



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF NAMIBIA PUBLIC PROCUREMENT SYSTEM

2025





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Methodology for Assessing
Procurement Systems

Republic of Namibia



Assessment of the Public Procurement System

VOLUME I - REPORT



Republic of Namibia

Ministry of Finance & Public Enterprises



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This report is divided in three parts:

- Volume I – Main Report (this volume)
- Volume II – Detailed Matrix (with coloured chart as Volume IIA)
- Volume III – Appendices with Concept Note etc. (including letter of request from the government)



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Acronyms/Defined Terms

ACC	Anti-Corruption Commission
AfDB	African Development Bank
ASC	Assessment Steering Committee
ATAG	Assessment Technical Advisory Group
BEC	Bid Evaluation Committee
COI	Conflict of Interest
CPBN	Central Procurement Board of Namibia
CSO	Civil Society Organization
e-GP	Electronic Government Procurement
EPDN	Enhancing Participatory Democracy in Namibia
GDP	Gross Domestic Product
GRN	Government of the Republic of Namibia
HPP II	Harambee Prosperity Plan II
INTOSAI	International Organization of Supreme Audit Institutions
KfW	Kreditanstalt fuer Wiederaufbau
MoFPE	Ministry of Finance and Public Enterprises
NACC	Namibia Competition Commission
NIPAM	Namibia Institute of Public Administration and Management
NDP	National Development Plan
NQA	Namibia Qualifications Authority
NTA	Namibia Training Authority
NUST	Namibia University of Science and Technology
OAG	Office of Auditor General
OPM	Office of Prime Minister
PC	Procurement Committee
PE	Procuring Entity
PEFA	Public Expenditure and Financial Accountability
PMU	Procurement Management Unit
PPA	Public Procurement Act
PPP	Public-Private Partnership
PPR	Public Procurement Regulations
PPU	Procurement Policy Unit
RP	Review Panel
SACU	South African Customs Union
SCD	Systematic Country Diagnostic
SBD	Standard Bidding Document
SPP	Sustainable Public Procurement
SWAPO	South West Africa People's Organization
TOR	Terms of Reference
TTL	Task Team Leader
UNAM	University of Namibia
UNCAC	United Nations Convention Against Corruption
UNCITRAL	United Nation Commission on International Trade Law



UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
VNR	Voluntary National Review
WB	The World Bank

CURRENCY EQUIVALENTS

Currency: Namibian Dollar (NAD)

USD 1 = NAD 18.917 (rates as of April 1, 2024) *

*Source: <https://www.exchange-rates.org/converter/usd-nad>

GOVERNMENT FISCAL YEAR (FY) April 1 – March 31



Background: In early 2023, the Ministry of Finance and Public Enterprises (MoFPE) of the Government of the Republic of Namibia (GRN) requested the World Bank to review the Namibian public procurement system using the Methodology for Assessing Procurement Systems (MAPS), an internationally recognized tool. The World Bank (WB) conducted the assessment in partnership with the African Development Bank (AfDB) and in close coordination with the Procurement Policy Unit (PPU) of the MoFPE from September 2023 to April 2024 with input from oversight agencies, ministries, private sector, and civil society (CSOs).

Objective: The assessment aimed at providing strategic direction for the development of a national procurement strategy and helping identify areas of improvement and recommend reform measures for an effective, efficient, and transparent public procurement system. that generates value for money of the annual public procurement spend, which is substantial, being 25.37% of GDP in 2021.

Key findings: The PPU faces the challenges arising from **limited resources and low capacity**, as do public procuring entities. The Head of PPU is at the level of Deputy Executive Director which is perceived as a lower level than Accounting Officers. As of end March 2024, the PPU has 14 staff (shortage of about 35% of approved position of 22, with further attrition recently by resignation of Head of PPU and MAPS Project Coordinator). Based on the proposed structure of the PPU, at least 46 positions are needed to discharge their mandate as required by the Act.

Of about 2,000 officers in procurement role in 176 public entities, about 75% work as part time **without any formal procurement qualification and/or suitable training** required. The mindset of procuring entities is typically a rules-based approach focusing on compliance of procurement procedures with the legal framework. Public procurement is not acknowledged as a strategic function to enhance service delivery and bring better value-for-money while promoting sustainable outcomes in line with policy objectives of the government.

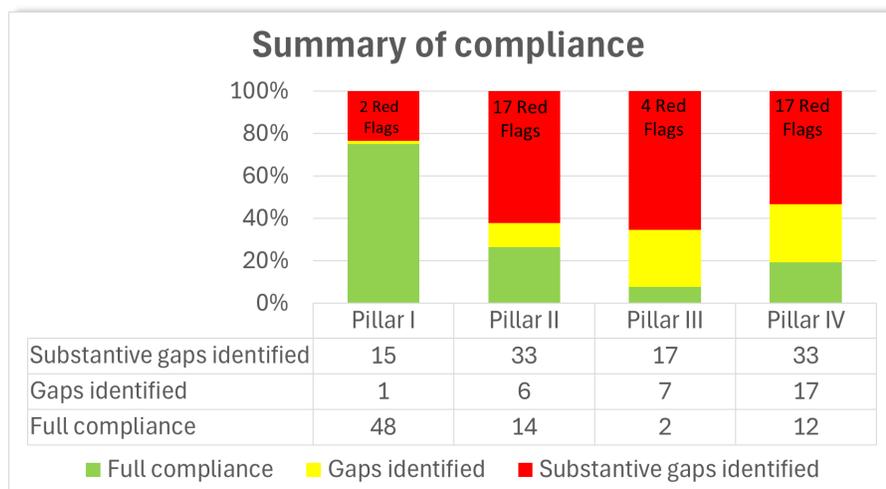
The existing eProcurement Portal is commendable but only used by a few public entities for the publication of procurement information such as procurement plans and bid adverts/awards (less than 5% in 2022/23). The **absence of an end-to-end e-Government Procurement (e-GP) system** is a missed opportunity for enhancing transparency and generating substantial savings and revenue to sustain the public procurement system.

Assessment approach: MAPS requires an assessment of the public procurement system based on four pillars. **Pillar I** assesses the existing Legal, Regulatory and Policy Framework (like Public Procurement Act of 2015 and regulations), which is law “as in the books”, while the other three pillars relate to how the law operates in practice. These are **Pillar II** on Institutional Framework and Management Capacity of PPU, Central Procurement Board of Namibia (CPBN), Review Panel, and procuring entities; **Pillar III** on Procurement Operations and Market Practices requiring review of a sample of actual procurement transactions (14 entities, 191 cases sampled) and private sector survey (84 responses received); and **Pillar IV** on Accountability, Integrity and Transparency of the public procurement system (feedback obtained from 8 CSOs, consultation held with Office of Auditor General AG, Government Internal audit, Review Panel, and Anti- Corruption Commission).

The four pillars comprise a total of 14 Indicators, 55 Sub-indicators, and 210 Assessment criteria of qualitative and quantitative nature. While more information on the assessment can be found in the main report, matrix, and appendices, a “snapshot” of the assessment results is provided in the chart below (full compliance to the assessment criteria as green, gaps identified as yellow, and substantive gaps as red).



Pillar I on “law as in the books” is relatively strong (75% compliance), while Pillars II, III, and IV) on operations in practice require substantial improvements. **Out of 98 substantive gaps, 40 are “Red Flags” predominantly in Pillars II and IV.** These are situations that are outside the procurement sphere and thus not completely under control of PPU where higher level government intervention will be needed.



Top seven strategic priorities and key actions:

#1 Elevate status of PPU and increase staff number and skills: This will also require converting PPU from a “Unit” to an “Authority” under the aegis of MoFPE as in many other countries.

#2 Improve capacity and professionalize procurement as strategic function: Procurement akin to accountancy to be carried out by qualified and trained professionals. GRN to have a regulatory body of purchasing and supply management. Capacity building including learning from other countries.

#3 Implement end-to-end E-Government Procurement (e-GP) system: Cover full procurement cycle, use open contracting standards, and include monitoring of contract management and performance.

#4 Amend legislation: Enhance provisions on use of less competitive and non-competitive methods of procurement to reduce over-use or misuse, together with practical measures to ensure understanding, application and enforcement. , Enhance institutional status of PPU and Review Panel and remove gaps and overlaps in responsibility.

#5 Adjust institutional roles and responsibilities to avoid conflicts of interest and the dilution of accountability: PPU to be responsible for policy and not to get involved in decision making on contract cases. Accounting officer to be fully accountable from the time need is identified till need is satisfied. No need for CPBN to get involved in contract management.

#6 Accelerate the enactment of PFM and Audit bills: This step will provide a comprehensive control framework including by government internal audit and Office of Auditor General.

#7 Enforce filing of financial and asset disclosure form as mandatory. Required by all officials involved in procurement and financial management (including staff who prepare specifications and certify payment).

Implementation of these priority reform actions as well as of the “Red Flag” items in the report will require political will, sustained interinstitutional efforts, and support from international financial institutions by leveraging and learning from similar reform initiatives in other countries.

Benefits: Implementation of strategic priorities and recommendations of the assessment is expected to result in (i) **sustainable outcomes with better service delivery** to Namibian citizens; (ii) **stimulation of local markets** and know-how transfer from foreign markets; (iii) **improved efficiency with substantial savings** from the total annual public procurement spend; (iv) **transparency and integrity** in managing public funds; and (v) **participation of CSO and improved trust** in how the Government uses public resources.



Executive summary

The Executive Summary is organized in different sections. It starts with general information on background, objective, process, and basis of the assessment before summarizing key findings and major strengths for each of the four MAPS Pillars followed by areas of improvement to address key gaps. At the end, it provides an overview of compliance and gaps with Red Flags as well as strategic priorities and key actions.

A. Background and objective

Resource wealth, political stability, and sound economic management since Namibia's independence in 1990 have helped poverty reduction and allowed it to become an upper-middle-income country with GNI per capita of US\$4,880 in 2022. Based on the World Bank data, GDP for Namibia was US\$12.45 billion in 2021, which increased slightly to US\$12.61 billion in 2022. The annual public procurement spend is substantial, being 25.37% of GDP in 2021.¹ In its Action Plan Towards Economic Recovery and Inclusive Growth (Harambee Prosperity Plan II 2021 -2025), the GRN identifies five goals for improved governance: (i) Accountability & Transparency; (ii) Strengthening the National Anti-Corruption Mechanisms; (iii) Improved Performance & Service Delivery; (iv) Enhancing Citizen Participation & Engagement, and (v) Enhancing Security & Rule of Law. Achievement of each of these goals will be enhanced by an effective and efficient public procurement system and procurement specific activities.

The Procurement Policy Unit (PPU) established within the Ministry of Finance and Public Enterprises (MoFPE) is responsible for advising the Minister of Finance on procurement matters including monitoring compliance with the PPA, review of and proposals for improvement of the public procurement system, assessment of the impact of the system of socio-economic policy objectives and promotion of fundamental principles of procurement.²

Namibia is committed to developing a five-year public procurement strategy through which the country's procurement priorities, approach, strategies, and measures of success over a medium term will be outlined. The primary objective of conducting the MAPS Assessment in Namibia is to review Namibia's public procurement system to inform the ongoing development of that public procurement reform strategy. It is a timely exercise in the perspective of the full review of the Public Procurement Act of 2015 anticipated to commence in 2025/26. The outcome of the MAPS Assessment would provide credibility to the strategic direction of the procurement reforms in Namibia and particularly to the targeted development of the National Procurement Strategy.

B. Process and basis of the MAPS Assessment

Following the MoFPE request for a MAPS Assessment, a multidisciplinary and cross-departmental MAPS Assessment Steering Committee (MASC) was set up to ensure an efficient, high-standard, and participatory implementation of the MAPS Assessment and to provide leadership and guidance to the MAPS Assessment Team throughout the assessment process. MASC members included officials from key

¹ [Government spending, percent of GDP in Africa | TheGlobalEconomy.com](https://www.theglobaleconomy.com/Africa/government_spending_percent_of_gdp/)

² The PPU is also responsible for review, monitoring and assessing methods of disposal of assets.



government agencies involved in public procurement and representatives of the private sector and civil society, WB and AfDB, with Secretariat support provided by the PPU.

After approval of the MAPS concept note package by World Bank management in August 2023, the launch mission was conducted in September 2023, when the MAPS Assessment team engaged with key stakeholders and the MASC to present the plan for tasks to be undertaken together with required input and support. The Launch Workshop was held on September 13, 2023, and was attended by over 100 stakeholders, in-person and online, successfully generating the required level of collective engagement. The Launch Workshop was officially opened by the Deputy Minister of Finance and Public Enterprises, demonstrating commitment and support to the MAPS Assessment at the highest level. The Concept Note was approved by MAPS Secretariat on Dec 19, 2023.

The PPU appointed a national coordinator of the MAPs Assessment, supported by a team of officials to coordinate tasks under each pillar. Regular weekly meetings were held between PPU and the MAPS Assessment Team and WB and AfDB representatives, which ensured timely completion of all tasks. Throughout the process, the MAPS Assessment Team received extensive cooperation from Procurement Policy Unit (PPU)/Ministry of Finance and Public Enterprises (MoFPE), Procuring Entities, oversight agencies, civil society organizations (CSOs), and private sector.

For the identification of contracts as part of the required sample to be reviewed, the MAPS Assessment focused on public entities across sectors and at different levels of government. Procurement files of 191 contracts from 14 procuring institutions – at national, regional & local authority level as well as public enterprises³ – were reviewed and assessed. These also represented a good mix of procurement of goods, works, services (consulting and non-consulting), as well as central facilitation of contracts.

An anonymous private sector survey was launched on November 29, 2023, and 84 responses were received. Feedback was also sought from CSOs, by means of an anonymous survey/questionnaire launched on November 30, 2023, and 8 responses were received.

While overall, the collected data and information provided substantial input for the assessment, the limited availability of some data, such as information on contract execution, prevented the team from a deeper analysis.

The Validation Workshop was held on April 17, 2024, opened by Deputy Minister of Finance and attended by about 80 participants. The workshop was preceded by discussions with key stakeholders in the period April 8-12, 2024, to clarify outstanding questions. The MAPS Report was finalized in the light of responses received during the validation process with stakeholders, a peer review process at the World Bank/AfDB and then by MAPS Secretariat and international experts of the MAPS Assessment Technical Advisory Group (ATAG).

³ Public enterprise as defined by Public Enterprises Governance Act, No.1 of 2019. The MAPS Methodology uses the term public enterprises.



C. Key findings and major strengths under each pillar

The following summary provides the key findings including major strengths of the public procurement system in Namibia for each of the four Pillars of the MAPS Methodology. More details of the findings and for each of the identified gaps are listed in Chapter 3 of this report and in the Matrix.

Pillar I- Legal Regulatory and Policy Framework

The public procurement legal framework is set out in a clear hierarchy, with the Public Procurement Act 2015 (PPA) being the primary legislation, supported by the Public Procurement Regulations 2017 (PPR), Ministerial Directives, Codes and Guidelines. The PPA covers goods, works, consultancy services and non-consultancy services for procurement using public funds. Exemptions from application of the PPA are listed in the PPA, although there is no specific reference to the status of internationally funded procurements. According to the PPA, the Minister also has power to grant a general or specific exemption which is a potential weakness, depending upon how and to what extent the power is exercised. Public Private Partnerships are regulated by dedicated legislation, requiring all PPPs to be procured through a competitive bidding process, respecting procurement principles.

A range of procurement methods is listed in the PPA. Open advertised bidding is intended to be the default method of procurement with broadly expressed conditions of use for other, less competitive and non-competitive methods. The legal framework requires public advertisement of opportunities using the open advertised bidding method, with the minimum period for submission of bids of 30 days. No extension of this period is specified in the case of international bidding. There are rules and procedures relating to eligibility and exclusion, including for criminal and corrupt activities and there is a system for administrative debarment of bidders. It also sets out procedures for determination of eligibility, although not in the case of public enterprises, as well as provisions on partnership/joint ventures between foreign bidders and national bidders, on reservations and margins of preference.

The minimum content of procurement documents is listed in the PPA with provision for the use of functional specifications and principle of equivalence of standards. Potential bidders have the right to request clarification of procurement documents with timelines specified for the clarification process. Bids must be evaluated according to the criteria and methodology set out in the bidding documents and award is to the lowest evaluated substantially responsive bid which meets the qualification criteria. There are no provisions in the PPA or PPR referring in specific terms to use of non-price evaluation criteria or life-cycle costing. The Public Procurement Guidelines refer to cost of ownership and to disposal as price related criteria but actively discourage use of non-price criteria. The legal framework defines the process for, and recording of, bid opening and confidentiality of proprietary information of bidders must be respected.

Procuring entities are required to inform bidders of the award decision and bidders have the right to request the Central Procurement Board of Namibia (CPBN) or public entity to reconsider the award decision. If a bidder does not receive a response from the public entity or is not satisfied with the decision taken by the public entity, the bidder is entitled to apply to the Review Panel (RP) for review. Bidders also have a general right to apply to the Review Panel for review of a decision or action taken by the CPBN or a public entity, but this right is rarely exercised. There are a range of remedies available to the Review Panel, including setting aside the award decision. Review Panel decisions are published on the e-Procurement portal and there is a right to apply for judicial review to the High Court.



The PPU has issued e-GP Guidelines and a User Manual, which require use of e-procurement at specified points in the procurement cycle. There are no provisions in the PPA or PPR that ensure the use of tools and standards that provide unrestricted and full access to the e-GP system or that require interested parties to be informed which part of the process will be managed electronically. Procurement Management Units are required to maintain and keep records of procurements by a public entity in accordance with the provisions of the PPA.

There are model procurement documents (SBDs), for mandatory use, covering goods, works, non-consultancy services and consultancy services using different procurement methods, as well as for some specialized procurement. There are several standard contract conditions for use as an integral part of the bidding documents. The PPU has issued comprehensive Public Procurement Guidelines.

There is no policy/strategy in place together with a plan to implement all aspects of sustainable public procurement (SPP) - economic, environmental (including climate considerations) and social (including gender equality))- in support of broader national policy objectives and reflecting national priorities. Provisions in the legal framework on incorporating sustainability considerations and criteria into the procurement cycle are limited.

Pillar II: Institutional Framework and Management Capacity

PPA s.6 establishes the Procurement Policy Unit (PPU) within the Ministry of Finance and Public Enterprises and assigns normative/regulatory functions for public procurement to the PPU. PPA s.7 set out a long list of the functions of the PPU including setting procurement thresholds, providing policy advice on e-procurement, preparation of guidelines, monitoring, and report on the performance of facilitating the use of ICT, compliance inspection of procurement activity and contract and performance audits.

The normative/regulatory functions and related activities assigned to the PPU are substantial and wide ranging and may require a higher-level standing. The involvement of PPU in procurement transactions, while providing technical advice to Accounting Officers, may lead to Conflict of Interest (COI) situations.

Public entities are clearly defined in the PPA. An Accounting Officer must set up an internal organisational structure which includes a Procurement Committee, ad hoc Bid Evaluation Committee, and Procurement Management Unit for the conduct and management of procurement at the public entity and is accountable for the full compliance with the legal framework. Powers and functions of Accounting Officer are clearly defined in PPA. The PPA stipulates certification on the availability of funds before the commencement of each procurement process and to ensure funds remain committed.

There is no operational centralized procurement body in charge of consolidated procurement, framework agreements or specialized procurement. The CPBN acts on behalf of public entities in the conduct of the bidding process for the award of contracts exceeding prescribed thresholds.

Namibia's e-Procurement portal represents a huge step forward in modernizing public procurement practices, offering a robust platform to enhance transparency, efficiency, and accountability. There is an e-procurement strategy and road map, and the first steps towards implementing e-procurement have already been taken. Despite the commendable progress made to date, several challenges and gaps persist regarding the transition from the e-Procurement portal to an end-to-end e-GP system. The absence of



supplier registration, electronic bid submission, and contract execution functionalities compromises the capacity to provide procurement support along the full procurement cycle and conduct data analytics for informed decision-making and reporting.

Although the use of the e-Procurement portal is mandated for all public entities, information is published only for a fraction of public entities. For example, only 45 public entities used the portal against a target of 105 public entities during 2022/23 and only 334 out of the reported 9,721 procurements were advertised in the portal. Lack of financial and human resources hamper the ability of PPU to effectively implement the e-GP strategy and engage in change management and capacity development activities with public entities to promote the use of the e-Procurement portal.

The Ministry of Finance and Public Enterprises' Strategic Plan has a strategic objective to "Enhance efficiency of the Public Procurement system and compliance to the Public Procurement Act" which provides strategic direction regarding capacity building in public procurement through PPU and partnership, with the Consortium. A cooperation agreement was signed in 2021, between the Ministry of Finance and Public Enterprises and the Consortium consisting of the University of Namibia (UNAM), University of Science and Technology (NUST) and Namibia Institute of Public Administration and Management (NIPAM) for systematic and formal training and academic pathway in procurement.

Procurement is not yet recognized as a profession in Namibia and there is no need for a professional qualification in procurement or related discipline to work under Procurement Management Unit, to act as member of the Bid Evaluation Committee or to be part of Procurement Committee. To ensure effective delivery of public services, there is a need to establish procurement as a strategic function, as opposed to a routine compliance-based activity, and to cover the entire procurement process from needs assessment, market analysis, selection, contract award and including contract management.

Pillar III: Public Procurement Operations and Market Practices

The results achieved by procuring entities in adverse conditions, with a lack of human and technical resources, is remarkable. There is a quest for generalised compliance with the guidelines. The participation of the private sector in the public market is positive.

The analysis of procurement processes indicates that the assessment of needs and market studies are often overlooked and underutilized in the creation of Annual Procurement Plans, leading to strategies that are not fully informed or optimized and potentially undermining the integrity of specifications.

Procedures for bid submission, receipt, and opening are well-documented and generally adhere to confidentiality and security protocols, including the physical handling of paper submissions and the secure evaluation of bids. However, practices such as the disqualification of bidders based on relative price comparisons, if for example a proposed price was higher by a certain percentage than the average price, may encourage collusion, highlighting potential integrity issues within the procurement process. Confidentiality issues arise due to insufficient bid box sizes, risking the privacy of bids and potentially the procurement objectives. The visibility of decisions and transparency mechanisms are inadequate, with significant gaps in compliance with publication requirements and in providing stakeholder's sufficient oversight.



The MAPS Assessment Team found insufficient information on timely implementation of contracts. The information provided by the Procuring Entities, including for the sample contracts, did not allow quantitative indicators to be measured and in only two cases were delays of around 20-25% identified. According to information gathered from the CPBN Portal, which is responsible for the procurement of the most significant projects, it is consistently found that around 10 per cent of the processes show deviations from the planned execution time of between 10 and 25 per cent. 55% of the respondents to the Private Sector Survey claim that they have experienced situations in which the completion of the project was delayed.

The GRN promotes an open dialogue with the private sector, facilitated through established mechanisms through associations, which allow for a transparent and consultative process in formulating changes to the public procurement system while adhering to ethics and integrity rules. Despite these efforts, the private sector perceives a lack of regular government programs aimed at capacity building among private companies. There is a prevailing negative view among economic operators about the conditions in the public procurement market. While the government identifies key sectors within the public procurement market, there is a noted absence of sectoral strategies and a failure to address sector-specific risks and opportunities, with the policies outlined in the Public Procurement Act having limited practical effectiveness.

There is a need for effective mechanisms to measure private sector competitiveness and participation in public procurement, alongside efforts to improve market accessibility by reducing barriers and redistributing contractual risks more equitably.

Pillar IV: Accountability, Integrity, and Transparency of Public Procurement System

There are good initiatives by GRN on CSO participation, such as the “Enhancing Participatory Democracy in Namibia” (EPDN) program, supported by GRN and European Union (EU). These initiatives have so far limited impact on procurement specific issues of monitoring procurement performance and contract implementation. There are a few Civil Society Organizations (CSOs) in Namibia who are active in the area of monitoring procurement. While there is a perception of lack of consultation, according to feedback from the PPU, CSOs are invited and consulted broadly for major policy changes. There are limited opportunities to build capacity of CSOs by PPU or public entities.

There are no legal provisions to make participation of CSOs in procurement mandatory. GRN needs to create an enabling environment including through legislation for direct engagement of civil society from planning phase to contract monitoring. This should assist in improving transparency and contract performance, enhancing the role of civil society to act as a safeguard against inefficient and ineffective use of public resources.

Oversight of procurement is conducted by the Office of the Auditor General (OAG), Internal Audit and PPU. OAG performs procurement audit as part of the financial audit, which is risk-based and conducted using INTOSAI standard. The OAG does not conduct stand-alone compliance or performance audit on procurement. OAG and Internal Audit both encourage their staff to be acquainted with procurement processes and requirements through training offered by the PPU. According to feedback received during validation, Internal Audit will also be trained to become procurement auditors. PPU has conducted only very few compliance audits of public entities and highlighted some of the systemic issues in annual compliance audit summary reports. In the absence of regular compliance audits, there is no consolidated



audit report which highlights all systemic issues related to procurement. The oversight of procurement systems is assessed to be weak mainly due to capacity constraints in staffing and expertise in internal audit, OAG and PPU. The weak capacity limits the functionality of these institutions, which has a negative impact on the effectiveness and efficiency of the procurement system.

Namibia signed the United Nations Convention Against Corruption (UNCAC) in 2003 and ratified it on 27 April 2004. Namibia's Anti-Corruption Act, 2003 contains provisions relating to a number of practices and offences, including corrupt acquisition of private interest by a public officer, corruption in relation to tenders and corruptly accepting and receiving "gratification" which is a defined term. There have been two UNODC review cycles reviewing Namibia's implementation of UNCAC. Following the first review cycle, a Country Review report on implementation of UNCAC Chapters on Criminalization & Law enforcement and International Cooperation, was published in 2016. Most of the recommendations in that report have been implemented. An executive summary of the second review cycle, concerning implementation of UNCAC Chapters on Preventive Measures and Asset Recovery was published in 2023.

D. Areas of improvement to address key gaps

Based on the key findings from the previous section, the following selected areas of improvements include recommendations for each Pillar. Priority areas of improvement are highlighted in bold for each pillar followed by additional areas recommended for improvement. A more extensive list of recommendations to address each of the identified gaps under the sub-indicators can be found in Chapter 3 of this report and in the Matrix.

Pillar I: Legal, Regulatory and Policy Framework

Introduce more robust standards for use of less competitive and non-competitive procedures: Consider putting measures into place to ensure that discretion to use less competitive and non-competitive procurement methods is exercised with caution. For example, it may be appropriate to specifically state in primary legislation that non-competitive methods should be used only in highly exceptional and limited circumstances and to emphasize the importance of seeking to maximize competition. Advance public notice of direct procurement in the case of a single supplier may also be considered as a safeguard. It may also be advisable to make it clear in the legal framework that the poor planning on the part of a public entity shall not be a justifiable reason for use of non-competitive methods.⁴

Improve legal provisions on contract management: Amend the procurement legal framework to define the functions for undertaking contract management and clearly assign responsibilities for contract management, avoiding duplication and overlap between functions and activities of the procuring entity and CPBN. This will ensure that the responsibility of Accounting Officers of the public entities covers the entire procurement cycle from identification of need, ensuring availability of funds till contracts completion, timely payment, with CPBN only responsible as procurement agent of public entities for awarding contracts above defined threshold. This is further elaborated under Pillar II.

Assess the impact of use of Ministerial exemptions from application of designated provisions of the PPA and consider measures to restrict use and improve clarity of coverage: Assess the impact of the repeated use of the Ministerial exemption in relation to disposal of assets, acquisition or granting of rights and

⁴ See, for example UNCITRAL Model Law on Public Procurement, Article 30(4).



letting and hiring, in particular the impact on procurement of goods which may otherwise be subject to the PPA and consider whether this exemption should still apply to those procurements. It is also recommended to assess the impact of wider use of Ministerial exemptions on the level of compliance with basic procedural requirements and consider whether more stringent measures are required to ensure that this exemption is used only in exceptional cases.⁵ As part of this assessment and to ensure clarity of coverage it may also be appropriate to consider introducing provisions in the legal framework, ideally the PPA, to address the issue of whether the PPA applies to contracts arising from international agreements, international treaty or concluded under provision financed by multilateral financing institutions.⁶

Clarify rules on participation of foreign bidders and public enterprises as bidders: Clarify provisions on partnerships and joint venture arrangements with foreign entities to ensure that they do not create a barrier to entry for foreign bidders. Also consider including provisions in the legal framework which ensure that the principle of fair competition applies when public enterprises participate as bidders in public procurement. Amend SBDs to align new provisions and ensure that consistent terminology is used.

Introduce in the legal framework provisions to promote the use of life cycle costing or total cost of ownership, as appropriate in relevant procurements to ensure value for money decisions. All legal provisions must be supported by clear, practical guidelines on how to incorporate life cycle costing or total cost of owner into the entire procurement cycle, from planning to delivery and be tied in with measures to address sustainable public procurement more widely.

Introduce legal provisions to facilitate use of e-GP tools and standards: Introduce provisions into legal framework to ensure the consistent application of electronic technologies and require standardized formats, technical equipment and connection arrangements and procedures to grant unrestricted and full access to e-procurement. These provisions will need to be comprehensive and tailored to reflect the particularities in Namibia. They will also need to allow sufficient flexibility to take account of staged roll-out from the current e-Procurement portal to an upgraded or new end-to-end e-GP system.

Publish check list of procurement records and documents to be kept at operational level: Consider publishing a check list for use by procuring entities at an operational level which sets out which procurement documents are to be retained, to ensure a complete procurement record to cover the entire procurement process, including contract management. This should refer to and align with rights of public access to information.⁷

Develop a sustainable public procurement (SPP) policy/strategy to implement all aspects of SPP (economic, environmental (including climate considerations) and social (including gender equality)) in support of broader national policy objectives and reflecting national priorities. This should include a clear implementation plan/road map to cover introduction of systems and tools to operationalize, facilitate and monitor the application of SPP in priority areas in particular. It should also identify and provide for any amendments necessary to the legal/regulatory framework to allow for sustainability to be fully incorporated at all stages of the procurement cycle ensuring well-balance application of sustainability

⁵ The MAPS Assessment team understands that a draft regulation on asset disposal, leasing, letting and hiring has now been prepared.

⁶ See, for example, UNCITRAL Model Law on Public Procurement, Article 3.

⁷ The MAPS Assessment understands that PPU has developed a draft guidance note on retention of procurement records.



criteria from planning through to contract delivery and monitoring. SPP requirements embedded in the legal and regulatory framework should be reflected in model procurement documents (SBDs) and contract conditions and in supporting practical guidelines for implementation and related training.

Pillar II: Institutional Framework and Management Capacity

Elevate the status of PPU to an “Authority” under the aegis of MoFPE: GRN to consider reviewing level of expertise and resources provided to PPU and whether it is commensurate with its responsibilities and mandate under PPA. Consider elevating the status of PPU from a “Unit” to an “Authority” to enhance effective functioning according to its statutory mandate, taking into account lessons and good practices from other countries.

Establish procurement as a strategic function: Create dedicated structures within all public entities to be staffed by qualified procurement professionals, who are hired with a career path (like moving from procurement officer or contract officer to a project manager) and then initiative to be undertaken by GRN to have a regulatory body of the purchasing and supply management profession.

Enforce mandatory use of e-Procurement and enhance capacity: The mandatory use of the e-Procurement portal should be enforced across all public entities. Resources should be allocated to establish a business continuity technical team under the PPU with all technical, administrative, and supporting expertise for the smooth operation of the e-Procurement portal in coordination with the OPM.

Review PPA and remove gaps and overlaps in responsibility among PPU, CBPN and Accounting Officer of public entities and related accountability. These overlaps in responsibility arise from questionable provisions in PPA as described under Pillar I. For example, through its inspection and guidance functions on operational matters in procurement activities, the PPU may be perceived as being involved in procurement decisions on actual transactions rather than just providing policy advice. The role of CPBN in contract implementation for over-threshold contracts should also be reviewed to ensure that all roles are appropriately allocated, clearly defined and do not dilute the accountability and responsibilities of accounting officers. CBPN and accounting officers of public entities sign contracts as a tripartite agreement, where CBPN is designated as procurement agent and public entity as employer, but CPBN has no role in the agreement. However as required by PPA, CBPN gets involved in approving variation orders, price increases, contract extensions and cancellations which dilutes the accountability of accounting officers of public entities, and there is no value addition by CBPN in managing the contracts.

Ensure compliance with procurement planning, certification of availability of funds and timely payment: Establish linkage between budget, procurement, and treasury operations on payment of invoices and ensure that there is a national database on tracking payment to contractors/suppliers, and that funds remain committed to ensure timely payment as per contract provisions.

Pillar III: Public Procurement Operations and Market Practices

Develop strategic approach to procurement: The key sectors of the economy, such as infrastructure, health, education, or home affairs, must identify long-term sectoral strategies that in turn feed into medium/short-term operational plans. The risks specific to each sector must be identified and accompanied by plans to mitigate them. Similarly, opportunities to influence the market to achieve policy goals must be identified and pursued.



Deliver regular training programmes to increase the preparedness of economic operators: Given the PPU's current limited capacity to implement such programmes, partnerships should be created with other bodies to increase the reach of such programmes.

Develop guidelines to enable Procuring Entities to conduct market studies and align procurement plan with budget cycle: PPU should develop guidelines to enable Procuring Entities to conduct market studies. An attempt should be made to align the timelines of the Annual Procurement Plan and the Budget so that the former is an effective exercise.

Address confidentiality in bid evaluation process: The use of an e-Government Procurement solution that ensures confidentiality should be promoted. As indicated earlier the mandatory use of e-Procurement should be enforced.

Improve and safeguard visibility of decision-making: The publication of all notices should be centralised to facilitate communication with economic operators and civil society. Open/machine-readable formats, i.e., electronic formats that can be read automatically by data analysis software, should be adopted to allow effective monitoring of information.

Ensure practices for delivering better value for money: The use of relative comparison of bid prices and the use discrete scales with subjective scoring should be avoided. Bids need to be evaluated and scored based on objective evaluation criteria stated in the bidding documents.

Monitor contract implementation, quality control and ensure record keeping: Procuring Entities must ensure monitoring and quality control mechanisms during the execution phase of the contracts. Procuring Entities must ensure that inspection, quality control and final acceptance of the products processes are in place. They must also ensure that records are kept in the procurement files. Contract execution reporting mechanisms should be set up to ensure that all information relating to procurement processes is available, both in the pre- and post-contract phases.

Pillar IV: Accountability, Integrity, and Transparency of Public Procurement System

Accelerate the enactment of the PFM and Audit Bills: This step will provide comprehensive control framework (including internal controls, internal audits, external audits and oversight by legal bodies), legal backing for internal audit, and independence of the OAG.

Make it mandatory to annually file financial disclosure/asset declaration forms. This should include all officials involved in procurement and financial management (including technical staff who prepare technical specification and certify payment). The declaration should also provide information on beneficial ownership in the absence of a legislation, and ACC to analyze such report and track compliance and follow-up.

Make CSO involvement more inclusive and build capacity: CSO involvement to be made more inclusive while formulating changes to the public procurement system to cover a wider spectrum of CSOs. PPU/MoFPE to create a formal channel of feedback and regular consultations with a wider spectrum of CSOs for effective participation by CSOs. CSOs could act as a safeguard against inefficient and ineffective use of public resources, and PPU and Public Entities need to invest in capacity building and training of credible civil society organizations.



Ensure direct engagement of CSOs in procurement and contract implementation: GRN to consider creating an enabling environment including through legislation for direct engagement of civil society from planning phase to contract monitoring for improving transparency and contract performance.

Ensure appropriate oversight of procurement: Strengthen the procurement staffing capacity (number and expertise) in the internal audit, OAG and PPU.

Conduct audits to inform improvements in procurement performance and ensure balance between timely and efficient decision making and adequate risk-mitigation: PPU (also with support from Government Internal Audit) to carry out risk-based targeted compliance and performance audit annually identifying systemic issues and root causes affecting procurement performance and publish these reports.

Strengthen process for review of audit reports by legislature and clear mechanism for follow-up: Conduct an assessment of the Public Accounts Committee performance and implement reforms to address the identified weaknesses.

Review of the reconsideration process and the appeals (review) system to ensure it is fit for purpose: Undertake a critical review of the operation in practice of the current system for applications for reconsideration and applications for administrative review by the Review Panel to establish whether that system achieves the aims of delivering efficient and effective decision making and in a manner which is, and is perceived to be, fair and unbiased. The review should identify measures to improve or alter the system, including the institutional structure and standing of the Review Panel and its Secretariat, with particular reference to avoidance of conflicts of interest, to ensure that it is fit for purpose. The review will need to incorporate consideration and allocation of necessary resources to support operation of the Review Panel and its secretariat. The review should also include analysis of the reasons why applications for review at earlier stages in the procurement process, prior to the notice on selection for award,), for example at the stage of clarification of bidding documents. It may also be appropriate to investigate whether/to what extent fees paid by applicants inhibit access by concerned parties and/or act as an effective disincentive to frivolous complaints.

Ensure prompt publication of Review Panel decisions on the e-Procurement portal: To ensure transparency and enhance confidence in the review process, put into place relevant resources and support to ensure that all Review Panel decisions are published on the e-Procurement portal within the specified time frame of 7 working days. Consider also, publishing information on applications for Review so that all stakeholders are aware of such applications and can track cases and their outcomes.

Improve consistency in the use of terms related to prohibited practices: These include corrupt, fraudulent, collusive, coercive and obstructive practices in the public procurement legal and regulatory framework (PPA and PPR) and Anti-Corruption Act.

Enhance inter-institutional collaboration on anti-corruption: ACC and PPU may agree on a protocol/ procedure advising Public Entities to report cases of fraud and corruption and these are investigated and enforced. Various institutional stakeholders to work together in the anti-corruption sphere - Police, competition authorities, PPU, ACC, Audit, and NACC.

Increase support from wider group of CSO for their effective participation: This is required to safeguard against inefficient and ineffective use of public resources. Suppliers and business associations to develop internal compliance measures to ensure ethical behavior while competing for government contracts.



Overview of compliance to assessment criteria, gaps and red flags (including analysis, strategic priorities and key actions)

E. Overview of compliance to assessment criteria, gaps and red flags

The following table provides an overview of the findings of the assessment on the level of total 55 sub-indicators under four pillars. Each sub-indicator is identified (marked X) depending on the findings (full compliance/gaps identified/substantive gaps identified). This table also shows the red flags⁸ identified (marked X). Most of these red flags are elements that significantly impede the main goals of public procurement and that cannot be mitigated directly or indirectly, and such factors could lie outside the sphere of public procurement.

The sub-indicators listed in the table below are further divided into individual assessment criteria which are each assessed separately according to the MAPS Methodology. The number of qualitative criteria per sub-indicator varies between one and eleven, in some cases supported by quantitative indicators. In total there are 210 criteria to be assessed under 55 sub-indicators, as elaborated in detailed matrix.

The overview of compliance table presents an aggregated conclusion based on all of the assessed criteria for each sub-indicator. This means that where a single criterion under a sub-indicator is assessed to have a gap this will trigger the “Gaps identified” or “Substantive gaps identified” finding (depending on the nature of the gap) in this compliance table for that sub-indicator (marked X). It is therefore important to refer to the full assessment findings and supporting analysis in detailed matrix.

Remarks on gaps marked X for table below:

- No criteria of the sub-indicator have gaps (**Full Compliance**)
- Some criteria of the sub-indicator have minor gaps, but none have substantive gaps (**Gaps Identified**)
- At least one criterion of the sub-indicator has a substantive gap (**Substantive gap identified**)

PILLAR I		Full compliance	Gaps identified	Substantive gaps identified	Red flags
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) – Scope of application and coverage of the legal and regulatory framework			X	
	1(b) – Procurement methods			X	X
	1(c) – Advertising rules and time limits			X	
	1(d) – Rules on participation			X	
	1(e) – Procurement documentation and technical specifications	X			
	1(f) – Evaluation and award criteria			X	

⁸ Guidance on gaps, risks and red flags is found in <https://www.mapsinitiative.org/methodology/templates-guidance/>



PILLAR I		Full compliance	Gaps identified	Substantive gaps identified	Red flags
	1(g) – Submission, receipt, and opening of tenders	X			
	1(h) – Right to challenge and appeal	X			
	1(i) – Contract management			X	
	1(j) – Electronic Procurement (e-Procurement)			X	
	1(k) – Norms for safekeeping of records, documents and electronic data.			X	
	1(l) – Public procurement principles in specialized legislation	X			
2. Implementing regulations and tools support the legal framework.	2(a) – Implementing regulations to define processes and procedures	X			
	2(b) – Model procurement documents for goods, works, and services	X			
	2(c) – Standard contract conditions	X			
	2(d) – User’s guide or manual for procuring entities	X			
3. The legal framework reflects the country’s secondary policy objectives and international obligations	3(a) – Sustainable Public Procurement (SPP)			X	X
	3(b) – Obligations deriving from international agreements Not assessed.				

PILLAR II		Full compliance	Gaps identified	Substantive gaps identified	Red flags
4. The public procurement system is mainstreamed and well-integrated with	4(a) – Procurement planning and the budget cycle	-	-	X	
	4(b) – Financial procedures and the procurement cycle	-	-	X	X



PILLAR II		Full compliance	Gaps identified	Substantive gaps identified	Red flags
the public financial management system.					
5. The country has an institution in charge of the normative/regulatory function.	5(a) – Status and legal basis of the normative/regulatory function	-	-	X	X
	5(b) – Responsibilities of the normative/regulatory function	-	-	X	X
	5(c) – Organisation, funding, staffing, and level of independence and authority	-	-	X	X
	5(d) – Avoiding conflict of interest	-	-	X	X
6. Procuring entities and their mandates are clearly defined.	6(a) – Definition, responsibilities and formal powers of procuring entities	-	-	X	X
	6(b) – Centralised procurement body	-	X	-	
7. Public procurement is embedded in an effective information system.	7(a) – Publication of public procurement information supported by information technology	-	-	X	
	7(b) – Use of e-Procurement	-	-	X	X
	7(c) – Strategies to manage procurement data	-	-	X	
8. The public procurement system has a strong capacity to develop and improve	8(a) – Training, advice and assistance	-	-	X	X
	8(b) – Recognition of procurement as a profession	-	-	X	X
	8(c) – Monitoring performance to improve the system	-	-	X	



PILLAR III		Full compliance	Gaps identified	Substantive gaps identified	Red flags
9. Public procurement practices achieve stated objectives.	9(a) – Planning	-	-	X	
	9(b) – Selection and contracting	-	-	X	X
	9(c) – Contract management in practice	-	-	X	X
10. The public procurement market is fully functional.	10(a) – Dialogue and partnerships between public and private sector	-	-	X	
	10(b) – Private sector’s organisation and access to the public procurement market	-	-	X	
	10(c) – Key sectors and sector strategies	-	-	X	

PILLAR IV		Full compliance	Gaps identified	Substantive gaps identified	Red flags
11. Transparency and civil society engagement strengthen integrity in public procurement.	11(a) – An enabling environment for public consultation and monitoring	-	-	X	
	11(b) – Adequate and timely access to information by the public	-	-	X	X
	11(c) – Direct engagement of civil society	-	-	X	X
12. The country has effective control and audit systems.	12(a) – Legal framework, organisation and procedures of the control system	-	-	X	X
	12(b) – Co-ordination of controls and audits of public procurement	-	-	X	
	12(c) – Enforcement and follow-up on findings and recommendations	-	-	X	X
	12(d) – Qualification and training to conduct procurement audits	-	-	X	
13. Procurement	13(a) – Process for challenges and appeals	X			



PILLAR IV		Full compliance	Gaps identified	Substantive gaps identified	Red flags
appeals mechanisms are effective and efficient.	13(b) – Independence and capacity of the appeals body	-	-	X	X
	13(c) – Decisions of the appeals body			X	X
14. The country has ethics and anti-corruption measures in place.	14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties	-	X	-	
	14(b) – Provisions on prohibited practices in procurement documents	-	-	X	
	14(c) – Effective sanctions and enforcement systems	-	-	X	
	14(d) – Anti-corruption framework and integrity training	-	X	-	
	14(e) – Stakeholder support to strengthen integrity in procurement	-	-	X	
	14(f) – Secure mechanisms for reporting prohibited practices or unethical behaviour	-	X	-	
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules	-	-	X	X

F. Summary analysis of compliance/substantive gaps/red flags

The level of compliance of all 205 criteria that were assessed for the four Pillars is provided in the table below and can be summarized as follows:

- Out of 205 criteria, 77 are in full compliance (37.56 %).
- Pillar I, which represents “law as in the books”, is relatively strong while Pillars II, III, and IV, which relate to how the law operates in practice, require substantial improvements.
- For Pillar I, out of 64 criteria, 48 are in full compliance (75%).
- Out of total 98 Substantive gaps of 205 criteria (47.80 %), Pillar II has 33 substantive gaps out of 53 criteria (62.26 %), Pillar III has 17 substantive gaps out of 26 criteria (65.38%), and Pillar IV has 33 substantive gaps out of 62 criteria (53.22%).
- The number of “Red Flags” is 40 out of 98 substantive gaps (40.81%), which are predominant in Pillar II and Pillar IV, where higher level government intervention and inter-institutional efforts will be required with prioritized action plan (as suggested in Chapter 5 of this report).



Pillar #	Full compliance	Gaps identified	Substantive gaps identified (of which Red Flags)	Total
Pillar I	48	1	15(2)	64
Pillar II	14	6	33(17)	53
Pillar III	2	7	17(4)	26
Pillar IV	12	17	33(17)	62
Total	76	31	98(40)	205

Level of Compliance

G. Strategic Priorities and Key Actions

The following priorities and actions on improving legal provisions, and more importantly implementation and enforcement of such provisions for each of the four Pillars will help inform the development of the national public procurement strategy for Namibia.

- **Introduce** more robust standards for use of less competitive and non-competitive procedures to reduce over-use of these methods and emphasize the importance of seeking to maximize competition.
- **Review** PPA and remove gaps and overlaps in responsibility among PPU, CBPN and Accounting Officer of public entities and related accountability. Role of CPBN in contract implementation above the threshold needs review. Accounting Officer should be responsible and accountable for the entire procurement process from the time need is identified till need is satisfied for efficient service delivery, and Procurement Management Unit needs strengthening, with required resources and expertise.
- **Develop** a sustainable public procurement (SPP) policy/strategy and implementation plan for all
 - **Elevate** the status of PPU from a “Unit” to an “Authority” under the aegis of MoFPE: PPU is a unit under MoFPE, with inadequate financing and staff capacity impacting its independent functioning. The head of PPU is perceived as a lower level than all Accounting Officers of PE’s, which has implications and consequences in as far as engaging Public Entities effectively and in establishing procurement as a strategic function.
 - **Create** dedicated structures within all public entities and train staff as qualified procurement professionals and initiative to be undertaken by GRN to have a regulatory body of the purchasing and supply management profession.
 - **Enforce** mandatory use of the e-Procurement portal across all public entities: This step will enhance transparency, confidentiality, value-for-money and trust of all stakeholders in the integrity of public procurement system.
 - **Develop** and roll out end-to-end e-GP system that supports the whole procurement cycle and collects data in open standard format to facilitate data analytics.



- **Monitor** contract implementation, quality control and ensure record keeping. Contract execution reporting mechanisms should be set up to ensure that all information relating to procurement processes is available, both in the pre- and post-contract phases.

- **Accelerate** the enactment of the PFM and Audit Bills: This step will provide comprehensive control framework (including internal controls, internal audits, external audits and oversight by legal bodies), legal backing for internal audit, and independence of the OAG.
- **Undertake** a critical review of the operation in practice of the current system for applications for reconsideration and applications for administrative review by the Review Panel - to establish whether that system achieves the aims of delivering efficient and effective decision making and in a manner which is, and is perceived to be, fair and unbiased and identify measures for improvement.
- **Enforce** filing of financial and asset disclosure forms as mandatory: This should include annual asset/financial disclosure by official involved in procurement and financial management (including technical staff who prepare specification and certify payment) to annually file financial disclosure/asset declaration forms (including on beneficial ownership in the absence of a



1. Introduction

Context

The Ministry of Finance and Public Enterprises (MoFPE) as the custodian of the Public Procurement Act, 2015, requested the World Bank on March 09, 2023, to review the Namibian public procurement system using the Methodology for Assessing Procurement Systems (MAPS). The African Development Bank also expressed its interest in joining the MAPS assessment team, as indicated in letter dated April 20, 2023, from the World Bank to MoFPE. Namibia is committed to developing a 5-year public procurement strategy through which the country's procurement priorities, approach, strategies, and measures of success over a medium term will be outlined. The outcome of the MAPS assessment is expected to provide credibility to the strategic direction of the procurement reforms in Namibia and particularly to the targeted development of the National Procurement Strategy.

Objectives

The primary objective of conducting the MAPS assessment in Namibia is to review Namibia's public procurement system to inform the development of a public procurement strategy. It is a timely exercise in the perspective of the full review of the Public Procurement Act of 2015 anticipated to commence in 2024/25.

To achieve this objective, the assessment used the MAPS core tool and assessed strengths, weaknesses, and gaps in the public procurement system along the four MAPS pillars and benchmarked it with international practices. The assessment focused on the core principles of transparency, accountability, and value for money to enhance the contribution of the public procurement system to the broader development objective of the country. The assessment will therefore help address issues pertaining to procurement. More specifically, the assessment will help identify and address the issues around lack of transparency, capacity, and monitoring. Based on the relevant indicators of the MAPS assessment, the findings of the gap analysis will inform recommendations on the way forward to strengthen the public procurement system in Namibia.

Scope and methodology

The assessment was conducted on the four pillars of MAPS, i.e. (i) legal, regulatory, and policy framework; (ii) institutional framework and management capacity; (iii) procurement operations and market practices; and (iv) accountability, integrity, and transparency. It included the application of all recommended quantitative indicators, including survey-based ones, as per available data. The assessment covered all the main stakeholders of the public procurement system and a mix of selected procuring entities, including public enterprises. In the absence of a fully operational e-Procurement system, data needed to be collected in electronic format as available and in paper format including through face-to-face discussions with the sampled public entities to be able to assess the quantitative indicators and provide supportive evidence to the assessment.

As part of the qualitative and quantitative analysis, the assessment identified root causes of the transparency, capacity, and monitoring constraints and formulate appropriate actions to manage and



remove these constraints. For this, a combination of stakeholder surveys, focused group discussions, and data analytics was adopted.

In addition, the assessment took stock of the status of e-Procurement design and implementation based on the e-GP strategy as endorsed by the Minister of Finance and Public Enterprises.

As critical part of an efficient procurement system, the complaints mechanism was also subject of the assessment. The assessment included an analysis of the functions of the Review Panel as one of the key actors in procurement complaints handling, but also subsequent judicial review mechanisms. This also included understanding the roles of agencies having oversight over procurement, such as the Namibia Anti-Corruption Commission, the Office of the Attorney General, and the Namibian Competition Commission and establish the uniformity of interpretation of the procurement rules and related documents.

As two key stakeholders of the public procurement system, private sector and CSOs were included in the assessment to share their knowledge and experience. For each stakeholder meetings were organized and a survey to obtain information and feedback on how the public procurement system in Namibia works. Assessment also looked into the CSOs capacitation and coordination efforts which are among the priorities under the EU's focal sector on Governance and Gender.

Particular attention was given to assessing the authority, capacity, and autonomy of PPU as the regulatory authority for public procurement in Namibia. This included the availability of appropriate resources to enable the PPU to execute the expected leadership role in transforming public procurement into a strategic tool that contributes to economic growth and sustainable development and build the required capacity to do so at national, regional, and local level.

Assessment Team

A multidisciplinary and cross-departmental MAPS Assessment Steering Committee (MASC) was set up to ensure an efficient, high-standard and participatory implementation of the Assessment. It provided leadership and guidance to the Assessment Team throughout this assessment.

MASC was established with PPU in the MoFPE acting as Secretariat and include officials from other key government agencies involved in public procurement, private sector, civil society, WB and AfDB. Members of the MASC representing the Government acted as experts actively took part in the implementation process, collaborating on data and case study gathering, facilitating access to documentation upon need, and facilitating dialogue among stakeholders.

The Assessment Team consisting of the World Bank staff and international and national experts hired by the World Bank and AfDB completed assessment in consultation with the Assessment Steering Committee. The Assessment Team was led by the World Bank in close cooperation with PPU and AfDB.

The results of the assessment were subjected to validation process with all stakeholders, a peer review process at the World Bank/AfDB and then by MAPS Secretariat and by international experts of the MAPS Assessment Technical Advisory Group (ATAG).



Sampling Strategy and limitation of data

The MAPS assessment focused on public entities across sectors and different levels of government. It comprised of 14 procuring institutions at national, regional, and local authority level as well as public enterprises. This represented a good mix of procurement of goods, works, services (consulting and non-consulting), and central facilitation of contracts. The assessment excluded procurement for defense and Public Private Partnerships as these would not contribute to draw conclusions that are representative for Namibia's government procurement system. As for the selection of the sample cases, this was done primarily through the list of contracts communicated to the PPU on a quarterly basis endeavouring to respect the balance between types of contracts and procurement methods of each sampling agency.

While determining the sampling strategy under Indicator 9 on analysis of selected procurement cases, the sample included a total of 191 procurement cases of 14 public entities with an appropriate mix of goods, works and services (consulting Services and non-consulting Services) completed in the last five years (2018-2023). Initially, it was planned to include procurement sample contracts of the last three years. However, given the disruptions due to the COVID pandemic, it was agreed to extend this timeframe to five years. Also, the Public Procurement Act 2015 came into operation on April 1, 2017, and therefore the sample is intended to cover contracts completed from fiscal year commencing April 1, 2018, onwards based on the PPA 2015. The sample selection followed the guidance at paragraph 28 of the MAPS Methodology 2018 to represent a mix of entities and categories of procurement to make it representative at an aggregate level. The strategy was agreed upon with PPU during the kick-off mission.

Launch Workshop/Kick-off meetings

The Launch/kick-off mission engaged with the MAPS Assessment Steering Committee and key stakeholders in the preparatory task of the MAPS Assessment explaining required input and the plan for tasks to be undertaken. Stakeholders met included public entities, oversight bodies, academia, private sector representatives and civil society organizations who also participated in the launch workshop. The launch workshop was held to familiarize participants with the MAPS methodology, roles, assistance, sampling strategy, survey methodology and the roadmap for conducting the assessment. The workshop was officially opened by the Deputy Minister of Finance and Public Enterprises to show commitment and support to the assignment at highest level. The workshop was attended by over 100 stakeholders in-person and online and generated the level of collective engagement needed for the success of the assessment.

Regular meetings with PPU, implementation and Validation Missions

PPU was appointed as the national coordinator of the assessment, supported by a team of officials to coordinate tasks under each pillar. The entire task was coordinated by a Task Team Leader (TTL) of the World Bank supported by a co-TTL from the World Bank and AfDB respectively. In addition, there were four (4) consultants (3 international and 1 national) hired by the World Bank and AfDB as members of the core assessment team who worked jointly with the Government of Namibia.

A private sector survey was launched on November 29, 2023, to seek anonymous feedback to the questionnaire using Microsoft Forms. 84 responses were received. Feedback was sought from CSOs, launched on November 30, 2023, 8 responses were received. Validation Workshop was held on



April 17, 2024, opened by Deputy Minister of Finance, and attended by about 80 participants. The workshop was preceded by discussions with key stakeholders in the period April 8-12, 2024.

The results of the assessment were subjected to validation process with all stakeholders, a peer review process at the World Bank/AfDB and then by MAPS Secretariat and by international experts of the MAPS Assessment Technical Advisory Group (ATAG).

Summary of progress and next steps

MAPS Namibia, progress, and next steps as on the date of validation workshop of April 17, 2024, is captured in the following diagram. The information validation is given at Section 6 of this report.

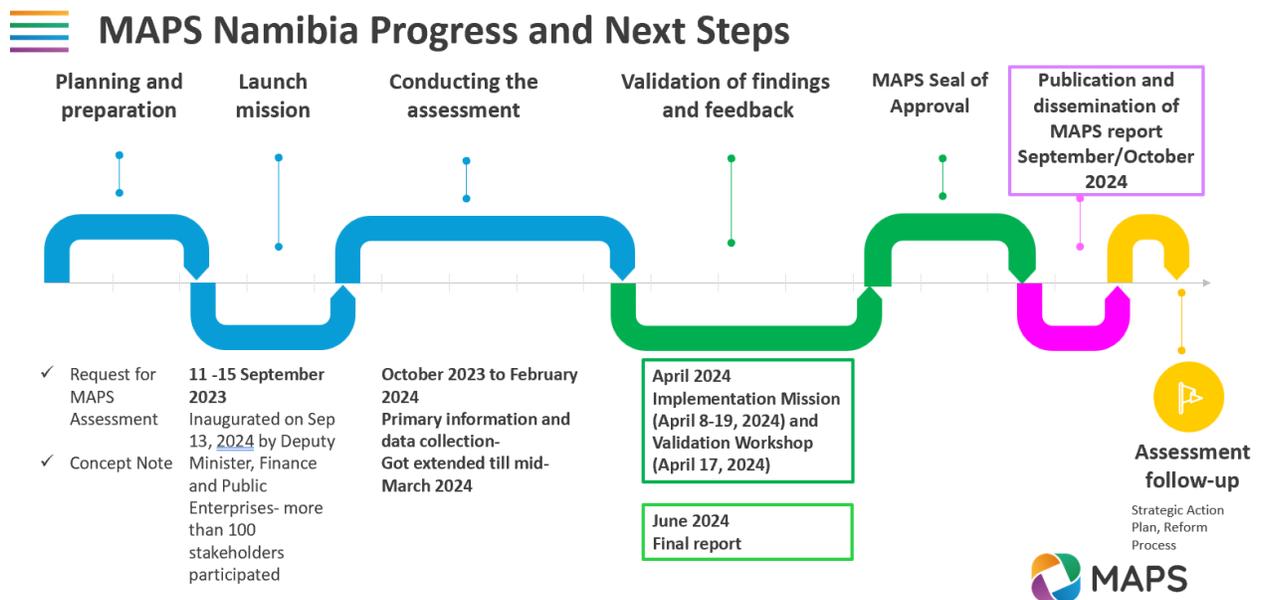


Figure 1: MAPS Namibia – Progress and Next Steps



2. Analysis of Country Context

2.1. Political, economic and geostrategic situation of the country

Country overview

Namibia is a geographically large country with a relatively small population of about 3.02 million (2023)⁹ and a 1,500 km-long coastline on the South Atlantic sharing borders with Angola, Botswana, South Africa, and Zambia. Demarcated into 14 regions, the country has a land area of 824,292 km², making it the 34th largest in the world. The driest country in Sub-Saharan Africa, it is rich in mineral resources, including diamonds and uranium. Resource wealth, political stability and sound economic management have helped poverty reduction and allowed Namibia to become an upper-middle-income country¹⁰ with GNI per capita of \$4,880 in 2022¹¹.

However, a growth model based on extractives struggles to generate jobs while structural constraints,



including skills shortages, hamper private sector development. Socio-economic inequalities inherited from the past apartheid system thus remain high, with Namibia having one of the highest Gini coefficients globally. Namibia's long-term vision is to become industrialized, with living standards comparable to developed countries (Vision 2030). While domestic socioeconomic challenges remain deep, despite the country's significant developmental achievements since independence in 1990, Namibia aims to harness opportunities presented by potential development of green hydrogen and oil sectors in the country to generate new engines of growth. Current oil exploration activity is supporting the recovery in foreign direct investment.

Figure 2: Map of Namibia

Source: United Nations (<https://www.un.org/geospatial/content/namibia>)

Political context

Namibia gained its independence in 1990 and is a multi-party democracy, where free and fair elections have been held every five years. The Southwest Africa People's Organization (SWAPO) has dominated

⁹ https://nsa.nsa.org.na/wp-content/uploads/2024/03/Media-Statement-2023-Population-and-Housing-Census-Preliminary-results_SIGNED-1.pdf

¹⁰ [World Bank Country and Lending Groups – World Bank Data Help Desk](https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=NA) (upper middle-income economies are those with a GNI per capita between \$4,466 and \$13,845 as of July 1, 2022)

¹¹ <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=NA>



Namibia's politics since independence. The country has continued to enjoy peace and political stability which has underpinned its social and economic progress. Namibia's sixth general elections, after independence, were held on 27th November 2019 and judged by international observers as, generally, free, fair, and peaceful.¹²

National Development Plans and Vision 2030¹³

Namibia's fifth National Development Plan (NDP 5) covers nation's blueprint for national development between 2017-2022. It outlines a development strategy to improve living conditions of every Namibian. According to NDP5 document, the purpose of NDP 5 is to set out a roadmap for rapid industrialisation while adhering to the four integrated pillars of sustainable development: (i) Economic Progression; (ii) Social Transformation; (iii) Environmental Sustainability; and (iv) Good Governance.

The National Planning Commission of Namibia¹⁴ launched on July 20, 2023, NDP6 for formulation and consultations with the theme of "Fostering Recovery, Inclusiveness and Resilience for Quality and Sustainable Development". This will be the last plan towards Vision 2030¹⁵ which according to the document: "A vision that will guide us to make deliberate efforts to improve the quality of life of our people to the level of their counterparts in developed world by the year 2030". Vision management identified the eight themes as the major issues around which the Vision will be formulated. These themes were Inequalities and social welfare; Political stability, Peace and sustainable development; Human resources, Institutional and capacity building; Macro-economic issues; Population, health and development; Natural resources and environment; Knowledge, information and technology; and Factors of the external environment.

State of peacefulness

Based on NDP5 document, Namibia ranks as "High" on peacefulness according to 2016 Global Peace Index. It is one of the eight countries with a high level of peace and security at par with developed countries like Australia and Great Britain. Based on the latest GPI report of 2023¹⁶, Namibia ranks 56 out of 163 countries with the State of Peace as "High" on the scale of Very High, High, Medium, Low and Very Low.

Economic overview

Namibia's economy expanded steadily in the post-independence years leading up to 2015. Between 1991 and 2015, the economy grew by an average 4.4 percent favored by prudent economic management and the commodity super cycle, which spurred mining investment and services linked to mining. During this period, growth was primarily driven by investment and a growing labor force, while total factor productivity declined due to persistent structural bottlenecks, including highly segmented input and output markets and severe skills shortages. The services sector consistently accounted for more than half of annual output, although the economy heavily relies on the primary sector for more than half of export

¹² <https://www.afdb.org/en/documents/namibia-country-strategy-paper-csp-2020-2024-0>

¹³ <https://www.npc.gov.na/>

¹⁴ <https://www.npc.gov.na/>

¹⁵ <https://www.npc.gov.na/national-plans/vision-2030/>

¹⁶ <https://www.visionofhumanity.org/wp-content/uploads/2023/06/GPI-2023-Web.pdf>

GPI measures the state of peace across three domains: the level of Societal Safety and Security; the extent of Ongoing Domestic and International Conflict; and the degree of Militarisation



earnings, especially diamond, uranium, and other minerals. Services accounted for 55.5 percent of real output in 2022 and mining 11.9 percent. At the same time, about 62 percent of jobs are in services and 1.7 percent in mining, according to the most recent labor force survey. The services sector is dominated by non-tradable activities including real estate, public administration, education and health. The heavy reliance on mineral exports exposes the country to external shocks; meanwhile, the country is prone to drought which affects the performance of water-intensive industrial activity, particularly uranium mining, and the agricultural sector.

The above vulnerabilities and binding constraints to growth came to the fore in the immediate years (2016-2019) building up to the COVID-19 pandemic. Growth came to a halt in 2016, while the subsequent years were mostly marked by recession as the commodity super cycle ended, major investment projects were completed, a drought took its course and the government embarked on fiscal consolidation after the debt ratio more than doubled from 2010 to 2015. Like in other countries, the COVID-19 pandemic induced a sharp recession in 2020. The economy only recovered its pre-COVID GDP in 2022, although the recovery was uneven and underpinned by strong mining output. As output in some sectors remains below pre-pandemic levels, including in the job-rich construction industry, wholesale and retail trade and financial services, unemployment is estimated to be elevated – the unemployment rate was last officially estimated for 2018 at 33.4 percent. In this context, economic diversification is an integral part of the government’s MTEF priorities, to support job creation and reduction of poverty and inequality.

Recently, Namibia’s longer-term prospects have been boosted by the discovery of significant oil reserves (2022 and exploration is continuing currently), the anticipated development of a large-scale green hydrogen sector and the availability of minerals which are critical for the low carbon transition. These activities are supporting investment growth, fueled by increasing FDI. While commercial viability on the oil discoveries is still being assessed and the large-scale green hydrogen project is at the feasibility stage, these developments carry the potential for more sizable FDI (exceeding the country’s GDP) into Namibia by the 2030s. Consequently, the development of these projects is currently not factored into the country’s medium-term economic outlook.

Table 1: Namibia - Key macroeconomic indicators and projections

	2019	2020	2021	2022 e	2023 f	2024 f	2025 f
Real GDP growth (%)	-0.8	-8.1	3.6	5.3	4.2	3.4	3.6
Real GDP per capita growth (%)	-2.5	-9.7	1.9	3.8	2.6	1.8	1.9
CPI inflation (%)	3.7	2.2	3.6	6.1	5.9	5.0	4.7
Budget balance (% GDP)	-5.6	-8.9	-8.5	-5.2	-3.7	-3.9	-4.6
Current account balance (% GDP)	-1.8	3.2	-11.2	-12.9	-11.1	-10.4	-10.2

Source: World bank MPO

Namibia has made progress in the overall Human Development Index (HDI) ranking, but significant socio-economic challenges persist, and they have been exacerbated by the unprecedented COVID-19 shock. According to the United Nations Development Program, Namibia’s HDI value for 2021 was 0.615, ranking the country in the 139th position among 191 nations, and putting it in the medium human development category. Namibia’s score is slightly below the average of 0.636 for countries in the medium human



development group and above the average of 0.547 for countries in Sub-Saharan Africa. The HDI value increased from 0.579 in 1990 to a peak of 0.639 in 2019, before declining in the aftermath of the COVID-19 pandemic. In the years up to 2019, life expectancy, mean years of schooling and expected years of schooling all increased.

Since independence, Namibia expanded household support and the delivery of public services, including public health and education, although access to services remains low among the poorest segments of the population. More than 70 percent of the population now living within six miles of a health facility, while stronger economic growth and improvements in education outcomes supported reductions in the national poverty rate from 35.9 percent in 2003 to 15.6 percent in 2015 (based on the US\$2.15 per day international poverty line) – one of the fastest declines in Sub-Saharan Africa. Despite this progress, estimated at 18.8 percent in 2022 (international poverty line), poverty is high for a country of Namibia’s income level. Meanwhile, income inequality has reduced but remains exceptionally high. In the early 1990s, income inequality, as measured by the Gini coefficient, was estimated at around 70. The Gini coefficient gradually declined to 60.0 in 2004 and to 59.1 in 2015. Structurally high unemployment, which is especially higher for woman and the youth, limits poverty reduction and efforts to reduce high inequality.

Social setting

However, a growth model based on extractives struggles to generate jobs while structural constraints, including skills shortages, hamper private sector development. As a result, poverty and inequality remain high driven by anemic job creation and the legacy of apartheid systems of government in the past—and are estimated to have been worsened by the COVID-19 pandemic. Due to negative per capita GDP growth since 2016, and the negative impact of COVID-19 on livelihoods, poverty rates are projected to have increased. Typically, female-headed households, less educated, larger families, children and the elderly, and laborers in subsistence farming, are particularly prone to poverty.

Gender gap

Based on Global Gender Gap Report 2022 published by World Economic Forum¹⁷ Namibia ranks 8th out of 146 countries. Namibia is one of the two countries in the Top 10 facing reversal in its overall performance. After continued positive progress since 2006, Namibia dropped two places in the ranking and slightly reopened its overall gender gap, reaching a score of 0.807 compared to 0.809 in 2021. Namibia’s performance on the Health and Survival subindex has remained unchanged since 2014. On Economic Participation and Opportunity, Namibia reported lower levels of parity in three indicators than in 2021: women’s labor-force participation (-0.014), wage equality (-0.017) and estimated earned income (-0.005). Although it has achieved parity across all levels of education as well as a high literacy score (0.998), Namibia’s ranking on the Educational Attainment subindex has not gained ground since slipping from parity in 2016. On the Political Empowerment subindex, the only change registered in 2022 was a small reduction in the gender gap score for women in ministerial positions (-0.001).

¹⁷ https://www3.weforum.org/docs/WEF_GGGR_2022.pdf

The Global Gender Gap Index benchmarks the current state and evolution of gender parity across four key dimensions (Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment).



