance ethical behaviour among staff of tender agencies will make the tender process in the country contribute positively to the development of local business initiatives and thus to socioeconomic growth and development.

Findings and recommendations from this study can be used by decision makers to enforce reforms that embrace effective and efficient use of public resources and generally improve on the current state of public procurement in Namibia. The improvement in the procurement process could help reduce wastage and operation costs and thus release resources that may be used to contribute to growth, equity and overall national development. Evidence provided by this study can be used to hold the Tender Board accountable on how the entire public procurement system is managed.

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