Governance and Corruption Perception Index

The 2022 Ibrahim Index of African Governance Index Report¹⁸ ranks Namibia well in 8th place amongst its Africa peers on governance at a broad level. However, there has been slight decline in the scoring on Security & Rule of Law which encompasses dimensions that impact on public procurement system such as; Accountability & Transparency (Institutional Checks & Balances, Civic Checks & Balances, Absence of Undue Influence on Government, Disclosure of Financial & Judicial Information, Accessibility of Information; and Anti-Corruption (Anti-Corruption Mechanisms, Absence of Corruption in State Institutions, Absence of Corruption in the Public Sector, Public Procurement Procedures, Absence of Corruption in the Private Sector).

Based on Corruption Perception Index 2022 of Transparency International Namibia scored 49/100 with rank of 59 out of 180 countries¹⁹.

Development challenges

Namibia's solid GDP growth over the first 20 years of independence helped the country achieve upper-middle income status in 2009. Despite improvements in access to public services and a reduction in poverty, deep underlying challenges persist, undermining the prospects for further advancement. A pre-1990 history of the systematic exclusion of the black majority from full participation in economic activities continues to shape society and the economy, constraining the country's economic and social progress to this day. Economic advantage remains in the hands of a relatively small segment of the population, and significant inequality persist. This lack of inclusiveness and society's vast disparities have led to a dual economy — a highly developed modern sector, co-existing with an informal subsistence-oriented one. Four important socio-economic challenges define the economy:

- Namibia ranks as one of the world's most unequal countries. Its Gini coefficient of 59.1 in 2015 was second only to South Africa. Geographical disparities in both economic opportunities and access to services are large and widening. High levels of inequality result in starkly different poverty rates across different groups, including by age and gender.
- Relatively high poverty, lagging human capital, and poor access to basic services are interrelated problems. Namibia's poverty rapidly declined from 1993/94 to 2015/16, but it remains high for the country's level of development. Despite recent progress, Namibia ranked 121st among 193 countries in the Human Capital Index²⁰.
- Skills shortages and barriers to entrepreneurship and trade and high costs of doing business curb private sector development and the diversification of the economy, resulting in low primary-sector productivity, slow job creation, high unemployment and in a dual labor market structure.
- High debt levels with rising interest payments alongside a large public wage bill constraining the flexibility of fiscal policy. The public debt ratio rose sharply through the 2010s and was estimated at 72.8 percent of GDP in FY 2022/23, above that of rating peers. Higher interest

¹⁸ <https://mo.ibrahim.foundation/sites/default/files/2023-01/2022-index-report.pdf>

¹⁹ <https://www.transparency.org/en/countries/namibia>

²⁰ <https://publicadministration.un.org/egovkb/en-us/data-center>



payments are increasingly crowding other budget priorities. While spending increased markedly in FY2023/24, supported by a rebound in Southern African Custom Union (SACU) inflows, staying the course on fiscal consolidation will be critical to preserve public debt sustainability.

In addressing the challenges and prioritizing the implementation of targeted policy programs to enhance service delivery, contribute to economic recovery, and engender inclusive growth, Namibia is implementing the Harambee Prosperity Plan II (HPP II)²¹, which covers the period 2021-2025 and builds on the solid foundation of the inaugural Harambee Prosperity Plan 2016-2020. This plan, which is underpinned by five pillars (Effective Governance, Economic Advancement, Social Progression, Infrastructure Development, International Relations) aims to ensure Namibia is positioned to respond to domestic socioeconomic challenges and global opportunities, now and in future by diversifying the sources of growth via attracting private investment in the green and blue economy and boosting productivity in sectors with high employment potential. The governance pillar of the HPP II focus on five goals; Accountability & Transparency; Strengthening the National Anti-Corruption Mechanisms; Improved Performance & Service Delivery; Enhancing Citizen Participation & Engagement and Enhancing Security & Rule of Law, which are all can leverage on an effective and efficient public procurement system.

Namibia is at a pivotal moment. The implementation of projects in green hydrogen, oil and gas exploration, and processing critical minerals will generate new sources of wealth and can contribute to diversify the economy and create jobs, combined with policies to raise skills and reduce skills mismatches, and reforms to reduce barriers to firm entry and growth. At the same time, Namibia is amongst the world's most drought-prone countries and is vulnerable to coastal flooding and sea level rises, erratic precipitation volumes and rising temperature which impact agriculture and human health. Given Namibia's geography and demographics, adaptation investments are needed to build resilience and safeguard development progress.

Preserving fiscal sustainability and enhancing the role and performance of public enterprises through a more effective competition policy environment is critical to maintain macro stability and boost development of the private sector. Namibia's public debt, including guarantees, has more than doubled as a share of GDP since 2014 to reach 70.2 percent of GDP in 2023. After 2015, the government had successfully contained expenditure growth until the COVID-19 pandemic, but reducing public debt proved difficult in a context of low GDP growth.

As the stock of debt grew, interest payments rose to 5.1 percent of GDP and are expected to remain elevated over the medium term, reducing resources for much-needed development spending. Supported by stronger inflows from the SACU revenue pool, which are set to increase by a further 15.2 percent in FY2024/25, government is projecting lower budget deficits by the end of the MTEF period. Struggling public enterprises continue to request government support, which has had an impact on the fiscal trajectory. Nonetheless, SOE guaranteed debt has reduced to 3.7 percent of GDP as of 2023.

Regional integration and trade

Due to the small domestic market, regional integration is key to Namibia's growth prospects. Namibia is a member of SACU and SADC. Under the SACU arrangement, Namibia enjoys free movement of goods, a

²¹ <https://hppii.gov.na>



common external tariff regime, and harmonized rules of origin. The country has made strides in regional integration. Notably, it signed the Common Market for Southern and East Africa (COMESA)-East African Community-SADC Tripartite Free Trade Area agreement in 2015, securing access to a potential market of nearly 670 million people. Namibia also signed and ratified the African Continental Free Trade Area (AfCFTA) Treaty in 2018. However, the country's ability to leverage growing regional market opportunities hinges on addressing supply side constraints to facilitate integration into regional value chains.²²

International obligation

Namibia is a WTO member but not a signatory to the GPA. It has concluded a number of Free Trade Agreements but they do not include detailed public procurement specific chapters.

Membership of international/regional trade organizations²³ are listed below:

- a. WTO: Namibia has been a member of the World Trade Organization (WTO) since 01 January 1995 and a member of GATT since 15 September 1992.²⁴ It not a signatory to or observer of the GPA.
- b. SACU: Namibia became a member of SACU (South African Customs Union) in 1990. Through membership of SACU, Namibia is a party to: SACU-EFTA Free Trade Agreement, SACU-Mercosur Free Trade Agreement and SACU-USA Trade Investment and Development Cooperation Agreement.
- c. AGOA Namibia qualifies for benefits under the US African Growth and Opportunity Act
- d. SADC: Namibia is a member of SADC (South African Development Community) and signatory to the Protocol on trade. Namibia is a member of the SADC group which signed the EU-SADC Economic Partnership Agreement, which entered into force in October 2016.²⁵
- e. COTONOU Agreement: Namibia forms part of the African, Caribbean and Pacific-European Union (ACP-EU) trade agreement, granting non-reciprocal preferential access to some of the ACP products into the EU market.

Namibia also has number of bilateral trade agreements.

2.2. The Public Procurement System and its links with the public finance management and public governance systems

The annual public procurement spend is substantial: 25.37% of GDP in 2021²⁶. Based on the World Bank data²⁷, GDP for Namibia was US\$12.45 billion in 2021, which increased slightly to US\$12.61 billion in 2022. The number of public procuring entities known is 176. However, there are additional public entities which are neither gazetted nor categorized. The total number of public procuring entities will rise once

²² <https://www.afdb.org/en/documents/namibia-country-strategy-paper-csp-2020-2024-0>

²³ http://nambiatradedirectory.com/trade_agreements/, NAMLEX Index of International Law Applicable to Namibia, Legal Assistance Center, 01 January 2023: https://www.lac.org.na/laws/NAMLEX_APPENDIX_2023.pdf

²⁴ https://www.wto.org/english/thewto_e/countries_e/namibia_e.htm

²⁵ <https://trade.ec.europa.eu/access-to-markets/en/content/epa-sadc-southern-african-development-community>

²⁶ https://www.theglobaleconomy.com/rankings/Government_size/Africa/

²⁷ <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=NA>



subsidiaries of public enterprises are classified and categorized following the amended Public Procurement Act.

Based Mid-Year Budget Review of Oct 2023²⁸, the appropriation for the FY2023/24 stands at N\$72.6 billion comprising of N\$66.1 billion in Operational expenditure while the Development budget stands at N\$6.5 billion.

Related to Public Financial Management a Public Expenditure and Financial Accountability (PEFA) assessment was carried out by African Development Bank in 2015, however the report has not been publicly disclosed.

Based on PEFA 2015, GRN has not yet adopted a formal PFM reform strategy but even without a fully articulated and Cabinet approved PFM reform strategy, Namibia over the past decade has been undertaking a number of PFM reforms that have been implemented. The PFM reform effort in Namibia has political championship at the very highest levels. Implementation oversight and monitoring is directly the responsibility of the Executive Director for the Ministry of Finance and Public Enterprises. The reform activities are the responsibility of department heads. Responsibility for the detailed implementation of each of the reform pillars is delegated to the relevant Ministry to be led by the Accounting Officer. One consequence of a lack of a published and approved PFM reform strategy is that there is no framework by which development partners can align their support to build capacity to affect the PFM reform. This also affects government's ability to (a) better articulate, accelerate and coordinate reform implementation across government departments, and (b) monitor reform implementation in a systematic manner.

Based on PEFA 2015, Namibia has experienced progress with regards to the implementation of public financial management reforms. As complex as they may be, the introduction of medium-term expenditure framework (MTEF), medium-term plans (MTP), Integrated Financial Management System (IFMS), program budgeting, among others has contributed significantly to progress made thus far on PFM reforms.

As per PEFA 2015, there are two financial years in Government: 1st April to 31st March for central government, public entities and regional councils, and 1st July to 30th June for local authorities. As at August 2015, there are 32 Offices, Ministries and Agencies (OMAs). Public Finance Management (PFM) reforms have been ongoing for the last 25 years. Some of the major but complex reforms include: the full implementation of the 3-year Medium Term Expenditure Framework (MTEF) budgeting, which has been in existence for the past 15 years, Program Based Budgeting (PBB), the 4 As of July 2015, there were 110,000 government employees on the payroll. Namibia Central Government PEFA Assessment 2015 32 Performance and Effectiveness Management Program (PEMP), which links medium-term development plans to the annual budget, the full rollout of the Integrated Financial Management System (IFMIS) to all line ministries, among others.

The overall structure of the Public Sector in Namibia is represented in the following diagram²⁹:

²⁸ <https://mfpe.gov.na/budget>

²⁹ PEFA 2015



Figure 3: Structure of the Public Sector in Namibia

CENTRAL GOVERNMENT President Government: President, Prime Minister, other Ministers Parliament: - National Assembly - National Council			
REGIONAL GOVERNMENT 14 x Regions - Region council - Governor			
PART MUNICIPALITY 1 - Municipal council	PART MUNICIPALITY 2 - Municipal council	TOWN - Town council	VILLAGE - Village council

Source: Ministry of Regional and Local Governments.

Based on the current government structure as in May 2024³⁰: “The government is run through departments, office, agencies and other entities. They implement policies to support the public. Office includes the Office of the President, Vice President and the Prime Minister. Ministerial departments cover the whole of Namibia, except the vice presidents' office that only applies to marginalized communities and war survivors. Public enterprises focus on providing services rather than implementing policies (3 Offices + 23 Ministerial Departments + 8 Agencies + 41 Public Enterprises)”.

The key institutions, their mandate and role in operating the procurement system

The Ministry of Finance and Public Enterprises³¹ is the key line ministry around which public finance management revolves. It is headed by a political appointee, who is answerable to Cabinet and Parliament referencing the full adherence to the legal framework contained in the State Finance Act. The Minister of Finance is among others responsible for the formulation, preparation and execution of national economic policies by way of ensuring effective coordination and collaboration among all government offices, ministries and agencies.

The Department of Procurement Policy Unit³² The Procurement Policy Unit (PPU) established within the Ministry of Finance and Public Enterprises (MoFPE) is responsible to advise the Minister of Finance on procurement or disposal as stipulated in Section 6(1) of the Public Procurement Act of 2015 as amended, which includes: (a) the monitoring of compliance with this Act, directives, code of procedures and guidelines issued under this Act; (b) the reviewing of the procurement system and proposal of mechanism for improving the implementation of government policies by public entities; (c) the assessing of the impact of the procurement system on the socio-economic policy objectives of the Government; (d) the promotion of the fundamental principles of procurement governing the administration of procurement; and (e) the reviewing of, monitoring and assessing methods of disposal of assets.

³⁰ <https://www.gov.na/about-government>

³¹ <https://mfpe.gov.na/>

³² <https://mfpe.gov.na/procurement-policy-unit>



PPU is charged with the responsibility of promoting key public procurement principles: integrity, accountability, transparency, competitive supply, effectiveness, efficiency, fair-dealing, responsiveness, informed decision-making, consistency, legality, and integration in the procurement of assets, works and services. Based on these principles, the Act cuts across all sectors, including energy, transport, health, and education, and governs procurement activities for all public entities.

Namibia has a partially decentralized public procurement system for bidding and contract implementation process. In accordance with Section 8 of Public Procurement Act of 2015, Central Procurement Board of Namibia (CPBN) is required to conduct the bidding process on behalf of public entities for the award of contracts for procurement or disposal of assets that exceed the threshold prescribed for public entities. The public entities must conduct their own bidding processes for the award of contracts that are within the threshold as specified as per Regulation 2 of the Public Procurement Regulation of 1 March 2017.

The Act also creates and / or empowers several distinct parties / entities namely:

Central Procurement Board of Namibia (CPBN)³³ to, for contracts that exceed the threshold, conduct the bidding process and enter into contracts for public entities and for such contracts, direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board. This includes establishing ad-hoc bid evaluation committees for the evaluation of bids.

Review Panel³⁴, established on a case-by-case basis, to adjudicate applications for review, suspension, debarment and disqualification of bidders and suppliers.

Both CPBN and Review Panel are established under PPA 2015 and constituted by the Minister, namely Minister of Finance and Public Enterprises.

Accounting Officers who are accountable for the full compliance with the Act and must set up an internal organizational structure which includes a Procurement Committee and Procurement Management Unit for the conduct and management of procurement at the public entity. This includes establishing ad hoc bid evaluation committees for the evaluation of bids.

Other related Directorates within MoFPE *inter alia* include: (i) Directorate of Expenditure and Financial Management; (ii) Directorate of Budget Management and Control; (iii) Directorate of Economic Policy & Advisory Services; and (iv) Directorate of Public Private Partnership, all headed by a Director:

- *Directorate of Expenditure and Financial Management:* The Directorate Expenditure and Financial Management is headed by a director, designated as Accountant-General³⁵. The responsibilities *inter alia* include: (i) to ensure that a proper system of accounts is established in every ministry and spending agencies; (ii) to ensure that adequate supervision and control exists over the expenditure and other disbursement of the government; and (iii) to prepare and submit to the Auditor-General as expeditiously as possible the accounts specified in the State Finance Act.
- *Directorate of Budget Management and Control:* The Directorate is entrusted with the responsibility of coordinating the preparation, finalization, managing and controlling of the

³³ <https://www.cpbm.com.na/> established pursuant to PPA s.8

³⁴ <https://eprocurement.gov.na/> review panel established pursuant to PPA s.58

³⁵ <https://mfpe.gov.na/expenditure-and-financial-management>



National Budget as well as the maintenance of an efficient payment system of the government.

- *Directorate of Economic Policy & Advisory Services:* This Directorate publishes annual and quarterly reports, data, short papers, and links to other relevant national and international reports. These reports cover the Macroeconomic and Fiscal policy Framework documents are annual reports produced in the lead up to the budget process. They advise the Minister of Finance and Public Enterprise and the Government as a whole on appropriate macroeconomic and fiscal policy for the budget. The quarterly economic updates serve as interim reports to management of the Ministry of Finance and Public Enterprises, giving details on any significant international, regional, and domestic economic developments and the policy implications thereof.
- *Directorate of Public Private Partnership;* The key functions include (i) providing analytical support to the Ministry of Finance and Public Enterprises and PPP Committee in undertaking the analysis necessary to advise the PPP Committee/Minister of MFPE in administering the PPP Policy; and (ii) assist the PPP Committee/MFPE in issuing regulations, circulars, and guidance notes, pertaining to PPPs.

Public entities including public enterprises (also sample agencies): As per PPA 2015, public entities mean any office, ministry or Agency of the Government and includes a local authority, a regional council, a public enterprise as referred to in the Public Enterprises Governance Act of 2006 (and subsidiaries of public enterprises as amended), a body or trust that is owned or controlled by the Government when engaged in any procurement individually or in consortium and any entity declared as public entities in terms of section 5 of PPL. In line with Public Procurement Regulation of 2017, public entities conduct their own bidding process for the award of contract that are within the defined threshold beyond which CPBN conduct the bidding process on behalf of the public entities. The Regulation defines the Internal Organization Structure on procurement committee and procurement management that includes monitoring every stage of the procurement process and ensure delivery of the procurement contracts in accordance with the Act.

The public entities/procuring of 14 institutions included in the sample (Pillar III) represent a good mix of procurement of goods and services, consulting services across different sectors³⁶. The rationale for their inclusion in the sample is given in the Concept Note included as Appendix I in Volume III of the Assessment Report.

Oversight Bodies

- *National Planning Commission*³⁷: The mandate of NPC is to plan and spearhead the course of national development which is derived from the Article 129 of the Constitution of the Republic of Namibia and the National Planning Commission Act 2013 (Act 2 of 2013). The functions of NPC include to (i) spearhead the identification of Namibia's socio-economic development priorities; (ii) formulate short-term, medium-term and long-term national development plans

³⁶ NamPower, City of Windhoek, Roads Authority, Office of the Prime Minister, Ministry of Health and Social Services, Ministry of Agriculture, Water and Land Reforms, Ministry of Works and Transport, Ministry of Education, Arts and Culture, Namibia Port Authority, Erongo Regional Council, Swakopmund Municipality Ministry of Gender Equality, Poverty Eradication and Social Welfare, Khomas Regional council and CPBN.

³⁷ <https://www.npc.gov.na/>



in consultation with regional councils; (iii) develop monitoring and evaluation mechanisms to ensure effective implementation of the national development plans; (iv) evaluate the effectiveness of Government socio-economic policies; (v) coordinate the development of government socio-economic policies to ensure consistency; and (vi) mobilize, manage and coordinate international development cooperation.

- *Office of the Attorney General*³⁸: The Attorney-General of the Republic of Namibia is appointed in terms of Article 86 of the Namibian Constitution. In accordance with Article 87 of the Namibian Constitution, the powers and functions of the Attorney-General shall be: (i) to exercise the final responsibility for the office of the Prosecutor-General; (ii) to be the principal legal adviser to the President and Government; (iii) to take all action necessary for the protection and upholding of the Constitution; and (iv) to perform all such functions and duties as may be assigned to the Attorney-General by Act of Parliament.
- *Office of the Auditor General*³⁹ The Auditor-General is appointed by the President on recommendation of the Public Service Commission and the approval of the National Assembly in terms of Article 127 of the Constitution of Namibia and derives his duties and power from Section 25 and 26 of the State Finance Act, 1991 (Act 31 of 1991). The Auditor-General is appointed for a period of five years, renewable. The Auditor-General is not a member of the Public Service. The Auditor-General can leave office by resigning and cannot be removed from office unless 2/3 majority of all members of Parliament vote for his/her removal on the grounds of gross misconduct or mental incapacity. Key Responsibilities of the Office of the Auditor-General include: (i) to carry out audits of Central Government Ministries, other Government funds, Boards, Statutory bodies, Municipalities, Regional councils, Town and Village councils; (ii) to audit 132 accounts, whilst carrying out Performance Audits, Compliance, Information Systems and Special Audits which examine the way in which public sector resources and systems are utilized; and (iii) to report the results of all audits to the National Assembly. These reports are considered by the National Assembly's Standing Committee on Public Accounts.
- *Namibia Anti-Corruption Commission*:⁴⁰ The Anti-Corruption Commission (ACC) is an independent agency established by an Act of Parliament, the Anti-Corruption Act, 2003 (Act No. 8 of 2003) to combat and prevent corruption in Namibia. As the leading agency in Namibia that investigates corruption offences, the ACC takes care to ensure that offenders are brought to justice. ACC is also responsible for taking measures for the prevention of corruption in public bodies and private bodies including revision of practices, systems and procedures which may be prone or conducive to corrupt practices, advising such bodies on ways to prevent corruption and educating the public on the evils and dangers of corruption. The mandate ACC include: (i) to investigate allegations of corrupt practices; (ii) to educate the public on the evils of corruption; and to prevent corruption.

³⁸ <http://www.ag.gov.na/>

³⁹ <https://oag.gov.na/>

⁴⁰ <https://acc.gov.na/>



- *Namibian Competition Commission* ⁴¹ : The Namibian Competition Commission was established in terms of the Competition Act 2 of 2003. The Act regulates competition issues across all sectors of the Namibian economy, having regulatory oversight of over 80 000 business entities. It became operational on 09 December 2009. In terms of the Act, the Commission is entrusted as the principal institution to promote and safeguard fair competition in Namibia by promoting the efficiency, adaptability, and development of the Namibian economy. The Commission is tasked with providing consumers with competitive prices and product choices; promoting employment and advance the social economic welfare of Namibians; expanding opportunities for Namibian participation in world markets while recognizing the role of foreign competition in Namibia; ensuring that small undertakings have an equitable opportunity to participate in the Namibian economy; and promoting a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons.
- *Public Service Commission of Namibia*: ⁴² In terms of Article 113 of the Constitution the functions of the Commission shall be defined by an Act of Parliament and shall include the power: :to advise the President and the Government on: (i)the appointment of suitable persons to specified categories of employment in the Public Service, with special regard to the balanced structuring thereof; (ii)the exercise of adequate disciplinary control over such persons to assure the fair administration of personnel policy: (iii)the remuneration of any such persons; and (iv) all other matters, which by law, pertain to the public service.

Training and research institutions

Relating to procurement training there is a consortium of three institutions (NIPAM, UNAM, NUST). These are public enterprises and therefore subject to PPA.

Namibia Institute of Public Administration and Management:⁴³ The NIPAM Act, 2010 establishes NIPAM as a Public Institute with the following mandate: (i)**Training**: to provide training or cause such training to be provided and conduct examinations or tests as a qualification for the appointment, promotion, or transfer of persons in or to the public service. (ii) **Consultancy**: to serve as the official Government consultant to design, evolve new systems, procedures and methods that will prevent waste and leakages and make the public service more efficient and effective in-service delivery, decision making, and formulating a proposal for reforms. (iii) **Operational Research**: to carry out an investigation into and offer practical and implementable solutions that inform national policies, governance practices and challenges/problems of public administration and NIPAM and other social, economic and contemporary issues affecting the Government of the Republic of Namibia; and (iv) **Capacity Evaluation**: undertake regular studies (e.g., surveys) on capacity gaps in public service institutions for planning and determining capacity building needs as a basis to expand training programs and other interventions. There are other

⁴¹ <https://www.nacc.com.na/>

⁴² <https://psc.gov.na/functions-and-duties-of-the-public-service-commission>

⁴³ <https://www.nipam.na/>



educational institutions University of Namibia⁴⁴ and Namibia University of Science and Technology⁴⁵ who are part of a consortium for procurement training and education along with NIPAM.

Private Sector

There are several private sector and business associations who have interest in procurement reform and a competitive business environment. These are:

- i. Namibian Manufacturers Association⁴⁶
- ii. Namibia Chamber of Commerce and Industry⁴⁷
- iii. Namibia Local Business Association⁴⁸
- iv. Construction Industries Federation⁴⁹
- v. Namibia Council for Architects and Quantity Surveyors⁵⁰

Civil Society Organizations

There are very few CSOs in Namibia who are active in governance and procurement monitoring and some of them offer useful reports on procurement, corruption on their website.

An example of CSO participation is a program supported by GRN and European Union (EU) called “Enhancing Participatory Democracy in Namibia” (EPDN) 51 to “strengthen collaboration` and coordination between Parliament, Civil Society Organizations and Government bodies in the implementation and oversight of public policies and programs”.

In addition to the World Bank and the African Development Bank, there are a number of international organizations which are active in supporting/funding programs mostly following procurement rules of such international organization, and these include World Health Organization⁵², UNICEF⁵³, UNDP⁵⁴, Global Fund⁵⁵, USAID⁵⁶, KfW⁵⁷.

2.3. National policy objectives and sustainable development goals

As per Article 95 of the Constitution of Namibia⁵⁸, the State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at (i) enactment of legislation to ensure

⁴⁴ <https://www.unam.edu.na/>

⁴⁵ <https://www.nust.na/>

⁴⁶ <https://www.linkedin.com/in/nma-namibian-manufacturers-association-43934765/?originalSubdomain=na>

⁴⁷ <http://www.ncci.org.na/>

⁴⁸ <https://m.facebook.com/p/Namibia-Local-Businesses-Association-100081603365345/>

⁴⁹ <https://cifnamibia.com/>

⁵⁰ <https://ncags.org/>

⁵¹ <https://www.epdn.org/>

⁵² <https://www.afro.who.int/countries/namibia>

⁵³ <https://www.unicef.org/topics/namibia>

⁵⁴ <https://www.undp.org/namibia>

⁵⁵ <https://www.theglobalfund.org/en/government/profiles/namibia/>

⁵⁶ <https://www.usaid.gov/namibia>

⁵⁷ <https://www.kfw-entwicklungsbank.de/Global-commitment/Subsahara-Africa/Namibia/>

⁵⁸ <https://www.un.int/namibia/namibia/chapter-11-principles-state-policy>



equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; (ii) enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused; (iii) consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health; and (iv) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

Namibia Vision 2030 document⁵⁹ on Policy Framework for Long -Term National Development, as basic principle, the concept of sustainable development is the cornerstone on which this work was based. Namibia has subscribed to this approach in its National Constitution, and has committed itself internationally, by adopting the United Nations Agenda 21 principles. The philosophy and principles of sustainable development cut across all sectors. Indeed, sustainable development is achieved only where sustainability in all sectors of endeavor is attained – social, economic, and ecological. For the purposes of this study, sustainable development is defined as “development that meets the needs of the present without limiting the ability of future generations to meet their own needs”.

Based on “NAMIBIA’S SECOND VOLUNTARY NATIONAL REVIEW REPORT ON THE IMPLEMENTATION OF THE SUSTAINABLE DEVELOPMENT GOALS TOWARDS AGENDA 2030” (VNR 2021)⁶⁰ under Goal 12 in principle, Namibia’s commitment towards sustainable consumption and production is in line with its efforts towards ensuring environmental safeguards while promoting sustainable development. The country has ratified several laws and conventions geared towards sustainable development.

Further, as part of Conservation Efforts Namibia has implemented energy conservation measures, including the campaign to distribute energy saving lamps and water conservation measures. Namibia is a party to a number of bilateral, multilateral, regional, and international agreements that promote sustainable consumption and production. The country ensures sustainable consumption of its fishery resources, beef resources, and wildlife. Through invader bush management, the country is sustainably producing charcoal and briquettes for the international market. The sustainable usage of resources in Namibia’s conservancies has become a globally acclaimed success story. Furthermore, Namibia joined the rest of the world to impose tax on plastic bags.

As per VNR 2021, On Goal 16 on Peace, Justice and Strong Institution, Namibia has promoted peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels Overview Namibia enjoys a strong comparative advantage in the region of being a politically stable constitutional democracy with a strong sense of the rule of law. This could largely be attributed to the broadly reconciliatory process at the time of independence, which led to the formulation of one of the most inclusive and formidable Constitutions in the world. Furthermore, the country continues to rank high on the inclusiveness, effectiveness, and efficiency of its institutions. Namibia’s score on the Ibrahim Index of African Governance (IIAG) is higher than the average score for Africa at 48.8, and for southern Africa at 53.3.

⁵⁹ https://www.npc.gov.na/wp-content/uploads/2021/11/vision_2030.pdf

⁶⁰ https://sustainabledevelopment.un.org/content/documents/279462021_VNR_Report_Namibia.pdf



2.4. Public Procurement Reform

Based on published document by MoFPE/PPU⁶¹, as means to improve Namibia's procurement system, Government of the Republic of Namibia enacted the Public Procurement Act, 2015 (Act. No.15 of 2015), repealing the Tender Board Act, 1996 (Act No. of 2016). The objective of the new law is to promote principles of fairness, transparency and ensure that public procurement is non-discriminatory among other key principles. As per this document by MoFPE/PPU, the Procurement Act, 2015 is anchored on the United Nation Commission on International Trade Law (UNCITRAL) model law on procurement, which provides for the model law on Public Procurement that sets international standards in respect of public procurement.

Albeit the Public Procurement Act, 2015 having come into effect in 2017, compliance level by public entities have been found to be quite low five years on. During 2021/22, when assessed by PPU against compliance relating how a procurement activity best complies to the Public Procurement Act, 2015, its regulations and directives issued therein, inclusive of guidelines, public entities turned an average compliance score of only 46%, with compliance rating varying widely from a low of 18% to a high of 76% across the public entities.⁶²

Major reform activities that the Namibian Government took to improve the public procurement system include an amendment to the Public Procurement Act of 2015 in 2022. In 2022, Government of Namibia finalized and enacted the amendment to the Public Procurement Act, 2015 with the aim to promote efficiency, good governance and enhance compliance. Primary features of the amendments includes: introduction of framework agreements and pool procurement as methods of procurement; reconsideration opportunities in procurement proceedings; redefinition of public entities to include subsidiary of public enterprises; enhanced clarity with regards to emergency procurement with reporting requirements to reduce abuse, strengthening of review panel function, in addition, the amendments also enabled for the separation of powers at the Central Procurement Board of Namibia, by introducing the position of Accounting Officer, who is now separate from the Chairperson of the Board.

Additional reform activities include the issuance of the Code of Good Practice on Preference to provide an overall policy on implementation of preferences; and the issuance of various Directives, Guidelines, Instruction Notes, and Guidance Notes to ease the implementation of the Public Procurement Act. Furthermore, the Procurement Policy Unit launched the basic eProcurement Portal, had the National e-GP strategy approved, developed and implemented new educational curriculum, developed and implemented new investigation framework, driving reforms on health procurement, signed memorandum of understanding with tertiary institutions to offer short courses and accredited programs on public procurement, developed and implemented compliance tools, developed and implemented capacity assessment frameworks and developed reporting mechanisms.

Public Procurement Challenges

PPU appears to face the challenge of low capacity and so do public procuring entities. The mindset of procuring entities is typically focused on a rules-based approach to ensure that procurement procedures

⁶¹ https://eprocurement.gov.na/guidelines1/-/document_library/rvky/view_file/535441
Reference Guide to Public Procurement version 1.0 (1 May 2021) issued by MoF/PPU

⁶² [Summary Report on Compliance Audits – 2021/22](#) from Namibia eProcurement Portal



are compliant with the legal framework even though it also remains a challenge with low compliance audit scores. There is a lack of acknowledging public procurement as a strategic function for better service delivery and sustainable procurement outcomes in line with policy objectives.

While PPU is doing its best to support the implementation of the fundamental procurement principles outlined above, lack of transparency and efficiency can still be found and there are limited tools and sufficient data available to identify public procurement issues and break them down by sector and/ or by procuring entity to be able to take corrective actions. The PPU annual compliance audit summary report⁶³ is limited and points to lack of submission of procurement plans and implementation reports by public entities but does not cover governance issues such as those related to conflict of interest declaration or material non-compliance with legislation.

The Namibia public procurement system further suffers from limited transparency as measured in terms of the use of the eProcurement Portal for publication of existing bid opportunities and awards made. While the CPBN portal includes sections with current open bids and awarded contracts, the eProcurement Portal, albeit being a basic portal and not an end-to-end e-GP system, should display all current bid opportunities as well as contract information for all advertised and awarded bids by all public entities. However, currently there is very limited publication of award information on the portal. Section 55 subsection (8) of the PPA requires the CPBN or public entity to promptly, in a manner prescribed in Regulation 39⁶⁴, publish a notice of every procurement or disposal award together with the executive summary of the bid evaluation report.

Without additional publicly available information on public procurement performance and having not yet developed a national monitoring and evaluation system on public procurement, an in-depth analysis of the system's weaknesses cannot be performed. However, besides missing procurement information, there are additional challenges on the Namibia procurement system. A lack of capacity, skills and knowledge of public procurement practitioners has been identified in the 2021/2022 Compliance Audit Summary Report by PPU as one of the main obstacles to increase public procurement efficiency. Further, inadequate planning and monitoring of procurements is an issue that hinders the implementation of public procurement as a strategic governance tool. According to the 2021/2022 PPU annual report on the performance of the public procurement systems, 46% of public entities failed to submit annual procurement plans and only 27% complied with publication of quarterly procurement implementation reports.

Based on Systematic Country Diagnostics (the World Bank, 2021)⁶⁵, the public procurement reform is underway. The Public Procurement Act of 2015 and the Public Procurement Regulations of 2017 addressed several grievances and the loss of legitimacy of the previous decentralized and opaque procurement system. The Act and Regulations were hailed as a major policy improvement by centralizing large procurements under the Central Procurement Board of Namibia (CPBN). However, the implementation was difficult due to capacity constraints. This applied both to the newly established CPBN and to the public entities that lack an understanding of the new law. Paradoxically, even though the law

⁶³ <https://eprocurement.gov.na/documents>

⁶⁴ <https://mpe.gov.na/documents/105739/121928/Public+Procurement+Regulations.pdf/7ddd0e10-1d9d-a1ef-889f-bb4a30aee7e7>

⁶⁵ <https://documents1.worldbank.org/curated/en/976371617896981427/pdf/Namibia-Systematic-Country-Diagnostics.pdf>



was a policy improvement over the previous procurement regime, its implementation was difficult and has led to temporary but dramatic increases in procurement times for large contracts. These took up to 12 months (as opposed to three to four months in the past) at the time of publication of the Systematic Country Diagnostics in 2021; there were also reported shortages of medical supplies and other items critical to delivering services.

The MoFPE as the custodian of the Public Procurement Act, 2015, has requested the World Bank, supported by the African Development Bank, to review the Namibian public procurement system using the Methodology for Assessing Procurement Systems (MAPS). Namibia is committed to developing a 5-year public procurement strategy through which the country's procurement priorities, approach, strategies, and measures of success over a medium term will be outlined. The outcome of the MAPS assessment would provide credibility to the strategic direction of the procurement reforms in Namibia and particularly to the targeted development of the National Procurement Strategy.



3. Assessment

3.1. Pillar I - Legal, Regulatory and Policy Framework

Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also consider international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.

Major Strengths under Pillar I

- The public procurement legal framework is set out in a clear hierarchy and is published on-line and is accessible without charge.
- There are clear rules on eligibility and exclusion to ensure that participation of interested parties is fair and based on qualification and exclusion.
- The minimum content of procurement documents is listed in the PPA, sufficient for suppliers to respond to the requirements of the public entity and there are standard bidding documents and contract conditions for mandatory use.
- Procuring entities are required to inform bidders of the award decision, bidders have the right request the Board or public entity to reconsider the award decision and right to request review of that decision by the Review Panel.

Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulation, procedures and bidding documents formally in use.

• **Synthesis of the indicator**

The public procurement legal framework is set out in a clear hierarchy with documents published and available online and free of charge. The procurement legal framework covers goods, works, consultancy services and non-consultancy services for procurement using public funds, with listed exemptions. The Minister also has power to grant a general or specific exemption and it is recommended that the use of this power is reviewed to assess its impact and, if that impact is negative, to identify measures to reduce reliance on this exemption. There is no specific reference to internationally funded procurements. Public Private Partnerships are regulated by dedicated legislation, requiring all PPPs to be procured through a competitive bidding process, respecting procurement principles.



A range of procurement methods is listed in the PPA. Open advertised bidding is intended to be the default method of procurement with conditions of use for other, less competitive and non-competitive methods. Conditions for use of less competitive procurement methods are defined in broad terms and permit exercise of significant levels of discretion by decision makers, with no safeguards in place to prevent misuse. The legal framework requires public advertisement of opportunities using the open advertised bidding method, with the minimum period for submission of bids of 30 days, with no extension of this period in the case of international bidding.

The legal framework sets out rules and procedures relating to eligibility and exclusion, including for criminal and corrupt activities. There is a system for administrative debarment, subject to due process. The legal framework sets out procedures for determination of eligibility and ability to perform a specific contract. The current drafting of provisions in the PPA on partnerships and joint ventures with foreign entities lacks clarity and can be improved. The PPA and PPR do not establish rules for the participation of public enterprises as bidders for public procurement contracts.

The minimum content of procurement documents is listed in the PPA and provisions in the legal framework on preparation of technical specifications, with the possibility of functional specification and principle of equivalence of standards provided for. Potential bidders have the right to request clarification of procurement documents with timelines specified for the clarification process.

The legal framework requires every bid to be evaluated according to the criteria and methodology set out in the bidding documents, although there is no specific reference to weighting of evaluation criteria. Award is to the lowest evaluated substantially responsive bid which meets the qualification criteria. There are no provisions in the PPA or PPR referring in specific terms to the use of non-price evaluation criteria or life-cycle costing. The legal framework defines the process for and recording of bid opening which shall coincide with the deadline for submission of bids or immediately after that deadline. There are provisions prohibiting disclosure of proprietary information of bidders and requiring confidentiality to be respected.

Public entities are required to inform bidders of the award decision and bidders have the right request the Board or public entity to reconsider the award decision. If a bidder does not receive a response from the public entity or is not satisfied with the decision of the public entity in response to a request for reconsideration it is entitled to apply to the Review Panel for review. Bidders also have a general right to apply to the Review Panel for review of a decision or action taken by the Board or a public entity, but this right is rarely exercised. The Review Panel has a range of remedies available including setting aside the award decision. Decisions by the Review Panel decisions are required to be published on the eProcurement Portal. There is a right to apply to the High Court for review of the decision of the Review Panel, after exhaustion of all available remedies under the PPA.

The PPU has issued e-GP Guidelines and a User Manual, which require use of e-Procurement at specified points in the procurement cycle. There are no provisions in the PPA or PPR that ensure the use of tools and standards that provide unrestricted and full access to the e-GP system or that require interested parties to be informed which part of the process will be managed electronically.



- **Findings**

The public procurement legal framework is set out in a clear hierarchy, with the Public Procurement Act 2015 (PPA) being the primary legislation, supported by the Public Procurement Regulations 2017 (PPR), Ministerial Directives, Codes and Guidelines. The legal framework covers goods, works, consultancy services and non-consultancy services for procurement using public funds, subject to listed exemptions. The PPA, PPR and other procurement legal framework documents are all published and accessible without charge from the MFPE eProcurement Portal.

Public Private Partnerships are regulated by dedicated legislation, the Public Private Partnership Act 2017 (PPP Act).

The PPA gives the Minister power to grant a general or specific exemption by way of a directive for specified types of procurement or from application of specific provisions of the PPA where they are not “practical or appropriate” in the case of the particular procurement. There are no provisions in the PPA specifically addressing whether and to what extent the PPA applies to the process for award of contracts funded pursuant to international agreements, international treaty or concluded under provision financed by multilateral financing institutions.

Procurement methods are listed in the PPA. Open advertised bidding is intended to be the default method of procurement with conditions of use for other, less competitive and non-competitive methods. There is a range of methods prescribed with an appropriate range of options, including provision for use of pre-qualification, post-qualification, single stage and two stage procurement. Fractioning of contracts (artificial division) to limit competition is prohibited. Conditions for use of less competitive procurement methods are defined in broad terms and permit exercise of significant levels of discretion by decision makers, with no safeguards in place to prevent misuse.

The legal framework requires public advertisement in a newspaper of wide circulation and on the public procurement portal of procurement opportunities using the open advertised bidding method. Publication of bidding documents on-line at time of advertisement should ensure that bidders are able to determine whether they are able to and interested in submitting a bid. Provisions in the PPA specify minimum period for submission of bids of 30 days and requires deadlines to be set to allow sufficient time for preparation, with a view to maximizing competition.

There are clear rules on eligibility and exclusion to ensure that participation of interested parties is fair and based on qualification and exclusion. The legal framework provides for exclusion for criminal and corrupt activities and for administrative debarment, subject to due process. The legal framework sets out procedures for determination of eligibility and ability to perform a specific contract. The current drafting of provisions in the PPA on partnerships and joint ventures with foreign entities lacks clarity and it is unclear what incentives and conditions apply when a foreign bidder wishes to participate. The PPA and PPR do not establish rules for the participation of public enterprises as bidders for public procurement contracts.

The minimum content of procurement documents is listed in the PPA, sufficient for suppliers to respond to the requirements of the public entity. There are provisions in the legal framework requiring preparation of technical specifications which must not be unreasonably restrictive and standard bidding documents



require use of international standards where possible. The possibility of functional specification and principle of equivalence of standards are provided for.

Potential bidders have the right to request clarification of procurement documents. Timelines for responses to requests for clarifications are specified and public entities must communicate the outcome of clarifications to all bidders in writing.

The legal framework requires every bid to be evaluated according to the criteria and methodology set out in the bidding documents, although there is no specific reference to weighting of evaluation criteria. Award is to the lowest evaluated substantially responsive bid which meets the qualification criteria. There are no provisions in the PPA or PPR referring in specific terms to the use of non-price evaluation criteria or life-cycle costing. PP Guidelines refer to cost of ownership and to disposal as price related criteria but actively discourage use of non-price criteria. Quality is a major consideration in evaluating proposals for consultancy services. During the period of evaluation confidentiality of bid information and the bid evaluation process must be respected.

The legal framework defines the process for bid opening which shall coincide with the deadline for submission of bids or immediately after that deadline. Records of bid opening proceedings must be retained and be made available to bidders. Security and confidentiality of bids must be maintained prior to bid opening, until after the decision on award of contract and there are provisions prohibiting disclosure of proprietary information of bidders. The PPA sets out clear provisions for the submission and receipt of bids.

Procuring entities are required to inform bidders of the award decision and bidders have the right request the Board or public entity to reconsider the award decision. If a bidder does not receive a response or is not satisfied with the decision in response to a request for reconsideration it is entitled to apply to the Review Panel for review. The Review Panel has a range of remedies available including setting aside the award decision. Bidders also have a general right to apply to the Review Panel for review of a decision or action taken by the Board or a public entity, but this right is rarely exercised. There is a right to apply to the High Court for review of the decision of the Review Panel. Rules establish time frames for submission of a request for reconsideration and application for review to the Review Panel. Applications for review by the Review Panel are not published, but there is no legal requirement in the legal framework to do so. Decisions by the Review Panel decisions are published on the eProcurement Portal, "Review Panel Reports" but not always within the specified time frame of 7 working days.

The legal framework requires the establishment of a procurement management unit within a public entity, which is responsible for management of procurement contracts. The legal framework also assigns some contract management related responsibilities to the CPBN. Conditions for contract amendment are prescribed in the legal framework and are included in procurement contracts, for mandatory use. Standard bidding documents sampled contain contractual provisions dealing with changes in contract price, change orders, variations and contract amendments. There are requirements for approval by the CPBN of contract price variations above specified thresholds. The list contents of procurement contracts to include provisions on dispute resolution and standard bidding documents sample contain such provisions. The final outcome of a dispute resolution process is enforceable through the Civil courts.

The PPA requires publication of open tenders on the public procurement portal and permits use of electronic reverse auctions. It also provides for the PPU to prepare guidelines on e-procurement and to



facilitate the use of information and communications technology in procurement. In addition, the PPA specifically provides for the Minister to make regulations relating to future development and implementation of e-procurement solutions. The PPU has issued e-GP Guidelines and a User Manual, which require use of e-procurement at specified points in the procurement cycle. There are no provisions in the PPA or PPR that ensure the use of tools and standards that provide unrestricted and full access to the e-GP system or that require interested parties to be informed which part of the process will be managed electronically. Procurement management units are required to maintain and keep records of procurement of a public entity in accordance with the provisions of the PPA.

The PPP Act requires all PPPs to be procured through a competitive bidding process, respecting procurement principles. PPP Act Part 2 establishes the PPP Committee, whose functions include to advise the Minister of Finance on policies relating to PPP and to develop best practice guidelines in relation to all aspects of PPP projects.

- **Gaps**

Substantive Gaps

1(a)(b): Ministerial exemptions from application of PPA: There appears to be quite heavy reliance on use of the provision in PPA s.4(2) giving the Minister power to grant a general or specific exemption by way of a directive for specified types of procurement or from application of specific provisions of the PPA where they are not “practical or appropriate” in the case of the particular procurement. This can be seen in the granting of a repeated general exemption in relation to disposal of assets, acquisition or granting of rights and letting and hiring and use of specific exemptions on a procurement specific basis. Over reliance on this exemption reduces coverage of the PPA in terms of procurement falling within its scope and, potentially, supports a culture of poor compliance with basic procedural requirements.

1(a)(b): Internationally funded procurement: There are no provisions in the PPA addressing the issue of whether or not the PPA applies to the procurement process for contracts arising from international agreements, international treaty or concluded under provision financed by multilateral financing institutions. It is thus not clear which provisions would take precedence in the event that use of that specific institution’s procurement rules & procedures is required.

1(b)(d): Standards for competitive procedures: The conditions for use of less competitive and non-competitive procurement methods are defined in the PPA in broad terms and permit exercise of significant levels of discretion by decision makers. This raises the possibility of inappropriate use or over-use of less competitive methods.

This Gap is assigned a “Red Flag” because inappropriate or over-use of less competitive methods has a significant impact both in terms of lack of transparency of the procurement system as a whole and reduction in competition reducing value for money outcomes. In addition, whilst amendments to the PPA are the starting point and lie within the procurement sphere, the task of ensuring that the provisions are well-understood, applied, and enforced is system-wide. It will require proactive cooperation by multiple stakeholders in addition to the PPU, including at procuring entity level and in a number of spheres including training & education, public finance management and internal and external audit.

1(c)(b): Time frames for submission of bids in international bidding: There are no provisions in the PPA or PPR requiring extended time frames for submission of bids in international bidding.



1(d)(b): Participation of foreign bidders: The provisions in the PPA and PPR on partnerships and joint venture arrangements with foreign entities are unclear. It is uncertain precisely what is mandated or optional, what incentives and conditions can legitimately be prescribed, by whom and at what stage of the procurement process. Mandatory requirements for partnerships and joint venture arrangements as a condition for participation or contract award are likely to create barriers to competition and may reduce value for money outcomes.

1(d)(d): Rules for participation of public enterprises as bidders: The PPA and PPR do not establish rules for the participation of public enterprises as bidders for public procurement contracts to ensure a level playing field for all competitors. Terminology used in the SBDs is not aligned with Namibian legislation and thus lacks clarity.

1(f)(a): Shortlisting bids for evaluation: Provisions on shortlisting bids for evaluation at PPA s.52(12) are not clear, in particular in relation to number, criteria, and methods for shortlisting.

1(f)(b): Price and non-price attributes: There are no provisions in the PPA or PPR referring in specific terms to use of non-price evaluation criteria or life-cycle costing. PP Guidelines refer to cost of ownership and to disposal as price related criteria but actively discourage use of non-price criteria. This is likely to reduce value for money outcomes.

1(i)(a): Contract management: Functions for undertaking contract management are not well defined in the procurement legal framework and the specific responsibilities for contract management activities are not sufficiently clearly assigned. The stated objectives of the CPBN described at PPA s.8, to include direction and supervision of accounting officers in “managing the implementation of procurement contracts awarded by the Board” creates potential for overlap of functions and responsibilities between accounting officer of the procuring entity and the CPBN.

1(j)(b): e-GP tools and standards: The PPA and PPR do not include provisions to facilitate effective use of e-procurement by ensuring that the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.

1(j)(c): e-GP – informing interested parties: The PPA and PPR do not include provisions that require interested parties to be informed which part of the process will be managed electronically.

1(k)(a): List of procurement records and documents to be kept at operational level: There is currently no comprehensive list of procurement records and documents to be retained by the Board or public entity at an operational level. This should assist to enhance consistency of record-keeping.

1(k)(c): Security protocols to protect records: There is currently no specific security protocol for the protection of public procurement records.

Minor Gaps

1(d)(c): Grounds for disqualification: There is no specific reference to disqualification on the grounds of conviction for terrorism, money laundering, drug and people trafficking or child labor related offences.



- **Recommendations**

To address Substantive Gaps

1(a)(b): Ministerial exemptions from application of PPA: Assess the impact of the repeated use of the Ministerial exemption in relation to disposal of assets, acquisition or granting of rights and letting and hiring, in particular on procurement of goods which may otherwise be subject to the PPA and consider whether this exemption should still apply to those procurements. Assess the impact of wider use of the exemption process on the level of compliance with basic procedural requirements and consider whether more stringent measures are required to ensure that the use of this exception is granted only in exceptional cases.

1(a)(b): Internationally funded procurement: Introduce provisions in the legal framework, ideally the PPA, to address the issue of whether or not the PPA applies to contracts arising from international agreements, international treaty or concluded under provision financed by multilateral financing institutions.⁶⁶

1(b)(d): Standards for competitive procedures: Consider putting measures into place to ensure that discretion to use less competitive and non-competitive procurement methods is exercised with caution. For example, it may be appropriate to specifically state in primary legislation that non-competitive methods should be used only in highly exceptional and limited circumstances and to emphasize the importance of seeking to maximize competition. Advance public notice of direct procurement in the case of a single supplier may also be considered as a safeguard. It may also be advisable to make it clear in the legal framework that the poor planning on the part of a public entity shall not be a justifiable reason for use of non-competitive methods.⁶⁷

1(c)(b): Time frames for submission of bids in international bidding: To allow for additional time for bid preparation by foreign bidders, consider amending the PPA or PPR to require and specify a minimum time frame for submission of bids in international bidding which is longer than the standard minimum time period of 30 days.

1(d)(b): Participation of foreign bidders: Clarify provisions on partnerships and joint venture arrangements with foreign entities to ensure that they do not create a barrier to entry for foreign bidders.

1(d)(d): Rules for participation of public enterprise as bidders: Include provisions in the legal framework which ensure that the principle of fair competition applies when public enterprises participate as bidders in public procurement. Amend SBDs to align new provisions and ensure that consistent terminology is used.

1(f)(a): Shortlisting bids for evaluation: Clarify provisions on shortlisting bids for evaluation at PPA s.52(12) to ensure that the Board and public entities understand what constitutes a “sufficient number” of bids and the criteria and methods to be applied to drawing up a shortlist.

1(f)(b): Price and non-price attributes: Introduce in the legal framework provisions to promote the use of life cycle costing or total cost of ownership, as appropriate in relevant procurements to ensure value for money decisions. All legal provisions must be supported by clear, practical guidelines on how to incorporate life cycle costing or total cost of owner into the entire procurement cycle, from planning to

⁶⁶ See, for example, UNCITRAL Model Law on Public Procurement, Article 3.

⁶⁷ See, for example UNCITRAL Model Law on Public Procurement, Article 30(4).



delivery. This should be tied in with measures to address sustainable public procurement more widely and recommendations at sub-indicator 3(a) Sustainable Public Procurement.

1(i)(a): Contract management: Amend procurement legal framework to define the functions for undertaking contract management and clearly assign responsibilities for contract management, avoiding duplication and overlap between functions and activities of the procuring entity and the Board (see also analysis, Gap and recommendations at 6(a)(b)).

1(j)(b): e-GP tools and standards: Introduce provisions into legal framework to ensure the consistent application of electronic technologies and require standardized formats, technical equipment and connection arrangements and procedures to grant unrestricted and full access to e-procurement. These provisions will need to be comprehensive and tailored to reflect the particularities of the e-GP system in Namibia.

1(j)(c): e-GP – informing interested parties: Introduce provisions into legal framework to make it mandatory to inform potential bidders which parts of the processes will be managed electronically (e.g. availability of procurement documents, communication, bid submission, contract awards, billing and payments etc.). Provisions in the legal framework will need to allow sufficient flexibility to take account of staged roll-out in the event of upgraded or new end-to-end e-GP system and will need to clarify whether conventional paper-based procurement is still allowed and at what phases of the procurement process.

1(k)(a): List of procurement records and documents to be kept at operational level: Consider publishing a check list for use by procuring entities at an operational level which sets out which procurement documents are to be retained, to ensure a complete procurement record to cover the entire procurement process, including contract management. This should refer to and align with rights of public access to information.

The MAPS Methodology lists the following as a minimum list of records to be retained:

- public notices of procurement opportunities
- the procurement method, including justification
- a complete set of bidding/selection documents, including clarifications and any amendments
- bid/proposal opening records
- evaluation reports, including clarifications sought and provided during the evaluation process
- award decisions, including all elements on which the decision was based
- award notices (if applicable)
- formal challenges (requests for review and appeals) by bidders and outcomes
- final signed contract documents and amendments
- contract variations, modifications, and changes
- certificates and reports of inspection, quality control and acceptance
- claims and dispute resolutions
- payments
- disbursement data (as required by the country's financial management system)



- any correspondence, meeting notes and minutes, including contract negotiations (if applicable).

1(k)(c): Security protocols to protect records: Establish security protocols to protect records of public procurement, both physical and electronic and consider measures to ensure compliance in a consistent manner by all public entities. This will need to be aligned with current requirements of the eProcurement Portal and future roll-out of e-GP.

To address Minor Gaps

1(d)(c): Grounds for disqualification: Include in the legal framework specific provisions listing grounds for ineligibility due to conviction by final judgment for specified organised crime, terrorist and trafficking offences (participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labour; and all forms of trafficking in human beings).

Summary of substantive gaps and recommendations of Indicator 1

Substantive gap	Risk classification and red flags	Recommendations
1(a): Ministerial exemptions from application of PPA – over reliance	Medium	Assess impact of use of Ministerial exemptions and consider whether more stringent measures require to ensure exceptional use only.
1(a): Internationally funded procurement – no specific provisions in legal framework	Medium	Introduce provision in the legal framework to address internationally funded procurement.
1(b): Standards for competitive procedures – lack of safeguard against improper use of less competitive/non-competitive methods	High, Red flag	Consider putting measures into place to ensure that discretion to use less competitive and non-competitive procurement methods is exercised with caution.
1(c): Time frames for submission of bids in international bidding not specified	Medium	Specify a minimum time frame for submission of bids in international bidding which is longer than the standard minimum time period of 30 days.
1(d): Participation of foreign bidders -provisions are unclear	Medium	Clarify provisions on partnerships and joint venture arrangements with foreign entities to ensure that they do not create a barrier to entry for foreign bidders.
1(d): No rules for participation of public enterprises as bidders	Low	Include provisions in the legal framework which ensure that the principle of fair competition applies when public enterprises



Substantive gap	Risk classification and red flags	Recommendations
		participate as bidders in public procurement. Amend SBDs.
1(f): Shortlisting bids for evaluation – provisions lack clarity	Low	Clarify provisions on shortlisting bids for evaluation.
1(f): Price and non-price attributes – lack of provisions on price/non-price attributes or consideration of life-cycle cost.	Medium	Introduce in the legal framework provisions to promote the use of life cycle costing or total cost of ownership, as appropriate in relevant procurements to ensure value for money decisions. Provide supporting guidelines.
1(i): Contract management – functions for contract management not well defined in the legal framework.	High	Amend procurement legal framework to define the functions for undertaking contract management and clearly assign responsibilities for contract management, avoiding duplication and overlap between functions and activities of the procuring entity and the Board (see also analysis, Gap and recommendations at 6(a)(b)).
1(j): e-GP tools and standards – no provisions to facilitate effective use of e-procurement by ensuring use of specified tools and standards.	Medium	Introduce provisions into legal framework to ensure the consistent application of electronic technologies and require standardized formats, technical equipment and connection arrangements and procedures to grant unrestricted and full access to e-procurement.
1(j): e-GP – no requirement to inform interested parties which parts of process will be managed electronically	Low	Introduce provisions into legal framework to make it mandatory to inform potential bidders which parts of the processes will be managed electronically.
1(k): No checklist of procurement records and documents to be kept at operational level	Medium	Consider publishing a check list for use by procuring entities at an operational level, which sets out which procurement documents are to be retained and to cover the whole procurement cycle, including contract management.



Substantive gap	Risk classification and red flags	Recommendations
1(k): No specific security protocols for protection of procurement records		Establish security protocols to protect records of public procurement, both physical and electronic and consider measures to ensure compliance in a consistent manner by all public entities.

Suggestions for improvement

1(e): Specifications - combined for 1(e), (b) & (c): The PPA, PPR and supporting framework including SBDs should be better aligned to ensure that the requirements for neutral specifications, possible use of functional specifications and the principle of equivalence are clearly expressed in consistent manner. It would also be useful to include specific reference to citing international norms when possible.

1(f)(d): Method for evaluation: Consider providing additional, more detailed guidance on selection and preparation of evaluation criteria, the way they are combined as well as decisions on how to weight criteria. This is particularly important to support use of criteria to assess life-cycle/total cost of ownership and non-price qualitative criteria. (see also 1(f)(b)).

1(g): Electronic procurement - combined for 1(g) (a), (b), (c) & (e): Consider inclusion of provisions in the PPA and/or PPR and related amendments, to specifically provide for and describe use of electronic procurement at defined stages of the procurement process, such as modality for submission and opening of tenders, recording of bid proceedings and security and confidentiality. Provisions in the legal framework will need to allow sufficient flexibility to take account of staged roll-out in the event of upgraded or new end-to-end e-GP system and will need to clarify whether conventional paper-based procurement is still allowed and at what phases of the procurement process. (see also, 1(k)).

1(h)(b): Right to judicial review: Consider including a positive statement in the PPA confirming entitlement to pursue judicial action in the High Court subject to requirements to exhausting all available remedies under the PPA.

1(h)(c): Use of administrative review at earlier stages in the procurement process: Investigate reasons why applications for review at earlier stages in the procurement process, prior to the notice on selection for award, are relatively rare. Consider expanding the provisions in PPA s.59, to refer specifically to applications for review at earlier stages such as when bids are invited or at pre-qualification where a two-stage process is used.

Indicator 2. Implementing regulations and tools support the legal framework

This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions of contract. Ideally the higher-level legislation provides the framework of principles and policies that govern public



procurement. Lower-level regulations and more detailed instruments supplement the law, make it operational and indicate how to apply the law to specific circumstances.

- **Synthesis of the indicator and Findings**

The Public Procurement Act 2015 (PPA) is supplemented by the Public Procurement Regulations 2017 (PPR) and also by Ministerial Directives, Codes and Guidelines. The PPR, which are Ministerial Regulations, are set out in a single document and are clearly drafted and have been updated in 2017, 2018 and 2023. They are available to download free of charge from the eProcurement Portal. There are model procurement documents (SBDs), for mandatory use, covering goods, works, non-consultancy services and consultancy services using different procurement methods, as well as for some specialized procurement. These are World Bank documents with some limited changes to reflect particularities of the procurement framework in Namibia. There are a number of standard contract conditions and for use as an integral part of the bidding document to be made available to participants in the procurement proceedings. The PPU has issued comprehensive Public Procurement Guidelines.

Suggestion for improvement

2(c)(b): Content of standard contract conditions: It is important to ensure that the standard contract conditions are well aligned with the terminology and relevant provisions of the procurement legal framework and so it is suggested that PPU reviews the documents and makes any necessary adjustments.

Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

This indicator assesses whether horizontal policy objectives, such as goals aiming at increased sustainability, support for certain groups in society, etc., and obligations deriving from international agreements, are consistently and coherently reflected in the legal framework, i.e. whether the legal framework is coherent with the higher policy objectives of the country.

- **Synthesis of the indicator**

There is no policy/strategy in place together with a plan to implement all aspects of sustainable public procurement (SPP) - economic, environmental (including climate considerations) and social (including gender equality)- in support of broader national policy objectives and reflecting national priorities. Provisions in the legal framework on incorporating sustainability considerations and criteria into the procurement cycle are limited.

- **Gaps**

Substantive Gaps

3(a)(a): Sustainable Public Procurement Strategy (SPP): There is no policy/strategy in place to implement sustainable public procurement (SPP).



This Gap is assigned a “Red Flag” because preparation and agreement on an SPP policy/strategy and implementation plan applying to all procuring entities and aligning with broader national policy objectives will require input from a number of institutions and is not solely within the remit of the PPU.

3(a)(c): Provisions incorporating sustainability considerations: The provisions allowing for incorporation of sustainability considerations (economic, environmental and social) are limited and do not cover all stages of the procurement cycle, from planning to contract delivery.

3(a)(d): Provisions requiring well-balanced application of sustainability criteria: Provisions allowing for sustainability to be incorporated into all stages of the procurement cycle are limited. There are no detailed provisions or supporting guidance on how to apply sustainability criteria to ensure value for money.

- **Recommendations**

To address Substantive Gaps

Combined recommendations for 3(a)(a), 3(a)(c), 3(a)(d): Develop a sustainable public procurement policy/strategy to implement SPP (economic, environmental (including climate considerations) and social (including gender equality)) in support of broader national policy objectives and reflecting national priorities. This should include a clear implementation plan/road map to cover introduction of systems and tools to operationalize, facilitate and monitor the application of SPP in priority areas. It should also identify and provide for any amendments necessary to the legal/regulatory framework to allow for sustainability to be fully incorporated at all stages of the procurement cycle ensuring well-balance application of sustainability criteria from planning through to contract delivery and monitoring. SPP requirements embedded in the legal and regulatory framework should be reflected in model procurement documents (SBDs) and contract conditions and in supporting practical guidelines for implementation and related training.

Summary of substantive gaps and recommendations of Indicator 3

Substantive gap	Risk classification and red flags	Recommendations
3(a): No Sustainable Public Procurement Strategy (SPP) and no implementation plan	High, Red Flag	Combined recommendations Develop a sustainable public procurement policy/strategy and supporting plan to implement SPP (economic, environmental (including climate considerations) and social (including gender equality)) in support of broader national policy objectives and reflecting national priorities.
3(a): Provisions incorporating sustainability considerations are limited	Medium	
3(a): Provisions requiring well-balanced application of sustainability criteria are limited	Medium	



3.2. Pillar II - Institutional Framework and Management Capacity

Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.

Pillar II evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses: i) whether it is adequately linked with the country's public finance management system; ii) whether institutions are in place in charge of necessary functions; and iii) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

Major Strengths under Pillar II

- Powers and functions of Accounting Officer are clearly defined in PPA.
- PPA stipulates certification on the availability of funds before the commencement of each procurement process and ensure funds remain committed.
- PPA establishes the Procurement Policy Unit (PPU) within the Ministry of Finance and Public Enterprises and assigns normative/regulatory functions for public procurement to the PPU.
- The Central Procurement Board of Namibia (CPBN) acts on behalf of public entities [as procuring agent] in the conduct of the bidding process for the award of contracts exceeding prescribed thresholds.
- Review Panel is also in place to review action taken by CPBN or a public entity for the award of a procurement contract.
- Namibia's eProcurement Portal represents a huge step forward in modernizing public procurement practices, offering a robust platform to enhance transparency, efficiency, and accountability.
- The Ministry of Finance and Public Enterprises' Strategic Plan has a strategic objective to "Enhance efficiency of the Public Procurement system and compliance to the Public Procurement Act" which provides strategic direction regarding capacity building in public procurement through PPU and partnership, for example, the cooperation agreement with the Consortium consisting of UNAM, NUST and NIPAM.

Indicator 4. The public procurement system is mainstreamed and well-integrated with the public financial management system

This indicator focuses on how well integrated the procurement system is with the public financial management system given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.

- **Synthesis of the indicator**

Though PPA stipulates certification on the availability of funds before the commencement of each procurement process and ensure funds remain committed, in practice there is non-compliance by public



entities. Non-compliance is also observed in submission of annual procurement plan by public entities and in reporting progress on major contracts.

- **Findings**

In accordance with Section 25 Part 4 of PPA 2015, on powers and functions of Accounting Officer, an Accounting Officer - (a) must, in the prescribed manner, set up an internal organizational structure which includes a Procurement Committee and Procurement Management Unit for the conduct and management of procurement at the public entity; and (b) is accountable for the full compliance with this Act and Directives and Instructions made under this Act.

As per PPA s.25 (4) an Accounting Officer must - (a) engage in procurement planning, plan each step of the procurement process, and prepare annual procurement plan; (b) certify the availability of funds before the commencement of each procurement process and ensure funds remain committed.

Further in accordance with 2017 Public Procurement Regulation 8 on procedures and process for procurement management unit and related to procurement plan and budgeting: the procurement management unit, inter alia must prepare: para (d) an annual procurement plan that a public entity intend to carry out during the financial year which includes - (i) types and quantity of the goods, works or services to be procured by the public entity; (ii) a schedule of the planned delivery, implementation or completion dates for goods, works or services required by the public entity; (iii) an indication of whether goods, works or services is procured within a year or under a multi-year arrangement.

CBPN website provides report on execution of major contracts on a quarterly basis. The last report was uploaded on 12 Dec 2023 for quarter ending Sep 2023.

- **Gaps**

Substantive Gaps

4(a)(a): Procurement Planning: Based on the Annual Report for 2022/23, by the end of the 2022/23 financial year, 86 out of 173 public entities had submitted their 2022/23 Annual Procurement Plans (APPs) to the PPU, representing a 49% compliance to the requirement of Section 25(4)(a) of the Public Procurement Act, 2015.

4(a)(b), 4(b)(a): Budget planning, formulation process, certification on availability of funds: Annual Report of MoFPE/PPU for 2021/2022(reference paragraph 7 on Public Procurement Compliance Audit) one of the common challenges identified at public entities include “Lack of certification of availability of funds prior to commencement of procurement process.” Also lack of e-GP and IFMS integration.

4(b)(b): Processing of Invoice and payment: Based on private sector survey, 78% of respondents experienced delayed payment of invoices. There is no system for tracking the payment of invoices. Considered “Red Flag” as improving the system requires inter-institutional efforts and absence of such a system may affect competition and higher bid prices due to uncertainty and delays.

Minor Gaps

4(a)(c): Feedback mechanism on budget execution/ completion of major contracts: As per Regulation 8 paragraph (4) and (5) the Procurement Management Unit of Public entities are required to monitor every stage of the procurement process and ensure delivery of procurement contracts and provide timely



procurement reports to the accounting officer and the Policy Unit. PPU Annual Report does not capture progress on contract execution by Public Entities.

- **Recommendations**

To address Substantive Gaps

4 (a)(a): Procurement Planning: Public Entities to fully comply with submissions of Annual Procurement Plan as required by PPA.

4(a)(b), 4(b)(a): Budget planning, formulation process, certification on availability of funds: to ensure compliance by public entities also through integration with e-GP and IFMIS.

4(b)(b): Processing of Invoice and payment: MoFPE to devise a system to track payment of invoices including through IFMIS and e- Procurement system to improve confidence of the market players and competitiveness in future.

To address Minor Gaps

4(a)(c): Feedback mechanism on budget execution/ completion of major contracts: Public entities to follow Regulation 8 and provide report to Accounting Officer and Policy Unit.

Summary of substantive gaps and recommendations of Indicator 4

Substantive gap	Risk classification and red flags	Recommendations
4(a): Procurement Planning - lack of compliance	Medium	Compliance by public entities on submission of Annual Procurement Plan as required by PPA.
4(a) Timely commitment of budget funds – lack of compliance	Medium	Compliance by public entities required also through integration with e-GP and IFMIS.
4 (b) Certification of funds prior to solicitation of tenders/proposals – lack of compliance	Medium	
4(b): Processing of Invoice and payment	High, Red Flag	To devise a system to track payment of invoices including through IFMIS and e-Procurement system for better competitiveness in future.



Indicator 5. The country has an institution in charge of the normative/ regulatory function

This indicator refers to the normative/regulatory function in the public sector and its proper discharge and co-ordination. The assessment of the indicator focuses on the existence, independence and effectiveness of these functions and the degree of co-ordination between responsible organisations. Depending on the institutional set-up chosen by a country, one institution may be in charge of all normative and regulatory functions. In other contexts, key functions may have been assigned to several agencies, e.g. one institution might be responsible for policy, while another might be in charge of training or statistics. As a general rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-coordinated joint effort.

- **Synthesis of the indicator**

The PPA establishes the Procurement Policy Unit (PPU) within the Ministry of Finance and Public Enterprises and assigns normative/regulatory functions for public procurement to the PPU. PPA s.6 establishes the PPU with responsibility for advising the Minister of Finance and Public Enterprises on any procurement or disposal matters. However, the mandate of PPU is wide ranging in terms of its functions and powers, and resources and available expertise are not commensurate to discharge its mandate effectively, and level of head of PPU is lower than Accounting Officers of public entities, which also impacts its authority to ensure compliance with the Act. There are examples of other countries where the level of normative and regulatory body is at least an “Authority” if not a regulator though within the aegis of Ministry of Finance and Public Enterprises and with much higher level of resources and funding.

Besides due to their role of providing guidance on operational matters to public entities in particular technical advice to procurement committee (if requested by them) puts them in a conflicting situation of dealing with decision making on procurement transaction while PPU by definition is a policy unit also with powers of performance auditing of the public entities. The power of PPU to conduct performance audit and investigation, leads to overlap of functions of Internal Auditor, Office of Auditor General and Anti-Corruption Commission, without a suitable mechanism of such tasks to be mutually reinforcing. Further some of the tasks of Central Procurement Board of Namibia (CPBN) like directing and supervising accounting officers of public entities (for contracts above thresholds) are regulatory in nature, creating overlaps with the responsibility of PPU as a regulatory unit.

- **Findings**

Responsibility of PPU includes, in summary: monitoring of compliance with the procurement legal framework; review of the public procurement system and proposals for improvement; assessment of the impact of the procurement system on the socio-economic policy objectives of the Government, and the promotion of the fundamental principles of procurement governing the administration of procurement.

PPA s.7 sets out a long list of the functions of the PPU which include setting procurement thresholds; providing policy advice on e-procurement; preparation of guidelines, provision of advice to public entities on all public procurement policies, principles, and practices; monitoring and report on the performance of facilitating the use of ICT; compliance inspection of procurement activity; contract and performance audits. PPA s.7 also sets out powers of the PPU for performance of its functions.



PPA s.8 establishes the Central Procurement Board of Namibia (CPBN) with the objects to conduct procurement on behalf of all public entities where the procurement is above specified thresholds, enter into contracts for procurement on its own behalf or on behalf of public entities (see analysis at sub-indicator (6) and to direct and supervise accounting officers in managing the implementation of procurement. The PPA and PPR also designate activities to be conducted by the CPBN. Some of these can be classified as regulatory in nature, in particular approval of: Individual Procurement Plans (PPR R8(3); Variation Orders (PPA s.56); Price increases (PPA s.56); Contract extensions, and Cancellation of bids (PPA s.54), even though CPBN has no defined role in contract management which is executed by the public entity as

employer. This also creates potential for overlap with the activities of the PPU which are analyzed further in 5(b).

On the role of CPBN, PPA s.8(c) requires them to direct and supervise accounting officers in managing the implementation of procurement (above the threshold) even though PPA s.25 (1) (b) requires accounting officer to be accountable for the full compliance with the Act and directives.

The normative/regulatory functions and related activities assigned to the PPU under the PPA are substantial and wide ranging and may be better placed with an institution of higher level standing than a unit within the Ministry of Finance and Public Enterprises, with more independence and authority to discharge its mandate effectively.

The Head of PPU is at the level of Deputy Executive Director (Grade 2 position). This level is perceived as a lower level than all Accounting Officers of Procuring Entities, thus reducing the likelihood of public entities complying with, for example, requirements to submit reports to the PPU. This negatively impacts on the ability to assess and measure effective performance of the procurement system as a whole.

PPA s.6 provides that the PPU is established under the Ministry of Finance and Public Enterprises and Public Enterprises as a “specialized Procurement Policy Unit that is subject to any general or specific policy directives issued by the Minister”. The location of the PPU within the MoFPE means that it is not a fully independent oversight institution.

According to information from the PPU, the level of funding received from the government/external sources is low, however more funding could not have been utilized due to lack of capacity to implement and lack of availability of suitable staff. PPU secured support from WB, AfDB, GIZ, UNICEF, UNDP, USAID in the form of technical support, consultants, and finances to address the lack of internal capacity in terms of numbers of staff, qualifications, experience, and expertise.

The PPU has a staff structure of 22 staff members as at the end of March 2024 (out of which 3 positions are vacant since beginning) with further attrition recently by resignation of Head of PPU and MAPS Project Coordinator. Therefore, the shortage of staff in the current structure is about 35% of the approved position, with severe shortage in the division on Monitoring and Evaluation. Based on the workload analysis conducted during 2023 by PPU, they need significantly more staff members to be able to effectively carry its mandate. The proposed organization chart by PPU shows 46 positions compared to 23 approved positions of PPU.



The methodology requires analysis as to functions of normative/regulatory body to establish that there are no incompatibilities in their functions and powers that creates COI, for example with their role of monitoring/auditing procurement practices and that there are internal systems in place to avoid COI.

The functions and powers assigned to the PPU under PPA ss.6 and 7 are wide ranging (see gap analysis at 5(a)(a)) and these raise the potential for conflict of interest arising within the PPU.

Such Conflict of Interest (COI) is challenging to manage due to a combination of very wide functions/activities including regulatory, monitoring, and advisory roles combine with limited staff.

- **Gaps**

Substantive Gaps

5(a)(a), 5(b)(a): Clear assignment of functions and powers: There is potential for overlap with the activities of the PPU and CPBN and Accounting officer of Public Entities. For example, through its inspection and guidance functions on operational matters in procurement activities at PPA s. 7 (1) (p), the PPU may be perceived as being involved in procurement decisions on actual transaction rather than just providing policy advice and through PPA s.7(2)(c) “commission or undertake investigations and institute performance audits” on functions of other oversight agencies like Anti- Corruption Commission and Office of Auditor General.

Based on the Instruction Note, as per Regulation 11 (9) (b), the procurement committee may seek technical advice from the Policy Unit through the office of accounting officer. Though the instruction by PPU in this Instruction Note is to seek advice from PPU in writing through accounting officer, the involvement of PPU in procurement transactions lead to COI situations.

PPAs.8(c) requires CPBN to direct and supervise accounting officers in managing the implementation of procurement (above the threshold) which creates an overlap with functions of PPU, as also with accounting officer of PPU.

Considered “Red Flag” as situation is beyond the control of PPU and requires intervention from the highest level of the government to bring clarity on functions and powers among oversight bodies.

5(c)(a): Organization, funding, staffing of PPU: the head of PPU is perceived as a lower level than all Accounting Officers of PE’s. which has implications and consequences in as far as engaging Public Entities is concerned leading to lack of compliance by Accounting Officers. Considered “Red Flag” as situation is beyond the control of PPU and requires intervention from the highest level of the government.

5(c)(b): Organization, funding, staffing of PPU: PPU is a unit under MoFPE, with inadequate financing and staff capacity impacting its independent functioning. Without a professional and capacitated PPU, public procurement is viewed as an administrative function and not a strategic function. It is a “Red Flag” as changes for an independent Authority will require support from the highest level in the government.

5(c)(c): Organization, funding, staffing of PPU: The current staffing of PPU in terms of grade/level, required professional expertise and number in position are insufficient to carry its mandate as required by the functions of Policy Unit under Section 7 of PPA 2015. Considered “Red Flag” as getting resources and adequate budget is not within the control of PPU.



5(d)(a): Avoiding Conflict of Interest: While PPA s.10 describes fiduciary duties of member of Board (CPBN) and improper conduct by members and PPA s.66 describes conduct of staff members of public entities and Board, including COI situations, it appears there are no similar provisions dealing with COI of PPU, where PPU may get involved in advising on procurement transaction where they have responsibility of monitoring/auditing.

No internal system or procedure is in place to avoid COI in the functioning of PPU. Considered “Red Flag” as functions and powers of PPU are defined in PPA and Regulation, which may require an amendment to be carried out by GRN.

- **Recommendations**

To address Substantive Gaps

5(a)(a), 5(b)(a): Clear assignment of functions and powers: Review PPA/Regulation and remove gaps and overlaps in responsibility among PPU, CBPN and Accounting Officer of public entities. This may be carried out through appropriate regulation for better role clarity.

5(c)(a), 5(c)(b), 5(c)(c): Organization, funding, staffing of PPU: GRN to consider reviewing level of expertise and resources provided to PPU and if it is commensurate with its responsibilities and mandate under PPA. Consider elevating the status of PPU to an Authority for its effective functioning as per given mandate in PPA, also taking lessons and good practices from other countries.

5(d)(a): Avoiding Conflict of Interest: GRN/MoFPE to review functions and powers of PPU to avoid COI situation also through adequate internal system so that PPU does not get involved in procurement transactions and functions which are to be overseen by other oversight bodies like internal audit, Office of Auditor General, Anti-Corruption Commission. PPU role to be complimentary and mutually reinforcing through MOU with these institutions.

Summary of substantive gaps and recommendations of Indicator 5

Substantive gap	Risk classification and red flags	Recommendations
5(a): No clear assignment of functions and powers	High, Red Flag	Review PPA/Regulation and remove gaps and overlaps in responsibility among PPU, CBPN and Accounting Officer of public entities.
5(b): Providing advice to procurement entities – no clarity on functions and powers	High, Red Flag	
5(c): Organization, funding, staffing of PPU	High, Red Flag	To review level of expertise and resources and elevate the status of PPU to an Authority under the aegis of MoFPE for effective functioning.
5(d): Avoiding Conflict of Interest	High, Red Flag	to review functions and powers of PPU to avoid COI situation also through adequate internal system and mechanism (MoU) to ensure that the respective roles of all agencies are mutually reinforcing without overlaps.



Indicator 6. Procuring entities and their mandates are clearly defined

This indicator assesses: i) whether the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; ii) whether there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and iii) whether a centralised procuring entity exists.

- **Synthesis of the indicator**

The Internal Procurement Structures of Accounting Officer and roles and responsibilities are defined in PPA s.25 and as per this section the Accounting Officer is accountable for the full compliance of the Act and responsible and accountable for the entire procurement process including contracts implementation. However as per PPA s.8 (a) and (b) Central Procurement Board of Namibia (CPBN) conducts bidding process on behalf of public entities as “Procuring Agent” for contracts above defined threshold and signs the contract in that capacity with public entities signing it as Employer and with Contractor, it is a tripartite agreement. The contract does not define any role of CPBN in contract agreement, but PPA s. 8 (c) stipulates that CPBN is required to direct and supervise accounting officer in managing the implementation of contract above the threshold. This creates a dilution of accountability of the Accounting Officer who as per PPA s.25 are fully accountable. There is a need for strengthening the internal procurement structure of public entities.

The function of Procurement Management Unit needs to be strategic with required resources for needs assessment/market analysis, selection and contracting and contracts management (including specialized technical expertise for the sector/ministry). Accounting officer to delegate responsibility to PMU Head and make them part of the decision -making process (and not just as clerks to ensure required paper-work compliance to PPA).

GRN to consider strengthening the hands of Accounting Officer and professionalization of procurement at sector/ministry level⁶⁸ without any requirement to involve CPBN in contract monitoring, variation, amendment. This step is recommended so that Accounting Officer is fully accountable as required by PPA s.25 with required resources and expertise for efficient and effective service delivery.

Findings

Public entities are clearly defined in the PPA with required their roles and responsibilities.

The Central Procurement Board of Namibia (CPBN) acts on behalf of public entities in the conduct of the bidding process for the award of contracts exceeding prescribed thresholds. It also has power to enter into procurement contracts on behalf of procuring entities where it has conducted the bidding process and it does so. In practice the procuring entity is responsible for contract management and payment of the contractor.

Based on examination of a recently signed contract in April 2024, it is seen that the contract is signed by the Chairperson of CPBN for and on behalf of the Procuring Agent, by the CEO of Public Entity on behalf

⁶⁸ Based on data received from PPU, out of 31 Office, Ministries and Agencies (OMAs) none have required internal procurement structure in place



of the Employer and by the Managing Director of the firm on behalf of the Contractor. Therefore, it is a tripartite contract.

General Conditions of Contract (GCC) /Special Conditions of Contract (SCC) defines CPBN as the “Procuring Agent” and the Public Entity as “the Employer”. The Project Manager is an Independent Consultant, who could delegate duties and responsibilities to three Managers (Civil & structural design, Electrical and mechanical design and Architectural Design. Day-to-day time control and cost control is managed by the Project Manager who is responsible for certifying the payment on a monthly basis. Employer is required to pay to the Contractor the amount certified by the Project Manager within stipulated days (like 30 days) of each certificate.

The contract agreement does not define any role of CPBN in the supervision of the contract.

Based on discussions with CPBN, they carry out a quarterly supervision of the contract as per their role under s.8 (c) PPA " to direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board".

Therefore, their role is as "Procuring Agent" under s. 8(a) and (b) PPA and to direct and supervise accounting officer under s. 8(c) PPA is dilution of the accountability of accounting officer as given in s.25 PPA more so when contract variations are also approved by CPBN.

The legal framework sets out the responsibilities and competencies of accounting officers of public entities, from procurement planning to contract delivery. It also requires establishment of an internal organizational structure to handle public procurement.

As indicated above, the CBPN, conducts bidding process on behalf of Public Entities, and has power to enter into contracts for procurement or disposal of assets on its own behalf or on behalf of public entities awarded by the Board. In addition, the CPBN may also direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board. In addition, the CPBN approves Variation Orders (PPA s.56); Price increases (PPA s.56); Contract extensions, and Cancellation of bids (PPA s.54).

The Internal Procurement Structures of Accounting Officer and roles and responsibilities are defined in s.25 of PPA s.25(1) requires that accounting officers (which term for the purposes of the PPA covers accounting officers in ministries and constitutional institutions and equivalent post holders in public entities) must, in the prescribed manner, set up an internal organizational structure which includes a procurement management unit.

The Procurement Management Unit (PMU). The constitution, procedures and processes of the Bid Evaluation Committee are described at PPA s.25. and PPR R.5,7,9 and 13. According to PPA s.1 definition of a procurement management unit, the PMU is a division or department in a public entity responsible for the execution of functions constituted in terms of PPA s.25.

PPR R.8 Procedures and processes for the Procurement Management Unit provides that the Procurement Management Unit “responsible for conducting and management of procurement activities of a public entity from the initiation or the procurement to the award of the procurement contract” and makes it clear that the PMU is not responsible for evaluation of bids or awarding or termination of procurement contracts.



PPR R.8(2) to (5) lists activities of the PMU that includes support to the functioning of procurement committee and provide secretarial services, prepare annual procurement plan, confirm budget availability and source of funding and initiate procurement activity on receipt of purchase requisition approved by the accounting officer, implement policy decisions of public entities and review panel, prepare individual procurement plan, maintain keep records of procurement and monitor every stage of the procurement process and ensure delivery of procurement contract, initiate necessary action against defaulting suppliers and contracts and provide timely procurement report to accounting officer and the Policy Unit.

Regulation 12 requires head and supporting staff of Procurement Management Unit constituted in consultation with the Policy Unit, to have technical and professional competence, procurement knowledge and skill and integrity and sound decision -making abilities.

The Act or Regulation does not stipulate any minimum professional qualification/certification relevant for procurement professionals, and its it is not clear other than routine clerical or compliance functions, how Accounting Officer are using knowledge and experience and decision-making abilities of Procurement Management Unit as they have no substantive role in any decision, even though they are required to monitor every stage of procurement and initiate necessary action against defaulting suppliers and contracts.

Based on Annual Report 2022/2023 of PPU, on Internal Organization Structure, “In line with Regulation 12(1) and 13, the PPU received and handled 134 requests from public entities for amendments to Internal Organizational Structures for procurement. Of the 134 requests, 104 were successfully implemented, while thirty (30) of the requests were referred back due to non-conformance to the directive on submission of Internal Procurement Structures and non-compliance to the relevant legislative requirements”.

PPA allows for an accounting officer to delegate or assign powers and functions to a staff member, save in specified cases.

PPA s.74 Delegation and assignment by accounting officer “(1) An accounting officer may delegate or assign to a staff member any of the powers or functions conferred upon or imposed on the accounting officer by or under this Act, except the power to issue contract awards, sign agreements and appointing or recommending staff members for appointment to procurement committee, bid evaluation committee or procurement management unit. (2) A delegation or assignment under subsection (1)— (a) is made in writing; and (b) does not divest the accounting officer from the powers or functions so delegated or assigned. (3) An accounting officer, at any time and without prejudice of a right, may vary or set aside any decision made by a staff member in the exercise of a power delegated under subsection.”

Based on discussions held by the Assessment Team in Sep 2023 with PPU, Accounting Officer and CBPN, it was gathered that Accounting Officer as per their powers and functions under s.25 of PPA are accountable for full compliance with the Act and directives and instructions. In practice, however, the roles are diffused in some cases due to the overlapping and potentially conflicting roles lying with both the procuring entities and CPBN. In addition to be on safe side PEs/ Accounting Officer keep on involving PPU in decision making on procurement transaction (refer Instruction Note of 01 March 2022 on procedure for requesting advice from PPU) due to provision in Regulation 8 (b) that Procurement Committee may seek technical advice from the Policy Unit through the officer of accounting officer.



Based on draft Annual Report 2022-23 of PPU, MoF, related to challenges experienced with process for contracts at CPBN, included (i) Enormous requests from public entities for exemption from procuring through the CPBN; and (ii) The use of external Bid Evaluation Committee has proven to be a challenge in meeting legal timelines, and issues related to confidentiality, reputation damage and conflict of interest among others. The Board and management are investigating alternative models to mitigate the current risks going forward.

Related to a Centralized Procurement, to consolidate the procurement needs of several public entities, soliciting and concluding framework agreement, there is specific amendments to the PPA in 2022 introducing the possibility to use framework agreements and pooled procurement.

Public Procurement Amendment Act 2022 introduces definitions of "framework agreement" and "pooled procurement" (see amendments to s.1 PPA), adds new section 38A Procurement under framework agreement adds new 38B Pooled procurement The Public Procurement Amendment Act 2022 came into force on 07 October 2022.

- **Gaps**

Substantive Gaps

6(a)(a), 6(a)(b): Responsibilities and power of procuring entities in managing the procurement process including contract implementation: There is lack of clarity on the role of CPBN in contract implementation above the threshold. As per contract CBPN signs the contract as a procurement agent in a tripartite agreement, but they have no defined role in the contract. This leads to dilution of the responsibility of accounting officer (fully accountable as per PPA s. 25 (1) (b)) due to CBPN required to direct and supervise accounting officer in managing the implementation of procurement contracts as per s. 8 (c) PPA.

As indicated under Indicator 5, the PPA and PPR also designate other activities to be conducted by the CPBN. Some of these can be classified as regulatory in nature, in particular approval of: Individual Procurement Plans (PPR R8(3); Variation Orders (PPA s.56); Price increases (PPA s.56); Contract extensions, and Cancellation of bids (PPA s.54). In the given situation the accountability for project implementation gets diffused and divided between PE and CPBN.

This gap is considered “Red Flag” as situation is beyond the control of PPU and accounting officer of public entities and requires intervention from the highest level of the government to bring clarity on functions and powers among oversight bodies and public entities.

6(a)(c): Internal procurement structure: the internal structure of a large number of public entities is inadequate related to dedicated procurement roles and majority working in part time roles.

Based on the data provided by PPU on May 15, 2024, the situation is as under:

- i. Total number of procuring entities (OMAs, RCs, LAs, public enterprises): - 176 (this number represent PE’s which are Gazetted, active and eligible for compliance to requirements on APP and Reports as well as PE’s which are not Gazetted but complying with APPs and Reports).
- ii. Number of procuring entities with compliance to Internal Structure as per PPA s. 25: All Public entities have structures in terms of Section 25 of the PPA.



- iii. Number of procuring entities with dedicated procurement roles (Positions): 67.
- iv. Total number of procurement officers in dedicated full-time role to cover all procuring entities: 422.
- v. Total number of officials who work in procurement roles as part time: 1,567.

The role of Procurement Management Unit is routine clerical or just checking compliance and their knowledge, experience and decision-making abilities are not developed. Their decision-making abilities are not tested by suitable delegation by the Accounting Officer to cover the entire procurement process from the planning/market analysis, selection and contracting and contracts management to build their expertise.

This gap is considered “Red Flag” as situation is beyond the control of PPU and accounting officer of public entities and requires intervention from the highest level of the government to bring clarity on functions and powers among oversight bodies and public entities.

6(a)(d): Delegation for decision-making and 6(a)(e): Accountability for decision-making: Based on the existing provision in PPA, respective roles and accountabilities of PPU, Accounting Officer of PE and CPBN are diffused and not clear if Accounting Officer assumes accountability as the s25 of PPA. The contract agreement does not define any role of CPBN in the supervision of the contract. Based on discussions with CPBN, they carry out a quarterly supervision of the contract as per their role under s.8 (c) PPA " to direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board".

Therefore, their role is as "procuring agent" under 8(a) and (b) PPA and subsequently to direct and supervise accounting officer under 8(c) is conflicting as they do not have any responsibility under the contract, and it is a dilution of the accountability of accounting officer as given in s.25 PPA more so when contract variations are also approved by CPBN.

Due to lack of delegation to Head PMU and their staff, the decision- making abilities are not encouraged and developed. The Accounting Officer themselves are not required to have any procurement knowledge and experience and therefore their own decision making is not supported by expert advice from capable procurement professionals.

This gap is considered “Red Flag” as situation is beyond the control of PPU and accounting officer of public entities and requires intervention from the highest level of the government to bring clarity on functions and powers among oversight bodies and public entities.

Minor Gap

6(b)(a): Centralized Procurement Body: framework agreement/pooled procurement: There is no centralized procurement body in charge of consolidated procurement, framework agreement or specialized procurement. There are specific amendments to the PPA in 2022 introducing the possibility to use framework agreements and pooled procurement. However, order for commencement of the



provisions of framework agreement (new s.38 A) and pooled procurement (new s.38 B) and responsibilities not issued.

- **Recommendations**

To address Substantive Gaps

6(a)(a), 6(a)(b), 6(a)(c): Responsibilities and power of procuring entities in managing the procurement process including contract implementation: The legal framework sets out the responsibilities and competencies of accounting officers of public entities, from procurement planning to contract delivery, which requires establishment of an internal organizational structure to handle public procurement. It will be useful to have a competency assessment done for PMU Head, PMU Support staff, Procurement Committee and Bid Evaluation Committee and thus set educational and experience requirements for these positions relevant to the size and scope of procurements of different public entities to cover the strategic function of planning, selection and contracting and contracts management including required sector specific technical expertise with career path for PMU staff and procurement professionals (See Indicator- 8 on Professionalization of procurement function). Accounting Officer should be responsible and accountable for the entire procurement process from the time need is identified till need is satisfied for efficient service delivery, and PMU needs strengthening.

6(a)(d), 6(a)(e): Delegation and Accountability for decision-making: Accounting Officer who are responsible and accountable for the entire procurement process and service delivery should use CPBN as needed as “procurement agent” with a service agreement or MOU for timely award of contract above threshold. Accounting officer to delegate power/responsibility within the internal procurement structure including to PMU Head for procurement process and contract implementation without any requirement to involve CPBN in contract monitoring, variation, amendment. This step is recommended so that Accounting Officer is fully accountable as required by s.25 of PPA for efficient service delivery.

To address Minor Gaps

6(b)(a): Centralized Procurement Body: framework agreement/pooled procurement: Action to be taken in operationalization of framework agreement /pooled procurement and responsibilities defined.

Summary of substantive gaps and recommendations of Indicator 6

Substantive gap	Risk classification and red flags	Recommendations
6(a): Responsibilities and power of procuring entities in managing the procurement process including contract implementation not clear	High, Red Flag	Accounting Officer should be responsible and accountable for the entire procurement process from the time need is identified till need is satisfied for efficient service delivery, and PMU needs strengthening, with required resources and expertise.



Substantive gap	Risk classification and red flags	Recommendations
6(a): Lack of delegation and accountability for decision-making	High, Red Flag	Accounting officer to delegate power/responsibility within the internal procurement structure including to PMU Head for procurement process and contract implementation without any requirement to involve CPBN in contract monitoring, variation, amendment. This step is recommended so that Accounting Officer is fully accountable as required by PPA s.25 for efficient service delivery.

Indicator 7. Public procurement is embedded in an effective information system

The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.

- **Synthesis of the indicator**

GRN embarked on public procurement reforms which include the adoption of e-GP based on the Public Procurement Act, 15 of 2015, and led by PPU. Following an e-GP readiness assessment in 2019, PPU started to introduce e-GP in a phased approach by establishing a centralized eProcurement Portal for the publication of procurement and contract information along the procurement cycle. The eProcurement Portal is not an end-to-end e-GP system. PPU also developed a national e-GP strategy which was approved by the Cabinet. It provides for an e-GP implementation roadmap with the objective of putting an end-to-end e-GP system in place that provides for improved transparency, efficiency, performance, and accountability of the public procurement system. Currently, the eProcurement Portal is operational and PPU is about to finalize the user requirements for the introduction of the end-to-end e-GP system.

Despite the commendable progress made to date, several challenges and gaps persist regarding the adoption of e-GP. The absence of supplier registration, electronic bid submission, and contract execution functionalities compromises the capacity to provide end-to-end procurement support and conduct data analytics for informed decision-making and reporting along the full procurement cycle. Although the use of the eProcurement Portal is mandated for all public entities, information is published only for a fraction of public entities. Lack of financial and human resources hamper the ability of PPU to effectively implement the e-GP strategy and engage in change management and capacity development activities with public entities to promote the use of the eProcurement Portal.

It is critical to allocate technical and financial resources for PPU to successfully implement the approved e-GP strategy and continue the phased implementation of an end-to-end e-GP system which covers the



whole procurement cycle and provides data analytics and reporting tools for strategic procurement planning and policy making.

- **Findings**

The GRN has introduced many reform initiatives to improve the quality of public service delivery. Chief among them is the enactment of the Public Procurement Act, 15 (PPA) of 2015, which in section 79(1)(j) refers to e-GP under the authority of the Minister of Finance to make regulations relating to “the adoption of e-procurement for different stages and methods of procurement, and to the extent thereof, the procedures specified in this Act are deemed to be modified for substituting written communication by e-communication in the manner that improves competition, efficiency and transparency without affecting the sanctity, security and recording of such communication and the information contained therein.”⁶⁹

While the implementation of the PPA 2015 is still mainly based on manual processes, GRN has embarked on modernizing public procurement to improve transparency, compliance, and efficiency along the broader objectives of the national development agenda. Introducing e-GP in the public sector is one of the reform initiatives to achieve the strategic goals of Namibia Vision 2030⁷⁰ and Harambee Prosperity Plan II⁷¹. E-GP is a national project under the leadership of the Honorable Minister of Finance in line with section 7(1)(b) of the PPA 2015 which mandates PPU “to advise the Minister on policy for introducing e-procurement as a means of simplified and transparent procurement”⁷². This is highly commendable since government leadership at highest level is a key success factor of e-GP adoption.

PPU has been leading the e-GP agenda including the development of a centralized eProcurement Portal and a national e-GP strategy⁷³ following an e-GP readiness assessment conducted in 2019. The e-GP readiness assessment scored Namibia as moderately satisfactory with a score of 2.25 out of 4 suggesting the phased implementation of e-GP services in the country by addressing the identified gaps and considering the recommendations of the readiness assessment. The PPU started with the preparation of the national e-GP project with three (3) implementation phases: (i) the design and implementation of a centralized eProcurement Portal by PPU in collaboration with the Office of the Prime Minister (OPM) from 2021/2022, (ii) the expansion of the portal to a more advanced e-GP system with e-submission and e-registration for procuring entities, bidders, and other stakeholders, and (iii) further expansion into an end-to-end e-GP system including e-catalogs, M&E, PPU internal workflow & processing, and integration with other external relevant information systems (i.e. Business registry, IFMS, Tax, Banks, etc.).

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[file:///C:/Users/wb194124/Downloads/Public%20Procurement%20Act,%202015%20\(Act%20No.%2015%20of%202015\).pdf](file:///C:/Users/wb194124/Downloads/Public%20Procurement%20Act,%202015%20(Act%20No.%2015%20of%202015).pdf)

⁷⁰ https://www.npc.gov.na/wp-content/uploads/2021/11/vision_2030.pdf

⁷¹ <https://nipdb.com/download/harambee-prosperity-plan-ii/>

⁷²

[file:///C:/Users/wb194124/Downloads/Public%20Procurement%20Act,%202015%20\(Act%20No.%2015%20of%202015\).pdf](file:///C:/Users/wb194124/Downloads/Public%20Procurement%20Act,%202015%20(Act%20No.%2015%20of%202015).pdf)

⁷³

https://eprocurement.gov.na/documents/-/document_library/ycvk/view/2862113?com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_ycvk_redirect=https%3A%2F%2Feprocurement.gov.na%2Fdocuments%3Fp_p_id%3Dcom_liferay_document_library_web_portlet_DLPortlet_INSTANCE_ycvk%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview



As part of Phase 1, PPU led the establishment of an online web presence by creating a static website containing public procurement-related information and a basic centralized registration system for public entities to maintain procurement projects and information. The launch of the eProcurement Portal, which is hosted in the OPM data center, was a transformative leap forward in modernizing public procurement practices offering a robust platform to enhance transparency, efficiency, and accountability. Effective from April 1, 2022, PPU released the Phase 1 – e-Procurement Guidelines⁷⁴ as mandated in section 7(1)(c) of the Public Procurement Act, 15 of 2015, for use by public entities and CPBN. The Phase 1- e-Procurement Guidelines mandate the use of the eProcurement Portal to publish a whole range of procurement information.

To this end, the current eProcurement Portal developed during Phase 1 of the e-GP project is a basic system to facilitate public entities in different stages of the procurement process. The portal covers all the key stages of the procurement processes for public entities including the publication of annual procurement plans, bid advertisements including bidding documents and amendments, bid opening records, bid evaluation summaries, contract awards, bid cancellations, and review panel decisions. Information on contract execution is limited to the publication of contract amendments. The portal also provides access to the Public Procurement Act, Regulations, Guidelines, instruction notes, and templates as well as to standard bidding documents, PPU annual reports, and the e-GP strategy.

However, the portal does not support interactive functions for bidders except providing access to the information and documents published by public entities. The eProcurement Portal does not support electronic submission of bids. Based on feedback from public entities, using the eProcurement Portal has enhanced the efficiency and transparency of procurement processes and saved a lot of administrative time. However, these facts cannot be evidenced in the absence of data to support these claims. It is also not possible to prove whether more suppliers including SMEs participate in public procurement as the eProcurement Portal does not support the registration of suppliers and their size.

While the eProcurement Portal provides for the publication of information as required by the legal and regulatory framework, the documents and information available are not published in open machine-readable format. Table content can be exported as pdf and bidding documents are generally available in jsf format. The portal does not provide any option for analyzing the published information. The data entered in the portal is the responsibility of the public entities and the level of data reliability is not known as neither a third-party audit nor a systemic performance evaluation have been conducted.

Despite the advantages of the current eProcurement Portal in terms of transparency and accessibility to public procurement information, only a limited number of public entities seem to comply with the mandate of using the eProcurement Portal in accordance with the Phase 1 – e-Procurement Guidelines. Based on the PPU Annual Report of February 2024 for FY 2022/23 (ending March 31, 2023), the total number of procurements conducted during FY 2022/23 was 9,721. This number is aggregated from only 171 reports received, out of the number of 521 possible reports. While 122 public entities were trained on the use of the eProcurement Portal, only 45 public entities were using it in FY 2022/23 against the

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<https://eprocurement.gov.na/documents/46410/848059/ELECTRONIC+PUBLIC+PROCUREMENT+PHASE+1+GUIDELINES+V3.pdf/>



expected target of 105 public entities. The eProcurement Portal was used as reflected in the following table:

Table 2: Use of eProcurement Portal in 2022/23

Activity on eProcurement Portal	Number of Activities
Publication of the APP	45
Bids Advertisement	334
Bid Documents uploaded	369
Bid Opening reports uploaded	156
Notice of Selection uploaded	30
Executive summary uploaded	42

Source: Annual Report PPU 2022/23 (unpublished)

As of April 2024, there were only 15 annual procurement plans for FY 2023/24 published in the eProcurement Portal and 26 for FY 2024/25. The information in the following table is published on the eProcurement Portal as of May 6, 2024:

Table 3: Use of eProcurement Portal in 2024

Activity Name	2024			
	Jan	Feb	Mar	Apr
Bid Advertisements	67	53	52	38
Bidding Documents	98	110	60	64
Bid Opening Reports	43	73	36	13
Bid Evaluation Reports	1	0	0	0
Bid Evaluation Report Summaries	12	9	9	0
Award Notices	9	13	9	0
Selection of Award Notices	15	9	9	2
Cancellation Notices	6	4	1	2
Review Panel Decisions	6	10	4	4

Source: <https://egp2.gov.na/index.jsf>

In the absence of information on the total number of planned procurements in 2023/24, it is not possible to give any percentage of the number of procurement cases represented in the table above. Based on the data for FY 2022/23, of which the 9,721 procurements were aggregated from only one third of the total



number of expected reports, it can be concluded that the percentage of key procurement information published along the procurement cycle in relation to the total number of contracts is almost insignificant.

The low uptake of the portal suggests that lack of skills and capacity may persist in using the portal's current functionalities despite the availability of the Phase 1 - e-Procurement Guidelines and the e-Procurement Manual. The fact that PPU organizes relevant training for all users with the support of OPM and evaluates and adjusts training programs based on feedback and needs on a regular basis does not appear to have the desired impact of developing e-Procurement skills and capacity among procurement staff in public entities.

Phase 2 of Namibia's e-GP Project started with the development of the national e-GP Strategy 2023-2027 with financial and technical support by the World Bank to formulate the roadmap for gradually implementing an end-to-end e-GP system covering all the stages, functions, processes, and stakeholder requirements for data-driven procurement transactions in compliance with the public procurement act and guidelines in the country. The national e-GP Strategy was approved by the Cabinet and provides the roadmap for full e-GP adoption in Namibia.

Following a broad stakeholder consultation process, PPU is currently finalizing the extended e-GP User Requirements for the end-to-end e-GP system.

- **Gaps**

Substantive Gaps

7(a)(a): Accessibility of procurement information: The information published in the current portal is limited in time, as it mostly provides information for the current year, and in scope, as the portal is neither used by all procuring entities nor does it cover the contract execution phase. Therefore, interested parties cannot fully monitor outcomes, results, and performance in public procurement.

7(a)(b): Centralised online portal: Although mandated by the e-Procurement Guidelines, most public entities have not yet embraced the use of the eProcurement Portal.

7(a)(c): Publication of procurement information: The information is not published in real-time and does not represent all the procuring entities. The analysis contained in the published annual report is based on limited input from Public Entities, and there is an absence of an integrated information system.

7(a)(d): Open contracting: The documents and information available are not published in an open standard format compromising the capacity to develop analytical reports. In addition, it does not cover the execution phase of contracts, thus preventing interested parties from contract monitoring and project implementation tracking.

7(a)(e): Machine-readable format: The System does not support the machine-readable format of data storing, exchanging, and publishing, making it difficult to access and analyze procurement data in a structured way and limiting the transparency of the public procurement process.

7(b)(a): Use of e-Procurement: The use of the eProcurement Portal has been few and far between, with only 45 public entities having used the portal against a target of 105 public entities during 2022/23 and only 334 out of the reported 9,721 procurements advertised in the portal.



This gap is assigned a “Red Flag” since the low usage of the mandatory e does not only show a high level of noncompliance but also contribute to lack of transparency in the absence of resources and priority assigned by GRN.

7(b)(b): E-Procurement management capacity: Financial resources are limited to implement e-GP and optimize possible system interfaces with different operational governmental systems. The skills and resources at PPU are insufficient to manage the eProcurement Portal’s day-to-day operations and plan for future improvement, with PPU fully relying on OPM’s technical team.

7(b)(c): E-Procurement user capacity: Lack of skills persists in using the eProcurement Portal’s current functionalities. PPU does not have a policy requiring updating the knowledge and skills of the staff involved in e-procurement, which can lead to difficulties in tackling the new challenges posed by the ever-emerging technologies and meeting the expectations of the system's users.

7(c)(a): System for data collection: The eProcurement Portal does not capture the data of different transactions but collects only unstructured documents that cannot be processed and analyzed using data analytics tools to inform management decisions. The system cannot generate any comprehensive reports except a few predefined reports.

7(c)(b): System for data management: The system does not capture data for the entire procurement process and only captures unstructured data, mostly in pdf format, thus compromising the analysis of trends, levels of participation, efficiency, economy of procurement, and compliance requirements.

7(c)(c): Information reliability: No third-party audit has been performed so far to ensure the level of data reliability.

7(c)(d): Analysis of information: The eProcurement Portal information neither supports open data standards nor publishes the information in any machine-readable format to allow information analysis for different stakeholders.

Minor Gaps

7(b)(d): Supplier participation: Supplier participation is difficult to measure as the current eProcurement Portal does not register suppliers in the system and does not provide the facility for online bid submissions.

- **Recommendations**

To address Substantive Gaps

7(a)(a): Accessibility of procurement information: Efforts must be made to ensure that the eProcurement Portal is fully and completely used by all procuring entities. The eProcurement Portal should provide a section with data analytics and performance monitoring reports that are easily accessible to all stakeholders, covering the entire cycle, from procurement planning to contract execution.

7(a)(b): Centralised online portal: PPU, based on appropriate capacity and resources, should expedite the implementation of e-GP by providing necessary training programs and incentives to the users of all the public entities.



7(a)(c): Publication of procurement information: The rollout of e-GP to all public entities should be expedited to use the existing capability of the eProcurement Portal and integrate it with other government systems for monitoring and real-time reporting.

7(a)(d): Open contracting: The eProcurement Portal should support the publication of all documents and information throughout the processes and contract execution following the Open Contracting Data Standard, which provides for a full set of data to be published along the procurement cycle.

7(a)(e): Machine-readable format: The eProcurement Portal should comply with the Open Contracting Data Standard and facilitate the disclosure of e-GP data in machine-readable format for anyone to download and share without licenses or fees.

7(b)(a): Use of e-Procurement: The mandatory use of the eProcurement Portal should be enforced across all public entities.

7(b)(b): E-Procurement management capacity: Resources should be allocated to establish a business continuity technical team under the PPU with all technical, administrative, and supporting expertise for the smooth operation of the eProcurement Portal in coordination with the OPM.

7(b)(c): E-Procurement user capacity: A mandatory training requirement for new recruitments and regular refresher training on technical and operational e-Procurement aspects should be introduced for all procurement staff in public entities. E-Procurement training should also be offered as part of business outreach activities to the private sector.

7(c)(a): System for data collection: The planned end-to-end e-GP system should be fully data-driven and collect data on all transactions related to the procurement of goods, works, and services, including consulting services, along the whole procurement cycle.

7(c)(b): System for data management: Based on a fully data driven approach, the future e-GP system should provide a facility to measure compliance, performance, and outcomes of public procurement and provide business insights and trends to relevant stakeholders for enhancing the procurement services.

7(c)(c): Information reliability: A third-party system audit should be conducted to ensure the data security and reliability as well as functional adequacy and compliance with the Public Procurement Act and e-GP Guidelines. The assessment should be carried out every time major changes are made in the system to ensure new vulnerabilities are not introduced.

7(c)(d): Analysis of information: The planned e-GP system should provide comprehensive data analytics tools based on machine-readable data and Open Contracting Data Standards for generating feedback and ad-hoc reports in response to the requirements of the wide range of stakeholders.

To address Minor Gaps

7(b)(d): Supplier participation: The PPU should develop the end-to-end collaborative e-GP system providing functional processes and tools for all relevant stakeholders, including micro, small and medium-sized enterprises, facilitating equal participation in the bidding process.



Summary of substantive gaps and recommendations of Indicator 7

Substantive gap	Risk classification and red flags	Recommendations
7(a): Limited accessibility of procurement information	Medium	Make efforts to ensure that eProcurement Portal is fully and completely used by all procuring entities and provide a section in the eProcurement Portal to facilitate data analytics and performance monitoring reports easily accessible to all stakeholders, covering the entire cycle, from procurement planning to contract execution.
7(a): Limited use of centralised online portal	Medium	PPU, based on appropriate capacity and resources, to expedite the implementation of e-GP by providing necessary training programs and incentives to the users of all the public entities.
7(a): Limited publication of procurement information	Medium	Expedite the rollout of e-GP to all public entities to use the existing capability of the eProcurement Portal and integrate it with other government systems for monitoring and real-time reporting.
7(a): No Open contracting data standard	Low	eProcurement Portal to support the publication of all documents and information throughout the processes and contract execution following the Open Contracting Data Standard which provides for a full set of data to be published along the procurement cycle.
7(a): No machine-readable format	Low	eProcurement Portal to comply with Open Contracting Data Standard and facilitate the disclosure of e-GP data in machine-readable format for anyone to download and share without any licenses or fees.
7(b): Use of e-Procurement very limited	High, Red Flag	Enforce mandatory use of the eProcurement Portal across all public entities.
7(b): Limited E-Procurement management capacity	High	Allocate resources to establish a business continuity technical team under the PPU with all technical, administrative, and supporting expertise for the smooth operation of the eProcurement Portal in coordination with the OPM.



Substantive gap	Risk classification and red flags	Recommendations
7(b): Limited E-Procurement user capacity	Medium	Introduce a mandatory training requirement for new recruitments and regular refresher training on technical and operational e-Procurement aspects for all procurement staff in public entities and offer E-Procurement training as part of business outreach activities to private sector.
7(c): Limited system for data collection	Medium	Ensure end-to-end e-GP system that is fully data-driven and collects data on all transactions related to the procurement of goods, works, and services, including consulting services, along the whole procurement cycle.
7(c): Limited system for data management	Low	Based on a fully data driven approach, provide a facility the future e-GP system to measure compliance, performance, and outcomes of public procurement and provide business insights and trends to relevant stakeholders for enhancing the procurement services.
7(c): Limited information reliability	Low	Conduct third-party system audits after major changes in the eProcurement Portal and future e-GP system to ensure data security and reliability as well as functional adequacy and compliance with the Public Procurement Act and e-GP Guidelines.
7(c): Limited analysis of information	Low	Provide comprehensive data analytics tools in the planned e-GP system based on machine-readable data and Open Contracting Data Standards for generating feedback and ad-hoc reports in response to the requirements of the wide range of stakeholders.

Suggestions for improvements

7(a)(f): Responsibility for managing and operating e-GP system: It should be noted that the PPU with its current limited staffing and resources does not have the capacity to manage and operate the eProcurement Portal (see reference under indicator 6 to staffing of PPU). GRN need to allocate sufficient financial and human resources to PPU. The operation of an end-to-end e-GP system can be used to generate revenue from user fees which may help sustain the operation of the e-GP system in particular and of the public procurement system in general.



7(b)(e): E-Procurement roadmap: The e-GP roadmap should be reviewed and updated along the phased implementation. It should also emphasize a change management plan as key success factor for e-GP implementation.

Indicator 8. The public procurement system has a strong capacity to develop and improve

This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. Three aspects should be considered: i) whether strategies and programmes are in place to develop the capacity of procurement staff and other key actors involved in public procurement; ii) whether procurement is recognised as a profession in the country's public service; iii) whether systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the public procurement system.

- **Synthesis of the indicator**

The Ministry of Finance and Public Enterprises' Strategic Plan has a strategic objective to "Enhance efficiency of the Public Procurement system and compliance to the Public Procurement Act "which provides strategic direction regarding capacity building in public procurement. PPU with the limited staff and with support from consortium of training institution has taken lot of initiative to train procurement professionals.

Procurement is not yet recognized as a profession in Namibia at par with Accountancy and Legal and there is no need for a professional qualification in procurement or related discipline to work under Procurement Management Unit, to act as member Bid Evaluation Committee or to be part of Procurement Committee.

In terms of professionalization and sequencing there is a need to establish procurement as a strategic function as opposed to a routine compliance-based function to cover the entire procurement process from needs assessment, market analysis, selection and contracting and contracts management, in effect from the time the need is identified till need is satisfied for effective public service delivery.

Further there is a need to create dedicated structures within all public entities to be staffed by qualified procurement professionals, who are hired with a career path (like moving from procurement officer or contract officer to a project manager) and then initiative to be undertaken by GRN to have a regulatory body of the purchasing and supply management profession with a mandate *inter alia* to cover to conduct professional competence examinations & issue practicing certificates to procurement professionals, confer memberships, conduct training and research etc.

PPU is developing a National M&E Framework for Public Procurement which will help guide the information and reporting needs of the future e-GP system. PPU also intends to develop a National Public Procurement Strategy after the MAPS assessment.

- **Findings**

The Assessment Team in its initial mission in Sep 2023 and subsequently in November 2023, discussed with PPU for their input on strategies in place to develop capacity of procurement staff and other key stakeholders, to confirm if procurement is recognized as a profession in Namibia's public service and if



there are systems in place to improve the public procurement system. Discussions were further held with the Consortium consisting of the University of Namibia (UNAM), Namibia University of Science and Technology (NUST) and Namibia Institute of Public Administration and Management (NIPAM) in pre-validation meeting in April 2024 to seek their input.

Based on discussions held with PPU and the Consortium in these meetings and their input, the situation on existing and proposed training courses are as under:

- (a) To establish a systematic and formal training and academic pathway in procurement, a cooperation agreement was signed in 2021, between the Ministry of Finance and Public Enterprises and the Consortium consisting of UNAM, NUST, and NIPAM.
- (b) Three (3) study programs were on offer since 2021/22. This is part of the bigger scheme to professionalize and develop a career path for procurement practitioners and procurement cadres in Namibia. It also served to kick start a sustainable solution to the challenges of procurement capacity within the system. Through the consortium, academic institutions under the agreement committed to develop and provide short courses and three accredited academic programs in the field of public procurement.
- (c) The Consortium developed five (5) comprehensive short courses and three academic qualifications in public procurement in 2021. The short courses include: (i) Introduction to Public Procurement Management and Practices, (ii) Public Procurement Process, (iii) Preparation of Bid Documents, (iv) Bid Evaluation, and (v) Public Procurement Contract Management.
- (d) The three academic qualifications offered by NUST as part of the capacity building initiatives of the Ministry of Finance and Public Enterprise; include: (i) a Certificate in Procurement Management, NQF level 4 (ii) a Bachelor of Procurement and Supply Chain Management, NQF level 7, and (iii) Post Graduate Diploma in Procurement, NQF level 8.
- (e) The Certificate in Procurement Management (NQF Level 4) includes specialized courses such as: Introduction to Procurement Management, Public Procurement and Good Governance, Procurement Contract Management, Procurement Stakeholder Management and it is 6 months program.
- (f) The Bachelor of Procurement and Supply Chain management (NQF Level 7) mostly have students coming from Secondary Institutions but working students who wants to upskill themselves and subsequently do a higher-level qualification are also admitted to this program. Students who complete the Bachelor of Procurement and Supply Chain Management will ordinarily be able to pursue further studies in Procurement and Supply Chain Management, or a related cognate area of learning, at NQF Level 8.
- (g) For the Postgraduate Diploma in Procurement Management (NQF Level 8), 95% of students are working professionals (with minimum 3 years of working experience, as a requirement for the entry to the course) and a Bachelor's degree in any discipline or an equivalent qualification at NQF Level 7 from a recognised institution, worth at least NQF 360 credits. Courses offered in this programme are Procurement and Good Governance, Global Supply Chain Diligence, Advance Contract Management, Financial Techniques for Supply Chain Management, Procurement Audits, Strategic Procurement Management, Leadership and Project Management and E-procurement.
- (h) Following the development of the short courses and three academic qualifications mentioned above, the Ministry of Finance and Public Enterprises issued a directive to all Accounting Officers to pay for studies towards the Post Graduate Diploma for their staff.



- (i) The short courses and three academic qualifications are open for both public and private sectors. During 2021/22, the Consortium conducted sixteen (16) training sessions for short courses that were attended by four hundred and four (404) staff members.
- (j) The enrolment for the first intakes into the three academic qualifications at NUST as presented by the Consortium was as follows: (i) Certificate in Procurement: 6 students. (ii) Bachelor’s Degree in Procurement & Supply Chain: 283 students. (iii) Post Graduate Diploma in Procurement: 247 students.
- (k) The Policy Unit conducted regular trainings for public entities, as follows: (i) 2020/21 - 32 trainings, benefitting 1373 people (ii) 2021/22 – 01 trainings, benefitting 867 people; and (iii) 2022/23 – 49 trainings, benefitting 1029 people.
- (l) MoU (from 2021) with NUST-NIPAM-UNAM Consortium allows for unaccredited short courses and accredited qualifications. The short courses are planned to be updated in 2024 based on the results from compliance audits conducted by the Policy Unit, Legal Advises, Directives and any other changes approved by the Policy Unit.
- (m) The accredited courses are planned to invite PPU as guest speakers/lecturers. New accredited programs such as Masters and Doctorate Degree planned in medium term. Outcome of qualifications and planned in long term to coincide and provide automatic exam entrance for CIPS exams. However, the Consortium is yet to establish a robust evaluation system for both short courses and academic qualifications. The results of the evaluation will form part of its quarterly reports to the Policy Unit.

As per Annual PPU Report PPU 2022-23, PPU has started with support from AfDB, and completed in June 2023, to develop educational material such as study guides and templates and to provide capacity development for PPU staff members covering Study Guide & Presentations on (a) internal structures (PC, PMU, BEC), (b) Governance Structures (Review Panel, CPBN, PPU), (c) Bidding Methods, (d) Bidding Process, (e) Examination and Evaluation of Bids, (f) Bidding Documents, and (g) Contract Management; as well as Train-the-Trainers Guide on these topics.

As per s.7 (f), PPU is required to prepare and conduct training programs and approve training curriculum on public procurement as proposed by training institutions for staff members, contractors and suppliers concerning procurement.

The Ministry of Finance and Public Enterprises’ Strategic Plan has a strategic objective to “Enhance efficiency of the Public Procurement system and compliance to the Public Procurement Act “which provides strategic direction regarding capacity building in public procurement through PPU and partnership, for example, the cooperation agreement with the Consortium consisting of UNAM, NUST and NIPAM. These training offerings are open for all key actors involved in public procurement, for example, public officials, bidders / business community, governance structures (boards and councils’ members for Regional and Local Authorities).

Procurement is not yet recognized as a profession in Namibia, akin to accountancy or legal. In fact, there is a need to clearly define the procurement process in the Act itself as a “strategic function” to cover all activities from the time need is identified till need is satisfied, to be managed by “qualified” procurement professionals, as a mandatory requirement under the Act.



More precisely, based on definition adopted by MDBs the procurement process is defined as “The process that starts with the identification of a need and continues through planning, preparation of specifications/ requirements, budget considerations, selection, contract award, and contract management. It ends on the last day of the warranty period”. This also requires as a first step in any project, to prepare a project-level strategy document by the project authorities, that includes market research and analysis and describes how procurement support the development objectives of the project and deliver VfM.

The above concept of the role of a procurement professional to manage the entire procurement process and raise the profile from a routine administrative/compliance function to strategic function so far is just an intention by GRN. The focus of the Act and Regulation currently is on the administrative part of the bidding process, and not on procurement strategy/needs assessment/market analysis and research and, after end of bidding process on managing a contract for effective service delivery.

Section 6 of PPA 2015 refers to fundamental principles of transparency, integrity, competitive supply, effectiveness, efficiency, fair-dealing, responsiveness, informed decision-making, consistency, legality, integration and accountability, but the details in the Act and Regulation focusses on compliance.

Section 3 of PPA 2015, under Application of the Act covers, covers: (a) all procurement of goods, works and services and disposal of assets undertaken by the Board or a public entity; (b) the letting and hiring of anything or the acquisition or granting of any right; and (c) contract management of goods, works and services procured or disposed of by the Board or a public entity.

Based on input from PPU, as part of the professionalization function of PPU, they intend is to lobby for the creation of permanent PMU structures in PE’s, to develop standard ToRs for staff in internal procurement structures, to develop standard Performance Agreements, to develop a bill or find another way for a professional procurement body.

Based on input from PPU, the future e-GP system is targeted to incorporate and facilitate a number of performance data and information which will be taken from a monitoring and evaluation framework currently developed under a World Bank funded project as an umbrella monitoring and evaluation framework to be used jointly by Botswana, Lesotho and Eswatini which shall then also be customized for each individual nation for use in managing data and information in public procurement.

PPU was assisted by World Bank to conduct an e-GP readiness Assessment and develop National Strategy. WB is now assisting to develop user requirements and through this cooperation and the global expertise of WB, PPU envisions the best and most appropriate data and reporting requirements to be met.

Currently PPU has undertaken host of initiative on “Compliance Audit Framework”, “Capacity Assessment Framework”, “Investigation Manual”, Annual Report Format, Annual Procurement Plans and Quarterly Progress Report templates.

The PPU does not have a comprehensive performance measurement system covering of both qualitative and quantitative aspects. This is much more owing to the lack of a comprehensive e-GP system to facilitate gathering of such data effortlessly (automatically), through execution of procurement by the public entities. Instead, all information gathered is obtained through deliberate requests to public entities to submit such information. This has tended to be a challenge as the response by public entities has rather been far and between. This has affected availability of performance data throughout, including



performance on the implementation of preferential procurement and effect of public procurement to achievement of socio-economic objectives of Government.

To support this endeavor, the WB is funding the development of a National M&E Framework for Public Procurement which would help guide the information and reporting needs of the future e-GP system.

The information obtained via the existing monitoring and performance measurement system albeit minimal is quite important for decision-making and policy making. The PPU generates and on the basis of insights from the APPs, quarterly reports and compliance audits amongst others is better supported in strategy and policy formulation aimed to improve public procurement overall.

As a Department within the Ministry of Finance and Public Enterprises, the PPU's strategic activities features under the Ministerial Strategic Plan, along with the strategic activities of other departments within the Ministry. PPU also submits an Annual Plan for approval and used for quarterly progress reporting. PPU intends to develop a National Public Procurement Strategy after the MAPS assessment.

Section 6 of the Public Procurement Act, 2015 establishes the Procurement Policy Unit, including outlining its mandate. Furthermore, section 7 outlines various specific functions of the PPU.

Observations to highlight are that PPU reports to the Accounting Officer of the Ministry of Finance and Public Enterprises in terms of administration and to the Minister in terms of Policy and in an advisory role.

- **Gaps**

Substantive Gaps

8(a)(a): Substantive permanent training programs: Despite some existing training initiatives, these are constrained severely due to staff shortage and attrition of senior level staff in PPU (including PPU Head and Project Coordinator of MAPS) which is critical for training and retaining a procurement workforce of about 2,000 officials of which 75% in part time role, and not trained fully to discharge their responsibilities.

8(a)(b): PPU Capacity to provide training: This is due to staff shortage/further attrition, which is continuing since the assessment was started, and a major concern by the Assessment Team (Head of PPU, Project Coordinator for MAPS, and Pillar III coordinator resigned from PPU during the course of this assessment).

8(b)(a), 8(b)(b): Recognition of procurement as a profession and appointment: Procurement is not yet recognized as a profession in Namibia, akin to accountancy or legal. In fact, there is a need to clearly define the procurement process in the Act itself as a "strategic function" to cover all activities from the time need is identified till need is satisfied, to be managed by "qualified" procurement professionals, as a mandatory requirement under the Act. Job Descriptions in the form of ToRs not prepared. Competency framework is yet to be prepared, assessment to be conducted for ToRs for different positions in Procurement Structures, which is to be finalized and released.

Procurement function is still seconded to certain staff members, it is not as preferred option and there are no dedicated structures for career path.

There is no system of hiring/appointment based on qualification and professional certification for procurement tasks.



The above gaps for 8(a)(a), 8(a)(b), 8(b)(a), and 8(b)(b) are considered “Red Flags” as these will require inter-institutional efforts legislative initiatives on the part of GRN and beyond the control of PPU.

8(c)(a), 8(c)(c): Performance Measurement System and Results Framework: Lack of National M&E Framework for Public Procurement which would help guide the information and reporting needs of the future e-GP system.

The PPU does not have a comprehensive performance measurement system covering of both qualitative and quantitative aspects. This is much more owing to the lack of a comprehensive e-GP system to facilitate gathering of such data effortlessly (automatically), through execution of procurement by the public entities. Instead, all information gathered is obtained through deliberate requests to public entities to submit such information. This has tended to be a challenge as the response by public entities has rather been far and between. This has affected availability of performance data throughout, including performance on the implementation of preferential procurement and effect of public procurement to achievement of socio- economic objectives of Government.

Minor Gaps

8(a)(c): Help Desk function: Though help desk is available for questions on the eProcurement Portal and Internal Structures, there is need for clarity that advice should not be sought by the Accounting Officers/procurement committee at bid evaluation stage and involve PPU on procurement transaction.

8(c)(b): Information is used to support strategy: Refer to 8(c)(a).

8(c)(d): Overlap of roles: Auditing -PPU now engaging with Government Internal Audit unit so that Central Government internal audit teams conduct an Annual Compliance audit (also covered under Indicator 12). Training Standard approval. This is a role of the Namibia Qualifications Authority (NQA) and Namibia Training Authority (NTA) and PPU still has to engage with them to determine the cooperation model on this matter.

- **Recommendations**

To address Substantive Gaps:

8(a)(a): Substantive permanent training programs: MoFPE to intervene to prevent attrition of staff in PPU (including Head of PPU and other senior officials). Provide additional human and financial resources to train procurement workforce in the public entities, in private sector, and for CSOs.

8(a)(b): PPU Capacity to provide training: MoFPE at the top level in the government to immediately address the situation of staff attrition and provide resources to retain PPU capacity to train procurement workforce.

8(b)(a), 8(b)(b): Recognition of procurement as a profession and appointment: PPU to work towards a professional body in the long term to have it form part of the National Public Procurement Strategy. This may require host measures like establishing a regulatory body, need for mandatory certification.

In sequencing it requires establishment of procurement as a strategic function, create dedicated structures within all public entities to be staffed by qualified procurement professionals, who are hired with a career path (like moving from procurement officer or contract officer to a project manager) and



then initiative to be undertaken by GRN to have a regulatory body of the purchasing and supply management profession with the following mandate:

- (i) to conduct professional competence examinations & issue practicing certificates to procurement professionals.
- (ii) confer memberships, conduct training and research, publish journals, collaborate with professional institution.
- (iii) establish and monitor standards for persons employed in purchasing and supply chain management.
- (iv) Universities and training institutions to align their curriculum to include practical case studies to deal with procurement issues in Namibia.
- (v) Public bodies/ PPU to facilitate “internship” on public procurement / project management to build a cadre of qualified, competent, and motivated procurement work force.

8(c)(a), 8(c)(c): Performance Measurement System and Results Framework: PPU to develop a National M&E Framework for Public Procurement which would help guide the information and reporting needs of the future e-GP system. The work is in progress with the support of the World Bank.

To address Minor Gaps

8(a)(c): Help Desk function: Need for clarity on the role of PPU that it is a policy unit and Accounting Officer and public entities are accountable and responsible for full compliance of the Act as per s.25 of PPA and PPU should not be drawn into decision making on a procurement transaction. Any advice to be given prior to bid opening and compliance to be checked as post contract audit. Regulation 11 on seeking technical advice from the Policy Unit by the procurement committee through the office of Accounting Officers to be reviewed by PPU accordingly.

8(c)(b): Information is used to support strategy: Possible to be addressed after removing gap at 8(c)(a).

8(c)(d): Overlap of roles: PPU to train, assist in initial stages and be part of reporting and quality assurance aspect. Further cooperation is also expected with the Auditor General’s Office. To be resolved through suitable MOUs between PPU, OAG, Internal Audit and training bodies.

Summary of substantive gaps and recommendations of Indicator 8

Substantive gap	Risk classification and red flags	Recommendations
8(a): Lack of providing substantive permanent training programs	High, Red Flag	MoFPE to intervene to prevent attrition of staff in PPU (including Head of PPU and other senior officials). Provide additional human and financial resources to train procurement workforce in the public entities, in private sector, and for CSOs.
8(a): Limited PPU Capacity to provide training	High, Red Flag	MoFPE at the top level in the government to immediately address the situation of staff attrition and provide resources to retain PPU capacity to train procurement workforce.



8(b): No recognition of procurement as a profession and appointment	High, Red Flag	In sequencing it requires establishment of procurement as a strategic function, create dedicated structures within all public entities to be staffed by qualified procurement professionals, who are hired with a career path (like moving from procurement officer or contract officer to a project manager) and then initiative to be undertaken by GRN to have a regulatory body of the purchasing and supply management profession as per mandate described above.
8(c): Lack of Performance Measurement System and Results Framework	Medium	The PPU to develop a National M&E Framework for Public Procurement which would help guide the information and reporting needs of the future e-GP system (already in progress).

3.3. Pillar III - Public Procurement Operations and Market Practices

This Pillar looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.

The findings presented reflect the conclusions drawn from the sample of cases and the perceptions gathered from the different stakeholders. To this end, a strategy for collecting sample cases was agreed with the PPU, which involved identifying 13 procuring agencies and selecting approximately 15 cases per organisation. Individual meetings were also held with each of the procuring entities. In addition, an online questionnaire was distributed to the private sector, which received 84 responses, and a Business Outreach Meeting was held to discuss some of the aspects that have an impact on companies.

Major Strengths under Pillar III

- The results achieved by procuring entities in adverse conditions, with a lack of human and technical resources, is remarkable.
- There is a quest for generalised compliance with the guidelines.
- The participation of the private sector in the public market is positive.



Indicator 9. Public procurement practices achieve stated objectives.

- **Synthesis of the indicator**

The analysis of procurement processes indicates that the assessment of needs and market studies are often overlooked and underutilized in the creation of Annual Procurement Plans, leading to strategies that are not fully informed or optimized. Despite requirements and desired outcomes of contracts generally being well-defined, the use of sustainability criteria — focusing on economic and social considerations — appears limited and lacks environmental protection elements. Additionally, the use of Standard Bidding Documents is prevalent, yet clarity and ease of interpretation of these documents by the private sector remain a concern, with varying levels of understanding across different sectors.

Procedures for bid submission, receipt, and opening are well-documented and generally adhere to confidentiality and security protocols, including the physical handling of paper submissions and the secure evaluation of bids. However, practices such as the disqualification of bidders based on relative price comparisons (if price exceeds average price by certain percentage) may encourage collusion, highlighting potential integrity issues within the procurement process. Moreover, the implementation of e-procurement and electronic submission methods have been identified, aiming to enhance transparency and value for money, though the procurement process remains complex and challenging for many potential bidders, affecting overall accessibility and fairness.

Challenges persist in the implementation and execution phases of contracts, notably reflected in the frequent delays and concerns expressed by both private sector respondents and Procuring Entities. Issues with payment timeliness and fairness further complicate relationships with vendors, exacerbating concerns over contractual adherence and overall efficiency. Despite the existence of platforms like the CPBN portal to enhance transparency regarding contract extensions, such practices are not uniformly adopted across all procuring entities. Additionally, the lack of involvement of external stakeholders in the procurement process and insufficient provision of procurement data in accessible formats prevent effective oversight and engagement from Civil Society Organizations (CSOs), ultimately impacting the transparency and effectiveness of public procurement practices.

Market studies are either not conducted or perceived as ineffective and biased, undermining the integrity of specifications. Confidentiality issues arise due to insufficient bid box sizes, risking the privacy of bids and potentially the procurement objectives. Additionally, bid evaluation practices are critiqued for not ensuring value for money and may encourage collusion. The visibility of decisions and transparency mechanisms are inadequate, with significant gaps in compliance with publication requirements and in providing stakeholder's sufficient oversight. Critical information regarding timely implementation, quality control, and payment compliance is often missing or inconsistent, which prevents effective monitoring and hinders stakeholder involvement. Lastly, issues with accessible and complete records, alongside limited procurement statistics, obstruct the ability of Civil Society Organizations to monitor public procurement and impede the overall improvement of procurement practices. These substantive and minor gaps collectively pose significant risks to achieving the objectives of public procurement, prompting the assignment of several Red Flags.

It is suggested the development of guidelines to facilitate effective market studies, the adoption of e-Government Procurement solutions to ensure bid confidentiality, and the centralization of publication notices to increase decision visibility and transparency. Additionally, it is stressed the importance of timely



and transparent contract implementation, including quality control, contract amendments, and the involvement of stakeholders. For minor gaps, it is recommended clarifying tender requirements and outcomes, incorporating sustainable practices, choosing competitive procurement methods, and embedding sustainability into procurement documents and training. It is emphasized the need for better monitoring, stakeholder engagement, and transparency to improve procurement processes and outcomes.

- **Findings**

The analysis of needs is carried out as part of the Annual Procurement Plan, in an exercise that has little impact or no impact on the definition of the procurement strategy, as it is seen as a mere "tick in the box". Market studies are not conducted consistently. In most cases, the requirements and desired outcomes of contracts are clearly defined. The utilization of preferences was detected in some sample cases. The use of these preferences constitutes the use of sustainability criteria in the sense that they value proposals that respect certain economic issues (protection of the national business community) and social issues (e.g. protection of "Previously Disadvantaged Namibians"). No environmental protection criteria were found.

The use of multi-stage procedures was detected, and the use of Standard Bidding Documents was identified as a recurring practice. However, only 36% of the respondents to the Private Sector Survey consider the bidding documents clear and easy to interpret. This percentage rises to 42% when only respondents able to supply goods are considered and to 54% when only respondents able to supply works are considered. Procurement methods are chosen, documented, and justified in accordance with the purpose. However, one situation was identified in which the merit of the justification for adopting Single/Sole source procurement is questionable. Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. Bidders or their representatives are allowed to attend bid openings. Generally, confidentiality is ensured during submission, evaluation, and award. For paper submissions there are Bid Boxes with limited capacity. As these boxes are locked and in places where surveillance is ensured and have elements for recording the submission of tenders. When bids are opened, the bid evaluation committee is responsible for transporting the documents to secure facilities where the tenders are evaluated. Confidentiality is ensured by restricting access to the premises where the evaluation process takes place. The use of e-submission was identified. Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract. A practice of disqualifying bidders on the basis of a relative comparison of all the prices submitted was detected, which can favour collusion. The use of discrete scales based on subjective criteria for scoring the evaluation was identified. The e-procurement website⁷⁵ offers a searchable section where some contracts are published, while allowing the visualization of limited historical data (only those published since January 2024). Sections for publishing procurement notices are also available on the individual websites of some procuring entities and the published notices follow the template provided by the regulations. In contracts, there are no generic sustainability clauses other than the preferences-related ones, but usually include clauses that penalize poor performance. However, no examples were found where good performance is rewarded. Generally, the selection and award process is carried out effectively, efficiently and in a transparent way, as the prescribed guidelines are followed. This is positive, as it indicates that there are mechanisms in place to ensure fairness and accountability.

⁷⁵ <https://eprocurement.gov.na>



Despite efforts to adhere to guidelines, deviations do occur from time to time due to emergencies, changes in requirements, or human error. The process is not necessarily accessible to all eligible participants due to interpretation of criteria, lack of resources, unclear criteria, etc., while the entire procurement process is perceived to be difficult to understand and time-consuming. This hinders participation and transparency if participants are not able to comprehend the process raising concerns about equity and fairness in the procurement process.

Delays in the implementation of contracts/projects is pointed out by the private sector as frequent. The PEs also reveal concerns in this regard. Contract execution is managed by the technical areas, making it difficult for procurement units to monitor. There seems to be no consistent practice of conducting inspection, quality control and final acceptance of products. Concerns about payment conditions were raised by the private sector, with the large majority of respondents to the Private Sector Survey, 78 per cent, saying they regularly experience delays in paying invoices. In addition, 49 per cent of respondents also raised concerns about the fairness of payment provisions. In the sample cases analyzed, where it was possible to observe, the agreed payment deadlines are not always met, with a practice of paying invoices at the end of the month in which they are due extending the deadlines ("payment in X days, end of month"). For large contracts, the CPBN portal has a section where it publicizes the approval of contract extensions, a practice that does not seem to be extended to other procuring entities. Procurement statistics are not readily available, nor is the procurement information provided in a machine-readable format to allow CSO's or other stakeholders to perform their "watchdog" role. There is no established practice of involving external stakeholders in procurement processes. This was mentioned by the procuring entities during the assessment and confirmed by the CSOs (see indicator 11 for more context). Different practices were found among the procuring entities, revealing different levels of maturity. However, the bureaucratic nature of the procurement process, coupled with the low (or non-existent at various stages of the process) adoption of electronic tools, contributes to poor performance in this indicator. Different practices were found among the procuring entities, revealing different levels of maturity. There seems to be a disconnect between the areas that carry out procurement and those that execute contracts, with little or no information on the execution phase of contracts.

- **Gaps**

Substantive Gaps

9(a)(a): Needs analysis is not informed by effective market studies: Both the procuring entities consulted and 83 per cent of the private sector representatives who took part in the Private Sector Survey confirm that there is no practice of carrying out market studies. Furthermore, of the remaining 17%, 43% consider that market research is neither effective nor rigorous and 71% even consider that market studies are used to "steer" specifications in a certain direction.

9(b)(e): Confidentiality cannot be ensured during submission of bids in all cases: In some locations, the size of the bid boxes may not be sufficient to accommodate all the bids, forcing the PMU to manipulate their contents during the bidding period.

A Red Flag is assigned because it is considered that the existence of even a single case where confidentiality cannot be ensured, can significantly impede achieving the objectives sought through public procurement.



9(b)(f): Practices during evaluation of bids do not ensure best value for money: A practice of disqualifying bidders on the basis of a relative comparison of all the prices submitted was detected. This practice can favour collusion and prevent the achievement of value for money.

The use of discrete scales for scoring the evaluation was identified.

55% of the respondents to the Private Sector Survey consider that appropriate techniques are applied to determine the lowest evaluated substantially responsive bid based on the criteria indicated in the tender documents.

9(b)(g): Visibility of decisions is not safeguarded: The information published is limited in time and may not represent all the contracts awarded in a given period. The data is not presented in an open/machine-readable format that allows for easy analysis.

9(b)(j): Transparency mechanisms require improvement: A gap is identified in the transparency of the process. In almost 50 per cent of the sample cases, no evidence was found of compliance with publication requirements. In addition, 75 per cent of respondents to the private sector survey consider that they are not given sufficient visibility over decisions throughout the procurement process.

9(c)(a): Insufficient information on timely implementation of contracts: The information provided by the PEs did not allow quantitative indicators to be measured. In only 2 cases were delays of around 20-25% identified.

According to information gathered from the CPBN portal, which is responsible for the procurement of the most significant projects, it is consistently found that around 10 per cent of the processes show deviations from the planned execution time of between 10 and 25 per cent.

55% of the respondents to the Private Sector Survey claim that they have experienced situations in which the completion of the project was delayed.

A Red Flag is assigned because it is considered that the absence of consistent information of the contract execution phase can significantly impede achieving the objectives sought through public procurement.

9(c)(b): Insufficient information on contracts quality control: It was not possible to collect information that would allow to conclude that there is a consistent practice of conducting inspection, quality control and final acceptance of the products in the sample cases. In addition, 62 per cent of respondents to the Private Sector Survey indicate that this practice is not consistent.

9(c)(c): Payment terms are not complied with: 78 per cent of the respondents to the Private Sector Survey claim has experienced delays in payment of issued invoices. The information provided by the PEs did not allow quantitative indicators to be measured.

9(c)(d): Contract amendments are not issued: There seems to be no consistent practice of reviewing, issuing, and publishing contract amendments.

9(c)(e): Procurement statistics are not available: Procurement statistics are not readily available, nor is the procurement information provided in a machine-readable format to allow CSO's or other stakeholders to perform their "watch-dog" role.



A Red Flag is assigned because CSOs cannot carry out their social audit role because of lack of access to relevant procurement information and procuring entities cannot improve their performance without data to measure it.

9(c)(f): Opportunities for involvement of stakeholders: The analysis of the sample cases did not clearly reveal the involvement of external stakeholders in the procurement process.

9(c)(g): Accessible records: The records are not complete and accurate, and not easily accessible in a single file. There seems to be a disconnect between the areas that carry out procurement and those that execute contracts, with little or no information on the execution phase of contracts.

A Red Flag is assigned because it is considered that the absence of complete, accurate and easily accessible records hinders the achievement of public procurement objectives.

Minor Gaps

9(a)(b): Requirements and outcomes: There is a perception among economic operators that the requirements and desired outcomes are not clearly defined in the tender documents.

9(a)(c): Sustainability in practice: Environmental concerns are not usually considered in procurements.

9(b)(b): Clear and integrated procurement documents: There is a perception among economic operators that the bidding documents are not clear and easy to interpret.

9(b)(c): Choice of procurement methods: Few cases were identified in which the merit of the justification for adopting Single/Sole source procurement is questionable.

9(b)(h): Sustainability considerations in contracts: There are no generic sustainability clauses other than the preferences-related ones in the contracts.

9(b)(i): Incentives for exceeding defined performance levels: Contract clauses don't provide incentives for exceeding defined performance levels.

- **Recommendations**

To address substantive gaps

9(a)(a): Needs analysis is not informed by effective market studies: Needs analysis and procurement planning should be seen by Procuring Entities as an instrument for operationalising their procurement strategy. The PPU should develop guidelines or other equivalent instruments to enable Procuring Entities to conduct market studies. An attempt should be made to align the timelines of the Annual Procurement Plan and the Budget so that the former is an effective exercise.

9(b)(e): Confidentiality cannot be ensured during submission of bids in all cases: The submission of tenders without being able to ensure that they are encrypted and secured until they are opened by the bid evaluation committee should be banned. Alternatively, the use of an e-Government Procurement solution that ensures confidentiality should be promoted.

9(b)(f): Practices during evaluation of bids do not ensure best value for money: The use of relative comparison of bid prices and the use of discrete scales should be avoided.



9(b)(g): Visibility of decisions is not safeguarded: The publication of all notices should be centralised to facilitate communication with economic operators and civil society. Open/machine-readable formats should be adopted to allow effective monitoring of information.

9(b)(j): Transparency mechanisms require improvement: Verification of fulfilment of publication requirements should be intensified.

9(c)(a): Insufficient information on timely implementation of contracts: Procuring Entities must ensure monitoring and quality control mechanisms during the execution phase of the contracts.

9(c)(b): Insufficient information on contracts quality control: Procuring Entities must ensure that inspection, quality control and final acceptance of the products processes are in place. They must also ensure that records are kept in the procurement files.

9(c)(c): Payment terms are not complied with: Payment deadlines must be respected, and records kept of their fulfilment. Procuring Entities must provide visibility on the fulfilment of their obligations, particularly on payment deadlines.

9(c)(d): Contract amendments are not issued: Contract amendments must be issued, published, and kept in the procurement file.

9(c)(e): Procurement statistics are not available: Information should be made available and ready-to-use procurement statistics should be prepared by the PPU on a regular basis.

9(c)(f): Opportunities for involvement of stakeholders: The participation of external stakeholders, namely Civil Society Organizations, in all stages of the procurement process should be promoted.

9(c)(g): Accessible records: Contract execution reporting mechanisms should be set up to ensure that all information relating to procurement processes is available, both in the pre- and post-contract phases.

To address minor gaps

9(a)(b): Requirements and outcomes: Efforts must be made to ensure that the requirements and desired outcomes are clearly presented in all tender documents.

9(a)(c): Sustainability in practice: The implementation of Green Public Procurement guidelines should be considered, and its execution monitored to ensure alignment with other priorities.

9(b)(b): Clear and integrated procurement documents: The reasons behind the negative perception must be identified and potential misalignments corrected.

9(b)(c): Choice of procurement methods: The choice of competitive methods should be favored whenever possible. Improper use of less competitive/non-competitive methods to be subject to caution as explained under sub-indicator 1(b)(d).

9(b)(h): Sustainability considerations in contracts: SPP requirements embedded in the legal and regulatory framework should be reflected in model procurement documents (SBDs) and contract conditions and in supporting practical guidelines for implementation and related training.



9(b)(i): Incentives for exceeding defined performance levels: Positive performance, when agreed expectations are exceeded, for example early payment of invoices, should be rewarded. This measure should be accompanied by the implementation of effective systems for monitoring contract execution.

Summary of substantive gaps and recommendations of Indicator 9

Substantive gap	Risk classification and red flags	Recommendations
9(a): Needs analysis is not informed by effective market studies	High	PPU should develop guidelines to enable Procuring Entities to conduct market studies. An attempt should be made to align the timelines of the Annual Procurement Plan and the Budget so that the former is an effective exercise.
9(b): Confidentiality cannot be ensured during submission of bids in all cases	High, Red flag	The use of an e-Government Procurement solution that ensures confidentiality should be promoted.
9(b): Practices during evaluation of bids do not ensure best value for money	High	The use of relative comparison of bid prices and the use of discrete scales should be avoided.
9(b): Visibility of decisions is not safeguarded	High	The publication of all notices should be centralised to facilitate communication with economic operators and civil society. Open/machine-readable formats should be adopted to allow effective monitoring of information.
9(b): Transparency mechanisms require improvement	High	Verification of fulfilment of publication requirements should be intensified.
9(c): Insufficient information on timely implementation of contracts	High, Red flag	Procuring Entities must ensure monitoring and quality control mechanisms during the execution phase of the contracts.
9(c): Insufficient information on contracts quality control	High	Procuring Entities must ensure that inspection, quality control and final acceptance of the products processes are in place. They must also ensure that records are kept in the procurement files.
9(c): Payment terms are not complied with	High	Payment deadlines must be respected, and records kept of their fulfilment. Procuring Entities must provide visibility on the



Substantive gap	Risk classification and red flags	Recommendations
		fulfilment of their obligations, particularly on payment deadlines.
9(c): Contract amendments are not issued	High	Contract amendments must be issued, published, and kept in the procurement file.
9(c): Procurement statistics are not available	High, Red flag	Information should be made available and ready-to-use procurement statistics should be prepared by the PPU on a regular basis.
9(c): Opportunities for involvement of stakeholders are not utilized	Medium	The participation of external stakeholders, namely Civil Society Organizations, in all stages of the procurement process should be promoted.
9(c): Records are not accessible	High, Red flag	Contract execution reporting mechanisms should be set up to ensure that all information relating to procurement processes is available, both in the pre- and post-contract phases.

Indicator 10. The public procurement market is fully functional

The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business environment, strong financial institutions, the attractiveness of the public system as a good, reliable client, the kind of goods or services being demanded, etc.

- **Synthesis of the indicator**

The government promotes an open dialogue with the private sector, facilitated through established mechanisms through associations, which allow for a transparent and consultative process in formulating changes to the public procurement system while adhering to ethics and integrity rules. Despite these efforts, the private sector perceives a lack of regular government programs aimed at capacity building among private companies. The private sector is competitive and well-organized, with positive engagement in initiatives such as the Business Outreach Seminar and the Private Sector Survey and tends to have a reasonable number of competitors in tenders. However, there is a prevailing negative view among economic operators about the conditions in the public procurement market. While the government identifies key sectors within the public procurement market, there is a noted absence of sectoral strategies and a failure to address sector-specific risks and opportunities, with the policies outlined in the Public Procurement Act having limited practical effectiveness.



There are several substantive gaps in the public procurement framework, noting the absence of regular training programs for the private sector, which impedes capacity building. It also identifies significant deficiencies in data availability, preventing an accurate assessment of competitiveness in the public procurement market. Accessibility issues are prominent, with most private sector survey respondents indicating difficulties in financing, disproportionate procurement methods, non-objective evaluation criteria, and unfair risk distribution in contract provisions. Additionally, there is a notable lack of strategic approaches to procurement, with no long-term sectoral strategies or risk assessments being conducted.

To tackle significant deficiencies, regular capacity-building programs through collaborative efforts, enhancing the preparedness of economic operators are recommended. It also emphasized the need for effective mechanisms to measure private sector competitiveness and participation in public procurement, alongside efforts to improve market accessibility by reducing barriers and redistributing contractual risks more equitably. Furthermore, a strategic approach in key sectors such as infrastructure and health is recommended to develop long-term strategies that inform shorter-term operational plans, while identifying and mitigating sector-specific risks and seizing market opportunities to meet policy objectives. For minor gaps, it is suggested that the PPU enhances dialogue between public and private sectors to maintain transparency and acknowledge contributions through regular communication of consultation results.

- **Findings**

The government encourages open dialogue with the private sector, although this is not perceived by representatives from the private sector. There are established formal mechanisms for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government. The government has no regular programmes in place to help build capacity among private companies.

The private sector appears to be competitive and properly organised. There are various organisations that bring together professional classes and entrepreneurs. When asked to participate in the Business Outreach Seminar and the Private Sector Survey, the response can be considered positive. In competitive tenders, there appear to be a reasonable number of competitors. There is a generalized negative perception among economic operators regarding the appropriateness of conditions in the public procurement market.

Key sectors associated with the public procurement market are identified by the government. Nevertheless, there is an absence of sectoral strategies, as well as there is a lack of treatment of the risks associated with certain sectors or of opportunities to influence sector markets. Some policy objectives are mentioned in the Public Procurement Act, but without any practical impact.

- **Gaps**

Substantive gaps

10(a)(b): Capacity building programmes: There are no regular public procurement training programs for the private sector.



10(b)(a): Private sector competitiveness: There is a substantial gap in data to quantitatively assess the degree of competitiveness and interest of operators in the public procurement market.

10(b)(b): Market accessibility: The results of the Private Sector Survey reveal gaps in access to the public procurement market. 81% of respondents believe that there is no easy access to financing. More than 60 per cent consider procurement methods disproportionate to the risk and value of the procurement and that the evaluation criteria are not simple and objective. 63% also think the contract provisions do not distribute the risks associated with contract performance. Additionally, 71 per cent believe that there is no effective independent mechanism for reviewing decisions, and around 50 per cent believe that payment provisions are unfair.

10(c)(a), 10(c)(b): Strategic approach to procurement: There is no strategic approach to public procurement. There are no known long-term sectoral strategies that in turn feed into medium/short-term operational plans. Risks associated with certain sectors and opportunities to influence sector markets are not assessed by the government.

Minor gaps

10(a)(a): Dialogue between public and private sector: The government encourages open dialogue with the private sector, although this is not perceived by representatives from the private sector.

Recommendations

To address substantive gaps

10(a)(b): Capacity building programmes: The government should deliver regular training programmes to increase the preparedness of economic operators. Given the PPU's current limited capacity to implement such programmes, partnerships should be created with other bodies to increase the reach of such programmes.

10(b)(a): Private sector competitiveness: The substantial gap in data around private sector competitiveness must be filled. The PPU must find a mechanism to measure the participation of economic operators in public procurement.

10(b)(b): Market accessibility: The government should endeavour to remove the barriers to accessing the public market that have been identified. In particular, it should re-evaluate situations where excessive guarantees are demanded from suppliers or where contractual risks are not evenly distributed. This requires coordinated reflection with representatives of the different sectors of activity.

10(c)(a), 10(c)(b): Strategic approach to procurement: The key sectors of the economy, such as infrastructure, health, education, or home affairs, must identify long-term sectoral strategies that in turn feed into medium/short-term operational plans. The risks specific to each sector must be identified and accompanied by plans to mitigate them. Similarly, opportunities to influence the market to achieve policy goals must be identified and pursued.

To address minor gaps

10(a)(a): Dialogue between public and private sector: The PPU should seek to communicate the results of consultations and outreach programs to ensure transparency and acknowledgement by the private sector.



Summary of substantive gaps and recommendations of Indicator 10

Substantive gap	Risk classification and red flags	Recommendations
10(a): There are no capacity building programmes for the private sector	Medium	The government should deliver regular training programmes to increase the preparedness of economic operators. Given the PPU's current limited capacity to implement such programmes, partnerships should be created with other bodies to increase the reach of such programmes.
10(b): Private sector competitiveness: There is a substantial gap in data to quantitatively assess the degree of competitiveness and interest of operators in the public procurement market.	High	The substantial gap in data around private sector competitiveness must be filled. The PPU must find a mechanism to measure the participation of economic operators in public procurement.
10(b): There are constraints in the market accessibility	High	The government should endeavour to remove the barriers to accessing the public market that have been identified.
10(c): Strategic approach to procurement is lacking	High	The key sectors of the economy, such as infrastructure, health, education, or home affairs, must identify long-term sectoral strategies that in turn feed into medium/short-term operational plans. The risks specific to each sector must be identified and accompanied by plans to mitigate them. Similarly, opportunities to influence the market to achieve policy goals must be identified and pursued.

3.4. Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System

Pillar IV includes four indicators that are considered necessary for a system to operate with integrity, that has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and that has appropriate measures in place to address the potential for corruption



in the system. It also covers important aspects of the procurement system, which include stakeholders, including civil society, as part of the control system. This Pillar takes aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

Major Strengths under Pillar IV

There are good initiatives by GRN on CSO participation like program supported by GRN and European Union (EU) called “Enhancing Participatory Democracy in Namibia” (EPDN). There are a few Civil Society Organizations (CSOs) in Namibia who are active in the area of monitoring procurement.

- A control framework is established from the provisions in the Constitution, State Finance act, Treasury Instructions, Public Procurement Act 2015, the Public Procurement Amendment Act, 2022 and annual appropriation acts.
- Decisions by the Review Panel are rendered on the basis of evidence submitted to the Review Panel by the parties.
- Namibia signed the UNCAC in 2003 and ratified it on 27 April 2004. There have been two UNODC reviews: Cycle with a full Country Review report published in 2016 on implementation of Chapters III and IV of UNCAC (UNODC UNCAC 2016 Report) and an executive summary published in 2023 on implementation of Chapters II and V.
- According to the Anti-Corruption Commission (ACC), most of the recommendations in the 2016 Report have been adopted. The ACC refers to seven (7) pieces of policy/legislation that were implemented based on the recommendations of the first review cycle.
- Anti-Corruption Act Chapter 4 Corrupt Practices and Penalties contains provisions relating to a number of practices and offences, including corrupt acquisition of private interest by a public officer, corruption in relation to tenders and corruptly accepting and receiving “gratification”. Gratification is further defined (s.43).

Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fairer, improving contract performance and securing results. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: i) disclosure of information and ii) direct engagement of civil society through participation, monitoring and oversight.

• **Synthesis of the indicator**

There are very few Civil Society Organizations (CSOs) in Namibia who are active in monitoring procurement.

A good example of CSO participation is a program supported by GRN and European Union (EU) called “Enhancing Participatory Democracy in Namibia” (EPDN) 76 to “strengthen collaboration` and

⁷⁶ <https://www.epdn.org/>



coordination between Parliament, Civil Society Organizations and Government bodies in the implementation and oversight of public policies and programs”. This program is also intended to promote social contracting. PPU feedback indicates that Ministry of Health has a Social Contracting Policy. PPU is now a key stakeholder in terms of the way forward.

But the above initiatives have so far limited impact in monitoring procurement performance and contract implementation.

While there is a perception of lack of consultation, CSOs are invited and consulted broadly for major policy changes as per feedback from PPU. There are limited opportunities to build capacity of CSOs by PPU or public entities.

There are no legal provisions to make participation of CSO mandatory. GRN needs creating an enabling environment including through legislation for direct engagement of civil society from planning phase to contract monitoring for improving transparency and contract performance, so that as required by MAPS guidance, civil society could act as a safeguard against inefficient and ineffective use of public resources.

- **Findings**

The Assessment Team had discussions with representatives of Civil Society Organization in the mission in September 2023. An online survey was launched on November 30, 2023, through Microsoft Form by addressing the questions to 21 CSO participants as identified by PPU, who were considered active in the area of governance/procurement. With intensive follow-up by PPU the Assessment Team received 8 responses which were analyzed.

In the response 50% of participants have indicated that there is no consultative process when changes are formulated to the public procurement system, and 12% in “Maybe” category and similar percentages do not consider such consultations as transparent.

PPU feedback indicates that while there is a perception of lack of consultation, CSOs are invited and consult broadly for major policy changes such as Amendment to Act, Regulations and Code of Good Practice.

Based on feedback, CSOs need to be heard and involved in the procurement process: Relevant statements from survey participants are: “CSO are not mostly aware of any change taking place until its enacted and enforced”. “CSO need to be involved in the process for them to be empowered and also allowed to participate where their capacity is able to’ “CSOs play crucial roles in addressing and advocating for equality and transparency, however, the lack of recognition of the roles the CSOs play has made the process less transparent and exclusively to those in other categories.”

Based on the survey response with 57% “no” and 43% “may be”, there appears to be very few programs to build capacity of relevant stakeholders. One feedback is “Involving the CSO from the start would improve transparency and ensure the capacity and participation of the CSO”.

There are very CSOs whose input is taken into account and therefore 57% of participants report that CSO oversight is not happening.

Feedback from survey is: “For meaningful dialogue and partnerships, there need to be multistakeholder platforms created that incorporate a wide variety of sectoral stakeholders. Such platforms can serve as



unofficial oversight boards that regularly meet to view and deliberate governance and process issues that affect efficient public procurement in a given socio-economic sector”.

The lack of data is also due to lack of compliance by Public Entities in reporting the requested information. Based on PPU Annual Report of 2022-23, on performance information by all public entities during 2022/23 financial year based on the reports only 171 reports were received out of a possible 521 reports were received from public entities. Therefore, available information is inadequate for meaningful analysis by CSO or public. E- Procurement system is in initial phases of implementation.

Based on feedback of online survey, on the question of CSO participation, the perception of 63% of participants is “No” and 12% “maybe”. There are no legal provisions to make participation of CSO mandatory.

Based on the given response, about 75% of respondents do not see participation by CSO in procurement outcomes or suggesting changes to the project. Based on guidance in the MAPS methodology, legal and regulatory framework might establish the obligation or an opportunity for the government to consult public in the planning process for example prior to environmentally and socially sensitive procurement.

- **Gaps**

Substantive Gaps

11(a)(a): Transparent and consultative process: CSO involvement not inclusive and not transparent in formulating changes to the public procurement laws and regulations, with the exception of few CSOs.

11(a)(b): Programme to build capacity: There very few training or capacity building programmes for CSOs by PPU or public entities.

11(a)(c): CSO input and feedback: CSO feedback taken from very few organizations, there are no formal channels for such feedback.

11(b)(a): Adequate and timely access to information: Based on majority response, data/information is neither accurate nor timely. The available information/data in public domain is inadequate. The lack of data is also due to lack of compliance by public entities in reporting to PPU the requested information. Based on findings under Indicator -7, on Reporting and Analytics: The portal's reporting capabilities are rudimentary, with limited options for data analysis and insights generation, hampering informed decision-making.

This gap is a “Red Flag” as implementation requires coordination and action on the part of several government agencies.

11(c)(a): Direct engagement of civil society: There are no legal provisions to make participation of CSO mandatory.

This gap is a “Red Flag” as there is need for enabling environment that requires interagency coordination including through changes in PPA and Anti-corruption Act.

11(c)(b): Evidence of direct engagement of civil society: about 75% of respondents do not see participation by CSO in procurement outcomes or suggesting changes to the project. due to lack of enabling environment and regulation.



This gap is considered a “Red Flag” as the implementation requires legislation and interinstitutional collaboration.

- **Recommendations**

To address Substantive Gaps

11(a)(a): Transparent and consultative process: CSO involvement to be made more inclusive while formulating changes to the public procurement system to cover a wider spectrum of CSOs. PPU/MoFPE to create a formal channel of feedback and regular consultations with a wider spectrum of CSOs for effective participation by CSOs.

11(a)(b): Programme to build capacity: CSOs could act as a safeguard against inefficient and ineffective use of public resources, and PPU and Public Entities need to invest in capacity building and training of credible civil society organizations.

11(a)(c): Feedback consideration: PPU/MoFPE to create a formal channel of feedback and regular consultations with wider spectrum of CSOs for effective participation by CSOs.

11(b)(a): Adequate and timely access to information: To improve compliance in reporting by public entities as requested by PPU and to expedite roll -out of e-Procurement system so that data gathering, and analytics is functional.

11(c)(a), 11(c)(b): Direct engagement of civil society and evidence: GRN to consider creating an enabling environment including through legislation for direct monitoring engagement of civil society from planning phase to contract execution for improving transparency and contract performance. Based on guidance in the MAPS methodology, legal and regulatory framework might establish the obligation or an opportunity for the government to consult public in the planning process for example prior to environmentally and socially sensitive procurement.

Summary of substantive gaps and recommendations of Indicator 11

Substantive gap	Risk classification and red flags	Recommendations
11(a): Lack of transparent and consultative process	High, Red Flag	CSO involvement to be made more inclusive while formulating changes to the public procurement system to cover a wider spectrum of CSOs.
11(a): Lack of programmes to build capacity	High, Red Flag	Need to invest in capacity building and training of credible civil society organizations by PPU and public entities.
11(a): Insufficient feedback consideration		MoFPE to create a formal channel of feedback and regular consultations with wider spectrum of CSOs for effective participation by CSOs



Substantive gap	Risk classification and red flags	Recommendations
11(b): Lack of adequate and timely access to information:	High, Red Flag	To improve compliance in reporting by public entities and to expedite roll -out of e-Procurement system.
11(c): Insufficient direct engagement of civil society and evidence	High, Red Flag	GRN to consider creating an enabling environment including through legislation for direct engagement of civil society.

Indicator 12. The country has effective control and audit systems

The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, “effectiveness” means the expediency and thoroughness of the implementation of auditors’ recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.

- **Synthesis of the indicator**

A control framework is established from the provisions in the Constitution, State Finance act, Treasury Instructions, Public Procurement Act 2015, the Public Procurement Amendment Act, 2022 and annual appropriation acts.

Oversight of procurement is conducted by Internal Audit, Auditor General and PPU (Internal Audit and Auditor General have different mandates. Internal Audit will also be trained to become procurement auditors, as per feedback received during Validation Workshop in April 2024.

OAG performs procurement audit as part of the financial audit, which is risk-based, conducted using INTOSAI standards, including compliance audits. PPU is conducting compliance audits of public entities regularly. There is no stand-alone compliance or performance audit on procurement by OAG. Based on published reports there are no consolidated audit report which highlights systemic issues related to procurement.

OAG office and Internal Auditors encourage its staff members to be acquainted with procurement processes and requirement through training offered by the procurement unit.

The oversight of procurement systems is assessed to be weak mainly due to capacity constraints in staffing and expertise in internal audit, Auditor General and PPU. The weak capacity limits the functionality of these institutions, which negatively impacts the effectiveness and efficiency of the procurement system.



- **Findings**

Mandate of the Auditor-General as derived from Article 127 of the Namibian Constitution: The Auditor-General shall audit the State Revenue Fund and shall perform all other functions assigned to him or her by the Government or by Act of Parliament and shall report annually to the National Assembly thereon.

The Auditor-General is tasked with the investigation, examination and audit of the account-books, accounts, registers or statements which are to be kept or prepared in terms of any law in connection with the receipt, custody, banking, payment or issue of money, stamps, securities, equipment and stores by any statutory institution and which are in terms of any law to be investigated, examined and audited by the Auditor-General.

Based on PEFA Final Report of 2015, the State Finance Act 1991 (amended 1995) prescribes the roles and responsibilities of the internal auditor within Treasury only (Vote 9); there is no legal or regulatory framework for internal audit functions in other OMA's.

As per, Functions of Procurement Policy Unit, in Section 7 of PPA 2015 *inter alia* include to institute - (i) contract audits in the course of the execution of an awarded contract; and (ii) performance audit after the completion of the contract in respect of any procurement, when it is necessary; and (iii) commission or undertake investigations and institute performance audits.

Oversight of procurement is conducted by Internal Audit, Auditor General and PPU. Procurement transactions are audited by Auditor General as part of normal financial audits. Based on published Annual Report of PPU (September 2021)⁷⁷ Procurement Policy Unit undertook ten (10) procurement audits during the period of 2020/21 financial years. As per latest Annual Report of PPU for 2022-23 nine (9) public entities which were audited during 2022/23 turned a very low audit score, giving an average score of twenty-four (24%) percent.

OAG performs procurement audit as part of the financial audit. The risk-based audit, conducted using INTOSAI standards, involves conducting compliance audits.

PPU involved Government Internal Audit in the revision of its Compliance Audit tool and also working with Government Internal Audit to start doing Compliance audits in all OMA's and RCs.

There is no specific procurement training program for external auditors or qualification requirement for OAG staff to conduct procurement audit.

Based on input given by OAG during Validation Mission in April 2024, in the recent years there were limited opportunities for training of OAG Auditors which included one staff completing a post-graduate diploma in procurement management, e-GP training (1 day for 8 participants), procurement act induction workshop (1 day for 60 participants) and Fundamentals of Public Procurement Management (5 days for 7 participants).

There are entry level requirements for auditors with Business Degrees/Diploma to cover a range of subjects to conduct Regular Audit or Performance Audit.

⁷⁷ <https://eprocurement.gov.na/documents>



- **Gaps**

Substantive Gaps

12(a)(a): Laws and regulation to establish a comprehensive control framework: There is no legal or regulatory framework for internal audit function nor a separate law for the Office of the Auditor General (OAG). PPA does not include provisions for independent public procurement oversight by OAG or by Internal Audit apart from reference at s. 7(2)(c) of PPA to “commission or undertake investigations and institute performance audits”. In practice these are more a compliance audit and not a performance audit.

This gap is considered “Red Flag” as the implementation of such reforms requires interinstitutional efforts and addressing human resources and capacity challenges.

12(a)(b): Internal control/audit mechanism and functions that ensures appropriate oversight of procurement: The oversight of procurement systems is assessed to be weak mainly due to capacity constraints in staffing and expertise in internal audit, Auditor General and PPU. The weak capacity limits the functionality of these institutions, which negatively impacts the effectiveness and efficiency of the procurement system.

This gap is considered “Red Flag” as the implementation of recommendation requires interinstitutional efforts and addressing human resources and capacity challenges to be resolved by GRN.

12(a)(c): Balance between timely and efficient decision making and adequate risk-mitigation: Absence of a consolidated audit report that identifies systemic issues in the area of procurement and contracts management (based on PPU and Internal audit reports) for decision making and risk mitigation and to, identify root causes affecting performance. The procurement audit by PPU is related to compliance, as per summary given Annual Report.

12(a)(d): Independent external audit: While AG conducts audits using internationally accepted standards, his independence is limited, on account of reliance on MoFPE for budget allocation (as per PEFA 2015). There is lack of conducting procurement-related performance audits by OAG.

This gap is considered “Red Flag” as the implementation of recommendation requires interinstitutional efforts and addressing human resources and capacity challenges to be resolved by GRN.

12(a)(e): Review of audit reports by legislature: The OAG reports include valuable recommendations, but there is limited evidence of executive action to implement the recommendations timeously, nor is there evidence of any systematic follow up. Legislative scrutiny of external audit report is weak as evidenced by PEFA report of 2015. Assessment team could not find any report of Public Accounts Committee on their website on their deliberations and recommendations related to audit reports.

This gap is considered “Red Flag” as the implementation of recommendation and ensuring review by legislature is beyond the control of OAG.

12(a)(f): Clear mechanism for follow-up of findings: Lack of mechanism for follow up of internal and external audit recommendations.

This gap is considered “Red Flag” as the implementation of recommendation and ensuring review by legislature is beyond the control of OAG.



12(b)(c): Evidence of internal and external audit (on procurement): The subject of procurement not dealt with fully as part of Financial Audit. The procurement audit by PPU is related to compliance. Procurement performance audit is not carried out as intended in Performance Audit Manual issued by OAG. Audit reports of PPU not published regularly, other than providing a summary paragraph on compliance audit as part of their Annual Report.

12(c)(a), 12(c)(b): Enforcement and follow-up on findings and recommendations: Legislative scrutiny of external audit report is weak as evidenced by PEFA report. Considered “Red Flag” as this gap is beyond the control of OAG and requires intervention at the highest level in the government. PAC does not monitor implementation of its recommendation.

12(d)(a), 12(d)(b), 12(d)(c): Qualification and training to conduct procurement audit: There are limited opportunities for training of OAG to conduct procurement audit (also applies to Government Internal Auditors). There is no competency framework, or qualification requirement or specific procurement training program for external auditors (and internal auditors) or qualification requirement to conduct a high-quality procurement audit.

Minor Gaps

12(b)(b): Written standards and coordinated and mutually reinforcing procurement audit: There are written standards for performance audit by OAG and template for compliance audit by PPU (with input from Government Internal Audit, a central unit), but their audits are not coordinated.

12(b)(d): Clear reporting line among oversight bodies on procurement audit: There is no clear reporting lines among oversight bodies which are OAG, Government Internal Audit and PPU related to procurement audit.

Recommendations

To address Substantive Gaps

12(a)(a): Laws and regulation to establish a comprehensive control framework: Accelerate the enactment of the PFM and Audit Bills, which should provide comprehensive control framework (including internal controls, internal audits, external audits and oversight by legal bodies), legal backing for internal audit, and independence of the OAG.

12(a)(b): Internal control/audit mechanism and functions that ensures appropriate oversight of procurement: Strengthen the procurement staffing capacity (number and expertise) in the internal audit, OAG and PPU.

12(a)(c): Balance between timely and efficient decision making and adequate risk-mitigation: PPU (also with support from Government Internal Audit) to carry out risk-based targeted compliance and performance audit annually identifying systemic issues and root causes affecting procurement performance and publish these reports.

OAG should conduct performance audit of procurement transactions in OMAs on a regular basis.

12(a)(d): Independent external audit: To strengthen the independence of OAG, especially direct allocation of budget by Parliament and power to recruit its own staff.



12(a)(e), 12(a)(f): Review of audit reports by legislature and clear mechanism for follow-up: Conduct an assessment of the Public Accounts Committee performance and implement reforms to address the identified weaknesses. The assessment should include the capacity and capability of the PAC to review AG reports and follow-up on its recommendations. GRN should institutionalize and strengthen Audit Committees in all OMA. The ACs should be responsible of following up implementation of recommendation OAG, internal audit and PPU.

12(b)(c): Evidence of internal and external audit (on procurement): PPU (also with support from Government Internal Audit) to carry out risk-based targeted compliance and performance audit annually identifying systemic issues and root causes affecting procurement performance and publish these reports.

OAG should conduct performance audit of procurement transactions in OMAs on a regular basis.

12(c)(a), 12(c)(b): Enforcement and follow-up on findings and recommendations: Conduct an assessment of the Public Accounts Committee performance and implement reforms to address the identified weaknesses. The assessment should include the capacity and capability of the PAC to review AG reports and follow-up on its recommendations. PAC to monitor implementation of its recommendation by according priority from the highest level of the government.

12(d)(a), 12(d)(b), 12(d)(c): Qualification and training to conduct procurement audit: To institute competency framework, qualification requirement and specific training to conduct high quality procurement audit by Government Internal Auditors and OAG Auditors.

To address Minor Gaps

12(b)(b): Written standards and coordinated and mutually reinforcing procurement audit: OAG, Government Internal Audit and PPU to coordinate their audit plans (both compliance and performance) which should be mutually reinforcing.

12(b)(d): Clear reporting line among oversight bodies on procurement audit: OAG, Government Internal Auditor and PPU to agree on a protocol/MOU to establish a reporting line related to procurement audit especially sharing findings and protocols on relying on each other’s work.

Summary of substantive gaps and recommendations of Indicator 12

Substantive gap	Risk classification and red flags	Recommendations
12(a): Insufficient laws and regulation to establish a comprehensive control framework	High, Red Flag	Accelerate the enactment of the PFM and Audit Bills.
12(a): Weak internal control/audit mechanism and functions that ensures appropriate oversight of procurement	High, Red Flag	Strengthen the procurement staffing capacity (number and expertise) in the internal audit, OAG and PPU.



Substantive gap	Risk classification and red flags	Recommendations
12(a): Lack of balance between timely and efficient decision making and adequate risk-mitigation	High	<p>PPU (also with support from Government Internal Audit) to carry out risk-based targeted compliance and performance audit annually identifying systemic issues and root causes affecting procurement performance and publish these reports.</p> <p>OAG should conduct performance audit of procurement transactions in OMAs on a regular basis.</p>
12(a): Lack of independent external audits	High, Red Flag	To strengthen the independence of OAG, especially direct allocation of budget by Parliament and power to recruit its own staff.
12(a): Review of audit reports by legislature and clear mechanism for follow-up need to be improved	High, Red Flag	Conduct an assessment of the Public Accounts Committee performance and implement reforms. GRN should institutionalize and strengthen Audit Committees in all OMA.
12(b): Weak internal and external audits (on procurement)	Medium	OAG and PPU (also with support from Government Internal Audit) to carry out risk-based targeted compliance and performance audit annually identifying systemic issues and root causes affecting procurement performance and publish these reports.
12(c): Insufficient enforcement and follow-up on findings and recommendations	High, Red Flag	Conduct an assessment of the Public Accounts Committee performance and implement reforms to address the identified weaknesses. The assessment should include the capacity and capability of the PAC to review AG reports and follow-up on its recommendations.
12(d): Insufficient qualification and training to conduct procurement audit	Medium	To institute competency framework, qualification requirement and specific training to conduct high quality procurement audit by Government Internal Auditors and OAG Auditors.



Indicator 13. Procurement appeals mechanisms are effective and efficient

Pillar I covers aspects of the appeals mechanism as it pertains to the legal framework, including creation and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

- **Synthesis of the indicator**

Bidders seeking review of a decision by the CPBN or a procuring entity may submit an application for consideration by a five-member Review Panel, whose members are drawn from a list of qualified persons. The Review Panel is supported by a secretariat provided by staff seconded from the MoFPE and full independence cannot be guaranteed. Decisions by the Review Panel are decided based on evidence submitted, with a range of remedies being applied and compliance required by law.

- **Findings**

A Review Panel is constituted for each application for review and is made up of 5 members, drawn from a list of 15 persons with relevant qualifications. The Minister compiles the list of qualified persons after publication of an invitation to express interest. The list is published in the Gazette and may be updated annually. Review Panel Members are paid according to remuneration provisions applying under the Public Enterprises Governance Act No.1 of 2019. The secretariat role in support of the Review Panel is provided by staff seconded from the MoFPE, which means that full independence from the MoFPE (as procuring entity) cannot be guaranteed.

Decisions by the Review Panel are rendered on the basis of evidence submitted to the Review Panel by the parties and in accordance with the Review Panel Operations Manual which sets out the procedures applying to all applications for review submitted to the Review Panel. The High Court of Namibia has confirmed that applicants are duty-bound to comply and implement the decision of the Review Panel, unless such decision is set aside according to law. The procedures and time frames for submission of requests for reconsideration, review and issuing of decisions are specified in the legal framework and should not unduly delay the procurement process. Decisions are made based on information relevant to the case. There are measures in place to prevent conflicts of interest arising in respect of review panel members. Confidence in the Review System is low according to responses received from the Private Sector survey. The Review Panel makes a range of orders and imposes remedies the procurement management unit of the relevant public entity is required to implement the decisions of the Review Panel. Review decisions are published on the eProcurement Portal, although not always within the timelines stipulated in the law. In the last financial year, the Review Panel received 115 applications for review and published decisions in 112 cases. The Review Panel secretariat is insufficiently resourced and staffed to respond to the demands arising from the large number of applications for review received.



- Gaps

Substantive Gaps

13(b)(a): Independence of the Review Panel and its secretariat: The secretariat role in support of the Review Panel is provided by staff seconded from the MoFPE and so a potential for conflict arises in the activities of MoFPE both as procuring entity and provider of secretariat services in respect of the Review function.

This Gap is assigned a “Red flag” because independence of the system for review is an essential requirement with significant impact on the operation of an important aspect of the procurement ecosystem. In addition, the funding and resourcing of the Review Panel Secretariat is a wider budget issue falling outside solely the procurement sphere.

13(b)(g): Resourcing to support functions of the Review Panel: The secretariat supporting the Review Panel is insufficiently resourced and staffed to respond to the demands arising from the large number of applications for review received.

This Gap is assigned a “Red flag” because effective operation of the system for review is an essential requirement with significant impact on the wider procurement ecosystem. In addition resourcing (financial, human resources and other support) of the Review Panel is a higher-level budget issue not lying solely within the procurement sphere.

13(c)(b): Review of reconsideration and appeals system to ensure it is fit for purpose: The system for reconsideration and review is actively used by bidders, as evidenced by the number of applications considered by the Review Panel. Bidders are also prepared to use the court system to appeal against decisions of the Review panel. This may be implied to indicate a satisfactory level of confidence in the system but the responses to the private sector survey indicate otherwise. It is therefore not possible to conclude that the appeals system is seen to be operating in a fair manner, as required by the MAPS Methodology.

This Gap is assigned a Red flag because bidder confidence in the system for review is an essential requirement with significant impact on the operation of an important aspect of the procurement ecosystem. In addition, this is a whole-system issue with measures to resolve the Gap requiring high level governmental leadership and cross sectoral (public and private sector as well as civil society) cooperation to investigate and properly understand shortfalls and to identify and deliver improvements, learning and support to tackle the perception of unfairness.

13(c)(d): Publication of decisions on the eProcurement Portal: In financial year 2023/2024, Review Panel decisions were not all published on the eProcurement Portal within the specified time frame of 7 working days, thus reducing transparency in the operation of the procurement system.

This Gap is assigned a Red flag because bidder confidence in the system for review is an essential requirement with significant impact on the operation of an important aspect of the procurement ecosystem and lack of transparency negatively impacts confidence. In addition, the likely cause and remedy is linked to resourcing (financial, human resources and other support) of the Review Panel, which is a higher-level budget issue not lying solely within the procurement sphere.



- **Recommendations**

To address Substantive Gaps

Combined Recommendations for: 13(b)(a): Independence of the Review Panel and its secretariat; 13(b)(g): Resourcing of the Review Panel, and; 13(c)(b): Review of reconsideration process and appeals system to ensure it is fit for purpose: Undertake a critical review of the operation in practice of the current system for applications for reconsideration and administrative review by the Review Panel to establish whether that system achieves the aims of delivering efficient and effective decision making and in a manner which is, and is perceived to be, fair and unbiased. The review should identify measures to improve or alter the system, including the institutional structure and standing of the Review Panel and its Secretariat, with particular reference to avoidance of conflicts of interest, to ensure that it is fit for purpose. The review will need to incorporate consideration and allocation of necessary resources to support operation of the Review Panel and its secretariat.

The review should also include consideration of the reasons why applications for review at earlier stages in the procurement process, prior to the notice on selection for award, are relatively rare (see 1(h)(c)), for example at the stage of clarification of bidding documents. It may also be appropriate to investigate whether/to what extent fees paid by applicants inhibit access by concerned parties and/or act as an effective disincentive to frivolous complaints.

13(c)(d) Publication of Review Panel decisions on the eProcurement Portal: To ensure transparency and enhance confidence in the review process, put into place relevant resources and support to ensure that all Review Panel decisions are published on the eProcurement Portal within the specified time frame of 7 working days. Consider also, publishing information on applications for Review so that all stakeholders are aware of such applications and can track cases and their outcomes.



Summary of substantive gaps and recommendations of Indicator 13

Substantive gap	Risk classification and red flags	Recommendations
13(b): Independence of the Review Panel and its secretariat not fully guaranteed	High, Red flag	Combined Recommendations Critical review of current system to assess and propose measures to improve efficiency, effectiveness and confidence in the system. Include consideration of institutional structure, standing and resourcing of the Review Panel and secretariat services. See also 1(h)(c) - consideration of the reasons why applications for review at earlier stages in the procurement process, prior to the notice on selection for award, are relatively rare.
13(b): Review Panel is insufficiently resourced.	High, Red Flag	
13(c): Lack of confidence in the system	High, Red Flag	
13(c): Limited publication of Review Panel decisions on the eProcurement Portal	High, Red Flag	

Indicator 14. The country has ethics and anti-corruption measures in place

This indicator assesses i) the nature and scope of anti-corruption provisions in the procurement system and ii) how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

- **Synthesis of the indicator**

There is lack of consistency between the use of terms corrupt, fraudulent, collusive, coercive and obstructive practices in the public procurement legal and regulatory framework (PPA and PPR) and Anti-Corruption Act, 2003, and there is no mandatory requirement or precise instruction on how to incorporate the matter in procurement and contract documents.

For example, there is no explicit mention of cooling-off period for former public officials either in PPA/PPR or the Anti-corruption Act. The definitions of relative/associate/friend are not consistent between PPA and Anti-corruption Act.

Anti-Corruption Act s.48 places a duty on public officials and members of the public to report corrupt activities to the Commission. There is link on ACC website to report cases of Fraud and Corruption which



could be anonymous, asking to describe the incident/alleged corrupt practices in as much detail as possible.

Based on Annual Report of ACC for 2021/22 there are few cases (3 to 4) on cases relating to procurement and contract award under the section on notable and ongoing cases.

There is no evidence of enforcement on following mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). There is no systematic asset/financial disclosure and annual filing by officials involved in public financial management and procurement (as also other public officials).

The feedback from the private sector survey substantiates the existence of corruption to secure public sector contracts and the lack of effectiveness of anti-corruption measures.

- **Findings**

The PPA and PPR do not include definitions of fraud, corruption and other prohibited practices in procurement. There are, however, provisions at PPA s.67 Conduct of bidders and suppliers, which define consequences (offences and fines) for bidders and suppliers engaging in corrupt, fraudulent practices, collusive and coercive practices. “Collusion among bidders” is defined at PPA s.54(5).

The Anti-Corruption Act, 2003 does not define the terms such as fraud and corruption. Anti-Corruption Act Chapter 4 Corrupt Practices and Penalties contains provisions relating to a number of practices and offences, including corrupt acquisition of private interest by a public officer, corruption in relation to tenders and corruptly accepting and receiving “gratification”. Gratification is further defined (s.43).

Standard Bidding Document defines, corrupt, fraudulent, collusive, coercive and obstructive practices.

Namibia signed the UNCAC in 2003 and ratified it on 27 April 2004. There have been two UNODC reviews: Cycle with a full Country Review report published in 2016 on implementation of Chapters III and IV of UNCAC (UNODC UNCAC 2016 Report) and an executive summary published in 2023 on implementation of Chapters II and V.

According to the Anti-Corruption Commission (ACC), most of the recommendations in the 2016 Report have been adopted. The ACC refers to seven (7) pieces of policy/legislation that were implemented based on the recommendations of the first review cycle.

PPA s.66 Conduct of staff members of public entities, and PPA s.66A Disclosure of interest by staff members of public entities, both stipulate the consequences of non-compliance. The terms “relative” and “associate” are defined further in section 43, but there is no mention of “friend” as in PPA at Section 66. PPA s.67 on Conduct of bidders and suppliers, stipulates consequences as for an offence relating to corrupt or fraudulent practices or engaging in coercive practice.

As indicated above, Standard Bidding Documents define, corrupt, fraudulent, collusive, coercive and obstructive practices, which is broadly based on definition as adopted by International Financial Institution (IFIs) like the World Bank. But such definitions are not contained in the legal and regulatory framework. The SBDs also stipulate grounds for rejection linked to fraud and corruption related offences.

In accordance with PPA s. 7(4)(b) if, in the discharge of its functions, the Procurement Policy Unit finds that there has been a non-compliance with any provision of the PP directives, code of procedures or



guidelines made under this Act, the Minister may refer any matter of non-compliance to the Namibian Police, Anti-Corruption Commission or any other competent authority for investigation, when it thinks appropriate, and must inform the public entity concerned. However, it is implied that such reference to ACC/NAMPOL is on account of allegation of fraud, corruption, and other prohibited practices. As per clarification provided by PPU, based on Investigation Manual, the case is referred to police if criminal, to ACC if corruption, to Appointing authority if administrative.

Anti-Corruption Act s.48 places a duty on public officials and members of the public to report corrupt activities to the Commission. There is link on ACC website to report cases of Fraud and Corruption which could be anonymous, asking to describe the incident/alleged corrupt practices in as much detail as possible. As per feedback from ACC, Public entities and members of the public constantly report allegations of corruption to the Commission. ACC also has a website where allegations of corruption are reported, and whistleblowers are contacted to provide information pertaining to the allegations. The allegations are evaluated, analyzed and then investigated if allegations are based on reasonable grounds.

Applications for debarment, including on the grounds of fraud and corruption, can be made by a public entity. Decisions on debarment are made by the Review Panel following the process described in PPA s.68. Debarment is for a maximum period of 5 years. The Review Panel has discretion to suspend a supplier pending completion of disqualification or debarment proceedings. The Register of Suspension or Debarment shows 11 active debarment/suspension cases mostly on ground of supplying false information, with 2 cases on providing fraudulent, forged, or unauthentic document.

If an official contravenes the Public Procurement Act No. 15 of 2015 will be charged according to section 4(8) and Chapter 4 of the Anti-Corruption Act.

The ACC conducts a perception survey every five years however the last Perception survey was last done in 2016. It can be accessed at the ACC website. ACC has a preventative tool called Corruption Risk Assessment (CRA) in place that identifies risks and mitigate these risks at any public or private entities. The PEs are required in the National Anti-Corruption Strategy to organise in partnership with the ACC such training on CRA.

ACC publishes annual reports at every end of the financial years as required by the Anti-Corruption Act No.8 of 2008 and are accessible at the ACC website. In the Annual Report of ACC for 2021/2022 there are 3-4 cases (under notable and ongoing cases) related to procurement and contract award, but no details on proceedings and conviction are available. For cases investigated, ACC reports only one person was convicted and sentenced for corruption related to tender over the three-year period (2020-2021, 2021-2022 & 2022-2023). While some of the cases investigated by the Anti-Corruption Commission are still awaiting the Prosecutor General's decision, some are still in court and for other cases, investigations are still ongoing.

Based on feedback from ACC, as per the National Anti-Corruption Strategy and Action Plan (NACSAP) 2021-2025, the Anti-Corruption Commission (ACC) is required to conduct ethics and integrity training for Offices/Ministries/Agencies (OMAs), Private Bodies and Public Enterprises. ACC has an ethics and integrity training program offered to all public and private entities which can as well be attended by the procurement workforce. A total number of ninety (90) anti-corruption public education sessions were held in thirteen regions (13), and four thousand two hundred and twenty-six (2,226) people were reached.



ACC expects those who have received information on how to report and fight corruption to be agents of change against corruption in their institutions and communities.

ACC through the National Anti-Corruption Strategy and Action Plan (2021-2025), Strategic objective 6, specific objective 6.1 is engaging the civil society to play its role in constraining corruption.

Civil Society Organizations play an oversight role in advocating for general compliance to the PPA and operationalization thereof. They also play a critical role in identifying loopholes in the existing legislation (Public Procurement Act and others) and propose amendments to close loopholes of corruption in the procurement sector. These initiatives need to be converted into action by PPU/ACC through an enabling environment.

Based on feedback from ACC, ACC has a website and toll-free number accessible on a twenty-four-hour basis for the public to report alleged corrupt practices. There are also integrity committees established within the Offices/Ministries/Agencies (OMAs) and Regional Councils to oversee unethical behavior within their institutions to report such unethical behaviors to their accounting officers.

As part of its mandate, ACC receives reports of alleged corrupt practices that includes corruption and fraud and are handled with confidentiality. Informers and information are protected according to Section 52 of the Anti-Corruption Act No.8 of 2008. There is dedicated comprehensive legislation to protect whistleblowers, namely the Whistleblower Protection Act no 10 of 2017.

There is Public Service Code of Conduct, Integrity and Ethics to which all public servants have to adhere. This code of conduct has provisions on not to misuse official position, not to accept gifts, and declaring conflict of interest. PPA Part 10 concerns Procurement Integrity and contains various provision on matters such as conflict and disclosure. There is no separate code of conduct for officials involved in public financial management and procurement. As per clarification provided by PPU based on directive of internal structure issued on 5 August 2022 all staff in the Internal Structures are required to sign the Public Procurement Code of Ethics and Conduct.

On declaration of assets, the Public Service Act requires public officials to declare their interests including financial disclosure. There is, however, no systematic asset/financial disclosure and annual filing by officials involved in public financial management and procurement (as also other public officials). In several other countries, Anti-Corruption Office or Office of Ombudsman is responsible for ensuring compliance to asset declaration/financial disclosure.

Based on the private sector survey, there is a perception by 63 % of respondents that firms are expected to offer some kind of bonus/offers/gifts to secure a contract in the public sector. Related to the effectiveness on various anti-corruption measures like conflict of interest, financial disclosure, cooling-off period by former government officials, or whistleblower, the private sector survey shows significant gaps and lack of effectiveness (from more 60-70% not effective) of anti-corruption measures in the area of public procurement.

Gaps

- **Substantive Gaps**

14(b)(a): Provision on prohibited practices in procurement document and related instructions: There is lack of consistency between the use of terms corrupt, fraudulent, collusive, coercive and obstructive



practices in the public procurement legal and regulatory framework (PPA and PPR) and Anti-Corruption Act, 2003, and there is no mandatory requirement or precise instruction on how to incorporate the matter in procurement and contract documents.

14(c)(a), 14(c)(b), 14(c)(d): Reporting allegations of fraud and corruption in procurement and evidence of follow-up: No consistency and clarity between PPA and Anti-corruption Act to report allegations of fraud, corruption, and other prohibited practices to law enforcement authorities to ensure enforcement. Based on Annual Report of ACC for 2021/22 there are few cases (3 to 4) on cases relating to procurement and contract award under the section on notable and ongoing cases. For procurement related cases no substantial evidence is available on enforcement.

14(e)(a), 14(e)(b), 14e(c), 14e(d): Stakeholder support to strengthen integrity in procurement: Lack of effective participation by a broad range of CSO participants to fight against procurement related fraud and corruption, also due to lack of enabling environment. Very few organizations are active in the area of improving integrity in public procurement. No internal compliance measures Suppliers and business associations to support integrity and ethical behavior in public procurement.

14(g)(b), 14(g)(c), 14(g)(e): Evidence on enforcement on code of conduct including annual asset/financial disclosure: There is no evidence of enforcement on following mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). There is no systematic asset/financial disclosure (including beneficial ownership) and annual filing by officials involved in public financial management and procurement (as also other public officials) and no such requirement under the Public Procurement Code of Conduct and Ethics (2021). In several other countries, Anti-Corruption Office or Office of Ombudsman is responsible for ensuring compliance to asset declaration/financial disclosure. No data for this indicator at the Anti-Corruption Commission. Based on input of ACC, the Conflict-of-Interest statements, financial disclosure forms and information on beneficial ownership are filed by Human Resources department at the Office of the Prime Minister.

Considered “Red Flag” as enforcement on code of conduct with annual filing on asset/financial disclosures (including statement on beneficial ownership) by officials involved in procurement and financial management will require attention from the highest level of the government.

Minor Gaps

14(a)(a): Definition of fraud and corruption: Anti-corruption Act No.8 of 2003 does not clearly define the terms such as fraud and corruption, nor does PPA 2015. Such definitions are there in the Standard Bidding Document. Anti-corruption policies are not coordinated. There is lack of a comprehensive approach to conflict of interest and to the declaration of assets by public servants.

14(a)(b): Definition of individual responsibility and accountability: UNODC UNCAC 2016 Report at s.2 (p.3) observed that the definition of “public officer” in Anti-Corruption Act 2003 (ACA) s.32 does not cover unpaid persons or other persons performing public functions of providing a public service (in accordance with UNCAC article 2.) it noted that there is also uncertainty whether all categories of person holding legislative, administrative or judicial offices are covered. Recommended to adopt a definition of public office in line with UNCAC art.2. (see also pp16-18) Various other recommendations to amend legislation



including to cover acts of indirect bribery and third-party beneficiaries for all bribery offences under ACA, measure to criminalize trading in influence, liability of legal persons.

14(a)(c): Definition and provisions on conflict of interest, cooling-off period: There is no explicit mention of cooling-off period for former public officials either in PPA/PPR or the Anti-corruption Act. The definitions of relative/associate/friend are not consistent between PPA and Anti-corruption Act.

14(b)(b): Procurement and contract document to include provisions of fraud and corruption and prohibited practices: As noted at 14(b)(a) there is lack of consistency between the public procurement and anti-corruption legal frameworks. This lack of consistency continues in respect of the provisions on fraud, corruption and other prohibited practices in the procurement and contract documents which are based on International Financial Institution (IFI) terms.

The Bidding form in the SBD have no reference to establish bidder's eligibility based on declaration on Suspension and Debarment and Fraud and corruption in accordance with the provision of Anti-Corruption Act and PPL.

14(c)(c): System of suspension and debarment and due process: As indicated at sub-indicator 1(d)(c), there is no specific reference to disqualification on the grounds of conviction for terrorism, money laundering, drug and people trafficking or child labor related offences (refer to sub-indicator 1 d (c)).

To make provisions on fraud, corruption, and other prohibited practices consistent between public procurement and legal framework. Bidding form in SBD to include reference to establish bidder's eligibility based on declaration on Suspension and Debarment and Fraud and corruption in accordance with the provision of Anti-Corruption Act and PPL.

14(d)(a), 14(d)(b), 14(d)(c), 14(d)(d), (d)(e): Anti-corruption framework and integrity training: The private sector survey shows significant gaps and lack of effectiveness (from more 60-70% not effective) of anti-corruption measures in the area of public procurement. It is not clear how the various institutional stakeholders work together in the anti-corruption sphere - Police, competition authorities, PPU, ACC, Audit etc. No recent perception survey in particular those related to procurement related integrity risk and needed action for better service delivery. Evidence of enforcement in procurement related corruption is missing. Not much evidence on procurement related fraud and corruption training to Public Entities and private sector.

14(f)(a), 14(f)(b), 14(f)(c): Secure mechanism for reporting for reporting prohibited practices or unethical behaviour: There is no evidence of enforcement on procurement related fraud and corruption or data/follow-up on whistleblower complaint on procurement.

14(g)(a): Code of conduct and ethics: There is mandatory code of conduct and ethics but enforcement is missing. No data available.

14(g)(d): Training program on awareness of code of conduct, anti-corruption measures for procurement: There are several programs on awareness of ethics and anti-corruption measures conducted by ACC, but not focused on procurement related fraud and corruption.



- **Recommendations**

To address Substantive Gaps

14(b)(a): Provision on prohibited practices in procurement document and related instructions: To ensure consistency between the use of terms corrupt, fraudulent, collusive, coercive, and obstructive practices in the public procurement legal and regulatory framework (PPA and PPR) and Anti-Corruption Act, 2003, provided precise instruction on how to incorporate the matter in procurement and contract documents.

14(c)(a), 14(c)(b), 14(c)(d): Reporting allegations of fraud and corruption in procurement and evidence of follow-up: ACC and PPU may agree on a protocol/ procedure advising Public Entities to report cases of fraud and corruption and these are investigated and enforced. Various institutional stakeholders to work together in the anti-corruption sphere - Police, competition authorities, PPU, ACC, Audit to collaborate and work towards, support public procurement system reform, and enhance accountability in budget management in line with National Anti-Corruption Strategy and Action Plan (2021-2025).

14(e)(a), 14(e)(b), 14e(c), 14e(d): Stakeholder support to strengthen integrity in procurement: To enhance support from wider group of CSO for their effective participation to safeguard against inefficient and ineffective use of public resources. Suppliers and business associations to develop internal compliance measures to ensure ethical behavior while competing for government contracts.

14(g)(b), 14(g)(c), 14(g)(e): Evidence on enforcement on code of conduct including annual asset/financial disclosure: GRN to enforce provision on code of conduct and make it mandatory to file financial disclosure/asset declaration forms (including on beneficial ownership in the absence of a legislation) by official involved in procurement and financial management and ACC to analyze such report and track compliance and follow-up.

To address Minor Gaps

14(a)(a): Definition of fraud and corruption: There needs to be direct reference to PPA/PPR in anti-corruption legislation and consistency in definition of terms fraud and corruption for better clarity.

14 (a)(b): Definition of individual responsibility and accountability: Recommendation of UNCAC report of 2016 on definition of ““public officer” and related matters to be adopted.

14(a)(c): Definition and provisions on conflict of interest, cooling-off period: To make explicit mention of cooling-off period for former public officials either in PPA/PPR or Anti-Corruption Act. The definitions of relative/associate/friend to be made consistent between PPA and Anti-corruption Act.

14(b)(b): Procurement and contract document to include provisions of fraud and corruption and prohibited practices: To make provisions on fraud, corruption, and other prohibited practices consistent between public procurement and legal framework. Bidding form in SBD to include reference to establish bidder’s eligibility based on declaration on Suspension and Debarment and Fraud and corruption in accordance with the provision of Anti-Corruption Act and PPL.

14(c)(c): System of suspension and debarment and due process: As indicated at 1(d)(c) Include in the legal framework specific provisions listing grounds for ineligibility due to conviction by final judgment for specified organised crime, terrorist and trafficking offences (participation in a criminal organization;



terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labour; and all forms of trafficking in human beings).

14(d)(a), 14(d)(b), 14(d)(c), 14(d)(d), 14(d)(e): Anti-corruption framework and integrity training; Various institutional stakeholders to work together in the anti-corruption sphere - Police, competition authorities, PPU, ACC, Audit to collaborate and work towards, support public procurement system reform, and enhance accountability in budget management in line with National Anti-Corruption Strategy and Action Plan (2021-2025). To enhance support from CSO for their effective participation to safeguard against inefficient and ineffective use of public resources. ACC and PPU to consider conducting jointly training on procurement and integrity related topics to public entities and private sector.

14(f)(a), 14(f)(b), 14(f)(c): Secure mechanism for reporting for reporting prohibited practices or unethical behaviour: PPU and ACC to collaborate to develop a functioning system on follow-up of procurement related Fraud and Corruption including from the whistleblower.

14(g)(a): Code of conduct and ethics: The compliance is to be enforced.

14(g)(d): Training program on awareness of code of conduct, anti-corruption measures for procurement: ACC /PPU/ Office of Auditor General to collaborate on integrity training related to procurement.

Summary of substantive gaps and recommendations of Indicator 14

Substantive gap	Risk classification and red flags	Recommendations
14(b): Provision on prohibited practices in procurement document and related instructions is insufficient	Medium	To ensure consistency between the use of terms corrupt, fraudulent, collusive, coercive and obstructive practices in the public procurement legal and regulatory framework (PPA and PPR) and Anti-Corruption Act.
14(c): No clarity on reporting allegations of fraud and corruption in procurement and limited evidence of follow-up	Medium	ACC and PPU may agree on a protocol/ procedure advising Public Entities to report cases of fraud and corruption and these are investigated and enforced. Various institutional stakeholders to work together in the anti-corruption sphere - Police, competition authorities, PPU, ACC, Audit.
14(e): Lack of stakeholder support to strengthen integrity in procurement	Medium	To enhance support from wider group of CSO for their effective participation to safeguard against inefficient and ineffective use of public resources. Suppliers and business associations to



Substantive gap	Risk classification and red flags	Recommendations
		develop internal compliance measures to ensure ethical behavior while competing for government contracts.
14(g): No evidence on enforcement on code of conduct including annual asset/financial disclosure by official involved in procurement and financial management	High, Red Flag	GRN to enforce provision on code of conduct and make it mandatory to annually file financial disclosure/asset declaration forms (including on beneficial ownership in the absence of a legislation) and ACC to analyze such report and track compliance and follow-up.



4. Key Priority Actions

The following key priority actions are listed in the order of the assessment indicators:

- **Introduce** more robust standards for use of less competitive and non-competitive procedures to reduce over-use of these methods and emphasize the importance of seeking to maximize competition.
- **Review** PPA and remove gaps and overlaps in responsibility among PPU, CBPN and Accounting Officer of public entities and related accountability. Role of CPBN in contract implementation above the threshold needs review. Accounting Officer should be responsible and accountable for the entire procurement process from the time need is identified till need is satisfied for efficient service delivery, and Procurement Management Unit needs strengthening, with required resources and expertise.
- **Develop** a sustainable public procurement (SPP) policy/strategy and implementation plan for all aspects of SPP - economic, environmental (including climate considerations) and social (including gender equality supported by practical guidelines for implementation and related training).
- **Elevate** the status of PPU from a “Unit” to an “Authority” under the aegis of MoFPE: PPU is a unit under MoFPE, with inadequate financing and staff capacity impacting its independent functioning. The head of PPU is perceived as a lower level than all Accounting Officers of PE’s, which has implications and consequences in as far as engaging Public Entities effectively and in establishing procurement as a strategic function.
- **Create** dedicated structures within all public entities and train staff as qualified procurement professionals and initiative to be undertaken by GRN to have a regulatory body of the purchasing and supply management profession.
- **Enforce** mandatory use of the eProcurement Portal across all public entities: This step will enhance transparency, confidentiality, value-for-money, and trust of all stakeholders in the integrity of public procurement system.
- **Develop** and roll out end-to-end e-GP system: Following the approved e-GP strategy, the development of the user requirements should be completed and the system developed and rolled out to transition from the mandatory use of the eProcurement Portal to the end-to-end e-GP system which will help increase transparency, efficiency, and data collection and analysis for improved reporting and planning.
- **Monitor** contract implementation, quality control and ensure record keeping. Contract execution reporting mechanisms should be set up to ensure that all information relating to procurement processes is available, both in the pre- and post-contract phases.
- **Accelerate** the enactment of the PFM and Audit Bills: This step will provide comprehensive control framework (including internal controls, internal audits, external audits and oversight by legal bodies), legal backing for internal audit, and independence of the OAG.
- **Undertake** a critical review of the operation in practice of the current system for applications for reconsideration and applications for administrative review by the Review Panel - to establish whether that system achieves the aims of delivering efficient and effective decision making and in a manner which is, and is perceived to be, fair and unbiased and identify measures for improvement.
- **Enforce** filing of financial and asset disclosure forms as mandatory: This should include annual asset/financial disclosure by official involved in procurement and financial management (including technical staff who prepare specification and certify payment) to annually file financial disclosure/asset declaration forms (including on beneficial ownership in the absence of a legislation) and ACC to analyze such report and track compliance and follow-up.



5. Suggested Priorities for Strategic Planning Process

The Assessment Team has summarized, in the table below, a suggested timeline and priority with strategies for implementation to be decided by the government. The strategy needs to be realistic, aligned with other reform initiatives, ensuring a balance of perspectives and including a good mix of ‘quick wins’, as well as medium- and long-term initiatives. Accordingly, in the following table, (a) timeline is indicated as Short Term (ST); Medium Term (MT); and Long Term (LT); or through continuous improvements; (b) priorities are categorized as 1, 2, or 3; and (c) responsibility is assigned.

Action #	Proposed action	Timeline	Priorities	Responsible institutions
1	Introduce more robust standards for use of less competitive and non-competitive procedures	MT	2	PPU/MoFPE
2	Develop a sustainable public procurement (SPP) policy/strategy	MT	1	PPU/MoFPE
3	Review PPA and remove gaps and overlaps in responsibility	MT	1	PPU/MoFPE
4	Elevate the status of PPU from a “Unit” to an “Authority”	LT	1	MoFPE/GRN
5	Create dedicated structures within all public entities and train staff as qualified procurement professionals and initiative to be undertaken by GRN to have a regulatory body of the purchasing and supply management profession.	MT	1	GRN
6	Enforce mandatory use of the eProcurement Portal across all public entities	ST	1	GRN
7	Develop and roll out end-to-end e-GP system	MT	1	GRN
8	Monitor contract implementation, quality control and ensure record keeping	Continuous	2	All Public Entities and PPU
9	Accelerate the enactment of the PFM and Audit Bills	MT	1	OAG/GRN
10	Undertake a critical review of the operation in practice of the current system for applications for reconsideration and applications for administrative review by the Review Panel	MT	2	MoFPE/GRN
11	Enforce filing of financial and asset disclosure forms as mandatory	MT	1	MoFPE/ACC/ GRN



6. Information regarding Validation

In line with the diagram in Chapter 1 of the Report, the draft summary assessment report was shared with PPU and the Assessment Steering Committee on April 03, 2024. In the implementation-cum-validation mission from April 08-19, 2024, the Assessment Team met with the Assessment Steering Committee and additional key stakeholders from the government, private sector, and civil society and presented the summary findings, gaps and recommendations to them. The feedback received from the stakeholders was incorporated into the draft assessment report. The validation workshop has broadly validated the assessment findings and recommended reform actions to address remaining challenges for the improvement of the quality and performance of the country's public procurement system. All the details on consultations are covered in **Annex in Volume III** of the **Assessment Report**.

Following table provides the summary:

#	Description	Actual/Anticipated date
1	Completion of the draft Assessment Report for review by the Assessment Steering Committee and Stakeholders	April 02, 2024
2	Completion of revised draft Assessment Report after incorporating comments from PPU and Stakeholders based on feedback in implementation-cum-validation mission	May 16, 2024
3	Report sent for internal peer-review in the World Bank	May 17, 2024
4	Decision Review Meeting by the World Bank	June 03, 2024
5	Activity Completion Note to close ASA in World Bank system	June 26, 2024
6	Report Submission to MAPS Secretariat and completion of ATAG Review	July 25, 2024
7	Revised version of the Report and non-objection by ATAG/MAPS Secretariat	August 2024
8	The Final Report submission to GRN to seek their agreement to publish the assessment report	September 2024
9	Dissemination/Publication of Final MAPS Report	September/October 2024



Annexes/Appendices

Volume II Detailed Matrix

Volume III Appendices

Appendix 1: Concept Note (including letter of request from the government)

Appendix 2: Consultations with Private Sector and results of Private Sector Survey

Appendix 3: Consultations with CSOs and feedback

Appendix 4: Briefing Notes to Steering Committee

Appendix 5: Management Letter and Aide Memoire

Appendix 6: Master File on Analysis of Sample Cases - Indicator-9

Appendix 7: Resource List- Web links to involved institutions, other assessments, relevant laws, statistics, etc.





MAPS

Methodology for Assessing
Procurement Systems

Republic of Namibia



Assessment of the Public Procurement System

VOLUME II - MATRIX

FULL ANALYSIS OF ALL INDICATORS BY CRITERIA
WITH GAPS AND RECOMMENDATIONS



Republic of Namibia

Ministry of Finance & Public Enterprises



WORLD BANK GROUP



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Pillar I. Legal, Regulatory, and Policy Framework

Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

Sub-indicator 1(a) Scope of application and coverage of the legal and regulatory framework	
The legal and regulatory body of norms complies with the following conditions:	
Assessment criterion 1(a)(a): Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	
Conclusion:	No gap
Red flag:	No
Qualitative analysis The public procurement legal framework is set out in a clear hierarchy, with the Public Procurement Act 2015 being the primary legislation, supported by the Public Procurement Regulations 2017, Ministerial Directives, codes and guidelines.	
Legal system: The Constitution is the Supreme Law of Namibia. There are four sources of law in Namibia: (1) statutes. (2) common law (3) customary law (4) international law. The legal system is based on Roman-Dutch and English law and adopts a common law approach. Namibia follows a monist approach in that international law does not need to be translated into national law and, consequently, international treaties can be applied directly following an act of ratification. (Article 144 of the Constitution).	
Public Procurement Act 2015 ¹ (PPA): the PPA is the primary legislation, an Act of Parliament, which came into force on 31 December 2015. The PPA was amended in 2022, with delayed commencement of some provisions. ² The Public Procurement Law is an ordinary law sitting within a clearly defined hierarchical legal framework in accordance with Article 1(6) of the Constitution ³ . PPA s.3(a) provides that the provisions of the PPA or directives will prevail in the event of conflict with “any other law, regulations, rules or directives on matters relating to public procurement....”.	
The PPA has been amended by the Public Procurement Amendment Act 2022. ⁴ Most, but not all of the amending provisions came into effect on 07 October 2022. The remaining provisions, other than those relating to framework agreements and arrangements for pooled resources (see analysis at 6(b)), came into effect on 22 February 2024 and 01 April 2024. Provisions on framework agreements and arrangements for pooled resources require preparation and consultation on supporting rules and guidelines which are planned to be concluded in the financial year 2024/2025.	
Public Procurement Regulations 2017 ⁵ (PPR): PPA s.79 provides for the Minister of Finance to make implementing regulations. The PPR came into force on 01 April 2017. The PPR were amended in 2017, 2018 and 2023. ⁶ Consultations are ongoing (second quarter of 2024) on further amendments to the PPR.	
Public Procurement Directives: PPA s.73 Directives by Minister, provides for the Minister to direct in writing the PPU, Board or public entity to any aspect of matter of general application relating to procurement of goods,	

¹ Public Procurement Act No.15 of 2015, published in Government Gazette on 31 December 2015, commenced 01 April 2017 by Government Notice No.46 of 2017, Commencement of Public Procurement Act 2015.

² Amended by Public Procurement Amendment Act, 2022 (Act 3 of 2022) and Abolition of Payment by Cheque Act, 2022 (Act 16 of 2022).

³ The Constitution of the Republic of Namibia of 1990, as amended.

⁴ Public Procurement Amendment Act No.3 of 2022.

⁵ Government Notice No.47 of 2017

⁶ Amendment of Public Procurement Regulations: Public Procurement Act, 2105: Government Notice No.129 of 2017, Government Notice No.78 of 2018, Government Notice No.297 of 2023.

Pillar I. Legal, Regulatory, and Policy Framework

works or services. The PPU, Board or public entity “must give effect to or cause the policy directive to be implemented”. Public Procurement Directives are issued on a regular basis and are published on the e-procurement portal.

Supporting legal framework

Public Procurement Guidelines and Reference Guide to Public Procurement: PPA s.7(1)(h) lists one of the functions of the Procurement Policy Unit is to “prepare, update and issued directives, instructions, guidelines, guidance notes and manuals, including any other incidental documents for mandatory use by public entities.” The PPU issued Public Procurement Guidelines in 2017 and Reference Guide to Public Procurement in 2021.

Code of Good Practice on Preferences: PPA s.70 provides for the Minister to issue Codes of Good Practice on preferences. A Code of Good Practice on Preferences was issued on 31 January 2023.⁷

PPA s.79 provides for the Minister to make regulations relating to matters listed as PPA s.79(a)(a) to (k), including “detailed code of procedures regarding procurement process”.

Compliance with the Act, directives, code of procedures or guidelines is monitored by the PPU and CPBN is also required to refer established non-compliance to the PPU. According to PPA s.7(4) where the PPU identifies non-compliance with the Act, directives, code of procedures or guidelines the Minister may refer the matter with recommendations to the appointing authority of the staff member for appropriate action or refer the matter to the Namibian Police, Anti-Corruption Commission of any other competent authority for investigation and inform the public entity concerned.

Gap analysis

Recommendations

Assessment criterion 1(a)(b):

It covers goods, works and services, including consulting services for all procurement using public funds.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The legal framework covers goods, works, consultancy services and non-consultancy services for procurement using public funds, subject to listed exemptions. There is repeated use of Ministerial exemption for disposal of assets, acquisition or granting of rights and letting and hiring. There is no provision in the PPA concerning application of the PPA in relation to contracts arising from international agreements, international treaty or concluded under provision financed by multilateral financing institutions.

Coverage

PPA s.3 Application of Act provides that the PPA applies to “all procurement of goods, works and services and disposal of assets undertaken by the Board of a public entity”. According to PPA s.3, PPA also applies to letting and hiring of anything or acquisition or granting of any right and “contract management of goods, works or services procured or disposed of by the Board or a public entity.”

The terms “goods”, “works” and “services” are all clearly defined in PPA s.1 Definitions. The Term “services” is defined to cover both “non-consultancy services” and “consultancy services”, which are also defined terms.

⁷ Government Notice No.13 of 2023

Pillar I. Legal, Regulatory, and Policy Framework

The term “public entity” is widely defined and includes central government, local authority councils and regional councils, public enterprises and subsidiaries, entities of trusts owned or controlled by the Government and declared public entities. (see analysis of definition of procuring entities at 6(a)(a)).

Exemptions

PPA s.4 Exemptions, lists exemptions from application of the PPA relating to the “procurement, letting, hiring or disposal of security related goods, works, services and property” by the Namibian Defence Force, Namibian Police Force, Namibia Correctional Services, and Namibia Central Intelligence Service. There are no additional provisions on the nature or methods of procurement to be adopted for security and defence purchases.

The PPA does not contain provisions specifically addressing whether, or to what extent, the PPA applies to the process for award of contracts funded pursuant to international agreements, international treaty or concluded under provision financed by multilateral financing institutions. In this context it is thus not clear, for example, which provisions will take precedence in the event that there is conflict between the PPA and the rules of a donor organization, the application of which is mandatory pursuant to an obligation entered into by Namibia under any treaty or other form of agreement.

PPA s.4(2) gives the Minister power to grant a general or specific exemption by way of a directive for specified types of procurement or from application of specific provisions of the PPA where they are not “practical or appropriate” in the case of the particular procurement. The grounds justifying use of this power could be broadly interpreted, raising the risk of reduced transparency and value for money. The MAPS Assessment Team noted reliance on this section for repeated extensions of the exemption from provisions of PPA s.3(a) & (b) (application of the Act) in relation to disposal of assets, acquisition or granting of rights and letting and hiring, pending finalising of respective Regulations⁸. This opens up the possibility of reliance on this exemption for procurement of goods which may otherwise be subject to the PPA. The reason for the repeated use of the exemption is lack of capacity at the PPU to finalize the necessary Regulations. The MAPS Assessment team understands that a draft regulation on asset disposal, leasing, letting and hiring has been prepared. Finalization of these Regulations is not, however, a planned activity for the financial year 2024/2025.

According to PPU⁹ public entities also tend to use this option to obtain exemptions, including to extend timelines for bid validity, submission dates and evaluation periods and from application of preferential procurement policy.

Gap analysis

There appears to be quite heavy reliance on use of the provision in PPA s.4(2) giving the Minister power to grant a general or specific exemption by way of a directive for specified types of procurement or from application of specific provisions of the PPA where they are not “practical or appropriate” in the case of the particular procurement. This can be seen in the granting of a repeated general exemption in relation to disposal of assets, acquisition or granting of rights and letting and hiring and use of specific exemptions on a procurement specific basis. Over reliance on this exemption reduces coverage of the PPA in terms of procurement falling within its scope and, potentially, supports a culture of poor compliance with basic procedural requirements.

There are no provisions in the PPA addressing the issue of whether or not the PPA applies to the procurement process for contracts arising from international agreements, international treaty or concluded under provision financed by multilateral financing institutions. It is thus not clear which provisions would take precedence in the event that use of that specific institution’s procurement rules & procedures is required.

⁸ Most recently by Directive dated 08 September 2023, for a period to 30 September 2024.

⁹ Information provided by PPU to MAPS Assessment Team, April 2024.

Pillar I. Legal, Regulatory, and Policy Framework

Recommendations

Assess the impact of the repeated use of the Ministerial exemption in relation to disposal of assets, acquisition or granting of rights and letting and hiring, in particular on procurement of goods which may otherwise be subject to the PPA and consider whether this exemption should still apply to those procurements. Assess the impact of wider use of the exemption process on the level of compliance with basic procedural requirements and consider whether more stringent measures are required to ensure that the use of this exception is granted only in exceptional cases.

Introduce provisions in the legal framework, ideally the PPA, to address the issue of whether or not the PPA applies to contracts arising from international agreements, international treaty or concluded under provision financed by multilateral financing institutions. See, for example, UNCITRAL Model Law on Public Procurement, Article 3.

Assessment criterion 1(a)(c):

PPPs, including concessions, are regulated.

Conclusion: No gap

Red flag: No

Qualitative analysis

Public Private Partnerships are regulated by dedicated legislation, the Public Private Partnership Act 2017.

Public Private Partnership Act, 2017¹⁰ (PPP Act): the PPP Act regulates the planning, procurement and delivery of public private partnership projects, which are defined in the PPP Act s.1. Procurement covered by PPA is specifically excluded from coverage by PPP Act.

Gap analysis

Recommendations

Assessment criterion 1(a)(d):

Current laws, regulations and policies are published and easily accessible to the public at no cost.

Conclusion: No gap

Red flag: No

Qualitative analysis

Current laws, regulations and policies are published and accessible without charge from the MoFPE e-Procurement Portal, Documents tab.

Gap analysis

Recommendations

Sub-indicator 1(b)

Procurement methods

The legal framework meets the following conditions:

Assessment criterion 1(b)(a):

Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.

¹⁰ Public Private Partnership Act No.4 of 2017

Pillar I. Legal, Regulatory, and Policy Framework

Conclusion: No gap

Red flag: No

Qualitative analysis

Procurement methods are listed in the PPA. Open advertised bidding is intended to be the default method of procurement with conditions of use for other, less competitive and non-competitive methods.

PPA Part 5 Methods of Procurement

The default method for procurement is open advertised bidding. See analysis at 7(c) on level of use of open advertised bidding and other procedures in practice.

Procurement of goods, works and non-consultancy services: PPA s.27(1)(a) lists nine methods of procurement for goods, works and non-consultancy services, with specific provisions on each method of procurement set out in Chapter 5:

- (i) open advertised bidding in the form of either open national bidding or open international bidding (PPA ss.28, 29 & 30)
- (ii) restricted bidding (PPA s.31)
- (iii) request for sealed quotations (PPA s.32)
- (iv) direct procurement (PPA s.36)
- (v) execution by public entities (PPA s.34)
- (vi) emergency procurement (PPA s.33)
- (vii) small value procurement (PPA s.38)
- (viii) request for proposals (PPA s.35)
- (ix) electronic reverse auction (PPA s.37)

Conditions for use of procurement methods: Procurement by methods other than open advertised bidding is permitted subject to satisfying general conditions in PPA s.27(4), and specific conditions applying to particular procurement methods. General conditions in PPA s.27(4) are: (a) when a public entity has reason to believe that open advertised bidding (a) does not support empowerment and other policies of Government contemplated in PPA s.2; (b) is not efficient or practical for the procurement in question; or (c) is too costly to apply, given the value of the procurement.

Where a procurement method other than open advertised bidding is used, the Board or public entity must record the ground for choice of the procurement method in the record of procurement proceedings. Additional requirements relating to conduct of procurement methods are set out in PPR Part 4, Methods of Procurement. PPR R17 provides that emergency procurement must be limited to the quantity and duration needed to deal with the emergency.

Procurement method for consultancy services: PPA s.27(1)(b) provides that procurement of consultancy services is by mean of request for proposals on the basis of: (i) quality and cost; (ii) quality alone; (iii) quality and fixed budget; (iv) least cost and acceptable quality. Where a procurement method other than those listed in 27(a)(b) is used, the Board or public entity must record the ground for choice of the procurement method in the record of procurement proceedings.

Financial thresholds: PPR R3 Procurement thresholds for choice of procurement methods lists methods to which financial thresholds apply. Prescribed financial thresholds are as set out in PPR Annexure 2. See table below.

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Procurement method	Type of procurement contract			
	Goods	Works	Consultancy services	Non-consultancy services
Open international bidding (PPA s.30(a))	estimated value of procurement exceeds N\$25 Million	estimated value of procurement exceeds N\$40 Million	Not applicable	Not applicable
Restricted bidding (PPA s.31(1)(b))	estimated value of procurement not exceeding N\$3 Million	estimated value of procurement not exceeding N\$3 Million	Not applicable	estimated value of procurement not exceeding N\$2 Million
Request for sealed quotations (PPA s.32(1))	estimated value of procurement not exceeding N\$2 Million	estimated value of procurement not exceeding N\$2 Million	Not applicable	estimated value of procurement not exceeding N\$2 Million
Request for proposals (PPA s.35(2))	Not applicable	Not applicable	estimated value of procurement is above N\$5 Million	Not applicable
Small value procurement (PPA s.38(1))	estimated value of procurement not exceeding N\$15 000	estimated value of procurement not exceeding N\$15 000	estimated value of procurement not exceeding N\$15 000	estimated value of procurement not exceeding N\$15 000

Gap analysis

Recommendations

Assessment criterion 1(b)(b):

The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.

Conclusion: No gap

Red flag: No

Qualitative analysis

There is a range of methods prescribed with an appropriate range of options, including provision for use of pre-qualification, post-qualification, single stage and two stage procurement.

Two-stage procurement is permitted where conditions in PPA s.44 are met, where it is not feasible to fully define technical or contractual aspects to elicit competitive bids or due to the complex nature of the goods or services to be procured. Two stage process is described in PPA s.44.

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PP Guidelines provide further information and guidance on use and conduct of pre-qualification “which is used for especially for procurements of large or complex works”.

Gap analysis

Recommendations

Assessment criterion 1(b)(c):

Fractioning of contracts to limit competition is prohibited.

Conclusion: No gap

Red flag: No

Qualitative analysis

Fractioning of contracts (artificial division) to limit competition is prohibited.

PPA s.65 Artificial division, prohibits a public entity from artificially dividing the procurement in such a way as to avoid any monetary threshold laid down by or under the PPA.

Gap analysis

Recommendations

Assessment criterion 1(b)(d):

Appropriate standards for competitive procedures are specified.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Conditions for use of less competitive procurement methods and non-competitive methods are defined in broad terms and permit exercise of significant levels of discretion by decision makers.

Procurement by methods other than open advertised bidding is permitted subject to satisfying general conditions in PPA s.27(4), and specific conditions applying to particular procurement methods. General conditions in PPA s.27(4) are: (a) when a public entity has reason to believe that open advertised bidding (a) does not support empowerment and other policies of Government contemplated in PPA s.2; (b) is not efficient or practical for the procurement in question; or (c) is too costly to apply, given the value of the procurement. Where a procurement method other than open advertised bidding is used, the Board or public entity must record the ground for choice of the procurement method in the record of procurement proceedings.

Additional requirements relating to conduct of procurement methods are set out in PPR Part 4, Methods of Procurement. PPR R17 requires that in the case of emergency procurement the public entity must limit the procurement to the quantity and duration needed to deal with the emergency. In the case of direct procurement, PPR R18 requires a public entity to ascertain whether: goods cannot be procured using other procurement methods; the supplier is able to perform in terms of the procurement contract; the quality and technical aspect of the supplier’s proposal meets the requirements of the public entity, and the price paid to the supplier is fair and reasonable.

The conditions for use of less competitive and non- competitive procurement methods are defined in broad terms and permit exercise of significant levels of discretion by decision makers. This raises the possibility of

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inappropriate use or over-use of less competitive methods, resulting in less transparency and reduced value for money, unless appropriate safeguards are in place to ensure that this discretion is exercised in an appropriate manner. In discussion with PPU it was confirmed that there are currently no safeguards in place to prevent misuse of discretion.

Gap analysis

The conditions for use of less competitive and non-competitive procurement methods are defined in the PPA in broad terms and permit exercise of significant levels of discretion by decision makers. This raises the possibility of inappropriate use or over-use of less competitive methods.

This Gap is assigned a “Red flag” because inappropriate or over-use of less competitive methods has a significant impact both in terms of lack of transparency of the procurement system as a whole and reduction in competition reducing value for money outcomes. In addition, whilst amendments to the PPA are the starting point and lie within the procurement sphere, the task of ensuring that the provisions are well-understood, applied and enforced is system-wide. It will require proactive cooperation by multiple stakeholders in addition to the PPU, including at procuring entity level and in a number of spheres including training & education, public finance management and internal and external audit.

Recommendations

Consider putting measures into place to ensure that discretion to use less competitive and non-competitive procurement methods is exercised with caution. For example, it may be appropriate to specifically state in primary legislation that non-competitive methods should be used only in highly exceptional and limited circumstances and to emphasize the importance of seeking to maximize competition. Advance public notice of direct procurement in the case of a single supplier may also be considered as a safeguard. It may also be advisable to make it clear in the legal framework that the poor planning on the part of a public entity shall not be a justifiable reason for use of non-competitive methods.¹¹

Sub-indicator 1(c)

Advertising rules and time limits

The legal framework meets the following conditions:

Assessment criterion 1(c)(a):

The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).

Conclusion: No gap

Red flag: No

Qualitative analysis

The legal framework requires public advertisement in a newspaper of wide circulation and on the public procurement portal of procurement opportunities using the open advertised bidding method.

PPA s.28 Open advertised bidding, requires that where open advertised bidding is used, the invitation to bid or invitation to prequalify is published (a) in a newspaper with wide circulation; (b) in the case of international bidding in international media with wide circulation; and (c) in the public procurement portal.

Gap analysis

Recommendations

¹¹ See, for example UNCITRAL Model Law on Public Procurement, Article 30(4)

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Assessment criterion 1(c)(b):

Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

Provisions in the PPA specify minimum period for submission of bids of 30 days and requires deadlines to be set to allow sufficient time for preparation, with a view to maximizing competition. They do not specifically provide for extended timelines in the case of international bidding.

PPA s.47 Deadline for submission of bids requires the Board or a public entity must set a deadline for the submission of bids, applications for pre-qualification and expressions of interest so as to allow sufficient time for the preparation and submission, with a view to maximizing competition. The deadline may not be less than the prescribed minimum period.

PPR R35 Minimum period for submission of bids, requires a minimum time period for submission of 30 days from the date of publication of the invitation. PPA s.1 Definitions, defines "days" as "a day other than Saturday, Sunday or public holiday."

PPR R21 provides for a minimum period of 15 days for submission of a proposal of expression of interest for provision of consultancy services.

Gap analysis

There are no provisions in the PPA or PPR requiring extended time frames for submission of bids in international bidding.

Recommendations

To allow for additional time for bid preparation by foreign bidders, consider amending the PPA or PPR to require and specify a minimum time frame for submission of bids in international bidding which is longer than the standard minimum time period of 30 days.

Assessment criterion 1(c)(c):

Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).

Conclusion: **No gap**

Red flag: No

Qualitative analysis

PPA s.28 Open advertised bidding, requires that where open advertised bidding is used, the invitation to bid or invitation to prequalify is published (a) in a newspaper with wide circulation; (b) in the case of international bidding in international media with wide circulation; and (c) in the public procurement portal.

Gap analysis

Recommendations

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Assessment criterion 1(c)(d):

The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.

Conclusion: No gap

Red flag: No

Qualitative analysis

Publication of bidding documents on-line at time of advertisement should ensure that bidders are able to determine whether they are able to and interested in submitting a bid.

PPA s.40 Invitation for bidding, provides that the Board or public entity must prepare an invitation to bid, as may be prescribed.

E-GP Guidelines require Invitations to bid published on the E-GP Portal to be accompanied by the bidding documents, available for inspection on-line.

Gap analysis

Recommendations

Sub-indicator 1(d)

Rules on participation

The legal framework meets the following conditions:

Assessment criterion 1(d)(a):

It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions

Conclusion: No gap

Red flag: No

Qualitative analysis

There are clear rules on eligibility and exclusion to ensure that participation of interested parties is fair and based on qualification and exclusion.

PPA s.50 Prohibition of disqualified bidders and suppliers from participation, requires that the Board or public entity must ensure that no disqualified bidder or supplier is permitted to receive a procurement contract or otherwise participate in procurement proceedings. PPA s.50 lists documents or information to be submitted by a bidder or supplier. These documents provide evidence relating to suitability relating to payment of tax, social security contributions, affirmative action, compliance with labor law and evidence of business registration. Failure to provide required documents results in disqualification.

PPA ss.51 to 53 set out procedures to be applied to either pre-qualification of bidders submitting all relevant information or post-qualification of the highest ranked bidder.

PPR Part 5 ss.22 to 32 Qualifications Concerning Bidders and Suppliers, contains more detailed provisions concerning qualifications and evidence of suitability including technical capacity and economic & financial standing, as well as additional requirements in particular cases, such as where a major subcontractor is involved, or certain goods are to be procured.

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PPA s.68 Suspension, debarment and disqualification of bidders and suppliers, sets out grounds for suspension or debarment.

PP Guidelines provide further information and guidance on qualification requirements and criteria and the importance of distinguishing between qualification and evaluation criteria.

Gap analysis

Recommendations

Assessment criterion 1(d)(b):

It ensures that there are no barriers to participation in the public procurement market.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Partnerships/joint ventures between Namibian bidders and suppliers and foreign entities PPA s.71(4), states that: "For all procurement under international and national competitive bidding, prescribed incentives and conditions must be used to promote partnerships, joint venture arrangements and foreign entities to team up with Namibian bidders in the bidding process and for the period of the execution of procurement contracts." PPR R.55 Partnership between Namibian bidders and suppliers and foreign entities, provides the public entities "must encourage and promote joint venture arrangements between foreign entities and Namibian bidders in the bidding process and for the period of execution of procurement contracts by setting a proper weight in the criteria for evaluation in the procurement plan". The drafting of these provisions in the PPA and PPR lacks clarity. It is uncertain precisely what is mandated and what is optional and it is unclear what incentives and conditions can legitimately be prescribed, by whom and at what stage of the procurement process.

National Preference – reservations and margins of preference

The legal framework establishes schemes of preference granting preferential treatment to national suppliers in pursuance of the developmental and empowerment policies of the Government. The Code of Good Practice on Preferences (2023) grants exclusive preference to categories of local suppliers through reservation of certain goods, works and services. It specifies various matters including categories of local suppliers and eligibility requirements for benefitting from preferences and reservations; percentages of margins of preference categories reserved for exclusive preference. PPR s.65 provides for preferential weighting for joint ventures/partnerships with foreign entities where more than 60% of key employees are Namibian. The MAPS Assessment team concludes that the reservations and margins of preference are not excessive and do not constitute a gap for the purposes of the MAPS Methodology.

Gap analysis

The provisions in the PPA and PPR on partnerships and joint venture arrangements with foreign entities are unclear. It is uncertain precisely what is mandated or optional, what incentives and conditions can legitimately be prescribed, by whom and at what stage of the procurement process. Mandatory requirements for partnerships and joint venture arrangements as a condition for participation or contract award are likely to create barriers to competition and may reduce value for money outcomes.

Recommendations

Clarify provisions on partnerships and joint venture arrangements with foreign entities to ensure that they do not create a barrier to entry for foreign bidders.

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Assessment criterion 1(d)(c):

It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The legal framework provides for exclusion for criminal and corrupt activities and for administrative debarment, subject to due process. There is no specific reference to disqualification on the grounds of conviction for terrorism, money laundering, drug and people trafficking or child labor related offences.

Grounds for suspension or debarment: PPA s.68 Suspension, debarment and disqualification of bidders and suppliers, sets out grounds for suspension or debarment, as follows: “(a) supplying false information in the process of submitting a bid or pre-qualification application; (b) bid rigging or collusion between the bidders or a bidder and a supplier, agent, or staff member concerning the formulation of any part of the bidding documents; (c) interference by a supplier with the participation of competing bidders; (d) misconduct relating to the submission of bids, including corruption, bid rigging, price fixing, a pattern of underpricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier; (e) conviction for an offence relating to obtaining or attempting to obtain a procurement contract within five years prior to the bidding; or (f) conviction for an offence related to dishonesty or fraud or corruption in his or her professional activity within 10 years prior to the bidding and was sentenced to imprisonment without the option of a fine.”

Decisions on debarment: Applications for debarment can be made by a public entity. Decisions on debarment are made by the Review Panel following the process described in PPA s.68. Debarment is for a maximum period of 5 years. The Review Panel has discretion to suspend a supplier pending completion of disqualification or debarment proceedings.

PPR Part 9 ss.46 to 51 Procurement Integrity, set out further requirements concerning the process of suspension and debarment, including application, consideration and determination, conduct of proceedings, effects, disclosure and register. The PPU is required to publish decisions on suspension and debarment and establish and maintain the Register of Suspension or Debarment and make it available to any person who wishes to inspect it.

There is no specific reference to disqualification on the grounds of conviction for terrorism, money laundering, drug and people trafficking or child labor related offences.

Gap analysis

There is no specific reference to disqualification on the grounds of conviction for terrorism, money laundering, drug and people trafficking or child labor related offences.

Recommendations

Include in the legal framework specific provisions listing grounds for ineligibility due to conviction by final judgment for specified organised crime, terrorist and trafficking offences (participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labour; and all forms of trafficking in human beings).

Assessment criterion 1(d)(d):

It establishes rules for the participation of state-owned enterprises that promote fair competition.

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Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

PPA s.34 Execution by public entities sets out circumstances where execution by public entities (including public enterprises) may be used. The PPA and PPR do not, however, establish rules for the participation of public enterprises as bidders for public procurement contracts to ensure a level playing field for all competitors. SBDs, based on international financing institution standard documents, do have provisions on conditions for participation of government owned enterprises as bidders.

SBDs for large/complex procurement for Goods and works which are closely based on international financing institution's standard documents do have a provision on the conditions for participation of SOEs (for example, SBD Open International Bidding for Goods, Instructions to bidders, s.5.5 "Government-owned enterprises in the Republic of Namibia shall be eligible only if they can establish that they: (i) are legally and financially autonomous; (ii) operate under commercial law, and (iii) are not a dependent agency of the Purchaser."

This is not reflected in the PPA or PPR and terminology to describe government owned enterprises should be consistent with relevant national legislation, in particular the Public Enterprise Governance Act, 2019.

Gap analysis

The PPA and PPR do not establish rules for the participation of public enterprises as bidders for public procurement contracts to ensure a level playing field for all competitors. Terminology used in the SBDs is not aligned with Namibian legislation and thus lacks clarity.

Recommendations

Include provisions in the legal framework which ensure that the principle of fair competition applies when public enterprises participate as bidders in public procurement. Amend SBDs to align new provisions and ensure that consistent terminology is used.

Assessment criterion 1(d)(e):

It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.

Conclusion: **No gap**

Red flag: No

Qualitative analysis

The legal framework sets out procedures for determination of eligibility and ability to perform a specific contract.

PPA ss.51 to 53 set out procedures to be applied to either pre-qualification of bidders submitting all relevant information or post-qualification of the highest ranked bidder. Two-stage procurement is permitted where conditions in PPA s.44 are met, where it is not feasible to fully define technical or contractual aspects to elicit competitive bids or due to the complex nature of the goods or services to be procured. Two stage process is described in PPA s.44.

PPR Part 5 ss.22 to 32 Qualifications Concerning Bidders and Suppliers, contains detailed provisions concerning qualifications and evidence of suitability including technical capacity and economic & financial standing, as well as additional requirements in particular cases, such as where a major subcontractor is involved, or certain goods are to be procured.

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PP Guidelines provide further information and guidance on use and conduct of pre-qualification “which is used for especially for procurements of large or complex works”.

Gap analysis

Recommendations

Sub-indicator 1(e)

Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criterion 1(e)(a):

It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.

Conclusion: No gap

Red flag: No

Qualitative analysis

The minimum content of procurement documents is listed in the PPA and should be sufficient for suppliers to respond to the requirements of the public entity.

PPA s.1 Definitions, defines “bidding documents” to include “any document which contains instructions to bidders, specifications, maps, designs, terms of reference, work schedules, evaluation criteria, bills of quantities, conditions of contract or other similar items.”

PPA s.43 (2) Bidding documents provides that a Bidding document must contain: (a) clear instructions on the management of the procurement process and the applicable rules including set dates to seek clarification; (b) a clear description of the object of the procurement in the form of a statement of requirements; (c) the methodology and criteria to be used in the evaluation of bids and the determination of best evaluated bids; and the proposed form and conditions of contract or a statement of the form and conditions of a contract which will apply. PPR R.33 Bidding documents provides that in addition to the particulars referenced in PPA s.43, a bidding document may include other documents and information set out in a comprehensive list at PPR R33(1)(a) to (z).

PPA s.43(1) Bidding documents, requires that the Board or public entity must use the appropriate bidding document in the form substantially corresponding to the form determined by the PPU.

Gap analysis

Recommendations

Assessment criterion 1(e)(b):

It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.

Conclusion: No gap

Red flag: No

Qualitative analysis

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There are provisions in the legal framework requiring preparation of technical specifications which must not be unreasonably restrictive and standard bidding documents require use of international standards where possible. The possibility of functional specification is provided for.

Neutral specifications: PP Guidelines require that technical specifications must contain information to permit competition and must be drafted in a manner that is not unreasonably restrictive, whilst still describing “clearly and accurately all technical and other minimum needs of the public entity”. In addition, SBDs for mandatory use require that recognized international standards should be specified as much as possible and also refer to use of national standards or codes.

PPR R33(1)(y) concerns schedule of requirements and technical specifications relating to required technical and quality characteristics but does not refer specifically to neutral specifications, international norms or use of functional specifications.

PPR R25 Technical capacity to perform goods contracts. Requires a bidder or supplier to furnish evidence of technical capacity by provision of certificates drawn up by official quality control institutes or agencies of recognised competence.

Functional specifications: PP Guidelines provide further information and guidance on technical specifications, addressing four main categories: design specifications, performance specifications, functional specifications and brand name or equivalent specifications.

The PPA, PPR and supporting framework including SBDs could be better aligned to ensure greater clarity as to these requirements.

Gap analysis

Recommendations

Suggestions for improvement

Combined for 1(e), (b) & (c)

The PPA, PPR and supporting framework including SBDs should be better aligned to ensure that the requirements for neutral specifications, possible use of functional specifications and the principle of equivalence are clearly expressed in consistent manner. It would also be useful to include specific reference to citing international norms when possible.

Assessment criterion 1(e)(c):

It requires recognition of standards that are equivalent, when neutral specifications are not available.

Conclusion: No gap

Red flag: No

Qualitative analysis

The principle of equivalence of standards is provided for.

PPR R33(1)(c) provides that a bidding document may include “requirement that the bidder must state in the bid, the country of origin of the supplier or manufacturer, the name of the manufacturer or supplier, the brand name, model and catalogue number.” PP Guidelines on brand name or equivalent specifications permits use of brand names in specifications only in “exceptional circumstances” and requires that in such cases “the specification should state that an “equivalent” is also acceptable. In addition, the PP Guidelines require that in this case, specifications should set out the significant physical, functional and other characteristics which are

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essential to the Public Entity. There is a warning to procuring entities not to overstate their needs as this may limit competition unnecessarily and can lead to higher costs and unfair discrimination. ” In addition, SBDs for mandatory use include requirements on equivalence.

PPR R33(1)(f) refers to submission of alternatives “to the characteristics of the goods, works, services.... of other requirements set forth in the bidding documents” if they are permitted.

Gap analysis

Recommendations

Suggestions for improvement

See combined suggestion for improvement at 1(e)(b).

Assessment criterion 1(e)(d):

Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing).

Conclusion: No gap

Red flag: No

Qualitative analysis

Potential bidders have the right to request clarification of procurement documents. Timelines for responses to requests for clarifications are specified and public entities must communicate the outcome of clarifications to all bidders in writing.

PPA s.43 (2) Bidding documents provides that a Bidding document must contain clear instructions on the management of the procurement process and the applicable rules, including set dates to seek clarification.

PPR R33(1)(n) Bidding documents, provides that the bidding documents may include information on the manner in which the bidders may seek clarifications of bidding documents or whether the public entity itself intends to hold clarification meetings.

PPR R34 Request for clarification of bidding document, provides that a bidder may request clarification on bidding documents in writing. It specifies time limits for submission of and responses to requests for clarification and requires communication in writing of the clarification, on an anonymized basis, to other bidders whom a public entity has provided a bid document and modification of bid documents accordingly.

E-GP Guidelines issued by the PPU (29 March 2022)¹² refer to use of the E-GP Portal for bid clarification. This is not an interactive on-line function. The advertisement is to contain the e-mail address of PMU staff who can be contacted for clarifications or queries. Responses are uploaded to the E-GP Portal.

Gap analysis

Recommendations

**Sub-indicator 1(f)
Evaluation and award criteria**

¹² Electronic Public Procurement Phase 1 Guidelines V3 (29 March 2022), applicable from 01 April 2022, PPU.

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The legal framework mandates that:

Assessment criterion 1(f)(a):

The legal framework mandates that the evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The legal framework requires every bid to be evaluated according to the criteria and methodology set out in the bidding documents. Award is to the lowest evaluated substantially responsive bid which meets the qualification criteria.

PPA s.43 (2) Bidding documents, provides that a Bidding document must contain the methodology and criteria to be used in the evaluation of bids and the determination of best evaluated bids.

PPA s.52(9) Examination and evaluation of bids, requires every bid to be evaluated according to the criteria and methodology set out in the bidding documents and to be compared with other bids to determine the lowest evaluation substantially responsive bid which meets the qualification criteria.

PPR R33(q) provides that Bidding documents may include the criteria and methodology to be use for examination, evaluation, comparison and determination of the successful bidder.

PP Guidelines provide further information and guidance on evaluation criteria and refers to the need to ensure that the criteria are fully prescribed, each criterion is critical to the selection of the best bid and is capable of being compared, as well as being objective.

PPA s.52(12) provides that - where there are a substantial number of bid and “it is not practical to evaluate all the bids, the Board or public entity may select a sufficient number of lowest price bids to evaluate after completing the preliminary examination. “The manner of selecting the sufficient number of bids is at the discretion of the Board of public entity. There is no guidance on the use of these provisions. The MAPS Assessment team understands from discussions with PPU that there is a reluctance to apply these “shortlisting” provisions, due to a fear of being challenged.

Gap analysis

Provisions on shortlisting bids for evaluation at PPA s.52(12) are not clear.

Recommendations

Clarify provisions on shortlisting bids for evaluation at PPA s.52(12) to ensure that the Board and public entities understand what constitutes a “sufficient number” of bids and the criteria and methods to be applied to drawing up a shortlist.

Assessment criterion 1(f)(b):

The legal framework allows the use of price and non-price attributes and/or the consideration of life cycle cost as appropriate to ensure objective and value-for-money decisions.

Conclusion: Substantive gap

Red flag: No

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Qualitative analysis

PPA s.52(9) provides that “Every bid is evaluated according to the criteria and methodology set out in the bidding documents and is compared with other bids to determine the lowest evaluated substantially responsive bid which meets the qualification criteria”. There are no provisions in the PPA or PPR specifically referring to use of price and non-price attributes or criteria or consideration of life cycle cost. PP Guidelines refer to cost of ownership and to disposal as price related criteria but actively discourage use of non-price criteria.

PP Guidelines s.2.2.5, provide information and guidance on two categories of evaluation criteria: (1) price and price-related criteria and non-price criteria. Price related criteria are listed as: amount to be paid for the object of the procurement; transportation cost; cost of ownership; operation; maintenance; security, and: disposal. Examples of non-price criteria are listed, being enhancements in technical requirements, enhancements in terms and conditions requested, delivery/completion, past performance, experience, key personnel and facilities.

The PP Guidelines actively discourage use of non-price criteria, stating that “using non-price criteria significantly complicates the task of selecting the winning bidder. It also increases the opportunity for discrimination and corruption in procurement processes.” The PP Guidelines go on to advise as follows” “To reduce these problems, non-price criteria should be used only when the Public Entity cannot specify the precise requirements of the procurement and must be expressed in monetary terms.”

Gap analysis

There are no provisions in the PPA or PPR specifically referring to use of price and non-price attributes or criteria or consideration of life cycle cost. PP Guidelines refer to cost of ownership and to disposal as price related criteria but actively discourage use of non-price criteria. This is likely to reduce value for money outcomes.

Recommendations

Introduce in the legal framework measures to promote the use of life cycle costing or total cost of ownership, as appropriate in relevant procurements to ensure value for money decisions. All legal provisions must be supported by clear, practical guidelines on how to incorporate life cycle costing or total cost of owner into the entire procurement cycle, from planning to delivery. This should be tied in with measures to address sustainable public procurement more widely and recommendations at sub-indicator 3(a) Sustainable Public Procurement.

Assessment criterion 1(f)(c):

The legal framework mandates that quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.

Conclusion: No gap

Red flag: No

Qualitative analysis

Quality is a major consideration in evaluating proposals for consultancy services.

PPA s.35 Request for proposals, requires evaluation of technical proposals for consulting services on the basis of criteria which include relevant experience, quality of methodology, qualifications of key staff, transfer of knowledge. Technical evaluation is conducted first and financial proposals will be considered only from those bidders to have secured the minimum pass mark in the technical evaluation.

For consultancy services - the PP Guidelines also provide information and guidance on methods of evaluation and selection, covering: Quality and Cost-Based Selection Method (QCBS); Quality Based Selection (QBS); Least Cost Selection; Fixed Budget Selection; and Consultant Qualifications Selection.

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Gap analysis
Recommendations
Assessment criterion 1(f)(d): The legal framework mandates that the way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.
Conclusion: No gap
Red flag: No
Qualitative analysis PPA s.43 (2) Bidding documents, provides that a Bidding document must contain the methodology and criteria to be used in the evaluation of bids and the determination of best evaluated bids. This is repeated at PPR R33 and expanded up on in the Procurement Guidelines.
Gap analysis
Recommendations
Suggestions for improvement Consider providing additional, more detailed guidance on selection and preparation of evaluation criteria, the way they are combined as well as decisions on how to weight criteria. This is particularly important to support use of criteria to assess life cycle/total cost of ownership and non-price qualitative criteria (see also 1(f)(b)).
Assessment criterion 1(f)(e): The legal framework mandates that during the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.
Conclusion: No gap
Red flag: No
Qualitative analysis During the period of evaluation confidentiality of bid information and the bid evaluation process must be respected. PPA s.66 Conduct of staff members of public entities requires a staff member of a Board or a public entity involved in planning or conducting procurement process or contract administration “to keep confidential any information that comes into his or her possession relating to procurement proceedings and bids, including proprietary information of bidders”. PPA s.10 Fiduciary duties of members of Board and improper conduct by members (applying to CPBN), provides that a member of a Board may not “divulge confidential information entrusted to the member or obtained by the member during his or her exercise or performing of powers or functions under or in terms of [the PPA] or any other law.” PPA s.75 Oath of office requires a member of the Board (CPBN) or Review Panel to take the oath of office or affirmation on appointment. PPR R58, Annexure 6 contains the Oath or Affirmation in which the member must declare they “will not without being duly authorised disclose to any person any information which [they] have obtained or which [they] had access” by virtue of their office.

Pillar I. Legal, Regulatory, and Policy Framework

Gap analysis
Recommendations
Sub-indicator 1(g) Submission, receipt, and opening of tenders The legal framework provides for the following provisions:
Assessment criterion 1(g)(a): Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.
Conclusion: No gap
Red flag: No
Qualitative analysis The legal framework defines the process for bid opening which shall coincide with the deadline for submission of bids or immediately thereafter. PPA s.51 Opening of bids, requires bid envelopes to be opened at the time and place indicated in the bidding documents. The time of bid opening shall coincide with the deadline for submission of bids or immediately thereafter. A bidder or his or her representative is authorized to attend the bid opening. At the bid opening session, the following must be read out and recorded: name of the bidder, total amount of each bid, any discount or alternative offered, presence or absence of bid security if required and qualification documents submitted. A copy of the record must be made available to any bidder on request. The Board or public entity may not take or announce a decision regarding disqualification or rejection at the bid opening session. PP Guidelines provide further information and guidance on receipt and custody of bids, opening of bids and examination and evaluation of bids.
Gap analysis
Recommendations
Suggestion for improvement (combined for 1(g) (a),(b),(c) & (e)) Consider inclusion of provisions in the PPA and/or PPR and related amendments, to specifically provide for and describe use of electronic procurement at defined stages of the procurement process, such as modality for submission and opening of tenders, recording of bid proceedings and security and confidentiality. Provisions in the legal framework will need to allow sufficient flexibility to take account of staged roll-out in the event of upgraded or new end-to-end e-GP system and will need to clarify whether conventional paper-based procurement is still allowed and at what phases of the procurement process (see also, recommendations at 1(k)).
Assessment criterion 1(g)(b): Records of proceedings for bid openings are retained and available for review.
Conclusion: No gap
Red flag: No

Pillar I. Legal, Regulatory, and Policy Framework

Qualitative analysis

The legal framework requires records of bid opening proceedings to be retained and to be made available to bidders.

PPA s.51 Opening of bids, requires the following to be read out and recorded at the bid opening session name of the bidder, total amount of each bid, any discount or alternative offered, presence or absence of bid security if required and qualification documents submitted. A copy of the record must be made available to any bidder on request.

E-GP Guidelines require the bid opening report to be uploaded to E-GP Portal within 3 working days of opening bids. The report shall remain available on the website for the duration of the bidding process.

Gap analysis

Recommendations

Suggestions for improvement

See suggestion for improvement at 1(g)(a).

Assessment criterion 1(g)(c):

Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.

Conclusion: No gap

Red flag: No

Qualitative analysis

Security and confidentiality of bids must be maintained prior to bid opening and until after the decision on award of contract.

PPA s.66 Conduct of staff members of public entities requires a staff member of a Board or a public entity involved in planning or conducting procurement process or contract administration “to keep confidential any information that comes into his or her possession relating to procurement proceedings and bids, including proprietary information of bidders”.

PPA s.10 Fiduciary duties of members of Board and improper conduct by members, provides that a member of a Board may not “divulge confidential information entrusted to the member or obtained by the member during his or her exercise or performing of powers or functions under or in terms of [the PPA] or any other law.”

PPR R.10 Proceedings of internal organizational structure, require that bids are kept in a secured manner in a securely locked bid box and, where the size of the bid is too large for the bid box, the bidder must hand over the bid to the secretary of the procurement committee who must ensure that bids are kept in a safe place.

PP Guidelines provide further guidance on use of sealed bid boxes (and electronic equivalents) and specific requirement to keep bids confidential and, in the case of sealed bids, the bids are to remain unopened until the time for opening bids.

Gap analysis

Recommendations

Pillar I. Legal, Regulatory, and Policy Framework

Suggestions for improvement See suggestion for improvement at 1(g)(a).
Assessment criterion 1(g)(d): The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.
Conclusion: No gap
Red flag: No
Qualitative analysis PPA s.66 Conduct of staff members of public entities requires a staff member of a Board or a public entity involved in planning or conducting procurement process or contract administration “to keep confidential any information that comes into his or her possession relating to procurement proceedings and bids, including proprietary information of bidders”.
Gap analysis
Recommendations
Assessment criterion 1(g)(e): The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.
Conclusion: No gap
Red flag: No
Qualitative analysis The PPA sets out clear provisions for the submission and receipt of bids. PPA s.40 Invitation for bidding, requires the Board or public entity to prepare an invitation to bid. PPA s.43 (2) Bidding documents provides that a Bidding document must contain clear instructions on the management of the procurement process and the applicable rules including set dates to seek clarification. PPR R.33 Bidding documents provides that in addition to the particulars referenced in PPA s.43, a bidding document may include the manner, place and deadline for submission of tenders, the place, date and time for opening of bids and procedure for opening bids. PP Guidelines provide further information and guidance and confirm that bids are closed at the precise date and time of the bid deadline and that no late bids are accepted. Late bids must be returned unopened to the bidder concerned (s.3.1.6).
Gap analysis
Recommendations
Suggestions for improvement See suggestion for improvement at 1(g)(a).
Sub-indicator 1(h) Right to challenge and appeal

Pillar I. Legal, Regulatory, and Policy Framework

The legal framework provides for the following:

Assessment criterion 1(h)(a):

Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.

Conclusion: No gap

Red flag: No

Qualitative analysis

PPA s.59 sets out a general right for a bidder or supplier to apply to the Review Panel for review of a decision or action taken by the Board or a public entity. Although not expressly stated, this can include review of decisions or actions taken prior to the decision on selection for award. (see suggestion for improvement at 1(h)(c).

PPA s.55 provides bidders with the specific right to submit a request for reconsideration by a Board or a public entity of a notice on selection for award issued by the Board or public entity. A standstill period applies during which the Board or public entity may not award a contract or sign an agreement. The Bidder is entitled to submit an application for review to the Review Panel if it is not satisfied with the decision on reconsideration provided by the Board or public entity or in the event that the Board or public entity fails to provide a response.

General right to apply for review: PPA s.59(1) Application for Review, provides that a bidder or supplier may “as prescribed” apply to the Review Panel for “review of a decision or an action taken” by the Board or a public entity. The application to the Review Panel must be submitted within seven days after the bidder or supplier “is notified of the decision or the action”.

This provision allows for the submission of an application for review in respect of decisions or actions taken by the Board or public entity prior to the stage at which the notice of selection for award is sent to the bidder.

Request for reconsideration in response to the notice of selection for award and application for review: PPA s.55 requires the Board or public entity to notify (1) the successful bidder of the selection of its bid for award, and (2) other bidders specifying the name and address of the successful bidder and the price of the contract, accompanied by the executive summary of the bid evaluation report. A bidder may, within 7 days of receipt of that notification apply to the Board or public entity to reconsider its selection of a bid for award. The Board or the public entity must, within 7 days of the date of receipt of the application, notify the bidder of its decision. PPA s.55(4C) provides that any “contract awarded or agreement signed during the standstill period is invalid *ab initio*”. Further provisions on reconsideration by the Board or public entity are set out in PPR R.38 (as amended). The accounting officer or Chairperson of the Board must award the procurement contract to the successful bidder if no application for reconsideration is made or where no application for review to the Review Panel is made.

Gap analysis

Recommendations

Assessment criterion 1(h)(b):

Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.

Pillar I. Legal, Regulatory, and Policy Framework

Conclusion: No gap

Red flag: No

Qualitative analysis

As noted in the analysis at 1(h)(b), there is the possibility of direct application to the Review Panel in respect of a decision or action taken by the Board or by a public entity. A bidder may also apply to the Review Panel in if it is not satisfied with a decision issued by a Board or public entity in response to a request for reconsideration of the notice of selection for award or if a bidder does not receive a response to such a request. An application for review of a decision on reconsideration or failure to issues such a decision automatically suspends award of the contract or signature of an agreement until decision is made on the review application.

The Review Panel has a range of remedies available including setting aside the award decision or a signed contract.

There is a right to bring an action in the High Court for review of the decision of the Review Panel. Application to the High Court does not automatically suspend the contract award, but an urgent application may be made with the intention of halting the procurement process, if granted.

PPA s.59 Application for Review provides that a bidder or supplier has the right to apply to the Review Panel for review of a decision or action taken by the Board or by a public entity.

PPA s.60 Decisions of the Review Panel provided for a range of actions and remedies. Upon receipt of the application for review referred to in section 59, the Review Panel may:

- (a) dismiss the application;
- (b) direct the Board or the public entity that has acted or proceeded in a manner that is not in compliance with the PPA to act or proceed in a manner that is in compliance with the PPA;
- (c) set aside in whole or in part a decision or an action of the Board or public entity that is not in compliance with the PPA, and refer the matter back to the Board or public entity for reconsideration with specific instructions;
- (d) correct a decision or action by the Board or public entity that is not in compliance with the PPA;
- (e) confirm the decision of the Board or public entity; or
- (f) order that the procurement proceedings be terminated and start afresh.

Right for judicial review: the PPA does not expressly state that there is a right of judicial review but this can be easily implied from the wording of PPA S.59(4) which provides that “A bidder or supplier who is aggrieved or claims to have suffered, or to be likely to suffer, loss under this Act must exhaust all available remedies under this Act before instituting any judicial action in the High Court.” An application to the High Court does not automatically suspend the contract award but an urgent application may be made which, if successful, can halt the procurement process.

See additional analysis and findings at 13(b) on the funding, constitution and operation of the Review Panel, appointment and removal of a members of the Review Panel list, and impact on its independence.

Gap analysis

Recommendations

Suggestions for improvement

Consider including a positive statement in the PPA confirming entitlement to pursue judicial action in the High Court subject to requirements to exhausting all available remedies under the PPA.

Pillar I. Legal, Regulatory, and Policy Framework

Assessment criterion 1(h)(c): Rules establish the matters that are subject to review.
Conclusion: No gap
Red flag: No
Qualitative analysis The PPA establishes the matters that are subject to review. PPA s.59 sets out a general right for a bidder or supplier to apply to the Review Panel for review of “a decision or action” taken by a Board or a public entity. PPA s.55 provides bidders with the specific right to submit a request for reconsideration by a Board or a public entity of a notice on selection for award issued by the Board or public entity. As noted at 1(h)(a) PPA s.59 allows for the submission of an application for review in respect of decisions or actions taken by the Board or public entity prior to the stage at which the notice of selection for award is sent to the bidder. Bidders must apply for review within seven days after they are notified of the decision or action. This provides the possibility to submit an application to the Review Panel for review of, for example, the choice of method of procurement or the content of procurement documents such as evaluation criteria and specifications. According to discussions with the Review Panel and Review Panel Secretariat, applications for review are relatively rare at stages in the procurement prior to the notice of selection for award. It may be that, although there are provisions in the legislation, suppliers are not generally aware of this possibility or cannot see the benefits of requesting review at earlier stages in the process.
Gap analysis
Recommendations
Suggestions for improvement Investigate reasons why applications for review at earlier stages in the procurement process, prior to the notice on selection for award, are relatively rare. Consider expanding the provisions in PPA s.59, to refer specifically to applications for review at earlier stages such as when bids are invited or at pre-qualification where a two-stage process is used.
Assessment criterion 1(h)(d): Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.
Conclusion: No gap
Red flag: No
Qualitative analysis The legal framework sets out time frames for submission of a request for reconsideration and application for review to the Review Panel. Challenging the award decision: PPA s.55 requires a bidder or supplier to within 7 days of receipt of that notification apply to the Board of public entity to reconsider its notice of selection of bid for award. The Board or the public entity must, within 7 days of the date of receipt of the application, notify the bidder of its decision.

Pillar I. Legal, Regulatory, and Policy Framework

General right to review of decisions or actions, including the outcome of the request for review of notice of selection of bid for award: PPA s.59(1) requires a bidder or supplier to submit an application for review to the Review Panel within seven days after the bidder or supplier is notified of the decision or action.

PPA s.59 (3) provides that “The Review Panel must strive to make a decision within seven days of receipt of the application for review or as soonest as practical possible, but not later than 14 days.”

Gap analysis

Recommendations

Assessment criterion 1(h)(e):

Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.

Conclusion: No gap

Red flag: No

Qualitative analysis

Publication: Applications for review by the Review Panel are not published, but there is no legal requirement in the legal framework to do so. e-GP Guidelines issued by the PPU (29 March 2022)¹³ require Review Panel outcomes to be published on the e-GP Portal within 7 working days of the Review Panel’s decision/findings. Decisions by the Review Panel decisions are published on the E-GP Portal, “Review Panel Reports”, but not always within the specified time frame of 7 working days. (See 13(c)(d) for analysis, Gap and Recommendation relating to publication of Review Panel decisions).

E-GP Guidelines issued by the PPU (29 March 2022)¹⁴ require Review Panel outcomes to be published on the E_GP Portal within 7 working days of the Review Panel’s decision/findings. Review panel decisions are not all published within this specified time frame.

The MAPS Assessment Team observed, on reviewing the Review Panel Reports pages on 12 January 2024 that there were no reports published on-line for the period October to December 2023. On revisiting the same page in March 2024, 26 reports were published for that period.

Confidentiality: PPA s.61 Confidentiality in review proceedings, provides that all information in proceedings at the Review Panel are confidential and disclosure can result in fines or imprisonment. No public hearing may take place in circumstances listed including where it may prejudice legitimate commercial interests of the bidder or supplier or impede fair competition.

Gap analysis

Recommendations

Assessment criterion 1(h)(f):

Decisions by the independent appeals body can be subject to higher-level review (judicial review).

Conclusion: No gap

¹³ Electronic Public Procurement Phase 1 Guidelines V3 (29 March 2022), applicable from 01 April 2022, PPU.

¹⁴ Electronic Public Procurement Phase 1 Guidelines V3 (29 March 2022), applicable from 01 April 2022, PPU.

Pillar I. Legal, Regulatory, and Policy Framework

Red flag: No

Qualitative analysis

Decisions by the Review Panel are subject to higher-level review by the High Court and may be the subject of further appeal, in certain cases, to the Supreme Court.

PPA s.59(4) provides that “A bidder or supplier who is aggrieved or claims to have suffered, or to be likely to suffer, loss under this Act must exhaust all available remedies under this Act before instituting any judicial action in the High Court.”

Gap analysis

Recommendations

Sub-indicator 1(i) Contract management

The legal framework provides for the following:

Assessment criterion 1(i)(a):

Functions for undertaking contract management are defined and responsibilities are clearly assigned.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Functions for undertaking contract management are not well defined in the procurement legal framework and the specific responsibilities for contract management activities are not sufficiently clearly assigned.

According to the State Finance Act s.6 the Accounting Officer shall “be charged with the receipt, custody, banking and payment of, and accounting for, State moneys received in such office, ministry or agency”. PPA s.25(1) requires that accounting officers must, in the prescribed manner, set up an internal organizational structure “for the conduct and management of procurement at the public entity”. The internal organizational structure includes a “procurement management unit” which is defined as “the division or department in a public entity that is responsible for the execution of procurement functions” (PPA s.1). It appears, however, that the functions of the procurement management unit are ring-fenced and may not be intended to extend to proactive contract management, although the legal provisions are not entirely clear in this respect.

PPR 6(2)(d) provides that the procurement committee must ensure that the implementation of the procurement contract is made in accordance with the provisions of the PPA and the procurement contract. PPR R8(1) provides that the procurement management unit is “responsible for conducting and management of procurement activities of a public entity from the initiation of the procurement to the award of the procurement contract”, but it is “not responsible for the evaluation of bids or awarding or termination of procurement contracts.” Proposed amendments to the PPR add a reference to contract management as falling outside the responsibilities of the procurement management unit PPR R8(5) goes on to provide that the procurement management unit must monitor every stage of the procurement process and “ensure delivery of procurement contracts in accordance with the [PPA]” which could imply that there is some responsibility for contract management, but this is not clear. It also refers to the procurement management unit as being responsible for “initiation necessary action against defaulting suppliers and contract[or]s” and provide reports to the PPU including on total sum of procurement contract awarded. These are functions arguably related to contract management.

Pillar I. Legal, Regulatory, and Policy Framework

According to PPA s.72 Delegation and assignment by accounting officer, an accounting officer to delegate or assign in writing to any staff member any powers or functions conferred or imposed on the accounting officer under the PPA “except the power to issue contract awards, sign agreements....”

PPA s.8(a) lists one of the principal objects of the CPBN as “to direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board.” This indicates that the intention is to place responsibility for management with the accounting officer.

These provisions create potential for overlap of functions and responsibilities between accounting officer of the procuring entity and the CPBN in implementation of contracts awarded by the Board. In practice, contracts awarded by the CPBN are signed as tri-partite contracts, the parties being the supplier, the public entity and the Board. This potential overlap is further analyzed and identified as a gap at 6(a)(b).

Gap analysis

Functions for undertaking contract management are not well defined in the procurement legal framework and the specific responsibilities for contract management activities are not sufficiently clearly assigned.

The stated objectives of the CPBN described at PPA s.8, to include direction and supervision of accounting officers in “managing the implementation of procurement contracts awarded by the Board” creates potential for overlap of functions and responsibilities between accounting officer of the procuring entity and the CPBN.

Recommendations

Amend procurement legal framework to define the functions for undertaking contract management and clearly assign responsibilities for contract management, avoiding duplication and overlap between functions and activities of the procuring entity and the Board (see also analysis, Gap and recommendations at 6(a)(b)).

Assessment criterion 1(i)(b):

Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.

Conclusion: No gap

Red flag: No

Qualitative analysis

Conditions for contract amendment are prescribed in the legal framework and are included in procurement contracts, for mandatory use. Standard bidding documents sampled contain contractual provisions dealing with changes in contract price, change orders, variations and contract amendments. There are requirements for approval by the CPBN of contract price variations above specified thresholds.

PPA s.62 Contents of procurement contracts requires inclusion in all procurement contracts of provisions relating to contract amendments. Parties must expressly agree in writing to any amendment to the contract, other than changes which do not alter the basic nature or scope of the contract or in accordance with contract price adjustment provisions expressly authorised in the contract. Any other amendment that increases the contract value by more than 15% requires fresh procurement proceedings, otherwise than in narrowly specified cases. PPR R40 Contents of procurement contracts, confirms that a procurement contract may include provisions relating to adjustment of contract price and amendment of the contract.

PPR R41 Contract price adjustment, sets out conditions which must be met on contract price adjustment, subject to the 15% limit in PPA s.62

Pillar I. Legal, Regulatory, and Policy Framework

Approval by CPBN of Contract variations: PPA s.56 Variations and lowest bid exceeding prescribed threshold, provides that the Board must deal with any variation in contract price subsequent to the conclusion of a procurement contract where the variation causes the total contract amount to exceed the threshold of the public entity by more than 10 per cent or, where the contract was awarded by the Board, causes the total contract amount to exceed by more than 10 per cent.

Standard bidding documents sampled contain contractual provisions dealing with changes in contract price, change orders, variations and contract amendments.

Gap analysis

Recommendations

Assessment criterion 1(i)(c):

There are efficient and fair processes to resolve disputes promptly during the performance of the contract.

Conclusion: No gap

Red flag: No

Qualitative analysis

The PRR list contents of procurement contracts to include provisions on dispute resolution and standard bidding documents sample contain such provisions.

PPR R40(g) Contents of procurement contracts, confirms that a procurement contract may include provisions relating to how disputes between parties [are] to be resolved. Standard bidding documents sampled contain provisions on settlement of disputes, providing for initial resolution of disputes amicably, moving on to adjudication or arbitration and for international contracts the arbitration procedure of an international institution is recommended. GCC 24 provides that any decision of the arbitrator shall be final and binding.

Gap analysis

Recommendations

Assessment criterion 1(i)(d):

The final outcome of a dispute resolution process is enforceable.

Conclusion: No gap

Red flag: No

Qualitative analysis

GCC 24 provides that any decision of the arbitrator shall be final and binding. The final outcome of a dispute resolution process is enforceable through the Civil courts.

Namibia is not a signatory to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards.¹⁵

Gap analysis

Recommendations

¹⁵ <https://www.newyorkconvention.org/countries>

Pillar I. Legal, Regulatory, and Policy Framework

Sub-indicator 1(j)

Electronic Procurement (e-j)

The legal framework provides for the following:

Assessment criterion 1(j)(a):

The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.

Conclusion: No gap

Red flag: No

Qualitative analysis

The PPA requires publication of open tenders on the public procurement portal and permits use of electronic reverse auctions. It also provides for the PPU to prepare guidelines on e-procurement and to facilitate the use of information and communications technology in procurement. In addition, the PPA specifically provides for the Minister to make regulations relating to future development and implementation of e-procurement solutions. The PPU has issued E-GP Guidelines and a User Manual, which require use of e-procurement at specified points in the procurement cycle.

Phase 1 of deployment of the E-GP System went live from 1 April 2022. Notification of full live deployment, E-GP Guidelines and User Manual were issued by the PPU (29 March 2022)¹⁶ to tie in with that deployment. Phase 1 requires uploading of the following to the e-Procurement portal:

Annual Procurement Plans: approved Annual Procurement Plans and any subsequent amendments, with updated plan to be uploaded within 3 working days.

Advertisements for bids and quotations: both E-GP Portal and newspaper must be used for advertising for: Open National Bidding, Open International Bidding, Request for Sealed Quotations and Request for Proposals including Expression of Interest.

Bidding documents, for inspection: Bidding documents shall be available and accessible for inspection on the E-GP portal to all bidders with a charge payable for downloading. Bids are submitted in hard copy.

E-bid clarification responses: this is not an interactive on-line function. The advertisement is to contain the e-mail address of PMU staff who can be contacted for clarifications or queries. Responses are uploaded to the E-GP Portal.

Bid opening report: to be uploaded to E-GP Portal within 3 working days of opening bids.

Notice of Award: publish Notice of Award and executive summary of bid evaluation report on E-GP Portal.

Bid Evaluation Executive Summary: publish Notice of Award and executive summary of bid evaluation report on E-GP Portal.

Review Panel outcome: to be published within 7 working days of the Review Panel's decision/findings.

PPA s.7 Functions of Policy Unit, includes as one of the functions of the PPU, is "to advise the Minister on policy for introducing e-procurement as means of simplified and transparent procurement" and to prepare guidelines regarding procurement matters including e-procurement. The PPU also has the function "to facilitate the use of information and communications technology in procurement".

PPA s.28 Open advertised bidding provides for publication of the invitation in the public procurement portal.

PPA s.37 Electronic reverse auctions permit use of electronic reverse auctions, with detailed provisions set out in PPR R19.

¹⁶ Electronic Public Procurement Phase 1 Guidelines V3 (29 March 2022), applicable from 01 April 2022, PPU.

Pillar I. Legal, Regulatory, and Policy Framework

PPA s.79 Regulations, specifically provides for the Minister to make regulations relating to future development and implementation of e-procurement solutions, being regulations relating to “the adoption of e-procurement for different stages and methods of procurement, and to the extent thereof, the procedures specified in this Act are deemed to be modified for substituting written communication by e-communication in the manner that improves competition, efficiency and transparency without affecting the sanctity, security and recording of such communication and the information contained therein.”

PPR also provide for the maintenance by PPU of a register of bidders and suppliers eligible to participate under national preference schemes using an electronic database or portal.

Gap analysis

Recommendations

Assessment criterion 1(j)(b):

The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.

Conclusion: Substantive gap

Red flag: No

Gap analysis

The PPA and PPR do not include provisions to facilitate effective use of e-procurement by ensuring that the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.

Recommendations

Introduce provisions into legal framework to ensure the consistent application of electronic technologies and require standardized formats, technical equipment and connection arrangements and procedures to grant unrestricted and full access to e-procurement. These provisions will need to be comprehensive and tailored to reflect the particularities of the e-GP system in Namibia.

Assessment criterion 1(j)(c):

The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.

Conclusion: Substantive gap

Red flag: No

Gap analysis

The PPA and PPR do not include provisions that require interested parties to be informed which part of the process will be managed electronically.

Recommendations

Introduce provisions to legal framework to make it mandatory to inform potential bidders which parts of the processes will be managed electronically (e.g. availability of procurement documents, communication, bid submission, contract awards, billing and payments etc.). Provisions in the legal framework will need to allow sufficient flexibility to take account of staged roll-out in the event of upgraded or new end-to-end e-GP system and will need to clarify whether conventional paper-based procurement is still allowed and at what phases of the procurement process.

Pillar I. Legal, Regulatory, and Policy Framework

Sub-indicator 1(k)

Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

Assessment criterion 1(k)(a):

A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

PPR R8 (4) requires the procurement management unit to maintain and keep records of procurement of public entities in accordance with the provisions of the PPA.

PPR R.20 Records of small value procurement, requires the procurement management unit to maintain a procurement file for every procurement effected through small value procurement procedure and lists the minimum content.

There is currently no comprehensive list of procurement records and documents to be retained by the Board or public entity at an operational level, although the MAPs Assessment team understand that a draft guidance note on retention of procurement records has been prepared by PPU.

Gap analysis

There is currently no comprehensive list of procurement records and documents to be retained by the Board or public entity at an operational level. This should assist to enhance consistency of record-keeping.

Recommendations

Consider publishing a check list for use by procuring entities at an operational level which sets out which procurement documents are to be retained, to ensure a complete procurement record to cover the entire procurement process, including contract management. This should refer to and align with rights of public access to information.

The MAPs Methodology lists the following as a minimum list of records to be retained:

- public notices of procurement opportunities
- the procurement method, including justification
- a complete set of bidding/selection documents, including clarifications and any amendments
- bid/proposal opening records
- evaluation reports, including clarifications sought and provided during the evaluation process
- award decisions, including all elements on which the decision was based
- award notices (if applicable)
- formal challenges (requests for review and appeals) by bidders and outcomes
- final signed contract documents and amendments
- contract variations, modifications and changes
- certificates and reports of inspection, quality control and acceptance
- claims and dispute resolutions
- payments
- disbursement data (as required by the country's financial management system)
- any correspondence, meeting notes and minutes, including contract negotiations (if applicable).

Pillar I. Legal, Regulatory, and Policy Framework

Assessment criterion 1(k)(b): There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.
Conclusion: No gap
Red flag: No
Qualitative analysis Archives: Archives Act No.12 of 1992 - The National Archives of Namibia regulates and supervises all records management activities of all institutions in the Namibian public service that are created by an Act of Parliament. Records management includes all activities to control and manage the creation/receipt, use, maintenance and disposal of records as transpired activities. The Archives Code refers to a general retention period of 5 years which runs from contract completion. After a period of 5 years, the records are transferred to the National Archives. Statute of Limitations: Criminal Procedure Act No.52 of 1977 s.18, the period of limitations for corruption-related offences is twenty years from the date the offence was committed. These provisions apply to offences under the Anti-Corruption Act. UNODC Country Review report 2016 on implementation of UNCAC ¹⁷ notes that it appears that Namibia has implemented UNCAC Article 29 Statute of Limitations. That Report recommended that Namibia consider providing for an interruption or suspension of the period of limitations when criminal proceedings are filed.
Gap analysis
Recommendations
Assessment criterion 1(k)(c): There are established security protocols to protect records (physical and/or electronic).
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The PPA does not include requirements for putting into place security protocols to protect records. There is currently no specific security protocol for the protection of public procurement records.
Gap analysis There is currently no specific security protocol for the protection of public procurement records.
Recommendations Establish security protocols to protect records of public procurement, both physical and electronic and consider

¹⁷ UNODC Country Review Report of the Republic of Namibia – implementation of articles 15-42 of Chapter III and articles 44-50 of Chapter IV UNCAC

https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_01_29_Namibia_Final_Country_Report_.pdf

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measures to ensure compliance in a consistent manner by all public entities. This will need to be aligned with current requirements of the procurement portal and future roll-out of e-GP.

Sub-indicator 1(I)

Public procurement principles in specialized legislation

The legal and regulatory body of norms complies with the following conditions :

Assessment criterion 1(I)(a):

Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.

Conclusion: No gap

Red flag: No

Qualitative analysis

PPA applies to all public entities including state owned enterprises (public enterprises) active in the utilities sector such as Namibia Power Corporation, Namibia Water Corporation, Namibia Airports Company, Namibia Ports Authority, National Petroleum Corporation of Namibia and Telecom Namibia.

Gap analysis

Recommendations

Assessment criterion 1(I)(b):

Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.

Conclusion: No gap

Red flag: No

Qualitative analysis

The PPP Act requires all PPPs to be procured through a competitive bidding process, respecting procurement principles.

Public Private Partnership Act, 2017¹⁸ (PPP Act): the PPP Act regulates the planning, procurement and delivery of public private partnership projects, which are defined in the PPP Act s.1. Procurement covered by PPA is specifically excluded from coverage by PPP Act.

PPP Act s.20 requires all public private partnership projects (PPP) must be procured through a competitive bidding process and PPP Act s.4 Principles of probity and transparency requires that the public entity must carry out its responsibilities in relation to the initiation, preparation, procurement, management and implementation of PPP projects with complete probity and in a fair and transparent manner. Documents must not contain conditions which favor, or would be likely to favor, any bidder/s unduly and there are provisions addressing conflict of interest. The accounting office must keep or cause to be kept a record of actions and decision taken but the public entity in respect of the PPP project, including tender proceedings.

Gap analysis

Recommendations

¹⁸ Public Private Partnership Act No.4 of 2017

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<p>Assessment criterion 1(l)(c): Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>PPP Act Part 2 establishes the Public Private Partnership Committee, whose functions include to advise the Minister of Finance on policies relating to PPP and to develop best practice guidelines in relation to all aspects of PPP projects.</p>
<p>Gap analysis</p>
<p>Recommendations</p>

Indicator 2. Implementing regulations and tools support the legal framework

<p align="center">Sub-indicator 2(a) Implementing regulations to define processes and procedures</p>
<p>Assessment criterion 2(a)(a): There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The Public Procurement Regulations 2017 (PPR) supplement and detail the provisions of the PPA and are complementary to the Act.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 2(a)(b): The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>PPR are set out in a single document and are clearly drafted. They are available to download free of charge from the e-procurement portal: https://eprocurement.gov.na/.</p>
<p>Gap analysis</p>

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Recommendations						
Assessment criterion 2(a)(c): Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly						
Conclusion: No gap						
Red flag: No						
Qualitative analysis PPA s.79 Regulations, allocates responsibility for making of regulations to the Minister of Finance. PPA s.6 Procurement Policy Unit makes PPU responsible for advising the Minister on procurement matters, including review of the procurement system and proposing mechanisms for improvement. The PPR have been updated in 2017, 2018 and 2023.						
Gap analysis						
Recommendations						
Sub-indicator 2(b) Model procurement documents for goods, works and services						
Assessment criterion 2(b)(a): There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.						
Conclusion: No gap						
Red flag: No						
Qualitative analysis There are model procurement covering goods, works, non-consultancy services and consultancy services using different procurement methods, as well as for some specialized procurement (see table below). The documents are available to download in Word format from the e-Procurement Portal.						
Standard Bidding Documents & General Conditions of Contract [from e-PP January 2024]						
Goods	Open International Bidding			Non-consultancy services	Lump sum Open National Bidding	2017
	Open National Bidding	2017			Lump sum Request for Sealed Quotation	2017
	Request for Sealed Quotations	2017			Lump sum Informal Quotation	2017
	Restricted Bidding	2017			Lump sum GCC	2017
	Informal Quotation	2017			Time based GCC	
	General Conditions of Contract for RfQ (Goods)				Open National Bidding Cleaning Services	2017
Works	Open Advertised Bidding (NAD 50m)	2017			Restricted Bidding Security/Cleaning Services	

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	Open Advertised Bidding (NAD 100m)	2017		Consultancy services	Small Assignment Lump Sum	2018
	Request for Sealed Quotations	2017			Small Assignment time Based	2018
	Restricted Bidding	2017			Individual Assignments	
	SBD Prequalification	2018			Selection Time based	2019
IT systems	IT Single Supplier					

The model documents (SBDs) are World Bank documents with some limited changes to reflect particularities of the procurement framework in Namibia.

Gap analysis

Recommendations

Assessment criterion 2(b)(b):

At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.

Conclusion: No gap

Red flag: No

Qualitative analysis

PPA s.43(1) Bidding documents, requires that the Board or public entity must use the appropriate bidding document in the form substantially corresponding to the form determined by the PPU.

PPA s.43 (2) Bidding documents provides that a Bidding document must contain: (a) clear instructions on the management of the procurement process and the applicable rules including set dates to seek clarification; (b) a clear description of the object of the procurement in the form of a statement of requirements; (c) the methodology and criteria to be used in the evaluation of bids and the determination of best evaluated bids; and the proposed form and conditions of contract or a statement of the form and conditions of a contract which will apply.

In practice, there are standard bidding documents for mandatory use. See analysis at 2(b)(a).

Gap analysis

Recommendations

Assessment criterion 2(b)(c):

The documents are kept up to date, with responsibility for preparation and updating clearly assigned.

Conclusion: No gap

Red flag: No

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<p>Qualitative analysis PPA s.7 Functions of Policy Unit, lists issuing of “authorized versions of the standard bidding documents” as a function of the PPU. Documents are up to date.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Sub-indicator 2(c) Standard contract conditions used</p>
<p>Assessment criterion 2(c)(a): There are standard contract conditions for the most common types of contracts, and their use is mandatory.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis PPA s.43(1) Bidding documents provides that a Bidding document must contain the proposed form and conditions of contract or a statement of the form and conditions of a contract which will apply.</p> <p>PPA s.43(2) Bidding documents, requires that the Board or public entity must use the appropriate bidding document in the form substantially corresponding to the form determined by the PPU.</p> <p>There are stand-alone standard General Conditions of Contract (GCC) for RFQ for goods, RFQ non-consultancy services (time based), RFQ works. SBDs include standard form contracts, GCCs and Special Conditions of Contract (where appropriate).</p> <p>PP Guidelines provide information and guidance on general conditions of contract, special conditions of contract, INCOTERMS, special conditions of contract for works and special conditions of contract for services.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 2(c)(b): The content of the standard contract conditions is generally consistent with internationally accepted practice.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The conditions of contract, being based on World Bank standards are generally consistent with international practice.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Suggestion for improvement</p>

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It is important to ensure that the standard contract conditions are well aligned with the terminology and relevant provisions of the procurement legal framework and so it is suggested that PPU reviews the documents and makes any necessary amendments to improve consistency.

Assessment criterion 2(c)(c):

Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.

Conclusion: No gap

Red flag: No

Qualitative analysis

The contract conditions are an integral part of the bidding documents, which are to be made available to participants in procurement proceedings.

Gap analysis

Recommendations

Sub-indicator 2(d)

User's guide or manual for procuring entities

Assessment criterion 2(d)(a):

There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.

Conclusion: No gap

Red flag: No

Qualitative analysis

Public Procurement Guidelines (PP Guidelines) have been issued by the PPU pursuant to PPA s.7(1)(h). The PP Guidelines cover the procurement process from identification of needs and planning through to contract award and debriefing.

Gap analysis

Recommendations

Assessment criterion 2(d)(b):

Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.

Conclusion: No gap

Red flag: No

Qualitative analysis

PPA s.7 Functions of Policy Unit includes as one of the functions of the PPU preparation and updating of directive, instructions, guidelines, guidance notes and manuals.

Gap analysis

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Recommendations

Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

Sub-indicator 3(a) Sustainable Public Procurement (SPP)
Assessment criterion 3(a)(a): The country has a policy/strategy in place to implement SPP in support of broader national policy objectives
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis There is no policy/strategy in place to implement sustainable public procurement (SPP) in support of broader national policy objectives. The current National Development Plan (NDP) is NDP 5 for the period 2017/2018 to 2021/2022. ¹⁹ NDP 6 is currently the subject of national consultation, setting the development agenda for the last phase of “Namibia Vision 2030” ²⁰ Policy Framework for Long-Term National Development. NDP 5 identifies five “game changers that will move Namibia from a reactive, input-based economy towards a proactive, high-performance economy.” Game changer number two identifies encouraging local procurement as a means to increase agricultural productivity. Game changer number five is to “Achieve industrial development through local procurement.” Namibia has presented 2 Voluntary National Review Reports to the UN on Implementation of SDG Goals toward Agenda 2030 and has a further review planned for 2024. ²¹ https://sustainabledevelopment.un.org/content/documents/279462021_VNR_Report_Namibia.pdf According to the SDG Dashboard, Namibia’s Index Rank is 109 out of 166 with a SDB Index score of 64.3. ²²
Gap analysis There is no policy/strategy in place to implement sustainable public procurement (SPP). This Gap is assigned a “Red flag” because preparation and agreement on an SPP policy/strategy and implementation plan applying to all procuring entities and aligning with broader national policy objectives will require input from a number of institutions and is not solely within the remit of the PPU.
Recommendations Combined recommendations for 3(a), (a),(b)(c) & (d) Develop a sustainable public procurement policy/strategy to implement SPP (economic, environmental (including climate considerations) and social (including gender equality)) in support of broader national policy objectives and reflecting national priorities. This should include a clear implementation plan/road map to cover introduction of systems and tools to operationalize, facilitate and monitor the application of SPP in priority areas in particular. It should also identify and provide for any amendments necessary to the legal/regulatory framework to allow for sustainability to be fully incorporated at all stages of the procurement cycle ensuring

¹⁹ <https://www.npc.gov.na/national-plans/national-plans-ndp-5/>

²⁰ https://www.npc.gov.na/wp-content/uploads/2021/11/vision_2030.pdf

²¹ <https://hlpf.un.org/countries/namibia>

²² <https://dashboards.sdgindex.org/profiles/namibia> accessed 02 April 2024.

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well-balance application of sustainability criteria from planning through to contract delivery and monitoring. SPP requirements embedded in the legal and regulatory framework should be reflected in model procurement documents (SBDs) and contract conditions and in supporting practical guidelines for implementation and related training.

Assessment criterion 3(a)(b):

The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.

Conclusion: Choose an item.

Not assessed

Red flag: Choose an item.

Qualitative analysis

There is currently no sustainable public procurement policy/strategy in place to implement SPP in support of broader national policy objectives and thus no implementation plan to assess.

Gap analysis

Recommendations

See combined recommendations at 3(a)(a).

Assessment criterion 3(a)(c):

The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The provisions allowing for sustainability (economic, environmental and social criteria) are limited, being primarily addressed in the application of the preference scheme and in the possibility of use of non-price attributes in evaluation. The provisions do not cover all stages of the procurement cycle, from planning to contract delivery.

The aims of the statutory preference scheme provided for in PPA/PPR and the Code of Good Practice on Preferences (2023) include to support economic development, including local job creation, empowerment of MSMEs, women and youth owned businesses and allow preferential treatment for Namibian registered entities “that promote protection of the environment, maintain ecosystems and sustainable use of natural resources”. There are no provisions in the PPA or PPR specifically referring to use of price and non-price attributes or criteria or consideration of life cycle cost. PP Guidelines refer to cost of ownership and to disposal as price related criteria but actively discourage use of non-price criteria (see analysis at 1(f)(b)).

There is no detailed guidance on when and how to incorporate sustainability at all stages of the procurement cycle.

The Capacity Building Strategy²³ recommends that 20 officers who already hold a Bachelor’s Degree be identified and sponsored to follow a Master Degree program in Public Procurement Management for

²³ Ministry of Finance, Procurement Policy Unit, Capacity Building Strategy.

<https://eprocurement.gov.na/documents/46410/53667/Capacity+Development+Programme.doc/266c7572-2993-5d1e-d932-f0e04f40c547?t=1600077675251&download=true>

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<p>Sustainable Development (distance learning programs offered by University of Turin and University of Rwanda). The Proposed course content of the Diploma in Procurement and Supply Management includes a module on Sustainable Public Procurement.</p>
<p>Gap analysis The provisions allowing for incorporation of sustainability considerations (economic, environmental and social) are limited and do not cover all stages of the procurement cycle, from planning to contract delivery.</p>
<p>Recommendations See combined recommendations at 3(a)(a).</p>
<p>Assessment criterion 3(a)(d): The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis There are no detailed legal provisions or supporting guidance on how to apply sustainability criteria to ensure value for money.</p>
<p>Gap analysis Provisions allowing for sustainability to be incorporated in to all stages of the procurement cycle are limited. There are no detailed provisions or supporting guidance on how to apply sustainability criteria to ensure value for money.</p>
<p>Recommendations See combined recommendations at 3(a)(a).</p>
<p style="text-align: center;">Sub-indicator 3(b) Obligations deriving from international agreements Public procurement-related obligations deriving from binding international agreements are:</p>
<p>Assessment criterion 3(b)(a): Clearly established</p>
<p>Conclusion: Choose an item. Not assessed</p>
<p>Red flag: Choose an item.</p>
<p>Qualitative analysis Sub indicator 3(b) is not assessed.</p> <p>Namibia is a WTO member but not a signatory to the GPA. It has concluded a number of Free Trade Agreements but they do not include detailed public procurement specific chapters or annexes to be assessed under this criterion.</p> <p>Membership of international/regional trade organizations²⁴ WTO: Namibia has been a member of the World Trade Organization (WTO) since 01 January 1995 and a member of GATT since 15 September 1992.²⁵ It not a signatory to or observer of the GPA.</p>

²⁴ http://namibiatradedirectory.com/trade_agreements/

NAMLEX Index of International Law Applicable to Namibia, Legal Assistance Center, 01 January 2023
https://www.lac.org.na/laws/NAMLEX_APPENDIX_2023.pdf

²⁵ https://www.wto.org/english/thewto_e/countries_e/namibia_e.htm

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SACU: Namibia became a member of SACU (South African Customs Union) in 1990. Through membership of SACU, Namibia is a party to: SACU-EFTA Free Trade Agreement, SACU-Mercosur Free Trade Agreement and SACU-USA Trade Investment and Development Cooperation Agreement.

AGOA Namibia qualifies for benefits under the US African Growth and Opportunity Act

SADC: Namibia is a member of SADC (South African Development Community) and signatory to the Protocol on trade. Namibia is a member of the SADC group which signed the EU-SADC Economic Partnership Agreement, which entered into force in October 2016.²⁶

COTONOU Agreement: Namibia forms part of the African, Caribbean and Pacific–European Union (ACP–EU) trade agreement, granting non-reciprocal preferential access to some of the ACP products into the EU market.

Namibia also has number of bilateral trade agreements.

For information:

Namibia has been a member of the International Labor Organization since 1978 and has ratified eight out of ten of the ILO fundamental conventions.²⁷ Namibia ratified the United Nations Convention Against Corruption in 2004.²⁸ In the context of environmental considerations, Namibia has also, for example, ratified the United Nations Framework Convention on Climate Change, Kyoto Protocol and Paris Agreement

Gap analysis

Recommendations

Assessment criterion 3(b)(b):

Consistently adopted in laws and regulations and reflected in procurement policies.

Conclusion: Choose an item.

Not assessed

Red flag: Choose an item.

Qualitative analysis

Sub indicator 3(b)(b) is not assessed, see 3(b)(a).

Gap analysis

Recommendations

²⁶ <https://trade.ec.europa.eu/access-to-markets/en/content/epa-sadc-southern-african-development-community>

²⁷ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103008

²⁸ <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

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Indicator 4. The public procurement system is mainstreamed and well-integrated into the public financial management system

Sub-indicator 4(a)

Procurement planning and the budget cycle

The legal and regulatory framework, financial procedures and systems provide for the following:

Assessment criterion 4(a)(a):

Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

In accordance with Section 25 Part 4 of PPA 2015, on powers and functions of Accounting Officer, an Accounting Officer - (a) must, in the prescribed manner, set up an internal organizational structure which includes a Procurement Committee and Procurement Management Unit for the conduct and management of procurement at the public entity; and (b) is accountable for the full compliance with this Act and Directives and Instructions made under this Act.

Further, an Accounting Officer must - (a) engage in procurement planning, plan each step of the procurement process and prepare annual procurement plan; (b) certify the availability of funds before the commencement of each procurement process and ensure funds remain committed.

Further in accordance with 2017 Public Procurement Regulation 8(b) and (d) on procedures and process for procurement management unit related to procurement plan and budgeting: the procurement management unit, inter alia must prepare: para (d) an annual procurement plan that a public entity intend to carry out during the financial year which includes - (i) types and quantity of the goods, works or services to be procured by the public entity; (ii) a schedule of the planned delivery, implementation or completion dates for goods, works or services required by the public entity; (iii) an indication of whether goods, works or services is procured within a year or under a multi-year arrangement.

As per Article 6 of State Finance Act 1991- (Act 31) Amended 16 March 2022 on Expenditure during a financial year: Subject to the provisions of sections 9 and 16(1)(a) no expenditure shall be incurred during a financial year on services of the State which - (a) in the case of expenditure in respect of which an amount of money has been appropriated by an appropriation Act - (i) results in the total amount mentioned in an estimate of expenditure in respect of a vote being exceeded; (ii) results in the total amount mentioned in a main division of a vote being exceeded; (iii) results in the total amount mentioned in a subdivision of a main division being exceeded; (iv) results in a Column 2 amount of any vote being exceeded; (b) in the case of expenditure in respect of which amounts of money have been appropriated by or under any other law, results in the amounts determined by or under such law being exceeded.

Based on Annual Report of MoFPE/PPU for 2021/2022(reference paragraph 7 on Public Procurement Compliance Audit one of the common challenges identified at public entities include "Lack of certification of availability of funds prior to commencement of procurement process".

In fact, based on the same Annual Report 2021/2022, the Act and the Regulation stipulate as under: Section 25(4)(a) of the Act, states that Accounting Officers must engage in procurement planning, plan each step of the procurement process and prepare annual procurement plan. In addition, in line with Paragraph 1.5.1 of the Public Procurement Guideline, 2017, all public entities are required to submit their Annual Procurement Plan (APPs) to PPU for review before they are published on e-GP portal and own website. But in practice, the compliance on submission of procurement plans to PPU is low as indicated below:

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Regarding this requirement, PPU received annual procurement plans as reflected in table 1 below.

CATEGORY	2021/22
Category 1	34 out of 43 (79%)
Category 2	25 out of 49 (51%)
Category 3	35 out of 81 (43%)
Total	94 out of 173 (54%)

Table 1. Submission of Annual Procurement Plans by Public entities 2020/21

Remarks: As per Regulation 2 on Procurement Thresholds, For the purposes of procurement, public entities are categorized into Category 1 to Category 3, as specified in Annexure 1, to enable the Board to conduct the bidding process on behalf of public entities for the award of contracts of different procurement values.

Based on the Annual Report for 2022/23, by the end of the 2022/23 financial year, 86 out of 173 public entities had submitted their 2022/23 Annual Procurement Plans (APPs) to the PPU, representing a 49% compliance to the requirement of Section 25(4)(a) of the Public Procurement Act, 2015. This represents a mere 2% increase from 2021/22 level on compliance to the submission of Annual Procurement Plans, a requirement in terms of Section 25 of the Public Procurement Act, 2015 as amended.

Gap analysis

Lack of compliance by Public Entities in submission of Annual Procurement Plan

Recommendations

Public Entities to fully comply with submission of Annual Procurement Plan as required by PPA

Assessment criterion 4(a)(b):

Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

As stated above, in accordance with 2017 Public Procurement Regulation 8 (b) and (d) on procedures and process for procurement management unit related to procurement plan and budgeting: the procurement management unit, inter alia must prepare: para (d) an annual procurement plan that a public entity intends to carry out during the financial year which includes - (a) engage in procurement planning, plan each step of the procurement process and prepare annual procurement plan; (b) certify the availability of funds before the commencement of each procurement process and ensure funds remain committed. And further provide an indication of the budget available and source of funding for the procurement of the goods, works or services.

Also, as per State Finance Act 1991- (Act 31) Amended 16 March 2022, there are provisions to regulate commitment and appropriation of budget funds in a judicious manner, with due authorization of the Treasury as contained in the following articles.

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Article 17: Prohibition on incurring expenditure or making payments without Treasury authorization Subject to the provisions of this Act and notwithstanding anything to the contrary in any other law contained - (a) no expenditure shall be incurred as a charge to the State Revenue Fund; (b) no payments shall be made as a charge to the State Revenue Fund; (c) no fees or charges, or the rates, scales or tariffs thereof, shall be determined as a charge to the State Revenue Fund, without the authorization of the Treasury.

Article 21: Prohibition on variation of contracts or settlement or waiver of claims, without Treasury authorization Notwithstanding anything to the contrary in any law contained - (a) no contract in which the State is a party shall be cancelled or varied to the detriment of the State; (b) no claim by the State resulting from any loss or damage or unjust enrichment contemplated in section 11, whether or not instituted by way of judicial proceedings, shall be waived or settled; (c) no claim against the State shall be settled, without the authorization of the Treasury.

Gap analysis

Lack of compliance by the public entities. Lack of integration with e-GP and IFMIS

Recommendations

Compliance required public entities on certification of funds and ensure linkage with e-GP and IFMIS

Assessment criterion 4(a)(c):

A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Related to the feedback mechanism on execution of contracts, as per regulation 8 paragraph (4) and (5) responsibilities of procurement management unit must maintain and keep records of procurement of a public entity in accordance with the provisions of the Act. (5) The procurement management unit must - (a) monitor every stage of the procurement process and ensure delivery of procurement contracts in accordance with the Act; (b) initiate necessary action against defaulting suppliers and contracts; and (c) provide timely procurement reports to the accounting officer and the Policy Unit.

CBPN website provides report on execution of major contracts²⁹ on a quarterly basis. The last report was uploaded on 12 Dec 2023 for quarter ending Sep 2023.

Gap analysis

No evidence of monitoring of major contracts by Public Entities

Recommendations

Public Entities to follow Regulation 8 and monitor major contracts and provide report to Accounting Officer and Policy Unit

Sub-indicator 4(b)

Financial procedures and the procurement cycle

The legal and regulatory framework, financial procedures and systems should ensure that:

Assessment criterion 4(b)(a):

No solicitation of tenders/proposals takes place without certification of the availability of funds.

Conclusion: Substantive gap

Red flag: No

²⁹ https://cpbn.com.na/index/monitoring_evaluation

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Qualitative analysis

As stated earlier, in accordance with Section 25 Part 4 of PPA 2015, an Accounting Officer must certify the availability of funds before the commencement of each procurement process and ensure funds remain committed.

Further as per Regulation 8(e), the procurement management unit is required to initiate a procurement activity on receipt of a purchase requisition approved by the accounting officer.

Gap analysis

Lack of compliance by the public entities. Lack of integration with e-GP and IFMIS.

Recommendations

Compliance required public entities on certification of funds and ensure linkage with e-GP and IFMIS.

Assessment criterion 4(b)(b):

The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Based on PEFA 2015: "Integrated Financial Management System (IFMS) At present, IFMS is fully rolled out to all line ministries. All central government expenditure transactions are supposed (as a requirement from Treasury) to be processed through IFMIS. It should be noted that the geographical land size of Namibia has an influence on the rollout of IFMS to regional councils and local authorities; for this reason, standalone financial management (accounting) software such as Sage Pastel is used by regional and local authorities. IFMS is an Oracle based application on the current version Oracle Release 12. The application used in Namibia is a two-part application: an off-the-shelf application and a bespoke module. The off the-shelf module has fields such as fixed asset, general ledger, accounts payable, accounts receivable, and payment order. The bespoke application has the payroll, medical aid, housing collateral system, daily subsistence allowance (DSA), cheque processing, debt management and cash management".

The Assessment Team requested PPU to provide a clarification on linkage between budget, procurement and treasury operations on payment of invoices and if it is visible to prospective suppliers/ contractors and is there a national database on tracking payment to contractors/suppliers. The PPU clarified that it is not visible and there is no database available to the public. Also, according to PPU, there are some issues with timely payments, lack of planning, poor administration delaying payments, certifying invoices as well.

The private sector survey results reveal that 78% of respondents experienced delayed payment of invoices as given in the chart.

Quantitative analysis

// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b):

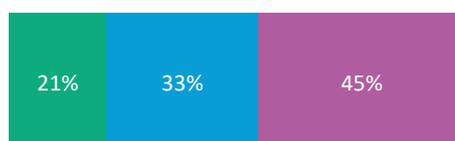
- invoices for procurement of goods, works and services paid on time (in % of total number of invoices).

Source: PFM systems (No data available from PFM system)- Refer to response of private sector

Source Private sector Survey

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How often has your company/organization experienced delayed payment of issued invoices?



■ Rarely ■ Often ■ Very often

Gap analysis

No system of tracking payment of invoices. Considered “Red flag” as improving the system requires inter-institution efforts and absence of a system may affect competition and higher bid prices due to uncertainty and delays. Delays are mostly due to back-and-forth between the contractor and public entities after submission of invoice.

Recommendations

MoFPE to devise a system to track payment of invoices including through e-Procurement System.

Indicator 5. The country has an institution in charge of the normative/regulatory function

Sub-indicator 5(a)

Status and legal basis of the normative/regulatory institution function

The legal and regulatory framework, financial procedures and systems provide for the following:

Assessment criterion 5(a)(a):

The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Public Procurement Unit of the Ministry of Finance:

The PPA establishes the Public Procurement Unit (PPU) within the Ministry of Finance and assigns normative/regulatory functions for public procurement to the PPU. PPA s.6 establishes the PPU with responsibility for advising the Minister of Finance on any procurement which includes, in summary: monitoring of compliance with the procurement legal framework; review of the public procurement system and proposals for improvement; assessment of the impact of the procurement system on the socio-economic policy objectives of the Government, and the promotion of the fundamental principles of procurement governing the administration of procurement.

PPA s.7 sets out a long list of the functions of the PPU which include: setting procurement thresholds; providing policy advice on e-procurement; preparation of guidelines, provision of advice to public entities on all public

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procurement policies, principles and practices; monitoring and report on the performance of the public procurement systems in Namibia and advising on desirable changes; setting mandatory training standards, capacity building and competence levels, certification requirements and professional development paths for procurement practitioners; preparing, updating and issuing directives, instructions, guidelines, guidance notes and manuals; issuing authorized versions of the standard bidding documents, standard forms of contracts, and other tender documents and forms for mandatory use by every public entity implementing procurement; development and implementation of a procurement performance assessment system; facilitating the use of ICT; compliance inspection of procurement activity; contract and performance audits; listing common use services and supplies for centralized procurement; design and maintenance of a supplier list; provision of guidance on procurement operational matters; investigation of compliance with the PPA, and; “such other functions as may be directed by the Minister from time to time or by any other law.” PPA s.7 also sets out powers of the PPU for performance of its functions.

Central Procurement Board of Namibia (CPBN):

PPA s.8 establishes the Central Procurement Board of Namibia (CPBN) with the objects to conduct procurement on behalf of all public entities where the procurement is above specified thresholds, enter into contracts for procurement on its own behalf or on behalf of public entities (see analysis at sub-indicator (6) and to direct and supervise accounting officers in managing the implementation of procurement. The PPA and PPR also designate activities to be conducted by the CPBN. Some of these can be classified as regulatory in nature, in particular approval of: Individual Procurement Plans (PPR R8(3); Variation Orders (PPA s.56); Price increases (PPA s.56); Contract extensions, and Cancellation of bids (PPA s.54). This creates potential for overlap with the activities of the PPU which are analyzed further in 5(b).

Gap analysis

Potential for overlap with the activities of the PPU and CPBN and Accounting officer of Public Entities related to involvement of PPU in providing guidance to PE on operational matters and procurement committee seeking advice from PPU, and involvement of CPBN in contract monitoring.

Considered “Red flag” as situation is beyond the control of PPU and requires intervention from the highest level of the government to bring clarity on functions and powers among oversight bodies.

Recommendations

Explained in 5(b)

Sub-indicator 5(b)

Responsibilities of the normative/regulatory function

The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility:

Assessment criterion 5(b)(a):

Providing advice to procuring entities

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

PPA s. 7 (1) (d) requires PPU to advise public entities on all public procurement policies, principles and practices by PPU. On the role of CPBN, PPA s.8(c) requires them to direct and supervise accounting officers in managing the implementation of procurement even though PPA s.25 (1) (b) requires accounting officer to be accountable for the full compliance with the Act and directives and any procurement above a threshold is conducted by CPBN “on behalf of public entities” for contracts above thresholds.

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<p>Gap analysis</p> <p>PPAs.8(c) requires CBPN to direct and supervise accounting officers in managing the implementation of procurement for contracts above thresholds which creates an overlap with functions of PPU, as also with accounting officer of PPU.</p> <p>Considered “Red flag” as situation is beyond the control of PPU and requires intervention from the highest level of the government to bring clarity on functions and powers among oversight bodies.</p>
<p>Recommendations</p> <p>To review PPA s.8(c), 7 (1) (d) and 25 (1) (b) and remove gaps and overlaps in responsibility among PPU, CBPN and Accounting Officer of public entities. PPU role should remain as policy without getting involved in transaction.</p>
<p>Assessment criterion 5(b)(b): Drafting procurement policies</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>PPA s. 6“(1) There is established within the Ministry of Finance a specialized Procurement Policy Unit, that is, subject to any general or specific policy directives issued by the Minister.</p> <p>PPA s.7 (1) (b) to advise the Minister on policy for introducing e-procurement as a means of simplified and transparent procurement.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 5(b)(c): Proposing changes/drafting amendments to the legal and regulatory framework</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>PPA s. 6“(1) There is established within the Ministry of Finance a specialized Procurement Policy Unit, that is, subject to any general or specific policy directives issued by the Minister.</p> <p>PPA .6 (1) (c) to prepare guidelines regarding procurement matters, including e-procurement, the letting or hiring of anything or the acquisition or granting of any right for or on behalf of public entities, and the disposal of assets.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 5(b)(d): Monitoring public procurement</p>

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Conclusion: No gap
Red flag: No
Qualitative analysis PPA s.7 (1) (e) to monitor, report on the performance of the public procurement systems in Namibia, including preparing an annual report to be tabled in the National Assembly within six months after the end of each financial year, and advise on desirable changes.
Gap analysis
Recommendations
Assessment criterion 5(b)(e): Providing procurement information
Conclusion: No gap
Red flag: No
Qualitative analysis PPA s.7 (1) (e) to monitor, report on the performance of the public procurement systems in Namibia, including preparing an annual report.
Gap analysis
Recommendations
Assessment criterion 5(b)(f): Managing statistical databases
Conclusion: No gap
Red flag: No
Qualitative analysis PPA s.7 (1) (j) to develop and implement procurement performance assessment system; (k)to facilitate the use of information and communications technology in procurement.
Gap analysis
Recommendations
Assessment criterion 5(b)(g): Preparing reports on procurement to other parts of government
Conclusion: No gap
Red flag: No
Qualitative analysis

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PPA s.7 (1) (e) to monitor, report on the performance of the public procurement systems in Namibia, including preparing an annual report to be tabled in the National Assembly within six months after the end of each financial year, and advise on desirable changes.

Gap analysis

Recommendations

Assessment criterion 5(b)(h):

Developing and supporting implementation of initiatives for improvements of the public procurement system

Conclusion: **No gap**

Red flag: No

Qualitative analysis

PPA s. 7 (1) (a) to propose various thresholds to the Minister relating to public procurement or disposal to be applied by public entities and the Board; (b) to advise the Minister on policy for introducing e-procurement as a means of simplified and transparent procurement; (c) to prepare guidelines regarding procurement matters, including e-procurement, the letting or hiring of anything or the acquisition or granting of any right for or on behalf of public entities, and the disposal of assets.

Gap analysis

Recommendations

Assessment criterion 5(b)(i):

Providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement

Conclusion: **No gap**

Red flag: No

Qualitative analysis

PPA s.7 (1) (i) to issue authorised versions of the standardised bidding documents, standard forms of contracts, pre-qualification documents, procedural forms, requests for proposals and other similar documents for mandatory use by every public entity implementing procurement (f) to prepare and conduct training programmes and approve training curriculum on public procurement as proposed by training institutions for staff members, contractors and suppliers concerning procurement.

The gap in practice is covered at Indicator 8.

Gap analysis

Recommendations

Assessment criterion 5(b)(j):

Supporting the professionalisation of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)

Conclusion: **No gap**

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Red flag: No
<p>Qualitative analysis</p> <p>PPA s. 7 (1)(g) to set mandatory training standards, capacity building and competence levels, certification requirements and professional development paths for procurement practitioners in Namibia with the consent of the Minister.</p>
Gap analysis
Recommendations
<p>Assessment criterion 5(b)(k): Designing and managing centralised online platforms and other e-Procurement systems, as appropriate</p>
Conclusion: No gap
Red flag: No
<p>Qualitative analysis</p> <p>PPA s.7 (1) (b) to advise the Minister on policy for introducing e-procurement as a means of simplified and transparent procurement; (b) to prepare guidelines regarding procurement matters, including e-procurement, the letting or hiring of anything or the acquisition or granting of any right for or on behalf of public entities, and the disposal of assets; and (k) to facilitate the use of information and communications technology in procurement.</p>
Gap analysis
Recommendations
Sub-indicator 5(c)
Organisation, funding, staffing, and level of independence and authority
<p>Assessment criterion 5(c)(a): The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.</p>
Conclusion: Substantive gap
Red flag: Yes
<p>Qualitative analysis</p> <p>The normative/regulatory functions and related activities assigned to the PPU under the PPA are substantial and wide ranging and may be better placed with an institution of higher level standing than a unit within the Ministry of Finance, with more independence and authority to discharge its mandate effectively.</p> <p>The head of PPU is at the level of Deputy Executive Director (Grade 2 position). This level is perceived as a lower level than all Accounting Officers of Procuring Entities. This has implications and consequences in as far as engaging Public Entities is concerned, and negatively impacts on the performance of public procurement in Namibia and non-compliance with PPA.</p> <p>For example, based on annual report 2022/23, where 171 reports of a possible 521 reports were received from public entities to compile procurement data (which an issue of non-compliance), and such based on Annual</p>

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Report of 2020/21 and 2021/22, such non-compliance is continuing from previous years and PPU is not able to influence public entities due to insufficient standing and authority.

Gap analysis

As indicated above, the head of PPU is perceived as a lower level than all Accounting Officers of PE's. which has implications and consequences in as far as engaging Public Entities is concerned leading to lack of compliance by Accounting Officers. Considered "Red flag" as situation is beyond the control of PPU and requires intervention from the highest level of the government.

Recommendations

To consider elevating the status of PPU to an "Authority" for its effective functioning as per given mandate in PPA.

Assessment criterion 5(c)(b):

Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

PPA s.6 provides that the PPU is established under the Ministry of Finance and Public Enterprises as a "specialized Procurement Policy Unit that is subject to any general or specific policy directives issued by the Minister" taking away from its independence as an oversight institution.

PPA s.7 provides that "a person appointed by the Minister to execute the function of the Policy Unit may be paid such remuneration, allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, out of the funds availed for such purposes, as the Minister may determine." and "The Minister must report to the National Assembly the names of persons appointed to execute the functions of the Policy Unit"

Based on PPU feedback, PPU always had some funding, albeit very low for its function. However, more funding would not have been utilized due to lack of capacity to implement. PPU secured support from WB, AfDB, GIZ, UNICEF, UNDP, USAID in the form of technical support, consultants and finances to address the lack of internal capacity in terms of numbers of staff, qualifications, experience and expertise.

Gap analysis

PPU is a unit under MoFPE, with inadequate financing and staff capacity impacting its independent functioning. Without a professional and capacitated PPU, public procurement is viewed as an administrative function and not a strategic function. It is a "Red flag" as changes for an independent Authority or Regulatory Body will require support from the highest level in the government.

Recommendations

Government of Republic of Namibia (GRN) to consider reviewing level of resources provided to PPU if it is commensurate with its responsibilities and mandate.

Assessment criterion 5(c)(c):

The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.

Conclusion: Substantive gap

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Red flag: Yes

Qualitative analysis

The PPU has a staff structure of 22 staff members as of March 31, 2024 (out of which 3 positions are vacant since beginning). Of the 22 approved positions, only 14 positions have been filled, leaving 8 vacancies. The numbers are given in the following table³⁰:

Name of the Directorates/ Division	Positions/Titles (Grade)	Number approved	Number in position	Number vacant
Department Public Procurement Policy	Deputy Executive Director (Grade 2)	1	1	
Directorate Legal Support and Compliance	Director (Grade 3)	1	1	
	Deputy Director (Grade 4)	1	1	
	Chief Policy Analyst (Grade 6)	1	1	
	Policy Analyst (Grade 7)	2	1	1 vacant
Directorate Professionalization and Capacity Strengthening	Director (Grade 3)	1	1	
	Deputy Director (Grade 4)	1	1	
	Chief Learning and Development Officer (Grade 6)	2	2	
Division Monitoring and Evaluation	Deputy Director (Grade 4)	1	NIL	1 position vacant since beginning
	Chief Policy Analyst (Grade 6)	3	1	2 positions vacant
Subdivision Administrative Service	Control Administrative Officer (Grade 6)	1	1	
	Chief Administrative Officer (Grade 8)	2	1	1 position vacant
	Senior Private Secretary (Grade 8)	1	NIL	1 position vacant since beginning
	Private Secretary (Grade 9)	1	NIL	1 position vacant
	Driver/Operator Driver (Grade 12)	1	NIL	1 position Vacant since beginning

³⁰ Head of PPU (Deputy Executive Director), and Chief Policy Analyst (MAPS coordinator) have resigned after March 31, 2024

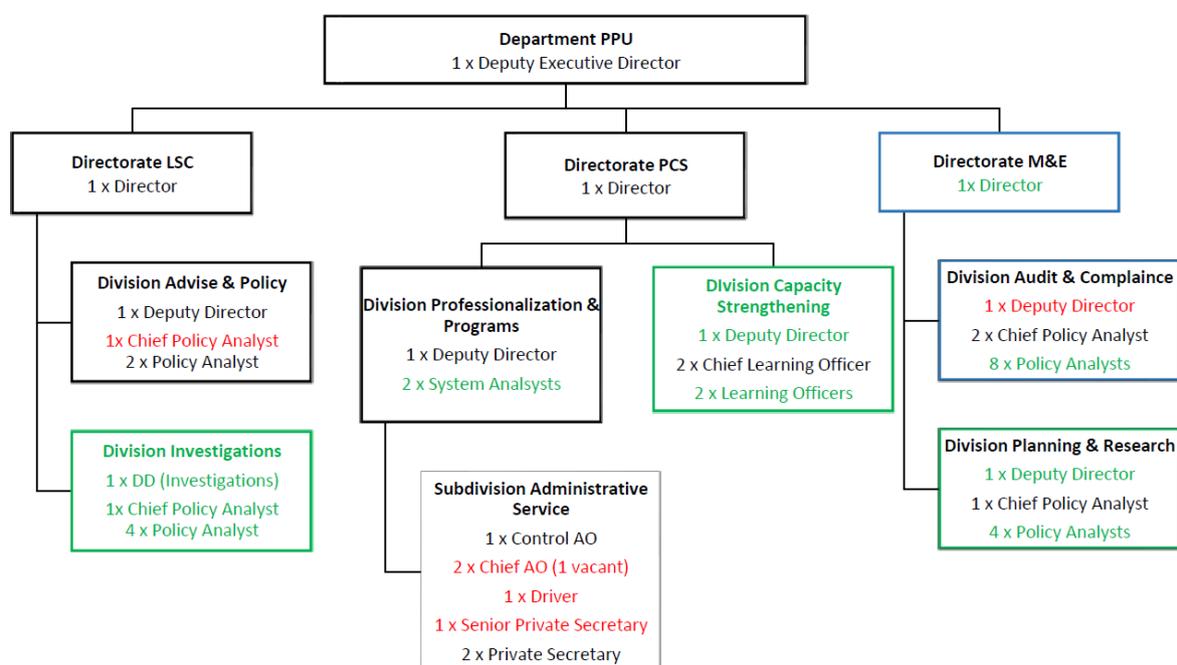
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SECONDED TO PPU	Deputy Director (Grade 4)	2	2	
Total		22	14	8

Therefore, the shortage of staff in the current structure is about 35% of the approved position, with severe shortage in the division on Monitoring and Evaluation.

Based on the workload analysis conducted during 2023 by PPU, they need significantly more staff members to be able to effectively carry its mandate as represented in the following chart (figure 4 as given by PPU as proposed New Public Procurement Unit Structure without any specific meaning of the colors).

Figure 4: Proposed New Public Procurement Unit Structure



The above organization chart shows 46 positions compared to 22 approved positions of PPU.

Gap analysis

The current staffing of PPU in terms of grade/level, required professional expertise and number in position are insufficient to carry out its mandate as required by the functions of the Policy Unit under Section 7 of PPA 2015. This is considered a “Red flag” as getting resources and adequate budget is not within the control of PPU.

Recommendations

GRN to consider reviewing level of expertise and resources provided to PPU if it is commensurate with its responsibilities and mandate under PPA.

Sub-indicator 5(d) Avoiding conflict of interest

Assessment criterion 5(d)(a):

The normative/regulatory institution has a system in place to avoid conflicts of interest*

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Conclusion: **Substantive gap**

Red flag: **Yes**

Qualitative analysis

The methodology requires analysis as to functions of normative/regulatory body to establish that there are no incompatibilities in their functions and powers that creates COI, for example with their role of monitoring/auditing procurement practices and that there are internal systems in place to avoid COI.

The functions and powers assigned to the PPU under PPA ss.6 and 7 are wide ranging (see analysis at 5(a)(a)) and these raise the potential for conflict of interest arising within the PPU. For example, through its inspection and guidance functions on operational matters in procurement activities at PPA s. 7 (1) (p), the PPU may be perceived as being involved in procurement decisions on actual transaction rather than just providing policy advice and through PPA (2) (c) commission or undertake investigations and institute performance audit” on functions of other oversight agencies like Anti- Corruption Commission and Office of Auditor General.

Such Conflict of Interest (COI) is challenging to manage due to a combination of very wide functions/activities including regulatory, monitoring and advisory roles combined with limited staff.

For example, the Instruction Note dated 01 March 2022, describes a situation where after the commencement of the Act in April 2017, “Procurement Policy Unit has been inundated for requests advice from various public entities via emails, telephone calls and in person” and when public entities are non-compliant, they allege that they acted on telephonic advice of PPU, which also led to investigation by Anti-Corruption Commission

Based on the Instruction Note, as per Regulation 11 (9), the procurement committee may seek technical advice from the Policy Unit through the office of accounting officer. Though the instruction by PPU in this Instruction Note is to seek advice from PPU in writing through accounting officer, the involvement of PPU in procurement transactions leads to COI situations.

While PPA s.10 describes fiduciary duties of member of Board (CPBN) and improper conduct by members and PPA s.66 describes conduct of staff members of public entities and Board, including COI situations, it appears there are no similar provisions dealing with COI of PPU, where PPU may get involved in advising on procurement transaction where they have responsibility of monitoring/auditing. PPU not to get in roles of oversight bodies like OAG and ACC, as required by their function according to PPA s.7(2) (c) “commission and undertake investigations and institute performance audit”.

Based on private sector survey, it appears that the opinion on COI is divided among respondents, where 57% consider that there is no COI.

Quantitative analysis

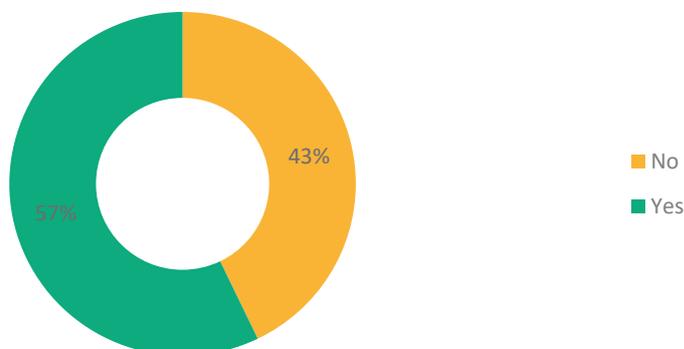
** Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a):*

- Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses).

Source: Survey.

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Do you consider the normative/regulatory institution to be free of conflicts of interest?



Gap analysis

No internal system or procedure in place to avoid COI in the functioning of PPU. Considered “Red flag” as functions and powers of PPU are defined in PPA and Regulation, which may require an amendment to be carried out by GRN.

Recommendations

To review functions and powers of PPU to avoid COI situation also through adequate internal system and mechanism (MoU) to ensure that the respective roles of all agencies are mutually reinforcing without overlaps.

Indicator 6. Procuring entities and their mandates are clearly defined

Sub-indicator 6(a)

Definition, responsibilities and formal powers of procuring entities

The legal framework provides for the following:

Assessment criterion 6(a)(a):

Procuring entities are clearly defined.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Public entities are clearly defined in the PPA.

The Central Procurement Board of Namibia (CPBN) acts on behalf of public entities [as procuring agent] in the conduct of the bidding process for the award of contracts exceeding prescribed thresholds. It also has power to enter into procurement contracts on behalf of procuring entities where it has conducted the bidding process and it does so.

Public entity

PPA s.1 Definitions, defines “public entity” as follows:

“public entity” means any office, ministry or agency of the Government, and includes —

- (a) a local authority council;
- (b) a regional council;
- (c) a public enterprise as referred to in the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019);

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- (d) an entity or trust that is owned or controlled by the Government, when engaged in any procurement individually or in consortium;
- (e) an entity declared as public entity in terms of section 5; and
- (f) a subsidiary of a public enterprise referred to in paragraph (c)”

“local authority” is further defined by reference to the Local Authorities Act, No.23 of 1992

Note from AfDB RACI: Commercial public institutions are subject to the law as PEs where they use the state budget. Commercial public institutions whose budget is not approved by Parliament are governed by special regulations applicable to the particular institution issued by the minister in charge of public investments. These special regulations for commercial public institutions are not available in the public domain.

PPA s.5(s) declaration as a public entity, provides for the Minister to declare any entity a public entity for the purposes of whole or part of the PPA where funding exceeds “the prescribed threshold in any form” or where an exclusive license or monopoly is granted. The declaration must be by way of notice in the Gazette. The prescribed threshold is set out in PPR Annexure 3 and is NAD 5 million.

As per clarification from PPU, all public entities whether they are directly receiving funding from Treasury or from their own balance sheets are subject to the PPA and PPR. There are no special regulations for certain PEs in so far as public procurement is concerned.

Central Procurement Board of Namibia (CPBN)

The CPBN conducts bidding processes on behalf of public entities and also has power to enter into the resulting procurement contracts on behalf the public entity.

PPA s.8 Establishment of Central Procurement Board of Namibia, lists the principle objects of the CPBN:

- “(a) to conduct the bidding process on behalf of public entities for the award of contracts for procurement or disposal of assets that exceed the threshold prescribed for public entities;
- (b) to enter into contracts for procurement or disposal of assets on its own behalf or on behalf of public entities awarded by the Board as contemplated in paragraph (a); and
- (c) to direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board.”

The thresholds above which the CPBN conducts the bidding process on behalf of public entities are prescribed in PPR Annexure 1. Public entities are divided into three categories for the purposes of these thresholds:

Category 1 public entities: Goods NAD 25 million, Works NAD 35 million, Consultancy services NAD 20 million, non-consultancy services NAD 15 million.

Category 2 public entities: Goods NAD 20 million, Works NAD 30 million, Consultancy services NAD 15 million, non-consultancy services NAD 10 million

Category 3 public entities: Goods NAD 15 million, Works NAD 20 million, Consultancy services NAD 10 million, non-consultancy services NAD 5 million

CPBN is solely dependent on government grant (2021-2022 NAD 36.6 million), although it does generate some income from sale of bidding documents.³¹

SBDs Instructions to Bidders s.3.3 explains that the public entities related to the bidding documents for the particular procurement are “the Public Entity, acting as procurement entity (Purchaser), the Procurement Policy Unit, in charge of issuing standard bidding documents and responsible for any amendment these may require, the Central Procurement Board in charge of vetting Bidding document, receiving and evaluation of bids in respect of major contracts ...”

³¹ CPBN Annual Report 2021-2022

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The MAPS Assessment Team notes a decision of the High Court of Namibia which refers to the CPBN acting as an “agent” for the procuring entity concerned.³²

The Central Procurement Board of Namibia (CPBN) acts on behalf of public entities [as procuring agent] in the conduct of the bidding process for the award of contracts exceeding prescribed thresholds as indicated earlier. It also has power to enter into procurement contracts on behalf of procuring entities where it has conducted the bidding process and it does so. In practice the procuring entity is responsible for contract management and payment of the contractor.

Based on examination of a recently signed contract in April 2024, it is seen that the contract is signed by the Chairperson of CPBN for and on behalf of the Procuring Agent, by the CEO of Public Entity on behalf of the Employer and by the Managing Director of the firm on behalf of the Contractor. Therefore, it is a tripartite contract.

General Conditions of Contract (GCC) /Special Conditions of Contract (SCC) defines CPBN as the “Procuring Agent” and the Public Entity as “the Employer”. The Project Manager is an Independent Consultant, who could delegate duties and responsibilities to three Managers (Civil & structural design, Electrical and mechanical design and Architectural Design. Day-to- day time control and cost control is managed by the Project Manager who is responsible for certifying the payment on a monthly basis. Employer is required to pay to the Contractor the amount certified by the Project Manager within stipulated days (like 30 days) of each certificate.

The contract agreement does not define any role of CPBN in the supervision of the contract. Based on discussions with CPBN, they carry out a quarterly supervision of the contract as per their role under s.8 (c) PPA " to direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board"

Gap analysis

Lack of clarity on contracting parties and status of procuring public entities for contracts above the threshold. There is a need to clarify the situation as per law in Namibia.

Recommendations

Accounting Officer should be responsible and accountable for the entire procurement process from the time need is identified till need is satisfied for efficient service delivery, and PMU needs strengthening with required resources and expertise.

Assessment criterion 6(a)(b):

Responsibilities and competencies of procuring entities are clearly defined.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The legal framework sets out the responsibilities and competencies of accounting officers of public entities, from procurement planning to contract delivery. It also requires establishment of an internal organizational structure to handle public procurement.

³² Sistemas Avanzados de Tecnologia S.A (SATEC) v Chairman of the CPBN and others Case no: HC-MD-CIV-MOT-GEN-2021/00112

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PPA s.25(1) requires that accounting officers (which term for the purposes of the PPA covers accounting officers in departments and constitutional institutions and equivalent post holders in public entities) “(i) must, in the prescribed manner, set up an internal organizational structure which includes a procurement committee, a bid evaluation committee and a procurement management unit for the conduct and management of procurement at the public entity; (ii) is accountable for the full compliance with this Act and directives and instructions made under this Act. (iii) must 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; (iv) certify the availability of funds before the commencement of each procurement process and ensure that the funds remain committed for the duration of the procurement contract; and (v) ensure that the proceedings of the internal structures of a public entity or the Board are properly recorded and kept in a safe and secure place in the prescribed manner.”

Procurement Committee: the constitution, procedures and processes of the Procurement Committee are described at PPA s.25 and PPR R.6, 9 and 11, in particular.

Bid Evaluation Committee: the constitution, procedures and processes of the Bid Evaluation Committee are described at PPA s.26. and PPR R.5,7,9 and 13, in particular.

Procurement Management Unit: see analysis at 6(a)(c).

Central Procurement Board of Namibia: As indicated at 6(a) (a), the CPBN, conducts bidding process on behalf of Public Entities, and has power to enter into contracts for procurement or disposal of assets on its own behalf or on behalf of public entities awarded by the Board. In addition, the CPBN may also direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board.

Gap analysis

Lack of clarity on the respective roles of PE (headed by accounting officer) and CPBN for contracts above threshold. As indicated under Indicator 5, the PPA and PPR also designate other activities to be conducted by the CPBN. Some of these can be classified as regulatory in nature, in particular approval of: Individual Procurement Plans (PPR R8(3)); Variation Orders (PPA s.56); Price increases (PPA s.56); Contract extensions, and Cancellation of bids (PPA s.54).

In the given situation the accountability for project implementation gets diffused and divided between PE and CPBN.

Recommendations

To review conflicting and overlapping role of PE and CPBN. As post-MAPS engagement, PPU ma explore god practices from other countries.

Assessment criterion 6(a)(c):

Establish a designated, specialised procurement function with the necessary management structure, capacity and capability.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The Internal Procurement Structures of Accounting Officer and roles and responsibilities are defined in s.25 of PPA s.25(1) requires that accounting officers (which term for the purposes of the PPA covers accounting officers

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in departments and constitutional institutions and equivalent post holders in public entities) must, in the prescribed manner, set up an internal organizational structure which includes a procurement management unit.

The Procurement Management Unit (PMU). The constitution, procedures and processes of the Bid Evaluation Committee are described at PPA s.25. and PPR R.5,7,9 and 13. According to PPA s. definition of a procurement management unit, the PMU is a division or department in a public entity responsible for the execution of functions constituted in terms of PPA s.25.

PPR R.8 Procedures and processes for the Procurement Management Unit provides that the Procurement Management unit “responsible for conducting and management of procurement activities of a public entity from the initiation or the procurement to the award of the procurement contract” and makes it clear that the PMU is not responsible for evaluation of bids or awarding or termination of procurement contracts.

PPR R.8(2) to (5) lists activities of the PMU that includes support to the functioning of procurement committee and provide secretarial services, prepare annual procurement plan, confirm budget availability and source of funding and initiate procurement activity on receipt of purchase requisition approved by the accounting officer, implement policy decisions of public entities and review panel, prepare individual procurement plan, maintain keep records of procurement and monitor every stage of the procurement process and ensure delivery of procurement contract, initiate necessary action against defaulting suppliers and contracts and provide timely procurement report to accounting officer and the Policy Unit.

Regulation 12 requires head and supporting staff of Procurement Management Unit constituted in consultation with the Policy Unit, to have technical and professional competence, procurement knowledge and skill and integrity and sound decision -making abilities.

The Act or Regulation does not stipulate any minimum professional qualification/certification relevant for procurement professionals, and it is not clear other than routine clerical or compliance functions, how Accounting Officer are using their knowledge and experience and decision-making abilities as they have no substantive role in any decision, even though they are required to monitor every stage of procurement and initiate necessary action against defaulting suppliers and contracts.

The internal structure of a large number of public entities is inadequate related to dedicated procurement roles and majority working as part time.

Based on the data provided by PPU on May 15, 2024, the situation is as under:

- i. Total number of procuring entities (OMAs, RCs, LAs, public enterprises): - 176 (this number represent PE’s which are Gazetted, active and eligible for compliance to requirements on APP and Reports as well as PE’s which are not Gazetted but complying with APPs and Reports.)
- ii. Number of procuring entities with compliance to Internal Structure as per PPA s. 25: All Public entities have structures in terms of Section 25 of the PPA.
- iii. Number of procuring entities with dedicated procurement roles (Positions): 67
- iv. Total number of procurement officers in dedicated full-time role to cover all procuring entities: 422
- v. Total number of officials who work in procurement roles as part time: 1,567

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Quantitative analysis

// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c):

- procuring entities with a designated, specialised procurement function (in % of total number of procuring entities). – **Explained above in the text under qualitative analysis**

Source: Normative/regulatory function.

Gap analysis

The role of Procurement Management Unit is routine clerical or compliance and their knowledge, experience and decision-making abilities are not developed.

Recommendations

To move the role of PMU from routine to strategic and hire/appoint professional with requisite qualification and experience (See Indicator- 8 on Professionalization of procurement function).

Assessment criterion 6(a)(d):

Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

PPA allows for an accounting officer to delegate or assign powers and functions to a staff member, save in specified cases.

PPA s.74 Delegation and assignment by accounting officer “(1) An accounting officer may delegate or assign to a staff member any of the powers or functions conferred upon or imposed on the accounting officer by or under this Act, except the power to issue contract awards, sign agreements and appointing or recommending staff members for appointment to procurement committee, bid evaluation committee or procurement management unit. (2) A delegation or assignment under subsection (1)— (a) is made in writing; and (b) does not divest the accounting officer from the powers or functions so delegated or assigned. (3) An accounting officer, at any time and without prejudice of a right, may vary or set aside any decision made by a staff member in the exercise of a power delegated under subsection.”

Gap analysis

As indicated at 6(a)(d) due to lack of delegation to Head PMU and their staff, the decision- making abilities are not encouraged and developed. The Accounting Officer themselves are not required to have any procurement knowledge and experience and therefore their own decision making is not support by expert advice from capable procurement professionals.

Recommendations

The delegation by Accounting Officer to be clarified for effective and timely decision on procurement process and contract implementation.

Assessment criterion 6(a)(e):

Accountability for decisions is precisely defined.

Conclusion: Substantive gap

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Red flag: Yes

Qualitative analysis

Based on discussions held by the Assessment Team in Sep 2023 with PPU, Accounting Officer and CPBN, it was gathered that Accounting Officer as per their powers and functions under s25 of PPA are accountable for full compliance with the Act and directives and instructions. In practice, however, the roles are diffused in some cases due to the overlapping and potentially conflicting roles lying with both the procuring entities and CPBN. In addition to be on safe side PEs/ Accounting Officer keep on involving PPU in decision making on procurement transaction (refer Instruction Note of 01 March 2022 on procedure for requesting advice from PPU) due to provision in Regulation 8 (b) that Procurement Committee may seek technical advice from the Policy Unit through the officer of accounting officer.

The conduct of bidding process role for procurement contracts above a specified threshold undertaken by the CPBN on behalf of public entities. In fact, Variation Orders (PPA s.56); Price increases (PPA s.56); Contract extensions, and Cancellation of bids (PPA s.54) all require approval of CPBN. Also, in accordance with PPA s.8 (c), CPBN is required to direct and supervise the accounting officer in managing the implementation of procurement contracts awarded by the CPBN.

Even though CPBN, conducts bidding process on behalf of Public Entities (s. 8 PPA) with Accounting Officer as responsible budget holder and accountable under PPA s.25, their authority and accountability for contracts above the threshold is diluted due to handling of the entire procurement process including signing of the contract, dealing with contract variation (s.55, s.56 PPA), including their role as per s.8 (c) to direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board

With the above provisions, the accountability of Accounting Officer (the budget holder and head of Public Entities) is made uncertain and diluted which may affect the service delivery.

Based on draft Annual Report 2022-23 of PPU, MoF, related to challenges experienced with process for contracts at CPBN, included (i) Enormous requests from public entities for exemption from procuring through the CPBN; and (ii) The use of external Bid Evaluation Committee has proven to be a challenge in meeting legal timelines, and issues related to confidentiality, reputation damage and conflict of interest among others. The Board and management are investigating alternative models to mitigate the current risks going forward.

Gap analysis

Based on the existing provision in PPA, respective roles and accountabilities of PPU, Accounting Officer of PE and CPBN are diffused and not clear if Accounting Officer assumes accountability as the s25 of PPA.

Recommendations

To clarify the accountability of Accounting Officer, by suitable amendments in PPA and or Regulations

Sub-indicator 6(b) Centralized procurement body

Assessment criterion 6(b)(a):

The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

There is no centralized procurement body in charge of consolidated procurement, framework agreement or specialized procurement.

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However, there are specific amendments to the PPA which introduced the possibility of using framework agreements and pooled procurement. The Public Procurement Amendment Act 2022:

- introduces definitions of "framework agreement" and "pooled procurement" (see amendments to s.1 PPA)
- adds new section 38A Procurement under framework agreement
- adds new 38B Pooled procurement

The Public Procurement Amendment Act 2022 came into force on 07 October 2022 except in the case of specified provisions listed in the Commencement Order [GN No318 of 2022]

According to Commencement Order GN No.20 of 2024, some of those delayed provisions came into force on 22 February 2024. Some more will come into force on 01 April 2024.

Commencement Order for commencement of the provisions on framework agreements (new s.38A) and pooled procurement (new s.38B) to be issued.

Gap analysis

There is no centralized procurement body in charge of consolidated procurement, framework agreement or specialized procurement. There are specific amendments to the PPA in 2022 introducing the possibility to use framework agreements and pooled procurement. However, order for commencement of the provisions of framework agreement (new s.38 A) and pooled procurement (new s.38 B) and responsibilities not issued.

Recommendations

Action to be taken in operationalization of framework agreement /pooled procurement and responsibilities defined.

Assessment criterion 6(b)(b):

In case a centralised procurement body exists, the legal and regulatory framework provides for the following:

- Legal status, funding, responsibilities and decision-making powers are clearly defined.
- Accountability for decisions is precisely defined.
- The body and the head of the body have a high-level and authoritative standing in government.

Conclusion: Choose an item.

Red flag: Choose an item.

Qualitative analysis

Not applicable and therefore not assessed

Gap analysis

Recommendations

Assessment criterion 6(b)(c):

The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.

Conclusion: Choose an item.

Red flag: Choose an item.

Qualitative analysis: Not applicable and therefore not assessed

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Gap analysis

Recommendations

Indicator 7. Public procurement is embedded in an effective information system

Sub-indicator 7(a)

Publication of public procurement information supported by information technology

The country has a system that meets the following requirements:

Assessment criterion 7(a)(a):

Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Art. 79 (1)(j) of the Public Procurement Act, 15 of 2015 includes reference to e-Procurement in regards to the authority given to the Minister of Finance to make regulations relating to , “the adoption of e-procurement for different stages and methods of procurement, and to the extent thereof, the procedures specified in this Act are deemed to be modified for substituting written communication by e-communication in the manner that improves competition, efficiency and transparency without affecting the sanctity, security and recording of such communication and the information contained therein.” Public Procurement Unit (PPU), under the Ministry of Finance released “Phase 1 – e-Procurement Guidelines” as mandated in the Section 7(1)(C) of the Public Procurement Act, 15 of 2015, effective from 1 April 2022 for use by public entities and the board, on Electronic-Government Procurement Portal. The Phase 1- e-Procurement Guidelines mandate the use of e-Procurement portal to enable:

1. The public entities and the board to upload the Annual Procurement Plan (APP) approved by the accounting officers after consultations with the PPU.
2. The Invitation to bid for an open National and International bidding process, Request for Sealed Quotations, and Request for Proposals, including Expression of Interest are to be advertised on the e-GP Portal and the Newspaper. Such advert shall be done simultaneously on the same data on the e-GP Portal and in the Newspaper. The PMU must ensure that an advertisement is published on the website and should remain from the date advertised in the newspaper until the closing date of the advert.
3. The bidding documents must be available and accessible on the e-GP Portal to all bidders.
4. Responses to clarifications will be uploaded to the e-GP portal within three (3) days of the deadline for receipt of clarification.
5. The Bid Opening Report in the prescribed format is uploaded to the e-GP Portal within three (3) working days of opening bids.
6. The Public Entity and the Board publish a notice for every procurement award, regardless of which procurement method or disposal award, and the executive summary of the bid evaluation report on the e-GP portal on the same day as the notice for award.
7. Similarly, all procurement awards executed under Emergency Procurement and Direct Procurement are uploaded to the website within 48 hours of the contract signature.
8. The Review Panel issues every review outcome on the e-GP Portal within seven (7) working days of the decision/findings.
9. All procurement Acts, regulations, directives, and guidelines are also published in the e-Procurement Portal under the “Documents” Section.

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The e-Procurement Portal, <https://eprocurement.gov.na/>, allows the information listed above to be consulted. However, only a few procuring entities have published relevant procurement and contract information for the year 2024 on the portal.

Gap analysis

The information published in the current portal is limited in time, as it only provides information for the year 2024, and in scope, as the portal is neither used by all procuring entities nor does it cover the contract execution phase. Therefore, interested parties are not able to fully monitor outcomes, results, and performance in public procurement.

In addition, the information is not published in an open format, compromising the capacity to develop analytical reports.

Recommendations

Efforts must be made to ensure that e-Procurement is fully and completely utilized by all procuring entities. The e-procurement portal should provide a section with data analytics and performance monitoring reports that are easily accessible to all stakeholders, covering the entire cycle, from planning to execution.

Assessment criterion 7(a)(b):

There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The e-Procurement Guidelines mandate all public entities to use the e-GP Portal for publishing and carrying out all the procurements following Open National and International bidding, Requests for sealed quotations, and Request for Proposals, including Expression of Interest. The e-GP portal at <https://eprocurement.gov.na/> is the centralized online portal that provides up-to-date information about the public procurement and processes for the procuring entities as well as the bidders. Despite procurement advertisements and award notices being published on public entity websites, only a few public entities publish their information in the e-procurement portal. Few procuring entities have their own e-procurement portals and use the centralized e-procurement portal to comply with the e-procurement guidelines.

Gap analysis

Although mandated by the e-procurement guidelines, not all public entities have embraced the use of e-procurement portal yet.

Recommendations

The PPU, based on appropriate capacity and resources, should expedite the implementation of the e-Procurement Portal by providing necessary training programs and incentives to the users of all the public entities.

Assessment criterion 7(a)(c):

The information system provides for the publication of: *

- procurement plans
- information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions

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- linkages to rules and regulations and other information relevant for promoting competition and transparency.

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

The e-procurement portal provides the functions and processes for public entities, and most key procurement processes are to be recorded under the workflow of the role and authority-based approval, and those processes are to be completed online. The system provides mandatory provisions to publish the Annual Procurement Plan (APP), bidding advertisements, bidding documents, bid opening report, Executive Summary of Evaluation Report, Notice of awards, Notice of cancellation, notice of selection of Award, and Review Panel reports. All the information is uploaded as a PDF file, which is unstructured data and does not allow data-driven analytics. Information on contract execution is limited to contract amendments. The e-Procurement Portal is developed following the prevalent Public Procurement Act, regulations and directives, and e-procurement guidelines. These are all published in the portal.

Quantitative analysis

// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):

- **procurement plans published (in % of total number of required procurement plans)**

There are 15 Annual Procurement Plans for the FY 2023/24 published in the Portal and 26 for the FY 2024/25, which represents less than 5% of the required plans.

- **key procurement information published along the procurement cycle (in % of total number of contracts):**
- **invitation to bid (in % of total number of contracts)**
- **contract awards (purpose, supplier, value, variations/amendments)**
- **details related to contract implementation (milestones, completion and payment)**

Based on the unpublished **Annual Report of February 2024 PPU/ MoFPE for the year 2022-2023 (ending March 31, 2023)**, the total number of procurements conducted during the financial year 2022/23: **9,721**. This number is aggregated from only 171 reports received, out of the number of 521 possible reports. While 122 public entities were trained on the use of the e-GP Portal, only 45 public entities were using it against a target of 105 public entities, which were expected to use the portal during 2022/23.

The information published on the e-procurement portal (<https://egp2.gov.na/index.jsf>) on May 6th, for the current year (2024) is:

Activity Name	2024			
	Jan	Feb	Mar	Apr
BID ADVERT (PUBLISH)	67	53	52	38
BID EVALUATION REPORT (PUBLISH)	1	0	0	0
BID OPENING REPORT (PUBLISH)	43	73	36	13
BIDDING DOCUMENT (PUBLISH)	98	110	60	64
EXECUTIVE SUMMARY OF EVALUATION REPORT (PUBLISH)	12	9	9	0
NOTICE OF AWARD (PUBLISH)	9	13	9	0
NOTICE OF CANCELLATION (PUBLISH)	6	4	1	2
NOTICE OF SELECTION OF AWARD (PUBLISH)	15	9	9	2

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In the absence of information on the total number of planned procurements in 2023/24, it is not possible to give any percentage of the number of procurement cases represented in the table above. Based on the data for FY22/23, 9721 cases, it can be said that the percentage of key procurement information published along the procurement cycle as a percentage of the total number of contracts is not significant.

• annual procurement statistics

Annual statistics are published in the form of reports in PDF format. Based on the provided information in the report, here are the specific annual procurement statistics for the financial year 2022/23. These statistics provide insights into the procurement activities conducted during the financial year 2022/23 in Namibia.

1. Total Number of Procurements Conducted: 9721
2. Total Number of Reports Received from Public Entities: 171
3. Total Number of Possible Reports: 521
4. Percentage of Procurement Plans Published: Approximately 32.8%
5. Distribution of Procurements by Category:
 - Goods: 59%
 - Non-Consultancy Services: 33%
 - Works: 7%
 - Consultancy Services: 1%
6. Value of Procurement per Procurement Method Utilized:
 - Open International Bidding (OIB): N\$886,123,628 (36%)
 - Direct Procurement (DP): N\$543,023,925.90 (22%)
 - Open National Bidding (ONB): N\$472,016,661.50 (19%)
 - Request for Quotation (RFQ): N\$272,716,141.80 (11%)
 - Other methods each account for under 5% of the value of procurements conducted.
7. Numerical Utilization of Procurement Methods:
 - Small Value Procurement (SVP): 6398 (59%)
 - Request for Quotation (RFQ): 1610 (15%)
 - Direct Procurement (DP): 1206 (11%)
 - Open International Bidding (OIB): <1%
 - Open National Bidding (ONB): 5%
 - Other methods each account for under 5% numerically.

• appeals decisions posted within the time frames specified in the law (in %).

The information provided in the report does not include details on appeals decisions posted within specific time frames as required by the law.

Gap analysis

The information is not published in real time and does not represent all the procuring entities. The analysis contained in the published annual report is based on limited input from Public Entities and there is absence of an integrated information system.

Recommendations

To expedite roll out of e-Procurement system to all public entities to use the existing capability of e-Procurement system and integrate it with other government systems for monitoring and real-time reporting.

Assessment criterion 7(a)(d):

In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation

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reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The information published online, covering the planning, selection and awarding phases, includes the full set of tender documents, a Summary of evaluation reports, Contract award notices, and selection notices.
Gap analysis The documents and information available is not published in an open standard format. In addition, it does not cover the execution phase of contracts thus preventing interested parties from contract monitoring and project implementation tracking.
Recommendations The e-procurement Portal should support the publication of all documents and information throughout the processes and contract implementation following the Open Contracting Data Standard, which provides for a full set of data to be published along the procurement cycle.
Assessment criterion 7(a)(e): Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The e-Procurement portal does not support machine-readable open data. The system is not aligned with the Open Contracting Data Standard (OCDS), a machine-readable format for storing and publishing procurement data and does not provide any alternative for analyzing the published information.
Quantitative analysis There are no data to support this analysis since the e-Procurement Portal does not provide for open data formats. <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e):</i> <i>- Share of procurement information and data published in open data formats (in %).</i> Procurement information are not published in open data formats. <i>Source: e-Procurement portal.</i>
Gap analysis The System does not support the machine-readable format of data storing, exchanging, and publishing, making it difficult to access and analyze procurement data in a structured way and limiting the transparency of the public procurement process.
Recommendations The e-procurement portal should comply with the Open Contracting Data Standard (OCDS) and facilitate the

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disclosure of e-procurement data as machine-readable data for anyone to download and share without any licenses or fees.

Assessment criterion 7(a)(f):

Responsibility for the management and operation of the system is clearly defined.

Conclusion: **No gap**

Red flag: No

Qualitative analysis

Art. 7 (1)(b) and (c) of the Public Procurement Act, 15 of 2015 clearly define the responsibility for the management and operation of the system to the Procurement Policy Unit (PPU) by mandating (b) to advise the Minister on policy for introducing e-procurement as a means of simplified and transparent procurement and (c) to prepare guidelines regarding procurement matters, including e-procurement, the letting or hiring of anything or the acquisition or granting of any right for or on behalf of public entities, and the disposal of assets. The PPU, under the Ministry of Finance released “Phase 1 – e-Procurement Guidelines” as mandated in the Section 7(1)(C) of the Public Procurement Act, 15 of 2015, effective from 1 April 2022, for use by public entities and the board, on Electronic-Government Procurement Portal.

Currently, the PPU is supported by the Prime Minister’s Office (PMO) to manage and operate the technology aspects of the e-Procurement Portal.

It should be noted that the PPU with its current limited staffing and resources does not have the capacity to manage and operate the e-Procurement system (see reference under indicator 6 to staffing of PPU).

Gap analysis

Recommendations

Sub-indicator 7(b) Use of e-Procurement

Assessment criterion 7(b)(a):

E-procurement is widely used or progressively implemented in the country at all levels of government.*

Conclusion: **Substantive gap**

Red flag Yes

Qualitative analysis

Based on the e-Procurement Guidelines issued by the PPU, electronic procurement is mandatory for all procurement procedures subject to the Public Procurement Law. However, the PPU has taken a phased approach to progressively implementing the e-procurement system both in terms of functionalities, and in terms of procuring entities coverage at all levels of government. There is low utilization by procuring entities of the functionalities currently available.

Quantitative analysis

// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a):

uptake of e-Procurement

- **number of e-Procurement procedures in % of total number of procedures**

The current version of the e-procurement system does not support e-submission.

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- value of e-Procurement procedures in % of total value of procedures

The current version of the e-procurement system does not support e-submission.

However, the usage of the e-GP system may be evidenced by the following statistics:

Activity on E-GP Portal	Number of Activities
Publication of the APP	45
Bids Advertisement	334
Bid Documents uploaded	369
Bid Opening reports uploaded	156
Notice of Selection uploaded	30
Executive summary uploaded	42

Table: Usage of E-GP portal during 2022/2023

Source: e-Procurement system.

Gap analysis

The usage of the e-Procurement Portal has been far and few between, as only 45 out of an expected number of 105 public entities were using the platform during 2022/23. Of the 9,721 procurements which were reported by 171 out of 521 possible reports, only 334 were advertised in the portal.

This Gap is assigned a “Red flag” since the low usage of the mandatory e-GP Portal does not only show a high level of noncompliance but also contributes to lack of transparency.

Recommendations

The mandatory use of e-Procurement portal should be enforced across all the public entities.

Assessment criterion 7(b)(b):

Government officials have the capacity to plan, develop and manage e-Procurement systems.

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

PPU is the ultimately responsible institution tasked with planning, developing, and managing e-procurement in the country. The phase – 1 e-procurement portal was designed and developed by the PPU in collaboration with the technical team from the OPM. The e-Procurement Portal is hosted in the OPM data center. The current structure of the PPU doesn't foresee a dedicated team for the e-procurement system. Still, the Director of Professionalization and Capacity Building oversees the e-procurement initiatives. Hence, the capacities at the time of the assessment are limited, and current human resources are stretched to adhere to these associated tasks.

Gap analysis

Financial resources are limited to develop the e-procurement System further and optimize possible system interfaces with different operational governmental systems.

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Also, PPU's human resources appear to be limited in managing the system's day-to-day operation and planning for its future improvement, so the PPU relies fully on the OPM's technical team.

Recommendations

Establish a business continuity technical team under the PPU with all technical, administrative, and supporting expertise for the smooth operation of the e-procurement portal. The role of OPM should be defined going forward.

Assessment criterion 7(b)(c):

Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

PPU organizes training for procurement staff and all users on the functioning of the e-procurement system in collaboration with OPM. PPU routinely evaluates and periodically adjusts training programs based on feedback and needs. In addition, PPU has prepared and issued e-procurement Guideline and e-procurement Manual that facilitate the use of the system.

Gap analysis

The low uptake of the portal suggests that difficulties, or lack of skills, may persist in using the portal's current functionalities. In addition, PPU does not have a policy requiring updating the knowledge and skills of the staff involved in e-procurement, which can lead to difficulties in tackling the new challenges posed by the ever-emerging technologies and meeting the expectations of the system's users.

Recommendations

Set a mandatory training requirement for the new recruitments and regular refresher training on the operational (functions and features and their proper use, security, communication, e-procurement challenges) as well as technical areas on a regular basis for all the staff in e-procurement operation and support to develop the capacity to address the challenges. E-Procurement training should also be offered as part of business outreach activities to private sector. Consider augmenting resource and number of PPU staff to conduct capacity building.

Assessment criterion 7(b)(d):

Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

E-GP System project is being executed in three (3) phases. The first phase establishes an online web presence by creating a static website containing public procurement-related information and a centralized registration system for public entities to maintain procurement projects and information. The current version of the e-procurement portal does not support the registration of the suppliers. Hence, it is impossible to identify suppliers' status as micro, small, or medium-sized enterprises.

Quantitative analysis

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*** Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):**

- bids submitted online (in %)

Bids are still not submitted through the existing e-procurement portal as the e-Submission functionality is not available yet.

- bids submitted online by micro, small, and medium-sized enterprises (in %)

Bids are still not submitted through the existing e-procurement portal as the e-Submission functionality is not available yet.

Source: e-Procurement system.

Gap analysis

The current e-procurement portal does not register suppliers in the system and does not provide the facility for online bid submissions, as planned in the e-procurement project.

Recommendations

The PPU should develop the end-to-end and collaborative e-procurement system providing functional processes and tools for all relevant stakeholders, including micro, small and medium-sized enterprises, facilitating equal participation in the bidding process.

Assessment criterion 7(b)(e):

If e-procurement has not yet been introduced, the government has adopted an e-procurement roadmap based on an e-procurement readiness assessment.

Conclusion: No gap

Red flag: No

Qualitative analysis

The Government of the Republic of Namibia embarked upon public procurement reform which include the introduction of an Electronic-Government Procurement (e-GP). The Procurement Policy Unit (PPU) of the Ministry of Finance and Public Enterprises (MFPE) is leading public procurement reform initiatives in the country, including the e-GP agenda through the national e-GP strategy. Introducing an e-GP in the Namibian public sector is one of many reform initiatives to achieve the strategic goals of Vision 2030 and Harambee Prosperity Plan II (HPP II).

Namibia enacted a Public Procurement Act in 2015, specifying the Procurement Policy Unit (PPU) as a regulatory body and the Central Procurement Board of Namibia (CPBN) as an executing body. These two bodies are established, functional, and execute their mandates, while the Review Panel was established to address bidders' complaints before they are escalated to a court of law. This Act has already made provisions for e-Government Procurement (e-GP).

An e-GP readiness assessment conducted in 2019 scored Namibia as moderately satisfactory with a score of 2.25 out of 4 and eligible for implementing e-GP services in the country, addressing gaps identified by strengthening its readiness. Following the e-GP Readiness Assessment, the PPU prepared the e-Procurement project with three (3) phases of implementation covering the following scope:

Phase 1: Establish an online web presence by creating a static website containing public procurement-related information and a basic centralized registration system for public entities to maintain procurement projects and information.

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Phase 2: Expand the basic system from Phase 1 to an advanced centralized registration system for procuring entities, Bidders, and all other users of the e-procurement system, including e-bidding.

Phase 3: This phase will expand on phase 2 by including e-cataloging, M&E, and the PPU internal workflow system.

After Phase 1 has been implemented, an assessment will be done to determine whether the subsequent phases will be developed by the Department of Public Service Information Technology Management (DPSITM) (in-house) or by a local company (private sector) or whether to integrate the developed portal with an off-the-shelf product.

After the implementation of Phase 1, Phase 2 started in 2023 with the development of the National e-GP Strategy 2023-2027 to formulate the roadmap for the implementation of e-GP in the country. The extended user requirements of the e-GP System were also developed with a broader consultation with the stakeholders. The PPU is finalizing the e-GP User Requirements for the end-to-end e-GP System.

Gap analysis

Recommendations

Sub-indicator 7(c)

Strategies to manage procurement data

Assessment criterion 7(c)(a):

A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The e-procurement system started on Phase 1 is based on the preparation and exchange of documents instead of data and also facilitates the functions of public entities. Bidders are not registered and cannot submit bids online. However, Bidders can access the documents on the Annual Procurement Plans, advertisements, bidding documents, amendments, bid opening records, bid evaluation summary, contract awards, review panel reports, and debarment and suspension lists.

Gap analysis

The e-procurement system covers the procurement processes from the side of the public entities and records and publishes the documents at different stages of the workflow in compliance with the Public Procurement Act and guidelines and e-Procurement guidelines. The system does not capture the data of different transactions but collects only the unstructured documents, which cannot be processed and analyzed using data analytics tools to facilitate any informed management decisions easily. The system cannot generate any comprehensive reports except a few predefined reports.

Recommendations

The new e-procurement system should be fully data-driven, providing the facility to collect data on all transactions related to the procurement of goods, works, and services, including consulting services, analyze and provide comprehensive data analytics, which provides business insights to the stakeholders to enhance the procurement services.

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<p>Assessment criterion 7(c)(b): The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The current e-procurement system is a basic system developed to facilitate public entities in the different stages of the procurement process. The system covers all the key stages of the procurement processes from the side of the public entities through the publication of the annual procurement plan, bid advertisements, amendment, bid opening record publication, summary of the bid evaluation report publication, and the publication of the contract awards. However, the system does not support the bidders' functions except providing access to those documents. Based on feedback from public entities, using an e-procurement portal has enhanced the efficiency and transparency of procurement processes and has saved a lot of administrative time. However, these facts cannot be established as no data supports the claims.</p>
<p>Gap analysis The system does not capture data for the entire procurement process and only captures unstructured documents as PDFs, so analyzing trends, levels of participation, efficiency, economy of procurement, and compliance with requirements is not easy.</p>
<p>Recommendations An E-procurement system should incorporate a data-driven principle at all stages of the procurement transactions and allow comprehensive data analytics to analyze trends, levels of participation, efficiency, and procurement economy and compliance with requirements.</p>
<p>Assessment criterion 7(c)(c): The reliability of the information is high (verified by audits).</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The adequacy of the data entered in the e-procurement system is the responsibility of the public entities. As such, data reliability can be ensured only through audits conducted at the PE level. No third-party audit of the e-procurement system has been conducted so far, and no systemic performance evaluation has been established.</p>
<p>Gap analysis No third-party system audit is performed so far to ensure the reliability of data.</p>
<p>Recommendations A third party system audit should be conducted to ensure the data security, functional adequacy and compliance with the Public Procurement Act and e-GP guidelines. The assessment should be carried out every time major changes are made in the system to ensure new vulnerabilities are not introduced.</p>
<p>Assessment criterion 7(c)(d): Analysis of information is routinely carried out, published and fed back into the system. *</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>

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Qualitative analysis

The e-GP system does not capture data, and so far, no reports have been published based on analyzing the information from the e-procurement system. However, the e-procurement portal publishes just a summary list of the Activities of the specific month of the year, i.e. number of published bid advertisements, bid opening report, bidding documents, executive summary of evaluation report, Notice of award, Notice of Cancellation, and Notice of Selection of Award.

Additionally, the e-procurement portal provides a web form to capture feedback in the form of complaints, feedback, questions, suggestions, and ways forward. The portal also captures the questions from the users, and the most frequently asked questions are published under the FAQ section of the portal.

Quantitative analysis

// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):

• total number and value of contracts

Refer also Indicator 7 (a) which is based on 171 reports out of possible 521 Reports from Public Entities

Value of Procurement per Procurement Method Utilized:

- Open International Bidding (OIB): N\$886,123,628 (36%)
- Direct Procurement (DP): N\$543,023,925.90 (22%)
- Open National Bidding (ONB): N\$472,016,661.50 (19%)
- Request for Quotation (RFQ): N\$272,716,141.80 (11%)

Other methods each account for under 5% of the value of procurements conducted.

• public procurement as a share of government expenditure and as share of GDP

No data available due to limited submissions by entities

• total value of contracts awarded through competitive methods in the most recent fiscal year.

To calculate the total value of contracts awarded through competitive methods in fiscal year 2022/23, we need to sum up the values associated with Request for Quotation (RFQ), Open National Bidding (ONB), and Open International Bidding (OIB).

Given:

1. Request for Quotation (RFQ): N\$272,716,141.80
2. Open National Bidding (ONB): N\$472,016,661.50
3. Open International Bidding (OIB): N\$886,123,628

Calculated Value (based on limited submission)

Total value of contracts awarded through competitive methods = Value of RFQ + Value of ONB + Value of OIB

Total value of contracts awarded through competitive methods=N\$272,716,141.80+N\$472,016,661.50+N\$886,123,628

Total value of contracts awarded through competitive methods=N\$1,630,856,431.30

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So, the total value of contracts awarded through competitive methods in fiscal year 2022/23 is approximately N\$1,630,856,431.30.

Gap analysis

The e-Procurement portal does not support any open data standards and does not publish the information in any machine-readable format to allow analysis of the information for different stakeholders.

Recommendations

The e-procurement portal should capture the data from the different transactions and follow the Open Contracting Data Standards to publish the machine-readable data and other ad-hoc reports on the portal to address the requirements of the wide range of stakeholders.

Indicator 8. The public procurement system has a strong capacity to develop and improve

Sub-indicator 8(a)

Training, advice and assistance

There are systems in place that provide for:

Assessment criterion 8(a)(a):

Substantive permanent training programmes of suitable quality and content for the needs of the system.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The Assessment Team in its initial mission in Sep 2023 and subsequently in November 2023, discussed with PPU for their input on strategies in place to develop capacity of procurement staff and other key stakeholders, to confirm if procurement is recognized as a profession in Namibia's public service and if there are systems in place to improve the public procurement system. Discussions were further held with the Consortium consisting of the University of Namibia (UNAM), Namibia University of Science and Technology (NUST) and Namibia Institute of Public Administration and Management (NIPAM) in pre-validation meeting in April 2024 to seek their input.

Based on discussions held with PPU and the Consortium in these meetings and their input, the situation on existing and proposed training courses are as under:

- (a) To establish a systematic and formal training and academic pathway in procurement, a cooperation agreement was signed in 2021, between the Ministry of Finance and Public Enterprises and the Consortium.
- (b) Three (3) study programmes were on offer since 2021/22. This is part of the bigger scheme to professionalize and develop a career path for procurement practitioners and procurement cadres in Namibia. It also served to kick start a sustainable solution to the challenges of procurement capacity within the system. Through the consortium, academic institutions under the agreement committed to develop and provide short courses and three accredited academic programs in the field of public procurement.
- (c) The Consortium developed five (5) comprehensive short courses and three academic qualifications in public procurement in 2021. The short courses include: (i) Introduction to Public Procurement Management and Practices, (ii) Public Procurement Process, (iii) Preparation of Bid Documents, (iv) Bid Evaluation, and (v) Public Procurement Contract Management.

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- (d) The three academic qualifications offered by NUST as part of the capacity building initiatives of the Ministry of Finance and Public Enterprise; include: (i) a Certificate in Procurement Management, NQF level 4 (ii) a Bachelor of Procurement and Supply Chain Management, NQF level 7, and (iii) Post Graduate Diploma in Procurement, NQF level 8;
- (e) The Certificate in Procurement Management (NQF Level 4) includes specialized courses such as: Introduction to Procurement Management, Public Procurement and Good Governance, Procurement Contract Management, Procurement Stakeholder Management and it is a 6-months programme;
- (f) The Bachelor of Procurement and Supply Chain management (NQF Level 7) mostly have students coming from Secondary Institutions but working students who wants to upskill themselves and subsequently do a higher-level qualification are also admitted to this programme. Students who complete the Bachelor of Procurement and Supply Chain Management will ordinarily be able to pursue further studies in Procurement and Supply Chain Management, or a related cognate area of learning, at NQF Level 8.
- (g) For the Postgraduate Diploma in Procurement Management (NQF Level 8), 95% of students are working professionals (with minimum 3 years of working experience, as a requirement for the entry to the course) and a Bachelor's degree in any discipline or an equivalent qualification at NQF Level 7 from a recognised institution, worth at least NQF 360 credits. Courses offered in this programme are Procurement and Good Governance, Global Supply Chain Diligence, Advance Contract Management, Financial Techniques for Supply Chain Management, Procurement Audits, Strategic Procurement Management, Leadership and Project Management and E-procurement;
- (h) Following the development of the short courses and three academic qualifications mentioned above, the Ministry of Finance issued a directive to all Accounting Officers to pay for studies towards the Post Graduate Diploma for their staff;
- (i) The short courses and three academic qualifications are open for both public and private sectors. During 2021/22, the Consortium conducted sixteen (16) training sessions for short courses that were attended by four hundred and four (404) staff members;
- (j) The enrolment for the first intakes into the three academic qualifications at NUST as presented by the Consortium was as follows: (i) Certificate in Procurement: 6 students. (ii) Bachelor's Degree in Procurement & Supply Chain: 283 students. (iii) Post Graduate Diploma in Procurement: 247 students;
- (k) The Policy Unit conducted regular trainings for public entities, as follows: (i) 2020/21 - 32 trainings, benefitting 1373 people (ii) 2021/22 – 01 trainings, benefitting 867 people; and (iii) 2022/23 – 49 trainings, benefitting 1029 people
- (l) MoU (from 2021) with NUST-NIPAM-UNAM Consortium allows for unaccredited short courses and accredited qualifications. The short courses are planned to be updated in 2024 based on the results from compliance audits conducted by the Policy Unit, Legal Advises, Directives and any other changes approved by the Policy Unit.
- (m) The accredited courses are planned to invite PPU as guest speakers/lecturers. New accredited programs such as Masters and Doctorate Degree planned in medium term. Outcome of qualifications and planned in long term to coincide and provide automatic exam entrance for CIPS exams. However, the Consortium is yet to establish a robust evaluation system for both short

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courses and academic qualifications. The results of the evaluation will form part of its quarterly reports to the Policy Unit.

- (n) The Policy Unit conducted regular trainings for public entities, as follows: (i) 2020/21 - 32 trainings, benefitting 1373 people (ii) 2021/22 – 01 trainings, benefitting 867 people; and (iii) 2022/23 – 49 trainings, benefitting 1029 people.
- (o) The details of training conducted by PPU during the financial year 2022/23, for staff members and bidders is as per table below.

Type of Training	Number of Trainings	Number of Attendees
Induction Training	8	158
Code of good practice of preference	4	99
E-GP Training	25	406
Bidders Training	3	69
Comprehensive Training	5	219
Amendment to the PPA, 2015	4	78
Total	49	1,029

Gap analysis

The above training which are good initiatives are constrained severely due to staff shortage and attrition of senior level staff in PPU (including PPU Head and Project Coordinator of MAPS) which is critical for training a retaining a procurement workforce of about 2,000 officials of which 75% in part time role, and not trained fully to discharge their responsibilities.

This gap is considered “Red flag” as situation is beyond the control of PPU and accounting officer of public entities and requires human and financial resources and intervention from the highest level of the government, also due to staff attrition in PPU.

Recommendations

MoFPE to intervene to prevent attrition of staff in PPU (including Head of PPU and other senior officials). Provide additional human and financial resources to train procurement workforce in the public entities, in private sector, and for CSOs.

Assessment criterion 8(a)(b):

Routine evaluation and periodic adjustment of training programmes based on feedback and need.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

As per input given by PPU:

- (i) MoU (from 2021) with NUST-NIPAM-UNAM Consortium allows for unaccredited short courses and accredited qualifications. The short courses are planned to be updated in 2024 based on the results from compliance audits conducted by the Policy Unit, Legal Advises, Directives and any other changes approved by the Policy Unit.

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- (ii) The accredited courses are planned to invite PPU as guest speakers/lecturers. New accredited programs such as Masters and Doctorate Degree planned in medium term. Outcome of qualifications and planned in long term to coincide and provide automatic exam entrance for CIPS exams. However, the Consortium is yet to establish a robust evaluation system for both short courses and academic qualifications. The results of the evaluation will form part of its quarterly reports to the Policy Unit.

As per draft Annual Report 2022-23 of PPU, with support from AfDB the PPU have started with the support from a consultant to develop educational material such as study guides and templates as well capacity development of PPU staff members to cover: Study Guide & Presentations on (a) Internal structures (PC, PMU, BEC) (b) Governance Structures (Review Panel, CPBN, PPU); (b) Bidding Methods (c) Bidding Process (d) Examination and Evaluation of Bids (e) bidding Documents; (f) Contract Management; and Trainers Guide for trainers on the topics.

Gap analysis

Consortium is yet to establish a robust evaluation system for both short courses and academic qualifications. PPU capacity to train is limited by staff shortage and untrained procurement work force is a huge risk to effectiveness and efficiency of the procurement system.

This gap is considered “Red flag” as situation is beyond the control of PPU and accounting officer of public entities and requires human and financial resources and intervention from the highest level of the government, also due to staff attrition in PPU.

Recommendations

As part of routine evaluation, and as stated at 8(a)(a), MoFPE to intervene to prevent attrition of staff in PPU (including Head of PPU and other senior officials) and provide additional human and financial resources to train procurement workforce both in the public entities, in private sector, and for CSOs.

Assessment criterion 8(a)(c):

Advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

S. 7 (d) of PPA 2015, lists one of the functions of PPU as to advise public entities on all public procurement policies, principles and practices.

As indicated at sub-indicator 5 (d) under Conflict of Interest, this advice function is too broad and creates a potential for PPU to get drawn into decision making on a procurement case. This section does not mention suppliers, though as per s.7 (f), PPU is required to prepare and conduct training programs and approve training curriculum on public procurement as proposed by training institutions for staff members, contractors and suppliers concerning procurement.

Instruction Note issued on 01 March 2022 on Procedure for Requesting Advice from Public Procurement Unit, has brought instances advice is being sought on phone and public entities when found non-compliant, they allege that they acted on the advice of PPU. It has led to investigation by Anti-Corruption Commission. This Note has prepared a protocol for seeking advice in writing/through e-mail or hand delivery, instructing public entities to keeping a record of advice.

Gap analysis

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Though help desk available for questions on E-GP and Internal Structures, there is need for clarity that advice should not be sought by the Accounting Officers/procurement committee at bid evaluation stage and involve PPU on procurement transaction.

Recommendations

Need for clarity on the role of PPU that it is a policy unit and Accounting Officer and public entities are accountable and responsible for full compliance of the Act as per s.25 of PPA and PPU should not be drawn into decision making on a procurement transaction. Any advice to be given prior to bid opening and compliance to be checked as post contract audit. Regulation 11 on seeking technical advice from the Policy Unit by the procurement committee through the office of Accounting Officers to be reviewed by PPU accordingly.

Assessment criterion 8(a)(d):

A strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.

Conclusion: No gap

Red flag: No

Qualitative analysis

At national level, Namibia's Vision 2030 identifies "Institutional Capacity for Development" which entails human capacity development as a means to achieving development goals.

Harambee Prosperity Plan II - In order to achieve the goal: Strengthening the Anti-Corruption Mechanisms - One of the activities under the HPPII is: - Strengthen institutional capacity of public procurement agencies (expertise and increased oversight).

The Ministry of Finance and Public Enterprises Strategic Plan has a strategic objective to "Enhance efficiency of the Public Procurement system and compliance to the Public Procurement Act "which provides strategic direction regarding capacity building in public procurement through PPU and partnership, for example, the cooperation agreement with the Consortium consisting of UNAM, NUST and NIPAM. These training offerings are open for all key actors involved in public procurement, for example, public officials, bidders / business community, governance structures (boards and council members for Regional and Local Authorities).

Gap analysis

Recommendations

Sub-indicator 8(b)

Recognition of procurement as a profession

The country's public service recognises procurement as a profession:

Assessment criterion 8(b)(a):

Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Procurement is not yet recognized as a profession in Namibia akin to other profession like Accountancy and Legal. In fact, there is a need to clearly define the procurement process in the Act itself as a "strategic function"

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to cover all activities from the time need is identified till need is satisfied, to be managed by “qualified” procurement professionals, as a mandatory requirement under the Act.

More precisely, based on definition adopted by MDBs³³ the procurement process is defined as “The process that starts with the identification of a need and continues through planning, preparation of specifications/requirements, budget considerations, selection, contract award, and contract management. It ends on the last day of the warranty period”. This also requires as a first step in any project, to prepare a project-level strategy document by the project authorities, that includes that includes market research and analysis and describes how procurement support the development objectives of the project and deliver VfM.

The above concept of the role of a procurement professional to manage the entire procurement process and raise the profile from a routine administrative/compliance function to strategic function so far is just an intention by GRN. The focus of the Act and Regulation currently is on the administrative part of the bidding process, and not on procurement strategy/needs assessment/market analysis and research and, after end of bidding process on managing a contract for effective service delivery.

s.3 of PPA 2015, under Application of the Act covers, covers: (a) all procurement of goods, works and services and disposal of assets undertaken by the Board or a public entity; (b) the letting and hiring of anything or the acquisition or granting of any right; and (c) contract management of goods, works and services procured or disposed of by the Board or a public entity.

As per s.8 of PPA 2015, for contracts exceeding the defined threshold CBPN in addition to conducting bidding process, is required under s. 8(c) “to direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board”.

However, related to contract management, at Part 8 of PPA 2015, apart from describing contents of procurement contract, it has a provision on termination of contract due to changed circumstances, but no further details are given either in the Act or in Regulation as to how a contract is to be managed and implemented.

It is not mandatory to be professionally qualified or trained to discharge host of functions under the Act that requires procurement knowledge and expertise.

To start with, for the Accounting Officer (s. 25 of PPA 2015), the given section requires Accounting Officer to set up internal organization structure that includes procurement committee, procurement management unit and ad hoc bid evaluation committees for the conduct and management of procurement of the public entity and Accounting Officer is accountable for the full compliance with this Act and directives and instructions made under this Act. There is no requirement for Accounting Officer to be professionally qualified or trained in procurement function to supervise this task effectively.

Related to ad-hoc Bid Evaluation Committee, S.26 (6) of PPA 2015, “the members of a bid evaluation committee must possess skills, knowledge and experience relevant to the procurement requirements which may include— (a) technical skills; (b) procurement and contracting skills; (c) knowledge in financial management and analytical skills; or (d) legal knowledge and expertise”.

These are general requirements without any need for a professional certification from a recognized body/institution.

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<https://projects.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#regulations> (World Bank Procurement Regulation September 2023)

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As per Regulation 11 on constitution of Procurement Committee, the Accounting Officer is required to constitute a procurement committee after consultation with the Policy Unit. Regulation 11, 5 (b) and 11 (7) requires the member of procurement committee “with regards to his or her - (i) experience or technical and professional competence; (ii) procurement skills and knowledge required for the performance of the functions of the procurement committee; and (iii) proven integrity and sound decision-making abilities. (7) In appointing the members of a procurement committee or alternate members, an accounting officer must seek to establish a balance of skills and experience among the members and their alternates in order to ensure that the procurement committee - (a) has an appropriate level of seniority and experience in decision-making; (b) includes persons with knowledge and experience in public procurement and other relevant professional disciplines; and (c) includes persons with knowledge and experience of the operations of a public entity

All the above requirements do not mandate a certification or professional qualification from a recognized body/institution.

Based on feedback from PPU, different Public Entities have their own requirement when recruiting with some recognizing Professional Qualifications in their requirements and it is not mandatory to be trained for working in public procurement but encouraged.

Based on input from PPU, CIPS, UK recently opened a branch in Namibia. PPU is expected to collaborate with CIPS to work towards a professional body in the long term and PPU aims to have it form part of the National Public Procurement Strategy. However, such efforts need to be adapted to Namibia public procurement System.

Akin to Accountancy profession (clerkship), internship in CPBN /PPU/ Procuring Entities may be of practical use combined with educational institution training the procurement professionals with practical case studies relevant for situation in Namibia, including on contracts management.

GRN/MoFPE/PPU may benefit from practices on professional certification in the neighboring countries³⁴. Zambia is one example, whereas per Section 25 of PPA 2020, under the function of procuring entities, it is stated that Procurement and stores management shall be carried out by a person who is a member of the Zambia Institute of Purchasing and Supply.

It is seen from draft Annual Report 2022/23 that PPU is already collaborating with The African Public Procurement Network on knowledge exchange and capacity building.

Gap analysis

It is not mandatory to be professionally qualified. Job Descriptions in the form of ToRs not prepared. Competency framework to be prepared assessment to be conducted ToRs for different positions in Procurement Structures to be finalized and released.

PPU work towards a professional body in the long term to have it form part of the National Public Procurement Strategy. This may require host measures like establishing a regulatory body, need for mandatory certification. Initiative to be undertaken by GRN to have a regulatory body of the purchasing and supply management profession with the following mandate:

³⁴ <http://zips.org.zm/About-ZIPS/Background> The Zambia Institute of Purchasing and Supply (ZIPS) was established by an Act of Parliament No.15 of 2003. referred to, as the Government of the Republic of Zambia principal national policy on Procurement and Supply Management. The Zambia Institute of Purchasing and Supply is now a Regulatory body on Purchasing and Supply Management Profession in Zambia. <http://zips.org.zm/About-ZIPS/Management-Structure>

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- (i) to conduct professional competence examinations & issue practicing certificates to procurement professionals;
- (ii) confer memberships, conduct training and research, publish journals, collaborate with professional institution; and
- (iii) establish and monitor standards for persons employed in purchasing and supply chain management.
- (iv) Universities and training institutions to align their curriculum to include practical case studies to deal with procurement issues in Namibia; and
- (v) Public bodies/ PPU to facilitate “internship” on public procurement / project management to build a cadre of qualified, competent and motivated procurement work force.

The above gaps are considered “Red flag” as these will require inter-institutional efforts legislative initiatives on the part of GRN and beyond the control of PPU.

Recommendations

In sequencing it requires establishment of procurement as a strategic function, create dedicated structures within all public entities to be staffed by qualified procurement professionals, who are hired with a career path (like moving from procurement officer or contract officer to a project manager) and then initiative to be undertaken by GRN to have a regulatory body of the purchasing and supply management profession as per mandate described above.

Assessment criterion 8(b)(b):

Appointments and promotion are competitive and based on qualifications and professional certification.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

There is no system of hiring/appointment based on qualification and professional certification for procurement tasks.

Central government is regulated or guided by the Public Service Act 13 of 1995³⁵ for appointments and promotions. There are probation periods and- the Public Service Staff Rules must be followed as well and other directives issued by the Prime Minister.

State Owned Enterprises follow internal HR policies.

Local Authorities follow their own internal HR Policy guided by the Local Authority Act, 1992 as amended.

The requirements are set in advance in terms of qualifications and years of relevant experience, which are then used when short-listing. Furthermore, there is usually an option for a written test if there still too many candidates to interview. In some cases, a psychometric test is also utilized.

Gap analysis

As at 8(b)(a)

Recommendations

As at 8(b)(a)

Assessment criterion 8(b)(c):

Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.

³⁵ <http://www.lac.org.na/laws/annoSTAT/Public%20Service%20Act%2013%20of%201995.pdf>

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Conclusion: No gap
Red flag: No
Qualitative analysis Gaps are given above at 8(b)(a) and 8(b)(b). For Central Government is it required to follow the Performance Management Policy as developed, under which it is a requirement that all staff members must have a performance agreement as well as quarterly review reports of them. The Public Procurement Act also requires that all staff in the internal procurement structures which include the Procurement Committee, the Procurement Management Unit and Bid Evaluation Committee must sign a Performance Agreement within 30 days of appointment. State Owned Enterprise follow internal HR policies. Annual Trainings plans are developed by Central Government OMA's and most State-Owned Enterprises, which depending on funding is then implemented. For more accurate information, it will have to be sourced from OPM and sample of other entities.
Gap analysis
Recommendations
Sub-indicator 8(c) Monitoring performance to improve the system
Assessment criterion 8(c)(a): The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Based on input from PPU, the envisaged E-procurement system is targeted to incorporate and facilitate a number of performance data and information. In addition, Namibia is set to benefit through a World Bank-led project that will see development of a monitoring and evaluation framework to be used jointly by Botswana, Lesotho and Eswatini which shall then also be customized for each individual nation for use in managing data and information in public procurement. PPU was assisted by World Bank to conduct an E-GP readiness Assessment and develop National Strategy. WB is now assisting to develop user-requirements and through this cooperation and the global expertise of WB, PPU envisions the best and most appropriate data and reporting requirements to be met. Currently PPU has a "Compliance Audit Framework", "Capacity Assessment Framework", "Investigation Manual", Annual Report Format, Annual Procurement Plans and Quarterly Progress Report templates. The PPU does not have a comprehensive performance measurement system covering of both qualitative and quantitative aspects. This is much more owing to a lack of a comprehensive E-GP system to facilitate gathering of such data effortlessly (automatically), through execution of procurement by the public entities. Instead, all

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information gathered is obtained through deliberate requests to public entities to submit such information. This has tended to be a challenge as the response by public entities has rather been far and between. This has affected availability of performance data throughout, including performance on the implementation of preferential procurement and effect of public procurement to achievement of socio- economic objectives of Government.

To support this endeavor, the WB is also supporting the PPU to develop a National M&E Framework for Public Procurement which would help to guide the information and reporting needs of the E-GP system.

Currently PPU has a “Compliance Audit Framework”, “Capacity Assessment Framework”, “Investigation Manual”, Annual Report Format, Annual Procurement Plans and Quarterly Progress Report templates.

Gap analysis

Lack of National M&E Framework for Public Procurement which would help to guide the information and reporting needs of the E-GP system.

Recommendations

Supporting the PPU to develop a National M&E Framework for Public Procurement which would help guide the information and reporting needs of the future E-GP system. (already in progress)

Assessment criterion 8(c)(b):

The information is used to support strategic policy making on procurement.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The information obtained via the existing monitoring and performance measurement system albeit minimal is quite important for decision-making and policy making. The PPU generates and on the basis of insights from the APPs, quarterly reports and compliance audits amongst others is better supported in strategy and policy formulation aimed to improve public procurement overall.

PPU also has an annual report and various quarterly reports. Policy decision making is also informed by feedback from trainings, stakeholder meetings and workshops, exemptions requests and procurement advice requested and provided.

Policy intervention is also guided by the requirements of the Act which indicates certain matters to be prescribed in regulations, some of which are outstanding.

Other policy interventions come from guidance or requests from the Office of the President in terms of overall National planning and priorities, cabinet and parliament.

Gap analysis

Refer to 8(c)(a)

Recommendations

To follow after removing gaps at 8(c)(a). This could include establishing a team within PPU for data analytics, also based on national M&E Framework.

Assessment criterion 8(c)(c):

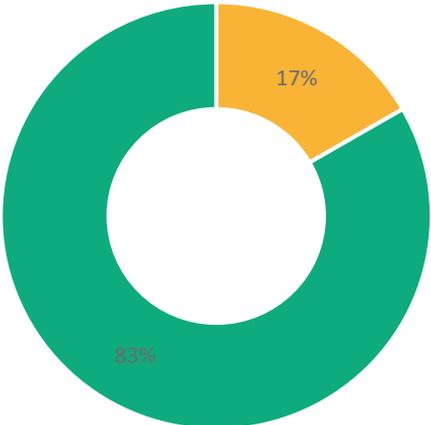
Strategic plans, including results frameworks, are in place and used to improve the system.

Pillar II. Institutional Framework and Management Capacity

Conclusion: Substantive gap
Red flag: No
Qualitative analysis As a Department within the Ministry of Finance and Public Enterprises, the PPU's strategic activities features under the Ministerial Strategic Plan, along with the strategic activities of other departments within the Ministry. PPU also submits an Annual Plan for approval and used for quarterly progress reporting. PPU intends to develop a National Public Procurement Strategy after the MAPS assessment.
Gap analysis Strategic plans, including results frameworks not in place.
Recommendations PPU to develop a National M&E Framework for Public Procurement which would help guide the information and reporting needs of the future e-GP system. The work is in progress with the support of the World Bank.
Assessment criterion 8(c)(d): Responsibilities are clearly defined.
Conclusion: Minor gap
Red flag: No
Qualitative analysis Section 6 of the Public Procurement Act, 2015 establishes the Procurement Policy Unit, including outlining its mandate. Furthermore, section 7 outlines various specific functions of the PPU. Observations to highlight are that PPU reports to the Accounting Officer of the Ministry of Finance and Public Enterprises in terms of administration and to the Minister in terms of Policy and in an advisory role.
Gap analysis Overlap in roles for: (i) Auditing (PPU now engaging with Government Internal Audit unit so that Central Government internal audit teams conduct an Annual Compliance audit. PPU to train, assist in initial stages and be part of reporting and quality assurance aspect. Further cooperation is also expected with the Auditor General's Office) (ii) Training Standard approval. This is a role of the Namibia Qualifications Authority and Namibia Training Authority and PPU still has to engage with them to determine the cooperation model on this matter.
Recommendations PPU to train, assist in initial stages and be part of reporting and quality assurance aspect. Further cooperation is also expected with the Auditor General's Office. To be resolved through suitable MOUs between PPU, OAG, Internal Audit and training bodies.

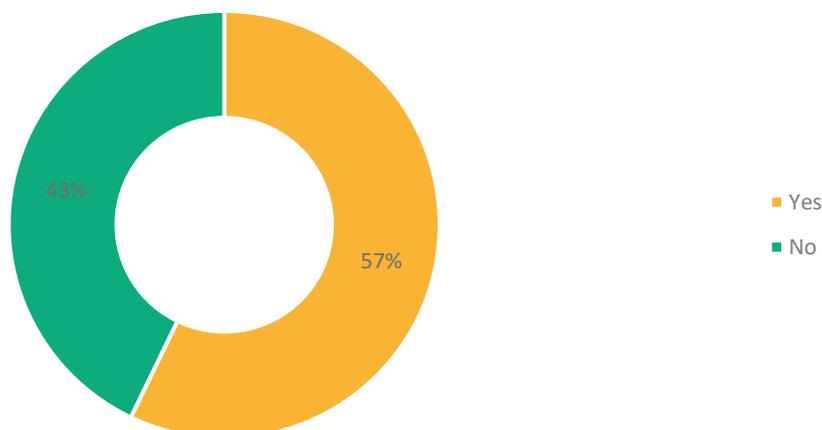
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Indicator 9. Public procurement practices achieve stated objectives

Sub-indicator 9(a) Planning						
Assessment criterion 9(a)(a): Needs analysis and market research guide a proactive identification of optimal procurement strategies.						
Conclusion: Substantive gap						
Red flag: No						
Qualitative analysis Needs analysis is carried out with the preparation of the annual procurement plan, which is seen as an ineffective instrument that creates barriers, since the timings for its preparation are out of step (3 months before the budget is approved). The analysis also revealed that there is no widespread practice of carrying out market research, which can be justified for different reasons. While some procuring entities argue that they do some comparative studies, others claim that they don't consult the market due to a lack of instruments, such as guidelines, or for fear of not being able to accept proposals from possible participants in the market studies. The results of the Private Sector Survey reinforce the above conclusions, as only 17 per cent of respondents confirm the existence of market studies. Of these, 57% consider market studies to be effective and rigorous, which contrasts with only 29% who consider that market studies are not used to "steer" specifications in a certain direction.						
<p>In your opinion, do Public Entities conduct market studies before starting a procurement?</p>  <table border="1"><thead><tr><th>Response</th><th>Percentage</th></tr></thead><tbody><tr><td>Yes</td><td>17%</td></tr><tr><td>No</td><td>83%</td></tr></tbody></table>	Response	Percentage	Yes	17%	No	83%
Response	Percentage					
Yes	17%					
No	83%					
Source: Private Sector Survey						

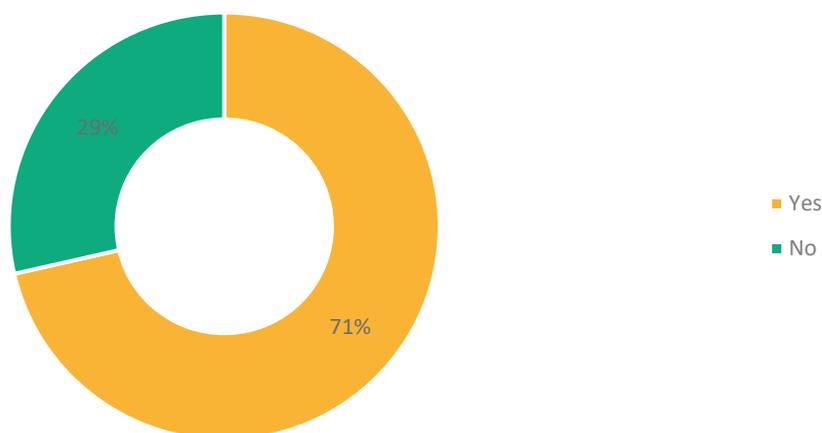
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In your opinion, are these market studies rigorous and effective?



Source: Private Sector Survey

From your perspective, are these market studies used to 'steer' specifications in a particular direction?



Source: Private Sector Survey

Gap analysis

Both the procuring entities consulted and 83 per cent of the private sector representatives who took part in the Private Sector Survey confirm that there is no practice of carrying out market studies.

Furthermore, of the remaining 17%, 43% consider that market research is neither effective nor rigorous and 71% even consider that market studies are used to "steer" specifications in a certain direction.

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Recommendations

Needs analysis and procurement planning should be seen by Procuring Entities as an instrument for operationalizing their procurement strategy. The PPU should develop guidelines or other equivalent instruments to enable Procuring Entities to conduct market studies. An attempt should be made to align the timelines of the Annual Procurement Plan and the Budget so that the former is an effective exercise.

Assessment criterion 9(a)(b):

The requirements and desired outcomes of contracts are clearly defined.

Conclusion: Minor gap

Red flag: No

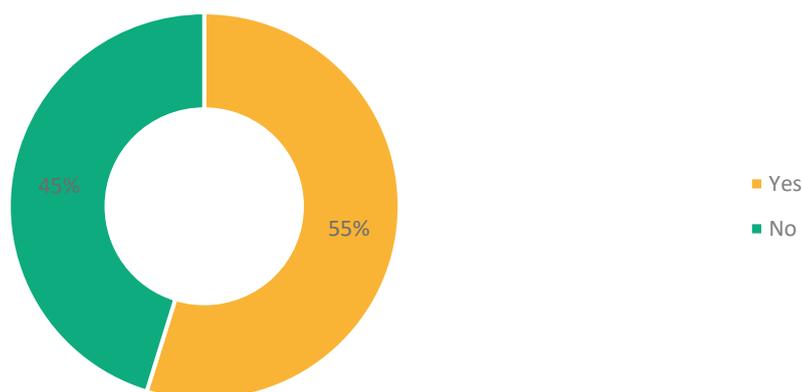
Qualitative analysis

The assessment revealed that, in most cases, the requirements and desired outcomes of contracts are clearly defined. This is confirmed by 55% of the respondents to the Private Sector Survey. This percentage rises to 68% when only respondents able to supply goods are considered and to 79% when only respondents able to supply works are considered.

Gap analysis

45% of the respondents to the Private Sector Survey consider that the requirements and objectives of the contract to be awarded are not well defined in the bidding documents. This percentage rises to 50% when only respondents able to supply non-consultancy services are considered and to 51% when only respondents able to supply consultancy services are considered.

In your opinion, are the requirements and objectives of the contract to be awarded well defined in the bidding documents?



Source: Private Sector Survey

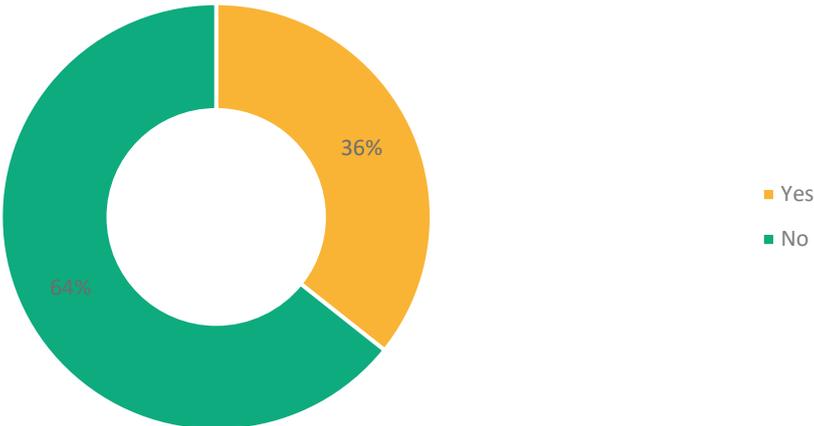
Recommendations

Efforts must be made to ensure that the requirements and desired outcomes are clearly presented in all tender documents.

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Assessment criterion 9(a)(c): Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.								
Conclusion: Minor gap								
Red flag: No								
Qualitative analysis The utilization of preferences was detected in some sample cases. The use of these preferences constitutes the use of sustainability criteria in the sense that they value proposals that respect certain economic issues (protection of the national business community) and social issues (e.g. protection of "Previously Disadvantaged Namibians"). No environmental protection criteria were found.								
Gap analysis Environmental concerns are not usually considered.								
Recommendations Following the development of a SPP strategy, the implementation of Green Public Procurement guidelines should be considered, and its execution monitored to ensure alignment with other priorities.								
Sub-indicator 9(b) Selection and contracting								
Assessment criterion 9(b)(a): Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.								
Conclusion: No gap								
Red flag: No								
Qualitative analysis The use of multi-stage procedures was detected. This is reinforced by the responses to the private sector survey, where 64% of the respondents claim to have participated in such bidding processes.								
<p>Has your company/organization experienced or participated in a two-stage bidding process (prequalification plus bidding)?</p> <table border="1"><thead><tr><th>Response</th><th>Percentage</th></tr></thead><tbody><tr><td>Never</td><td>36%</td></tr><tr><td>Sometimes</td><td>44%</td></tr><tr><td>Frequently</td><td>20%</td></tr></tbody></table>	Response	Percentage	Never	36%	Sometimes	44%	Frequently	20%
Response	Percentage							
Never	36%							
Sometimes	44%							
Frequently	20%							
Source: <i>Private Sector Survey</i>								
Gap analysis								

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Recommendations						
Assessment criterion 9(b)(b): Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.						
Conclusion: Minor gap						
Red flag: No						
Qualitative analysis The use of Standard Bidding Documents was identified as a recurring practice. However, only 36% of the respondents to the Private Sector Survey consider the bidding documents clear and easy to interpret. This percentage rises to 42% when only respondents able to supply goods are considered and to 54% when only respondents able to supply works are considered.						
<p>In your opinion, are the bidding documents clear and easy to interpret?</p>  <table border="1"><thead><tr><th>Response</th><th>Percentage</th></tr></thead><tbody><tr><td>Yes</td><td>36%</td></tr><tr><td>No</td><td>64%</td></tr></tbody></table>	Response	Percentage	Yes	36%	No	64%
Response	Percentage					
Yes	36%					
No	64%					
Source: <i>Private Sector Survey</i>						
Gap analysis 64% of the respondents to the Private Sector Survey consider that the bidding documents are not clear and easy to interpret.						
Recommendations The reasons behind the negative responses to the Private Sector Survey should be studied further.						
Assessment criterion 9(b)(c): Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.						
Conclusion: Minor gap						
Red flag: No						

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Qualitative analysis

Procurement methods are chosen, documented and justified in accordance with the purpose. However, few cases were identified in which the merit of the justification for adopting Single/Sole source procurement is questionable.

Gap analysis

A few cases were identified in which the merit of the justification for adopting Single/Sole source procurement is questionable.

Recommendations

The choice of competitive methods should be favored whenever possible.

Assessment criterion 9(b)(d):

Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.

Conclusion: No gap

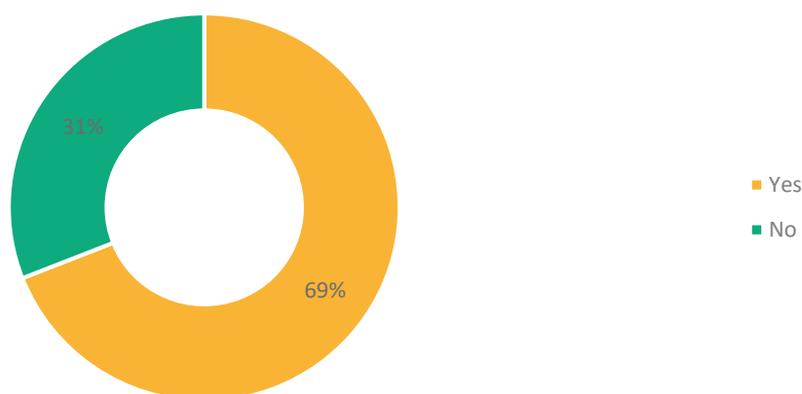
Red flag: No

Qualitative analysis

Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. Bidders or their representatives are allowed to attend bid openings.

Refer to Indicator 11 for additional context on the participation of the Civil Society.

Are the procedures for bid submission, receiving and opening clearly described in the tender documents and are they adhered to?



Source: Private Sector Survey

Gap analysis

Recommendations

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Assessment criterion 9(b)(e): Throughout the bid evaluation and award process, confidentiality is ensured.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis Generally, confidentiality is ensured during submission, evaluation and award. For paper submissions there are Bid Boxes with limited capacity. These boxes are locked and in places where surveillance is ensured and have elements for recording the submission of tenders. When bids are opened, the bid evaluation committee is responsible for transporting the documents to secure facilities where the tenders are evaluated. Confidentiality is ensured by restricting access to the premises where the evaluation process takes place.
Gap analysis In some locations, the size of the bid boxes may not be sufficient to accommodate all the bids, forcing the bid evaluation committee to manipulate their contents during the bidding period. A “Red flag” is assigned because it is considered that the existence of even a single case where confidentiality cannot be ensured, can significantly impede achieving the objectives sought through public procurement.
Recommendations The submission of tenders without being able to ensure that they are secured until they are opened by the bid evaluation committee should be banned. Alternatively, the use of an e-Government Procurement solution that ensures confidentiality should be promoted.
Assessment criterion 9(b)(f): Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract. A practice of disqualifying bidders on the basis of a relative comparison of all the prices submitted was detected. This practice can favor collusion. The use of discrete scales for scoring the evaluation was identified. 45% of the respondents to the Private Sector Survey consider that appropriate techniques applied to determine the lowest evaluated substantially responsive bid based on the criteria indicated in the tender documents. Disqualification of a bidder because it fell outside of the prescribed envelope (see example below).

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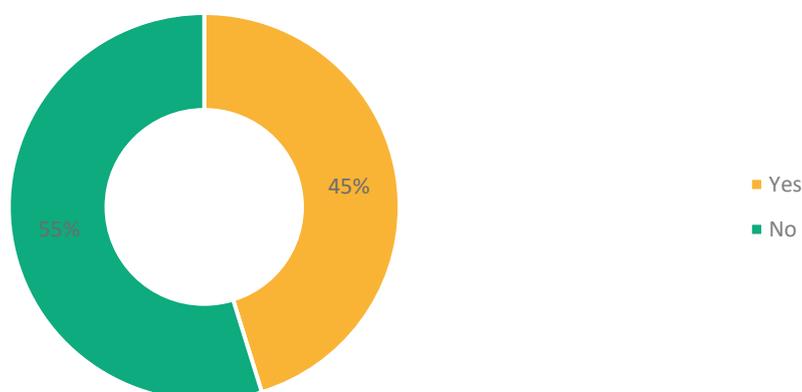
4. That it be noted that after the technical evaluation, the remaining three (3) bids were further subject to the financial evaluation as per the bidding document. For the financial stage, an average rate, plus and minus the standard deviation was applied to identify outliers which will be disqualified from further evaluation. The financial scoring is as follows:

Key Plant and machinery rate - Rates (All-inclusive hourly rate)			
Description	Bidder 1 J Basement Construction Trading cc	Bidder 5 Indigenous Construction cc	Bidder No: 8 John Namusheshe Construction & Investment cc
Track Excavator (equivalent to CAT 225) 114-125	1 200.00	1 290.00	1 903.25
Tipper Truck (7/10 m ³)	600.00	620.00	1 121.25
TLB	720.00	780.00	1 282.25
Low Bed	6 000.00	7 000.00	1 983.75
Total Hourly Rate (All inclusive)	8 520.00	9 690.00	6 290.50
EVALUATION			
Average	8 166.83		
Standard Deviation	1 727.05		
Upper Limit (Average plus Standard Deviation)	9 893.88		
Lower Limit (Average minus Standard Deviation)	6 439.79		

Table 6

Pursuant to the above, Bidder No. 8 was disqualified because it fell outside of the prescribed envelope:

Are appropriate techniques applied to determine the lowest evaluated substantially responsive bid based on the criteria indicated in the tender documents?



Source: Private Sector Survey

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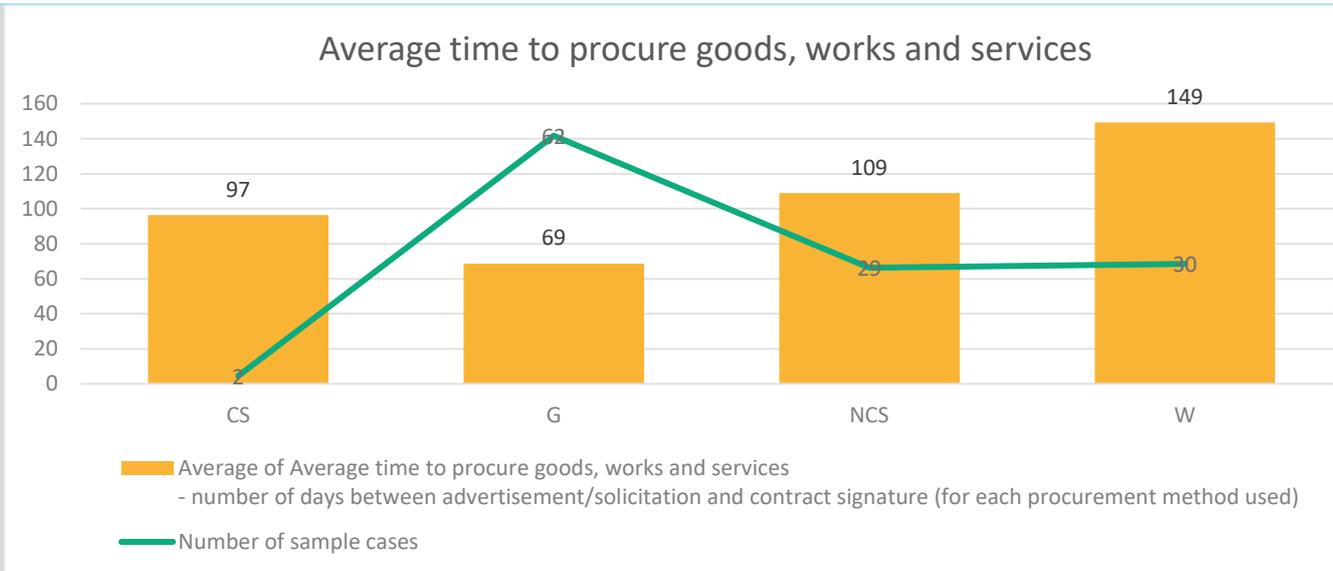
<p>Gap analysis</p> <p>A practice of disqualifying bidders on the basis of a relative comparison of all the prices submitted was detected. This practice can favor collusion.</p> <p>The use of discrete scales for scoring the evaluation was identified.</p> <p>55% of the respondents to the Private Sector Survey consider that appropriate techniques applied to determine the lowest evaluated substantially responsive bid based on the criteria indicated in the tender documents.</p>
<p>Recommendations</p> <p>The use of relative comparison of bid prices and the use of discrete scales should be avoided.</p>
<p>Assessment criterion 9(b)(g):</p> <p>Contract awards are announced as prescribed</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The e-procurement website³⁶ offers a searchable section where some contracts are published, while allowing the visualization of limited historical data (only those published since January 2024). Sections for publishing procurement notices are also available on the individual websites of some procuring entities. The published notices follow the template provided by the regulations.</p>
<p>Gap analysis</p> <p>The information published is limited in time and may not represent all the contracts awarded in a given period. The data is not presented in an open/machine-readable format that allows for easy analysis.</p>
<p>Recommendations</p> <p>The publication of all notices should be centralized to facilitate communication with economic operators and civil society.</p> <p>Open/machine-readable formats should be adopted to allow effective monitoring of information.</p>
<p>Assessment criterion 9(b)(h):</p> <p>Contract clauses include sustainability considerations, where appropriate</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Contracts contain preferences-related clauses.</p>
<p>Gap analysis</p> <p>There are no generic sustainability clauses other than the preferences-related ones.</p>
<p>Recommendations</p>

³⁶ <https://eprocurement.gov.na>

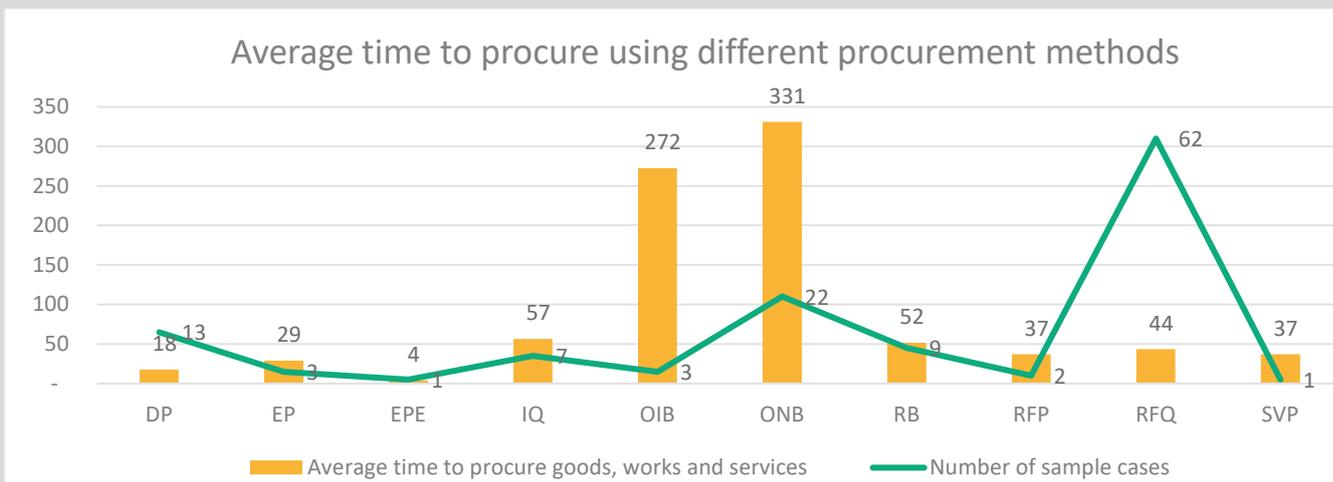
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<p>As recommended in 3(a), SPP requirements embedded in the legal and regulatory framework should be reflected in model procurement documents (SBDs) and contract conditions and in supporting practical guidelines for implementation and related training.</p>
<p>Assessment criterion 9(b)(i): Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Contracts usually include clauses that penalize poor performance. However, no examples were found where good performance is rewarded.</p>
<p>Gap analysis Contract clauses don't provide incentives for exceeding defined performance levels.</p>
<p>Recommendations Positive performance, when agreed expectations are exceeded, should be rewarded.</p> <p>This measure should be accompanied by the implementation of effective systems for monitoring contract execution.</p>
<p>Assessment criterion 9(b)(j): The selection and award process is carried out effectively, efficiently and in a transparent way*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Generally, the selection and award process is carried out effectively, efficiently and in a transparent way, as the prescribed guidelines are followed. This is positive, as it indicates that there are mechanisms in place to ensure fairness and accountability. Despite efforts to adhere to guidelines, deviations do occur from time to time due to emergencies, changes in requirements, or human error. The process is not necessarily accessible to all eligible participants due to interpretation of criteria, lack of resources, unclear criteria, etc., while the entire procurement process is perceived to be difficult to understand and time-consuming. This hinders participation and transparency if participants are not able to comprehend the process. This raises concerns about equity and fairness in the procurement process.</p>
<p>Quantitative analysis</p> <p><i>*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):</i></p> <ul style="list-style-type: none">- average time to procure goods, works and servicesnumber of days between advertisement/solicitation and contract signature (for each procurement method used)

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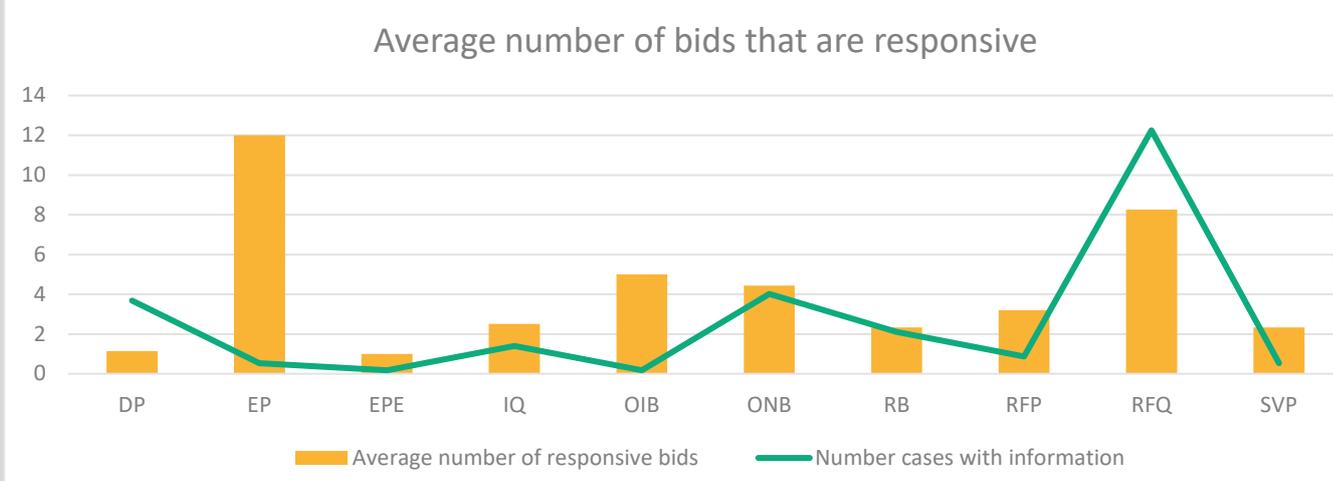


Source: Sample of procurement cases.



Source: Sample of procurement cases.

- average number (and %) of bids that are responsive (for each procurement method used)



Source: Sample of procurement cases.

- share of processes that have been conducted in full compliance with publication requirements (in %)

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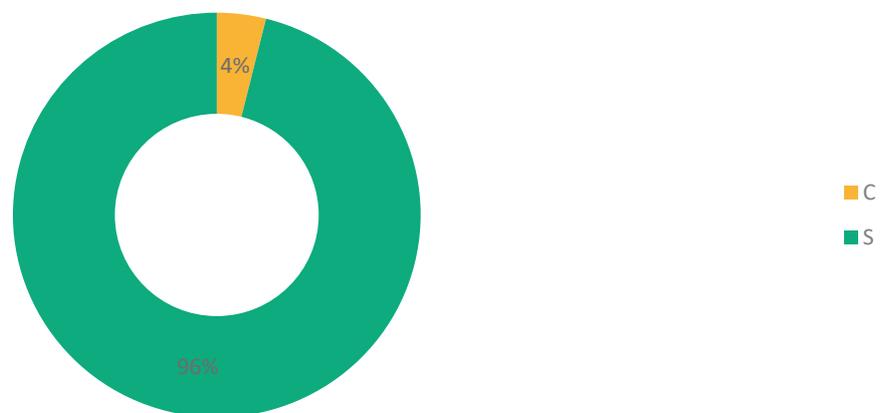
Share of processes conducted in full compliance with publication requirements



Source: Sample of procurement cases.

- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)

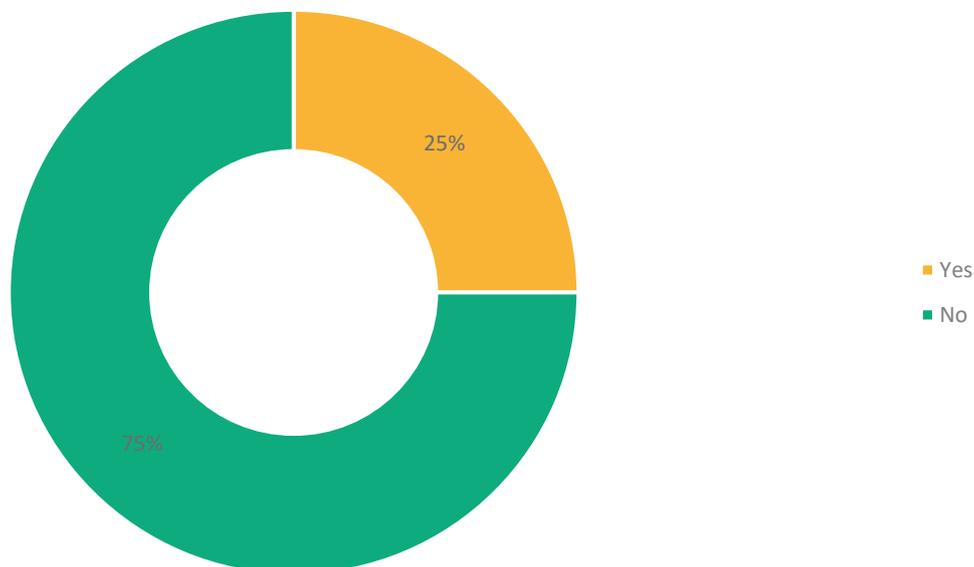
Number of successful processes awarded within defined time frames (S - successfully awarded; F - failed; C - cancelled) (180 sample cases considered)



Source: Sample of procurement cases.

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In your opinion, is sufficient visibility given to the reasoning behind decisions throughout the procurement process?



Source: Private Sector Survey

Gap analysis

A gap is identified in the transparency of the process. In almost 50 per cent of the sample cases, no evidence was found of compliance with publication requirements. In addition, 75 per cent of respondents to the private sector survey consider that they are not given sufficient visibility over decisions throughout the procurement process.

Recommendations

Verification of fulfilment of publication requirements should be intensified. Implementing e-procurement could also promote transparency (for additional context, see Indicator 7).

Sub-indicator 9(c) Contract management

Assessment criterion 9(c)(a):

Contracts are implemented in a timely manner.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Delays in the implementation of contracts/projects is pointed out by the private sector as frequent. The PEs also reveal concerns in this regard. Contract execution is managed by the technical areas, making it difficult for procurement units to monitor.

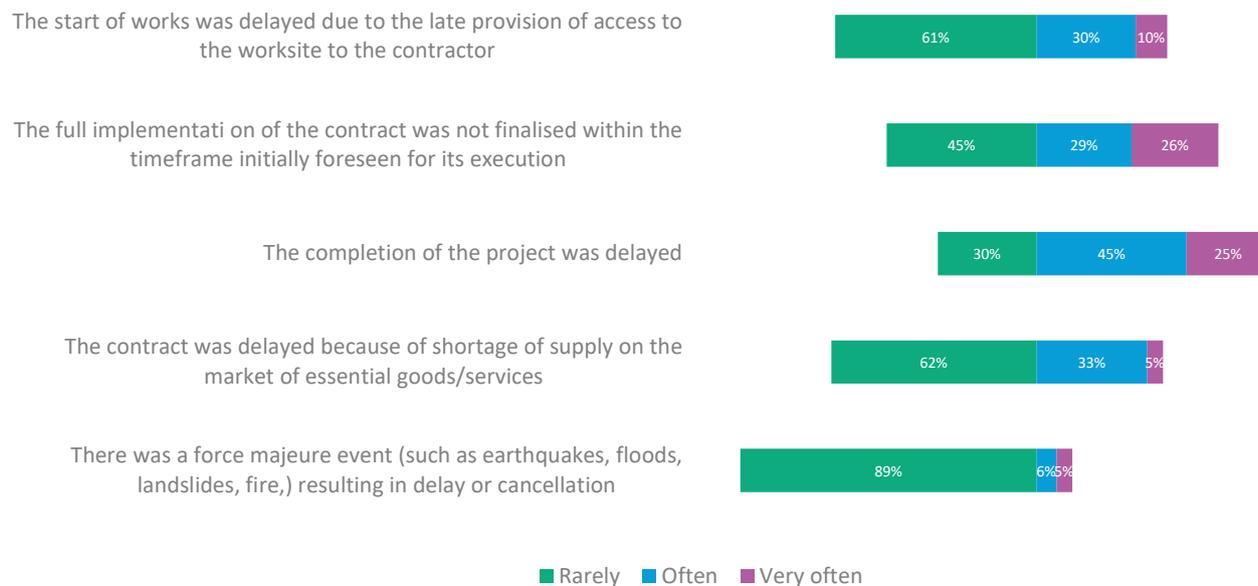
Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days).

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The information provided by the PEs did not allow quantitative indicators to be measured.

How often has your company/organization experienced the situations described below?



Source: Private Sector Survey

Gap analysis

The information provided by the PEs did not allow quantitative indicators to be measured. In only 2 cases were delays of around 20-25% identified.

According to information gathered from the CPBN Portal, which is responsible for the procurement of the most significant projects, it is consistently found that around 10 per cent of the processes show deviations from the planned execution time of between 10 and 25 per cent.

55% of the respondents to the Private Sector Survey claim that have experienced situations in which the completion of the project was delayed.

A “Red flag” is assigned because it is considered that the absence of consistent information of the contract execution phase can significantly impede achieving the objectives sought through public procurement.

Recommendations

Procuring Entities must ensure monitoring and quality control mechanisms during the execution phase of the contracts.

Assessment criterion 9(c)(b):

Inspection, quality control, supervision of work and final acceptance of products is carried out.*

Conclusion: **Substantive gap**

Red flag: No

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Qualitative analysis

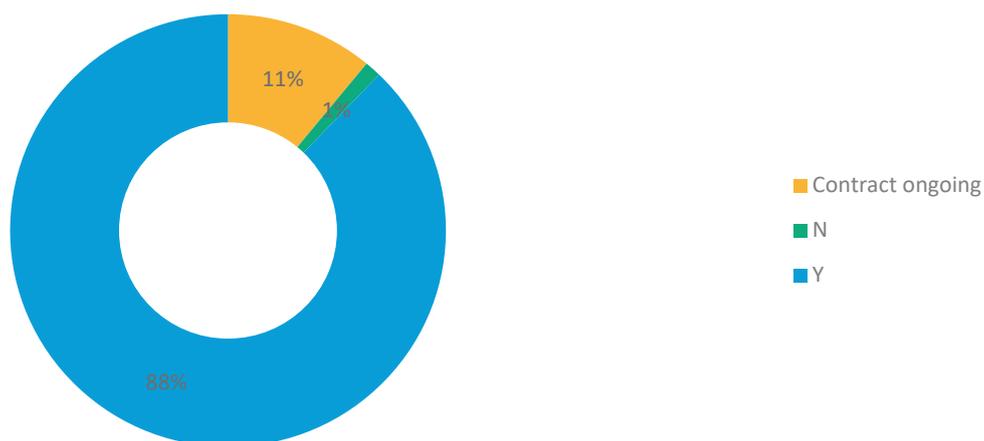
There seems to be no consistent practice of conducting inspection, quality control and final acceptance of products.

It was not possible to collect information on all the sample cases analyzed. In the (82) cases with available information, the practice seems to exist. However, the lack of information in the remaining cases combined with the perception of the private sector (62 per cent of respondents to the Private Sector Survey) inspection, quality control, supervision of work and final acceptance **is not** carried out effectively by public entities indicates that such a practice is not consistent.

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %).

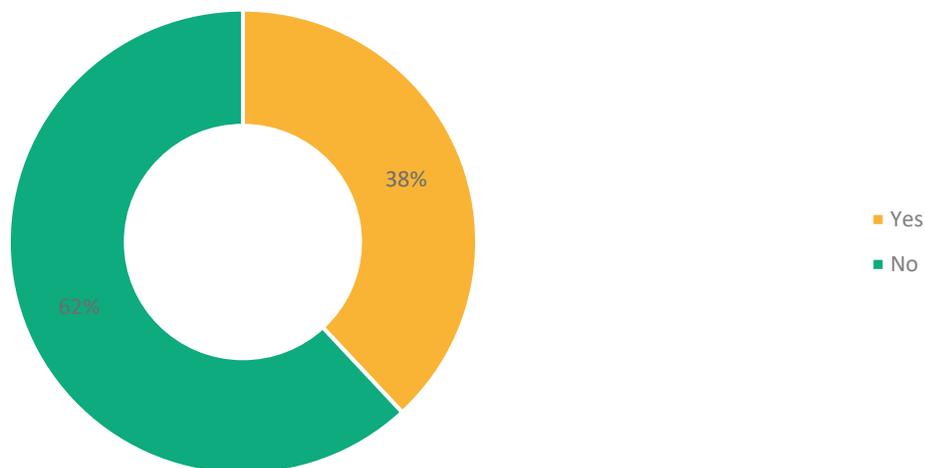
Share of contracts with quality control measures and final acceptance measures carried out as per contract (in 82 sample cases)



Source: Sample of procurement cases.

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In your opinion, are inspection, quality control, supervision of work and final acceptance carried out effectively by public entities?



Source: Private Sector Survey

Gap analysis

It was not possible to collect information that would allow to conclude that there is a consistent practice of conducting inspection, quality control and final acceptance of the products in the sample cases. In addition, 62 per cent of respondents to the Private Sector Survey indicate that this practice is not consistent.

Recommendations

Procuring entities must ensure that inspection, quality control and final acceptance of the products processes are in place. They must also ensure that records are kept in the procurement files.

Assessment criterion 9(c)(c):

Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Concerns about payment conditions were raised by the private sector. A large majority of respondents to the Private Sector Survey, 78 per cent, say they regularly experience delays in paying invoices. In addition, 49 per cent of respondents also raised concerns about the fairness of payment provisions.

In the sample cases analyzed, where it was possible to observe, the agreed payment deadlines are not always met, with a practice of paying invoices at the end of the month in which they are due extending the deadlines ("payment in X days, end of month").

Quantitative analysis

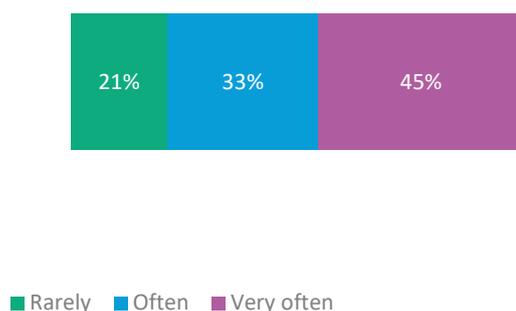
The information provided by the PEs did not allow quantitative indicator to be measured.

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Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).

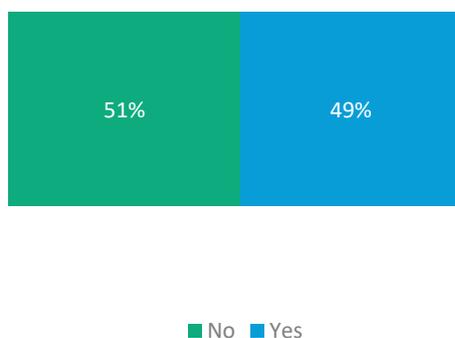
Source: Sample of procurement cases.

How often has your company/organization experienced delayed payment of issued invoices?



Source: Private Sector Survey

Do you think that the payment provisions are fair?



Source: Private Sector Survey

Gap analysis

78 per cent of the respondents to the Private Sector Survey claim has experienced delays in payment of issued invoices. The information provided by the PEs did not allow quantitative indicators to be measured.

Recommendations

Payment deadlines must be respected, and records kept of their fulfilment. Procuring Entities must provide visibility on the fulfilment of their obligations, particularly on payment deadlines.

Assessment criterion 9(c)(d):

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Contract amendments are reviewed, issued and published in a timely manner.*
Conclusion: Substantive gap
Red flag: No
Qualitative analysis For large contracts, the CPBN portal has a section where it publicizes the approval of contract extensions, a practice that does not seem to be extended to other procuring entities. The sample, selected at random, only allowed us to see records of one contract amendment.
Quantitative analysis The information provided by the PEs did not allow quantitative indicators to be measured. <i>Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %).</i> <i>Source: Sample of procurement cases.</i>
Gap analysis There seems to be no consistent practice of reviewing, issuing and publishing contract amendments.
Recommendations Contract amendments must be issued, published, and kept in the procurement file.
Assessment criterion 9(c)(e): Procurement statistics are available and a system is in place to measure and improve procurement practices.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis Procurement statistics are not readily available, nor is the procurement information provided in a machine-readable format to allow CSO's or other stakeholders to perform their "watchdog" role.
Gap analysis Procurement statistics are not readily available, nor is the procurement information provided in a machine-readable format to allow CSO's or other stakeholders to perform their "watchdog" role. A "Red flag" is assigned because CSOs cannot carry out their social audit role because of lack of access to relevant procurement information and procuring entities cannot improve their performance without data to measure it.
Recommendations Information should be made available and ready-to-use procurement statistics should be prepared by the PPU on a regular basis.
Assessment criterion 9(c)(f): Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*

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Conclusion: Substantive gap
Red flag: No
Qualitative analysis There is no established practice of involving external stakeholders in procurement processes. This was mentioned by the procuring entities during the assessment and confirmed by the CSOs (see indicator 11 for more context).
Quantitative analysis The analysis of the sample cases did not clearly reveal the involvement of external stakeholders in the procurement process. <i>Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation</i> <i>Source: Sample of procurement cases.</i>
Gap analysis The analysis of the sample cases did not clearly reveal the involvement of external stakeholders in the procurement process.
Recommendations The participation of external stakeholders, namely Civil Society Organisations, in all stages of the procurement process should be promoted.
Assessment criterion 9(c)(g): The records are complete and accurate, and easily accessible in a single file.*
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis Different practices were found among the procuring entities, revealing different levels of maturity. However, the bureaucratic nature of the procurement process, coupled with the low (or non-existent at various stages of the process) adoption of electronic tools, contributes to poor performance in this indicator. There seems to be a disconnect between the areas that carry out procurement and those that execute contracts, with little or no information on the execution phase of contracts.
Quantitative analysis <i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g):</i> <i>- share of contracts with complete and accurate records and databases (in %)</i> <i>Source: Sample of procurement cases.</i>

Pillar III. Public Procurement Operations and Market Practices

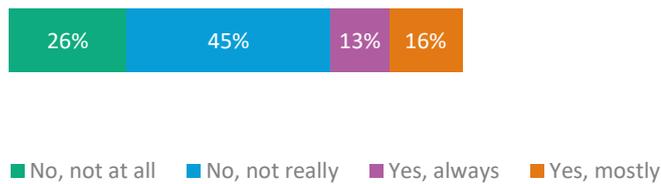
Data not available
Gap analysis <p>The records are not complete and accurate, and not easily accessible in a single file. There seems to be a disconnect between the areas that carry out procurement and those that execute contracts, with little or no information on the execution phase of contracts.</p> <p>A “Red flag” is assigned because it is considered that the absence of complete, accurate and easily accessible records hinders the achievement of public procurement objectives.</p>
Recommendations <p>Contract execution reporting mechanisms should be set up to ensure that all information relating to procurement processes is available, both in the pre- and post-contract phases.</p>

Indicator 10. The public procurement market is fully functional

Sub-indicator 10(a) Dialogue and partnerships between public and private sector
Assessment criterion 10(a)(a): <p>The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</p>
Conclusion: Minor gap
Red flag: No
Qualitative analysis <p>The government encourages open dialogue with the private sector, although this is not perceived by representatives from the private sector. There are established and formal mechanisms for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.</p>
Quantitative analysis <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a):</i> <i>- perception of openness and effectiveness in engaging with the private sector (in % of responses).</i> <i>Source: Survey.</i></p>

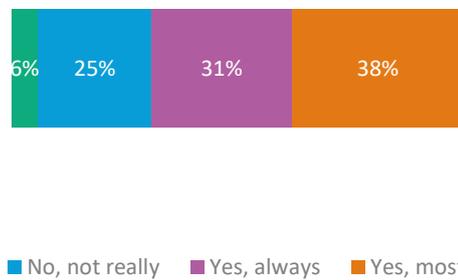
Pillar III. Public Procurement Operations and Market Practices

When changes are made to the legal and regulatory framework for public procurement, does the Government or the Procurement Policy Unit contact private sector/MSME or representative associations to communicate the intended changes and obtain their views?



Source: Private Sector Survey

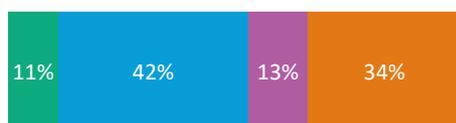
Do you find the changes to the legal and regulatory framework for public procurement difficult to follow?



Source: Private Sector Survey

Pillar III. Public Procurement Operations and Market Practices

Do you have the resources to keep up with the changes made to the legal and regulatory framework for public procurement?



■ No, not at all ■ No, not really ■ Yes, always ■ Yes, mostly

Source: Private Sector Survey

Gap analysis

The government encourages open dialogue with the private sector, although this is not perceived by representatives from the private sector. 71 % of the respondents to the Private Sector Survey consider that when changes are made to the legal and regulatory framework for public procurement the Government doesn't communicate with the private sector to obtain their views. In addition, for 69% of the respondents to the same survey, the changes to the legal and regulatory framework for public procurement are difficult to follow. Moreover, 53% claim not to have the resources to keep up with the changes made to the legal and regulatory framework for public procurement.

Recommendations

The PPU should seek to communicate the results of consultations and outreach programs to ensure transparency and acknowledgement by the private sector.

Assessment criterion 10(a)(b):

The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

The government has no regular programs in place to help build capacity among private companies. This is reinforced by the answers obtained in the Private Sector Survey, in which 86% of respondents say they are not aware of programs to build capacity in the private sector.

When asked if they had ever taken part in a program or training or information session, only 23% said yes. Of these, 37 per cent of respondents rated their satisfaction with these sessions negatively.

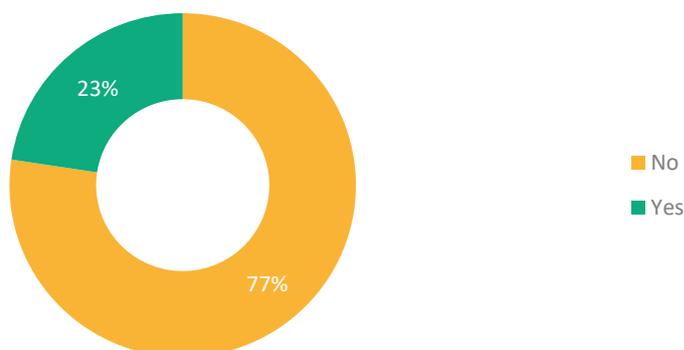
Pillar III. Public Procurement Operations and Market Practices

Does the government help you keep pace with changes made to the legal and regulatory framework for public procurement? Are you aware of training, guidelines, helplines, programs/support being provided by the government for private contractors and for SMEs



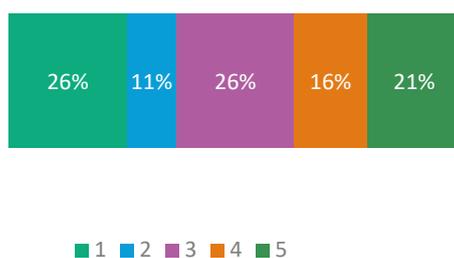
Source: Private Sector Survey

Have you ever participated in such a program or training or information session?



Source: Private Sector Survey

What is your level of satisfaction (with such trainings)?



Source: Private Sector Survey

Pillar III. Public Procurement Operations and Market Practices

Gap analysis

There are no regular public procurement training programs for the private sector.

Recommendations

The government should create regular training programs to increase the preparedness of economic operators.

Given the PPU's current limited capacity to implement such programs, partnerships should be created with other bodies to increase the reach of such programs.

Sub-indicator 10(b)

Private sector's organisation and access to the public procurement market

Assessment criterion 10(b)(a):

The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The private sector appears to be competitive and properly organized. There are various organizations that bring together professional classes and entrepreneurs. When asked to participate in the Business Outreach Seminar and the Private Sector Survey, the response can be considered positive.

In competitive tenders, there appear to be a reasonable number of competitors.

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):

- number of registered suppliers as a share of total number of suppliers in the country (in %)
- share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers)
- total number and value of contracts awarded to domestic/foreign firms (and in % of total)

Source: E-Procurement system/Supplier Database.

*****No data was available to present the recommended KPIs. *****

Gap analysis

The absence of information that makes it possible to present the recommended KPIs justifies the allocation of a substantive gap.

Recommendations

The substantial gap in data must be filled. The PPU must find a mechanism to measure the participation of economic operators in public procurement.

Assessment criterion 10(b)(b):

There are no major systemic constraints inhibiting private sector access to the public procurement market.

Conclusion: Substantive gap

Pillar III. Public Procurement Operations and Market Practices

Red flag: No

Qualitative analysis

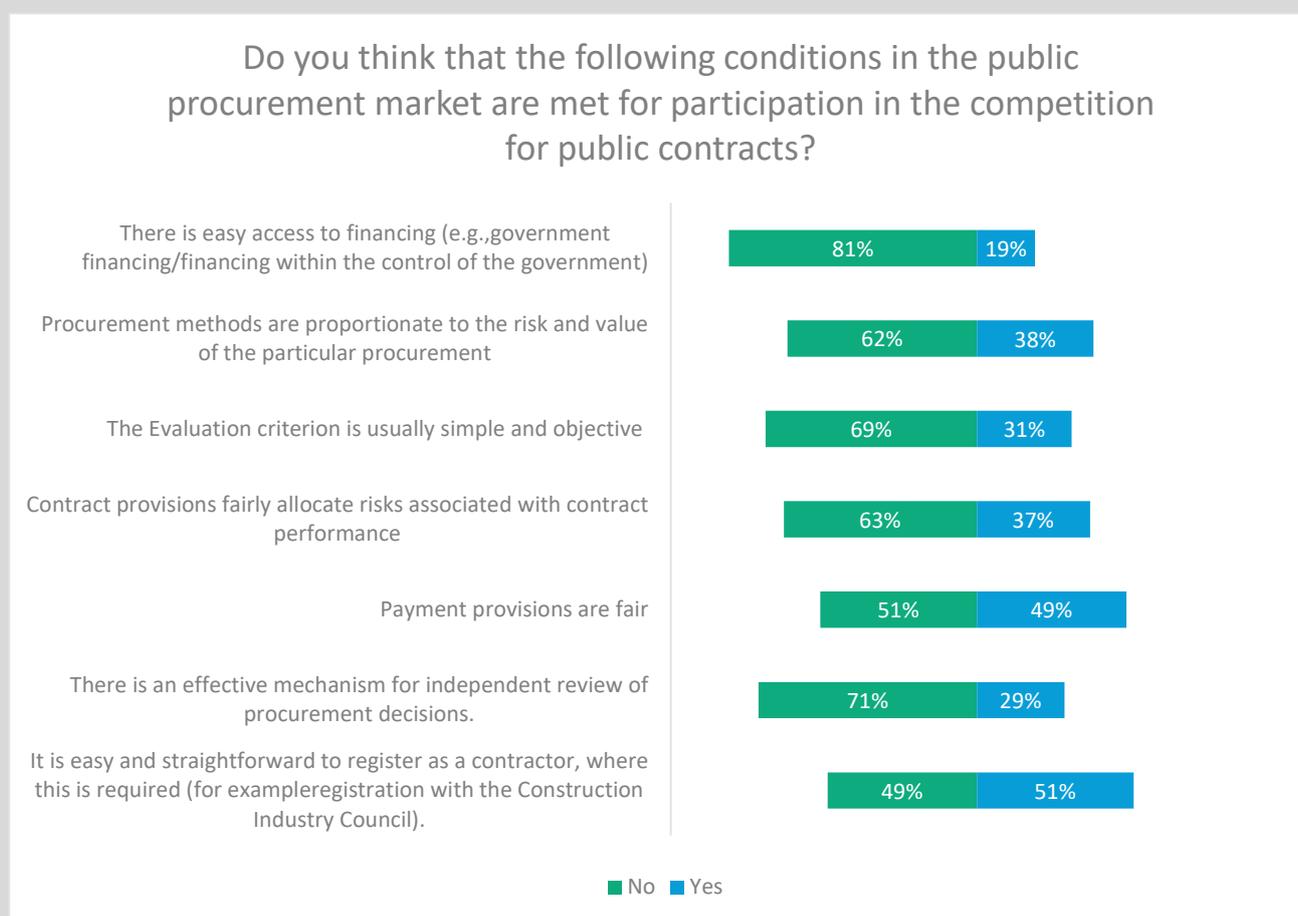
There is a generalized negative perception among economic operators regarding the appropriateness of conditions in the public procurement market.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b):*

- perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).

Source: Survey.



Source: Private Sector Survey

Gap analysis

The results of the Private Sector Survey reveal gaps in access to the public procurement market. 81% of respondents believe that there is no easy access to financing. More than 60 per cent consider procurement methods disproportionate to the risk and value of the procurement and that the evaluation criteria are not simple and objective. 63% also think the contract provisions do not distribute the risks associated with contract performance. Additionally, 71 per cent believe that there is no effective independent mechanism for reviewing decisions, and around 50 per cent believe that payment provisions are unfair.

Pillar III. Public Procurement Operations and Market Practices

<p>Recommendations</p> <p>The government should endeavor to remove the barriers to accessing the public market that have been identified. In particular, it should re-evaluate situations where excessive guarantees are demanded from suppliers or where contractual risks are not evenly distributed. This requires coordinated reflection with representatives of the different sectors of activity.</p>
<p>Sub-indicator 10(c) Key sectors and sector strategies</p>
<p>Assessment criterion 10(c)(a): Key sectors associated with the public procurement market are identified by the government.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Key sectors associated with the public procurement market are not identified by the government.</p>
<p>Gap analysis</p> <p>There is no strategic approach to public procurement. There are no known long-term sectoral strategies that in turn feed into medium/short-term operational plans.</p>
<p>Recommendations</p> <p>Consolidated recommendation for sub-indicator 10(c): The key sectors of the economy, such as infrastructure, health, education or home affairs, must identify long-term sectoral strategies that in turn feed into medium/short-term operational plans. The risks specific to each sector must be identified and accompanied by plans to mitigate them. Similarly, opportunities to influence the market to achieve policy goals must be identified and pursued.</p>
<p>Assessment criterion 10(c)(b): Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>With the absence of sectoral strategies, there is also a lack of treatment of the risks associated with certain sectors or of opportunities to influence sector markets.</p> <p>Some policy objectives are mentioned in the Public Procurement Act, but without any practical impact. To fill this gap, some procuring entities have adopted FIDIC templates for work-related contracts.</p>
<p>Gap analysis</p> <p>Risks associated with certain sectors and opportunities to influence sector markets are not assessed by the government.</p>
<p>Recommendations</p> <p>See 10(c) above for a consolidated recommendation for the sub-indicator 10(c).</p>

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Sub-indicator 11(a) Enabling environment for public consultation and monitoring																
<p>Assessment criterion 11(a)(a): A transparent and consultative process is followed when formulating changes to the public procurement system.</p>																
<p>Conclusion: Substantive gap</p>																
<p>Red flag: No</p>																
<p>Qualitative analysis The Assessment Team had discussions with representatives of Civil Society Organizations on the mission in September 2023. An online survey was launched on November 30, 2023, through Microsoft Form by addressing the questions to 21 CSO participants as identified by PPU, who were considered active in the area of governance/procurement. With intensive follow-up by PPU the Assessment Team received 8 responses which were analyzed and responses are given:</p> <p>In the following response 50% of participants have indicated that there is no consultative process when changes are formulated to the public procurement system, and 12% in “Maybe” category and similar percentages do not consider such consultations as transparent. Therefore, it is a substantive gap.</p> <div style="border: 1px solid #ccc; padding: 10px; margin: 10px 0;"> <p style="text-align: center;">Is there a consultative process when changes are formulated to the public procurement system?</p> <table border="1"> <caption>Survey Results: Consultative Process</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>38%</td> </tr> <tr> <td>No</td> <td>50%</td> </tr> <tr> <td>Maybe (partially)</td> <td>12%</td> </tr> </tbody> </table> </div> <p><i>Source: Civil Society Organization On-line Survey</i></p> <div style="border: 1px solid #ccc; padding: 10px; margin: 10px 0;"> <p style="text-align: center;">Would you consider it (the consultative process) as transparent?</p> <table border="1"> <caption>Survey Results: Transparency of Consultative Process</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>13%</td> </tr> <tr> <td>No</td> <td>50%</td> </tr> <tr> <td>Partially</td> <td>37%</td> </tr> </tbody> </table> </div> <p><i>Source: Civil Society Organization On-line Survey</i></p>	Response	Percentage	Yes	38%	No	50%	Maybe (partially)	12%	Response	Percentage	Yes	13%	No	50%	Partially	37%
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No	50%															
Partially	37%															

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

There are very few CSOs who are active in the area of monitoring procurement. The Institute for Public Policy Research (IPPR) has a Procurement Tracker Namibia project³⁷, which serves as a civil society monitor and oversight mechanism of what's happening on the public procurement landscape. The IPPR has been invited to discussions and included in some processes around law reform initiatives, as well as having some of its proposals incorporated into both the 2015 law and the 2022 amended law.

But, based on feedback there are other CSOs, that need to be heard and involved in the procurement process. Relevant statements from survey participants are: "CSOs are not mostly aware of any change taking place until its enacted and enforced". "CSOs need to be involved in the process for them to be empowered and also allowed to participate where their capacity is able to". "CSOs play crucial roles in addressing and advocating for equality and transparency, however, the lack of recognition of the roles the CSOs play has made the process less transparent and exclusive to those in other categories".

Gap analysis

CSO involvement is not inclusive and not transparent in formulating changes to the public procurement laws and regulations, with the exception of few CSOs.

Recommendations

CSO involvement to be made more inclusive and to cover a wider spectrum of CSOs, when formulating changes to the public procurement system to cover a wider spectrum of CSOs.

Assessment criterion 11(a)(b):

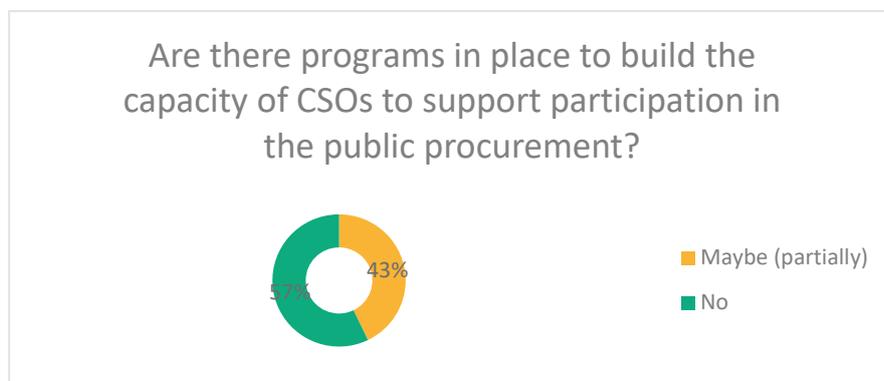
Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

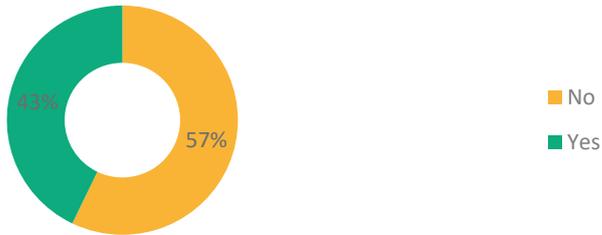
Based on the survey response with 57% "no" and 43% "maybe", there appears to be very few programmes to build capacity of relevant stakeholders. One feedback is; "Involving the CSO from the start would improve transparency and ensure the capacity and participation of the CSO".



Source: Civil Society Organization On-line Survey

³⁷ [CS6.indd \(ippr.org.na\)](#)

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

<p>Gap analysis No training or capacity building programs by PPU or Public Entities for CSO, based on CSO survey/feedback.</p>						
<p>Recommendations CSOs could act as a safeguard against inefficient and ineffective use of public resources, and PPU and Public Entities need to invest in capacity building and training of credible civil society organizations.</p>						
<p>Assessment criterion 11(a)(c): There is ample evidence that the government takes into account the input, comments and feedback received from civil society.</p>						
<p>Conclusion: Substantive gap</p>						
<p>Red flag: No</p>						
<p>Qualitative analysis As indicated at 11(a) (a), there are very few CSOs whose input is taken into account and therefore 57% of participants report that CSO oversight is not happening.</p> <p>Feedback from survey is: “For meaningful dialogue and partnerships, there need to be multistakeholder platforms created that incorporate a wide variety of sectoral stakeholders. Such platforms can serve as unofficial oversight boards that regularly meet to view and deliberate governance and process issues that affect efficient public procurement in a given socio-economic sector”.</p>						
<div style="border: 1px solid #ccc; padding: 10px; text-align: center;"> <p>Do you consider that any exercising of oversight role by CSO's is actually happening?</p>  <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>43%</td> </tr> <tr> <td>No</td> <td>57%</td> </tr> </tbody> </table> </div> <p><i>Source: Civil Society Organization On-line Survey</i></p>	Response	Percentage	Yes	43%	No	57%
Response	Percentage					
Yes	43%					
No	57%					
<p>Gap analysis CSO feedback taken from very few organizations, there are no formal channels for such feedback.</p>						
<p>Recommendations PPU/MoFPE to create a formal channel of feedback and regular consultations with a wider spectrum of CSOs for effective participation by CSOs.</p>						
<p style="text-align: center;">Sub-indicator 11(b) Adequate and timely access to information by the public</p>						
<p>Assessment criterion 11(b)(a): Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.</p>						

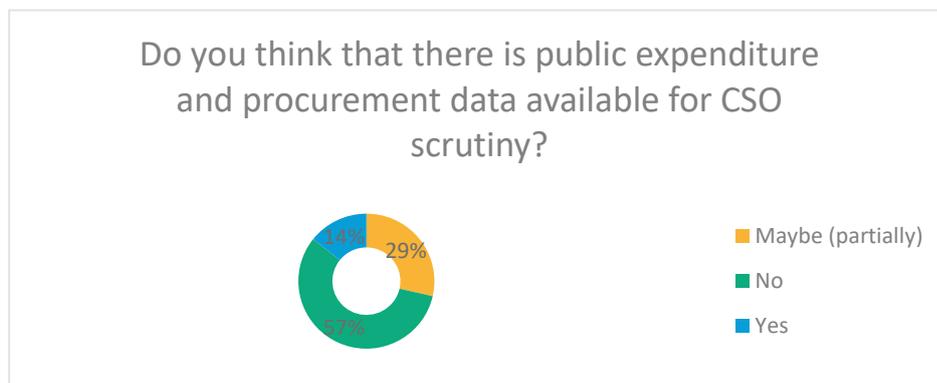
Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

Conclusion: **Substantive gap**

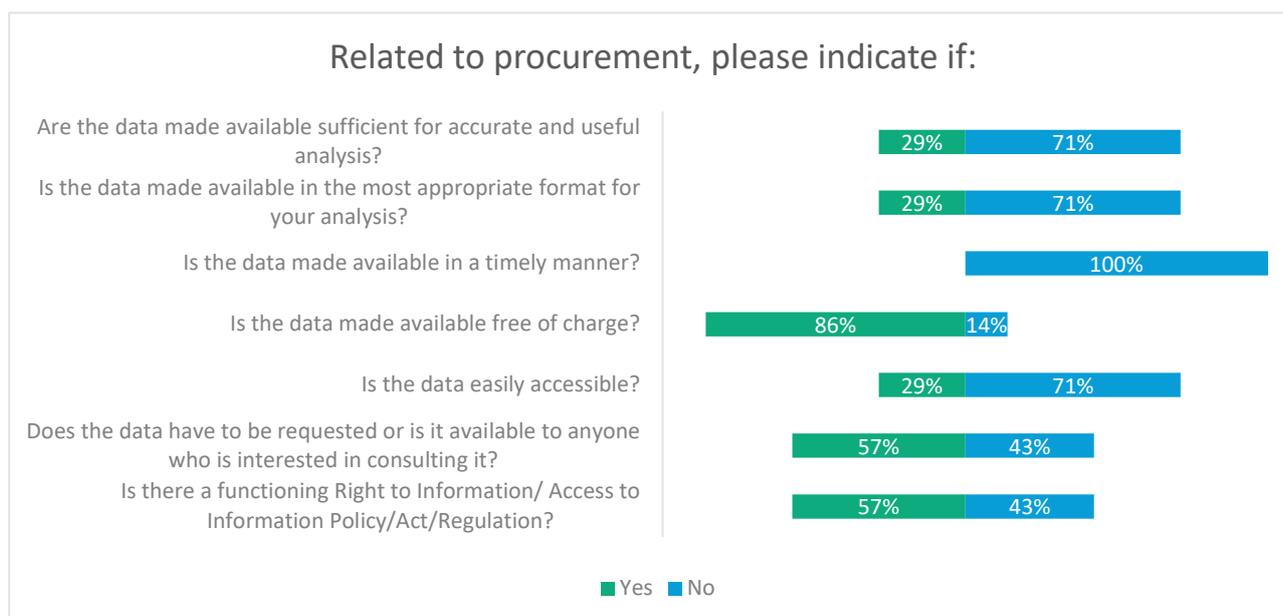
Red flag: **Yes**

Qualitative analysis

Based on majority response, data/information is neither accurate nor timely.



Source: *Civil Society Organization On-line Survey*



Source: *Civil Society Organization On-line Survey*

The lack of data is also due to lack of compliance by Public Entities in reporting the requested information. Based on PPU Annual Report of 2022-23, on performance information by all public entities during 2022/23 financial year based on the reports only 171 reports were received from public entities out of a possible 521 reports. Therefore, available information is inadequate for meaningful analysis by CSOs or the public. The E-Procurement system is in initial phases of implementation. The low utilization of eGP leads to very limited information, which at the very least does not serve as an incentive for CSOs to monitor procurement activities.

Gap analysis

The available information/data in public domain is inadequate. Based on findings under Indicator -7, on Reporting and Analytics: The portal's reporting capabilities are rudimentary, with limited options for data

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analysis and insights generation, hampering informed decision-making. It is a “Red flag” as implementation requires coordination and action on the part of several government agencies.

Recommendations

To improve compliance in reporting by public entities as requested by PPU and to expedite roll -out of e-Procurement system so that data gathering and analytics is functional.

Sub-indicator 11(c) Direct engagement of civil society

Assessment criterion 11(c)(a):

The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate:

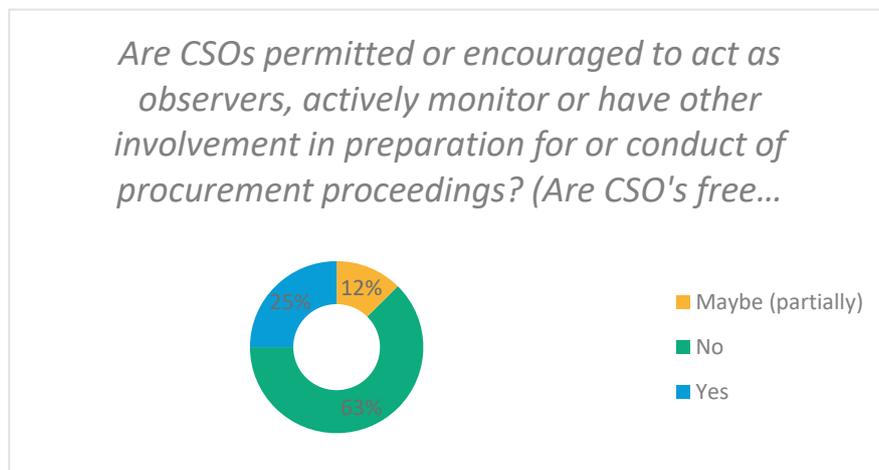
- the planning phase (consultation)
- bid/proposal opening (observation)
- evaluation and contract award (observation), when appropriate, according to local law
- contract management and completion (monitoring).

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Based on feedback of online survey, on the question of CSO participation, the perception of 63% of participants is “No” and 12% “maybe”. There is a perception in government that CSOs do not add any value. There are no legal provisions to make participation of CSO mandatory.



Source: Civil Society Organization On-line Survey

Gap analysis

There is a perception in government that CSOs do not add any value. There are no legal provisions to make participation of CSO mandatory. It is a “Red flag” as there is need for enabling environment that requires interagency coordination including through changes in PPA and Anti-corruption Act.

Recommendations

GRN to consider creating an enabling environment including through legislation for direct engagement of civil society from planning phase to contract monitoring for improving transparency and contract performance. Based on guidance in the MAPS methodology, legal and regulatory framework might establish the obligation or

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

an opportunity for the government to consult public in the planning process for example prior to environmentally and socially sensitive procurement.

Assessment criterion 11(c)(b):

There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.

Conclusion: **Substantive gap**

Red flag: **Yes**

Qualitative analysis

Based on the given response, about 75% of respondents do not see participation by CSO in procurement outcomes or suggesting changes to the project. Based on guidance in the MAPS methodology, legal and regulatory framework might establish the obligation or an opportunity for the government to consult public in the planning process for example prior to environmentally and socially sensitive procurement.

Are CSOs encouraged to act as enablers of good practices, being called upon to contribute to the improvement of public procurement outcomes, for example, by suggesting changes to projects?



Gap analysis

No evidence of direct engagement of civil society due to lack of enabling environment and regulation, it is a “Red flag” as the implementation requires legislation and interinstitutional collaboration.

Recommendations

GRN to consider creating an enabling environment including through legislation for direct engagement of civil society from planning phase to contract monitoring for improving transparency and contract performance.

Indicator 12. The country has effective control audit systems

Sub-indicator 12(a)

Legal framework, organisation and procedures of the control system

The system in the country provides for:

Assessment criterion 12(a)(a):

laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies

Conclusion: **Substantive gap**

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

Red flag: Yes

Qualitative analysis

A control framework is established from the provisions in the Constitution, State Finance act, Treasury Instructions, Public Procurement Act 2015, the Public Procurement Amendment Act, 2022 and annual appropriation acts.

Office of Auditor General

As published on the website of the Office of Auditor General³⁸, the mandate and duties are described as follows:

Mandate of the Auditor-General as derived from Article 127 of the Namibian Constitution

The Auditor-General shall audit the State Revenue Fund and shall perform all other functions assigned to him or her by the Government or by Act of Parliament and shall report annually to the National Assembly thereon.

Duties of the Auditor-General as derived from Section 25, State Finance Act 31 of 1991

The Auditor-General is tasked with the investigation, examination and audit of the books of account-, accounts, registers or statements which are to be kept or prepared in terms of any law in connection with the receipt, custody, banking, payment or issue of money, stamps, securities, equipment and stores by any statutory institution and which are in terms of any law to be investigated, examined and audited by the Auditor-General.

Based on PEFA Final Report of 2015, related to external scrutiny and audit, there is no separate audit law. The audit performed by the Auditor General generally meets International Standards for Supreme Audit Institutions (ISSAIs), issued by INTOSAI, based on the corresponding International Standards of Auditing (ISAs) adapted for the public sector audit.

Internal Audit based on Treasury instruction

Also, Based on PEFA Final Report of 2015, the State Finance Act 1991 (amended 1995) prescribes the roles and responsibilities of the internal auditor within Treasury only (Vote 9); there is no legal or regulatory framework for internal audit functions in other OMAs. Sections 14 and 15 prescribe that the Treasury may appoint any officer (without specific qualification) as internal auditor. In addition, there is no legal or regulatory requirements regarding the distribution of internal audit reports for management consideration.

An Internal Audit Policy has recently been approved, though it's not backed up by an Internal Audit-related Law. The organizational structure to support the new internal audit policy is yet to be agreed.

Provision on audit in Public Procurement Act of 2015 (amended in 2022)

Functions of Procurement Policy Unit, in Section 7 of PPA 2015 *inter alia* include to institute - (i) contract audits in the course of the execution of an awarded contract; and (ii) performance audit after the completion of the contract in respect of any procurement, when it is necessary; and (iii) commission or undertake investigations and institute performance audits.

The Act provides clear segregation of procurement-related responsibilities between PPU, PMUs, Ministerial Committees, and the CPB.

Directorate of Budget Management and Control in Ministry of Finance and Public Enterprises³⁹

³⁸ [Governing Legislation - OAG - GRN Portal](#)

³⁹ [Budget Management and Control - MFPE - Portal Ariel \(gov.na\)](#)

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The Directorate is entrusted with the responsibility of coordinating the preparation, finalization, managing and controlling of the National Budget as well as the maintenance of an efficient payment system of the government.

Gap analysis

There is no legal or regulatory framework for internal audit function nor a separate law for the Office of the Auditor General (OAG).

In addition, the PPA does not include provision for independent public procurement oversight by OAG or internal auditors apart from audit by PPU in terms of Section 7 of PPA “to commission or undertake investigation and institute performance audit” and indicated above (i) contract audits in the course of the execution of an awarded contract; and (ii) performance audit as per PPA provisions as part of function of PPU.

Considered “Red flag” as the implementation of such reforms requires interinstitutional efforts and human resources capacity challenges.

Recommendations

Accelerate the enactment of the PFM and Audit Bills, which should provide comprehensive control framework (including internal controls, internal audits, external audits and oversight by legal bodies), legal backing for internal audit, and independence of the OAG.

Assessment criterion 12(a)(b):

internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Oversight of procurement is conducted by Internal Audit, Auditor General and PPU.

Internal audit

As noted above, while the State Finance Act has provisions for Internal Audit at the Ministry of Finance, in practice all ministries do have internal audit. Procurement transactions are audited by Internal Audit as part of normal internal audit reviews.

Based on PEFA 2015, Indicator PI-20, on effectiveness of internal controls for non-salary expenditure, the overall score is C+, with scores on three dimensions as under:

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

Table 3.25 Controls for non-salary expenditure

PI	Dimension	Score 2015	Justification for 2015 score
PI-20	Effectiveness of internal controls for non-salary expenditure	C+	Scoring Method M1
(i)	Effectiveness of expenditure commitment controls	A	Commitment controls in IFMS are comprehensive and limits expenditure commitment to approved Treasury Authorisation Warrant (TAW) in accordance with approved budget allocations
(ii)	Comprehensiveness, relevance and understanding of other internal control rules/ procedures	B	The main Treasury Instructions are comprehensive and clear. In addition to the Treasury Instructions, there are other manuals for account payable, payroll procedures, daily subsistence allowance, and manual for the handling of state money. The instructions remain relevant for financial management
(iii)	Degree of compliance with rules for processing and recording transactions	C	Even though the level of compliance appears to be improving, there remain other simplified procedures for major transaction processing with particular reference to exemptions on public procurement.

As noted above, an Internal Audit Policy for government has only recently been approved, though it's not backed up by an Internal Audit-related Law. The organizational structure to support the new internal audit policy is yet to be agreed.

Auditor General

Procurement transactions are audited by Auditor General as part of normal financial audits. Annual audits do take place, and the audit system is robust and effective. However, the OAG Auditors have no specific training in carrying out procurement audits. It is noted that the Auditor General is making plans to establish systems and special teams to conduct procurement audits, especially as performance and value for money analysis/audits are increasingly becoming important as part of prudent public financial management.

PPU

Based on Section 6 and 7 of PPA 2015, Procurement Policy Unit is required to: (i) monitor compliance of the Act, directives, code of procedures and guidelines issued under the Act: (ii) monitor and report on the performance of the public procurement system in Namibia including preparing an annual report to be tabled in the National Assembly within six months after the end of each financial year, and advise on desirable changes; (iii) develop and implement procurement performance assessment system; and (iv) commission or undertake investigations and institute performance audit.

Based on published Annual Report of PPU (September 2021)⁴⁰ the *Procurement Policy Unit undertook ten (10) procurement audits during the period of 2020/21 financial years namely to establish whether the provisions of this Act have been complied with at the following public entities: Nampower, Namwater, City of Windhoek, Namibian Competition commission, Trasnamib, Ministry of Finance, Otjozondjupa Regional council, Tsumeb Municipality, Otavi Municipality and Otjiwarongo municipality*".

Based on latest Annual Report of PPU for 2022-23 nine (9) public entities which were audited during 2022/23 turned a very low audit score, giving an average score of twenty-four (24%) percent. This is rather a poor

⁴⁰ <https://eprourement.gov.na/documents>

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performance by all public entities and signifies minimum compliance to the Public Procurement Act, 2015. The thematic challenges identified at the public entities includes: (i) Lack of Performance reviews; (ii) Lack of approved requisitions (Regulation 8(2)(e)); (iii) Lack of certification of availability of funds prior to commencement of procurement process; (iv) Poor compliance to the bid opening procedure (Section 51); (v) Limited publication of procurement award (Section 55(8); and (vi) Poor record keeping overall among others.

Gap analysis

The oversight of procurement systems is assessed to be weak mainly due to capacity constraints in staffing and expertise in internal audit, Auditor General and PPU. The weak capacity limits the functionality of these institutions, which negatively impacts the effectiveness and efficiency of the procurement system.

Considered “Red flag” as the implementation of such reforms requires interinstitutional efforts and human resources capacity challenges to resolved by GRN.

Recommendations

Strengthen the procurement staffing capacity (number and expertise) in the internal audit, OAG and PPU.

Assessment criterion 12(a)(c):

internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The State Finance Act of 1991 and the Treasury Instructions directly address internal controls and allocate specific duties and responsibilities to accounting officers in OMAs. The main Treasury Instructions are comprehensive and clear. In addition to the Treasury Instructions, there are other manuals for account payable, payroll procedures, and daily subsistence allowances. Appropriate segregation of duties is prescribed throughout the expenditure process and responsibilities are clearly laid down.

Gap analysis

Absence of a consolidated audit report that identifies systemic issues in the area of procurement and contracts management (based on PPU and Internal audit reports) for decision making and risk mitigation and to identify root causes affecting performance. The procurement audit by PPU is related to compliance, as per summary given Annual Report.

Recommendations

PPU (also with support from Government Internal Audit) to carry out risk-based targeted compliance and performance audit annually identifying systemic issues and root causes affecting procurement performance and publish these reports.

OAG should conduct performance audit of procurement transactions in OMAs on a regular basis.

Assessment criterion 12(a)(d):

independent external audits provided by the country’s Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management

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Conclusion: **Substantive gap**

Red flag: **Yes**

Qualitative analysis

While AG conducts audits using internationally accepted standards, his independence is limited. According to PEFA 2015 (P1-26), The Constitution guarantees some degree of independence to the Auditor General, specifically with regards to his/her removal from office, which requires at least two-thirds majority of members of parliament. Nonetheless, the financial independence of the office of the auditor general is undermined by the reliance on the Ministry of Finance for budget allocation. Other concerns are the staffs of the Office of the Auditor General are public servants, recruited under the Public Service Act 1980 (amended 1995). The OAG audits itself.

According to input given by OAG to the Assessment Team, the AG performs procurement audit as part of the financial audit. The risk- based audit, conducted using INTOSAI standards, involves conducting compliance audits. The AG applies the Compliance Audit Manual (CAM) of 17/06/ 2022⁴¹ to review adequacy and adherence of internal controls, including procurement-related controls. The CAM provides guidance on procurement related issues examples (i) “Includes a requirement to audit compliance with specific legislation, for example the Public Procurement Act”, while deciding most appropriate audit approach; (ii) procurement related fraud risks; (iii) while determining the subject matter, which is auditable, for example, when the subject matter is procurement, it can be narrowed down to: a. The entity's planning of a procurement within an area; or b. The entity’s sourcing of goods and services within an area; or c. The contract management process within the entity, an illustration given in CAM is “National Department of Health's procurement sourcing practices with special emphasis on the procurement of medical equipment”; (iv) suitable propriety criteria may be derived from:

- Public financial management expectations such as compliance with an effective and efficient internal control system
- Beneficiaries' expectations regarding the utility of goods or the quality of the services and works
- Requirements for a transparent and unbiased allocation of public funds and human resources, and

(v)defining characteristics of criteria like “a paragraph in a procurement law determines that you must have a plan before sourcing any goods or services”.

Example on procurement as given in CAM on subject matter in the audit area of procurement can be "*Procurement of services for road construction for the Ministry of Transport*" By this we mean that the Ministry of Transport is responsible for procuring services for construction of roads in the country but does not and cannot construct the roads in its own capacity. Therefore, they must ensure awarding of the contracts for road construction to suppliers according to the requirements of the Procurement Act. We will follow this subject matter throughout the manual to demonstrate understanding in certain areas of the compliance audit process.’

Example of audit scope and objective in CAM is “The objective is to verify that the Ministry of Transport has planned, conducted and monitored the process of procurement of road construction projects as per requirements of the Procurement Act. 37 ISSAI 4000/43-44 38 ISSAI 400/50 57 Scope: Road construction projects in the Ministry of Transport for 2017, will be covered in this audit and evaluated against the criteria, para. 2 of the Procurement Act, which requires that the entity must include projects worth NAD 3 million and above in the procurement plan. Irregularities in the process of awarding contracts, such as tailoring of bid specifications, will

⁴¹ SAI Namibia Performance Audit Manual 2020

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also be covered and evaluated against Sec. 1 para. 3, requiring an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective”.

OAG also conducts performance audit to determine value for money using the OAG’s Performance Audit Manual (PAM)⁴². The main objective of performance auditing is to promote economical, effective and efficient governance. It also contributes to accountability and transparency. However, OAG has not conducted procurement-related performance audit⁴³.

Gap analysis

While AG conducts audits using internationally accepted standards, his independence is limited, on account of reliance on MoFPE for budget allocation (as per PEFA 2015). There is lack of conducting procurement-related performance audits by OAG.

This gap is considered “Red flag” as the implementation of recommendation requires interinstitutional efforts and human resources capacity challenges to resolved by GRN.

Recommendations

To strengthen the independence of OAG, especially direct allocation of budget by Parliament and power to recruit its own staff.

Assessment criterion 12(a)(e):

review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)

Conclusion: **Substantive gap**

Red flag: **Yes**

Qualitative analysis

Based on input given by OAG to the Assessment Team, Audit reports are reviewed and discussed by Public Account Committee (PAC) of both houses.

The mandate of PAC inter alia includes: (i) to examine annual reports of the Auditor-General, as may be referred to the Council by the Assembly in terms of the provisions of the Constitution, and advise the Council thereon; (ii) to scrutinize the Government’s financial proposals and fiscal policies and advise the Council thereon; and (iii) to examine incidents of financial mismanagement in the public sector and advise the Council thereon;

However, the Assessment Team could not find any report of PAC on their website⁴⁴ on their deliberations and recommendations related to audit reports.

The Assessment Team could not find any report of PAC on their website⁴⁵ on their deliberations and recommendations related to audit reports.

⁴² PAM was developed by customizing the Template Performance Audit Manual provided by the African Organization of English-speaking Supreme Audit Institutions (AFROSAI-E). The AFROSAI-E guidance for performance auditing includes “Guideline on performance audit of public procurement (2011)”⁴²

⁴³ <https://oag.gov.na/performance-audit-reports>

⁴⁴ <https://www.parliament.na/standing-committee-on-public-accounts-and-economy/>

⁴⁵ <https://www.parliament.na/standing-committee-on-public-accounts-and-economy/>

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Gap analysis

The OAG reports include valuable recommendations, but there is limited evidence of executive action to implement the recommendations timeously, nor is there evidence of any systematic follow up. Legislative scrutiny of external audit report is weak as evidenced by PEFA report of 2015. Assessment team could not find any report of Public Accounts Committee on their website on their deliberations and recommendations related to audit reports.

This gap is considered “Red flag” as the implementation of recommendation and ensuring review by legislature is beyond the control of OAG.

Recommendations

Conduct an assessment of the Public Accounts Committee performance and implement reforms to address the identified weaknesses. The assessment should include the capacity and capability of the PAC to review AG reports and follow-up on its recommendations.

Assessment criterion 12(a)(f):

clear mechanisms to ensure that there is follow-up on the respective findings.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Based on input given by OAG to the Assessment team, PAC follow up on recommendations in the performance audit reports, while AG follow up on his recommendations during the next audit.

Based on internal document of AfDB of January 2023 on Borrower’s Procurement System (BPS) which is derived from MAPS sub-indicators, it is stated that “From the documents reviewed it is evident that there are no Clear mechanisms to ensure that there is follow-up on the respective findings. Furthermore, it is noted that the AG’s mandate is firmly restricted to auditing; it has no formal enforcement powers of its own to ensure that public sector institutions implement or comply with audit recommendations. Recommendations are neither implemented timeously, nor recommendations are not implemented at all, while the Auditee fail to provide reasons why recommendations were not implemented”.

There is no legal or regulatory requirements regarding the distribution of internal audit reports for management considerations. In addition, while the internal audit reports provide findings & recommendations, executive actions are limited and where some actions are taken, they are often delayed.

Gap analysis

Lack of mechanism for follow up of internal and external audit recommendations. This gap is considered “Red flag” as the implementation of recommendation and ensuring review by legislature is beyond the control of OAG.

Recommendations

GRN should institutionalize and strengthen Audit Committees in all OMA and implement measures to ensure the effectiveness of mechanisms for review and determination of actions in response to the OAG reports. This should also include measures on follow-up and implementation of audit findings and recommendations. The ACs should be responsible for following up on the implementation of recommendations from OAG, internal audit and PPU.

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Sub-indicator 12(b) Coordination of controls and audits of public procurement
Assessment criterion 12(b)(a): There are written procedures that state requirements for internal controls, ideally in an internal control manual.
Conclusion: No gap
Red flag: No
Qualitative analysis As noted in 12 (a) (c), the State Finance Act of 1991 and the Treasury Instructions directly address internal controls and allocate specific duties and responsibilities to accounting officers in OMAs. The main Treasury Instructions are comprehensive and clear. In addition to the Treasury Instructions, there are other manuals for account payable, payroll procedures, and daily subsistence allowances. Appropriate segregation of duties is prescribed throughout the expenditure process and responsibilities are clearly laid down.
Gap analysis
Recommendations
Assessment criterion 12(b)(b): There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing.
Conclusion: Minor gap
Red flag: No
Qualitative analysis As explained at 12 (a) (d) there are manuals conducting procurement audits (both on compliance and performance). OAG has also clarified that “There are manuals for all different audit streams based on the international audit standards which serve as a guide in carrying out or performing audit work”. Procurement Audits are also carried by Procurement Policy Unit (PPU) as per their mandate.
Gap analysis No evidence that audit by OAG, Internal Auditors and PPU are coordinated and mutually reinforcing.
Recommendations OAG, Government Internal Audit and PPU to coordinate their audit plans (both compliance and performance) which should be mutually reinforcing.
Assessment criterion 12(b)(c): There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*
Conclusion: Substantive gap

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Red flag: No

Qualitative analysis

As indicated earlier, based on Compliance Audit conducted by PPU the thematic challenges identified at the public entities includes: (i) Lack of Performance reviews; (ii) Lack of approved requisitions (Regulation 8(2)(e)); (iii) Lack of certification of availability of funds prior to commencement of procurement process; (iv) Poor compliance to the bid opening procedure (Section 51); (v) Limited publication of procurement award (Section 55(8)); and (vi) Poor record keeping overall among others.

Auditor General

As per input given by OAG to the Assessment team, Audits are performed every end of the financial year as stipulated in institution or organization act.

Based on the published information on OAG website:

- Several documents are uploaded on **Performance Audit**⁴⁶, but related to procurement there are very few examples: procurement cycle of school material⁴⁷ for the year 2014/15, 2015/16, 2016/17 (Report No. 10/2019), which in itself is a comprehensive review.
- On **Financial Audit**⁴⁸, the website contains a comprehensive list of Offices and Agencies and Ministries. For example, based on document uploaded for Ministry of Health and Social Services for Ministry of Health and Social Services for 2020-21 (Report #38 of 2022)⁴⁹, Public Procurement Act 2015 is indicated under the subject matter and audit criteria.

⁴⁶ <https://oag.gov.na/performance-audit-reports>

⁴⁷ <https://oag.gov.na/web/oag/ministry-of-education-arts-and-culture-1>

⁴⁸ <https://oag.gov.na/financial-audit-reports>

⁴⁹ <https://oag.gov.na/web/oag/ministry-of-health-and-social-services>

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2.2 DESCRIPTION OF THE SUBJECT MATTER INFORMATION AND AUDIT SCOPE

The audit aimed to determine whether the Ministry of Health and Social Services used the appropriated funds in compliance with the Appropriation Act, 2020 (Act 4 of 2020); Appropriation Amendment Act, 2020 (Act 8 of 2020); State Finance Act, 1991 (Act 31 of 1991), Public Procurement Act, 2015 (Act 15 of 2015); Treasury Instructions and the Public Procurement Regulations during the financial year ended 31 March 2021.

2.3 AUDIT OBJECTIVE

The objective of this compliance audit is to verify and assess whether Ministry of Health and Social Services has complied with all laws and regulations that have an impact on the financial statements in accordance with the ISSAIs. In addition, the objective of this audit is to verify and assess whether public funds have been used appropriately and lawfully, and to report issues of non-compliance so that corrective action is taken and compliance to laws and regulations is strengthened.

2.4 AUDIT CRITERIA

The audit criteria of this compliance audit are derived from the following laws and regulations stated below:

Appropriation Act, 2020 (Act 4 of 2020);
 Appropriation Amendment Act, 2020 (Act 8 of 2020);
 State Finance Act, 1991 (Act 31 of 1991);
 Public Procurement Act, 2015 (Act 15 of 2015);
 Treasury Instructions; and
 Public Procurement Regulations.

Related key performance Indicator and its achievement it states as under:

3.4 SUMMARY OF METHODS APPLIED

The auditor reviewed the annual plan and the directorate quarterly reviews to confirm whether the Strategic Plan objectives, targets and KPIs have been correctly cascaded to the Annual Plan and the selected key performance indicators for the year under review are reported in the Annual Performance Report/Annual plan review/Directorate quarterly reports.

Furthermore, the audit team conducted interviews and reviewed documents to obtain information that pertains to the selected key performance indicators.

SELECTED KEY PERFORMANCE INDICATORS

The following key performance indicators were selected from the strategic plan 2017-2022.

STRATEGIC OBJECTIVES	KEY PERFORMANCE INDICATORS
Accelerate Health Infrastructure Development	# of Health facilities completed for Isolation
Availability of Adequate and Quality Essential Pharmaceuticals and Clinical supplies items	% of Suppliers who delivered as per Contract terms

3.5 KEY AUDIT FINDINGS

DIRECTORATE: DIRECTORATE OF HEALTH TECHNOLOGY AND INFRASTRUCTURE MANAGEMENT

INDICATOR/FINDINGS	RECOMMENDATION
<p># of health facilities completed for isolation</p> <p>The KPI indicator was not found in the Annual plan review for the year under review.</p>	<p>The Accounting Officer should ensure that the Indicator is reported in the Annual plan review of the Ministry.</p>

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While there is finding on health facilities completed for isolation, the report does not explicitly provide figures of % of Suppliers who delivered as per contract terms,

There is a conclusion on the subject matter and responsibilities of management however is stated as under in OAG report for 2020-2021.

3.6 CONCLUSION ON THE SUBJECT MATTER

The audit found an unsatisfactory outcome on the number of health facility completed for isolation.

4. RESPONSIBILITIES OF MANAGEMENT AND THOSE CHARGED WITH GOVERNANCE FOR THE FINANCIAL STATEMENTS

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Section 12 and 13 of the State Finance Act, 1991, (Act 31 of 1991) and legislation, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the entity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so. Those charged with governance are responsible of overseeing the entity's financial reporting process.

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The management is also responsible for ensuring adherence to the State Finance Act, 1991 (Act 31 of 1991), Public Procurement Act, 2015 (Act 15 of 2015), Treasury Instructions, Public Procurement Regulations, Appropriation Act, 2020 (Act 4 of 2020) and Appropriation Amendment Act, 2020 Act 8 of 2020) and to ensure that effective and efficient internal controls are implemented to enable compliance to the law that governs the performance information.

Similarly, Financial Audit Report for Ministry of Education, Arts and Culture for Financial Year ending March 31, 2022 (Report No 38/2023)⁵⁰ of March 2023 includes Public Procurement Act 2015 and public procurement regulation as a subject matter and under audit criteria, but findings deal with Key Performance Indicators (KPI) at broad level like "inclusive and quality education for all". No explicit findings are mentioned on procurement process and contracts management, on compliance to PPA 2015 and procurement regulation 2017.

Procurement Audit by PPU

⁵⁰ <https://oag.gov.na/web/oag/ministry-of-education-arts-and-culture>

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The draft Annual Report of PPU/MoFPE for 2022-23 (ending March 31, 2023) states that: *In line with the Ministry of Finance Strategic Plan 2017/18 – 2021/22 and Annual Work Plan 2022/2023, the Procurement Policy Unit undertook the following strategic programme activities: (a)Public procurement compliance and performance assessment.*

Based on the draft Annual Report, Compliance Audit was carried out for 9 public entities. The Annual Report states that all nine (9) public entities which were audited during 2022/23 turned a very low audit score, giving an average score of twenty-four (24%) percent. This is rather a poor performance by all public entities and signifies minimum compliance to the Public Procurement Act, 2015. Common challenges identified at the public entities includes: (i) Lack of Performance reviews; (ii)Lack of approved requisitions (Regulation 8(2)(e)); (iii)Lack of certification of availability of funds prior to commencement of procurement process; (iv)Poor compliance to the bid opening procedure (Section 51); (v)Limited publication of procurement award (Section 55(8); and (vi)Poor record keeping overall among others.

The Draft Annual Report concludes that: On the basis of section 25(1)(b) *“An Accounting Officer - is accountable for the full compliance with this Act and directives and instructions made under this Act”, As per the set procedure, Accounting Officers (of the public entities) were requested to submit an implementation action plan to address the shortcomings. The Action Plan serves as a basis against which further monitoring will be conducted by the PPU to ensure compliance going forward”.*

The Compliance Audit Reports by PPU are not published.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c):*

- *number of specialised procurement audits carried out compared to total number of audits (in %).*
- *share of procurement performance audits carried out (in % of total number of procurement audits).*

Source: Ministry of Finance/Supreme Audit Institution.

No data available

Gap analysis

The subject of procurement is not dealt with fully as part of Financial Audits. The procurement audit by PPU is related to compliance. The procurement performance audit is carried out as intended in the Performance Audit Manual issued by OAG. The Audit reports of PPU are not published other than providing a summary paragraph on compliance audit as part of the PPU Annual Report.

Recommendations

PPU (also with support from Government Internal Audit) to carry out risk-based targeted compliance and performance audit annually identifying systemic issues and root causes affecting procurement performance and publish these reports.

OAG should conduct performance audits of procurement transactions in OMAs on a regular basis.

Assessment criterion 12(b)(d):

Clear and reliable reporting lines to relevant oversight bodies exist.

Conclusion: Minor gap

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<p>Red flag: No</p>
<p>Qualitative analysis Based on input provided by OAG to the Assessment Team, the Constitution and PPA stipulate reporting lines to relevant oversight institutions.</p> <p>OAG has clarified that “Currently each central government audit performed have included procurement aspect in the audit report. However, to date the office, has not performed a standalone Performance Audit on Procurement. Moreover, parts of the Procurement process were covered in the Performance Audit on the Management of the Food Bank program in Namibia which was tabled 30 March 2023”.</p>
<p>Gap analysis There are no legal or regulatory requirements regarding the review and timely distribution of internal audit reports. There are no clear reporting lines among oversight bodies which are OAG, Government Internal Audit and PPU related to procurement audit.</p>
<p>Recommendations OAG, Government Internal Auditor and PPU to agree on a protocol/MOU to establish a reporting line related to procurement audit, especially sharing findings and protocols on relying on each other’s work.</p>
<p>Sub-indicator 12(c)</p>
<p>Enforcement and follow-up on findings and Recommendations</p>
<p>Assessment criterion 12(c)(a): Recommendations are responded to and implemented within the time frames established in the law.*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis As per input given by OAG to the Assessment Team “The office doesn’t enforce the recommendation implementation but do assist the Public Account Committee (PAC) on the monitoring by accompanying them on the site visit and drawing up questions to be posed. With regards to the follow-up on findings, the office does follow up during the next audit planning and risk assessment and report thereon if there were prior year and repetitive findings and communicate them to management during engagement and exit meetings as well as in the management letter and National Assembly. To date the office, did not conduct stand-alone Compliance Audit on Procurement. However, a Compliance audit is scheduled to commence in 2024 on the Procurement of Capital Projects”.</p> <p>Also stated above “the office also, did not perform a standalone Performance Audit on Procurement. Moreover, parts of the Procurement process were covered in the Performance Audit on the Management of the Food Bank program in Namibia which was tabled 30 March 2023. In case a performance audit is carried out, a follow up audit is performed within the next 3 years and report is tabled in the National Assembly”</p> <p>Based on PEFA 2015, on legislative scrutiny of audit report the Score is D+ as indicated below.</p>

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Table 3.41 Audit reports legislative scrutiny

PI	Dimension	Score 2015	Justification for 2015 score
PI-28	Legislative scrutiny of external audit reports	D+	Scoring Method M1
(i)	Timeliness of examination of audit reports by legislature (for reports received within the last three years)	D	The scrutiny of AG audit reports by PAC takes more than 12 months. The examination of audit reports for FY2011/2012, FY2012/2013 and FY2013/2014 is still pending
(ii)	Extent of hearings on key findings undertaken by legislature	B	PAC holds public hearings; both the electronic and print media are invited as well as the general public. Accounting Officers of OMAs and SoEs with adverse audit opinion are invited.
(iii)	Issuance of recommended actions by the legislature and implementation by the executive	C	Parliament issues recommendations but these are rarely implemented by the executive

The OAG reports include valuable recommendations, but there is limited evidence of executive action to implement the recommendations timeously, nor is there evidence of any systematic follow up.

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a):

- Share of internal and external audit Recommendations implemented within the time frames established in the law (in %).

Source: Ministry of Finance/Supreme Audit Institution.

Information not available on procurement issues related follow-up

Gap analysis

Legislative scrutiny of external audit report is weak as evidenced by PEFA report. Considered “Red flag” as this gap is beyond the control of OAG and requires intervention at the highest level in the government.

Recommendations

Conduct an assessment of the Public Accounts Committee performance and implement reforms to address the identified weaknesses. The assessment should include the capacity and capability of the PAC to review AG reports and follow-up on its recommendations.

Assessment criterion 12(c)(b):

There are systems in place to follow up on the implementation/enforcement of the audit Recommendations.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

As per input provided by OAG to the Assessment Team, PAC does not monitor implementation of its recommendation. However, as noted above, OAG follows up during the next audit if the recommendations have been implemented and report their observations in OAG’s management letter and report to the National Assembly.

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As per AFDB internal document⁵¹ on the follow up: “The AG’s work overall can be characterized as comprehensive, independent and displaying a much higher level of professionalism than a typical Namibian public institution. However, few if any audits compiled and released by the AG’s office on the public sector generate actions or even vigorous debate by the legislature. It is the responsibility of Parliament to review & deliberate on the reports and make further recommendations and actions to taken where malpractices have occurred or happened in the PEs. Consequently, while the AG has consistently made many crucial recommendations on improving the financial performance and accountability of the public sector, little of this has been implemented. It can be argued that the predictable result for Namibia is an overall weak public sector with poor financial oversight. Therefore, ensuring government accountability and the potential for curbing corruption by public sector officials and politicians remains substantially limited’.

Gap analysis

PAC does not monitor implementation of its recommendation. Considered “Red flag” as it is beyond the control of OAG.

Recommendations

PAC to monitor implementation of its recommendation with priority from the highest level of the government.

Sub-indicator 12(d)

Qualification and training to conduct procurement audits

Assessment criterion 12(d)(a):

There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Based on response provided by OAG to the Assessment Team, there is no specific procurement training program for external auditors or qualification requirement for OAG staff to conduct procurement audit. However, the office does allow its staff members to be acquainted with procurement processes and requirement through training offered by the procurement unit. In addition, the competency of the audit team is assessed, and ethical declarations are observed before and throughout the audit engagement.

Based on the career opportunities posted on OAG website⁵², there are entry level requirements with Business Degrees/Diploma to cover a range of subjects to conduct Regular Audit or Performance Audit.

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):

- number of training courses conducted to train internal and external auditors in public procurement audits.
- share of auditors trained in public procurement (as % of total number of auditors).

Source for all: Ministry of Finance/Supreme Audit Institution.

⁵¹ Assessment of The Borrower’s Procurement System (BPS) by AfDB- January 2023

⁵² <https://oag.gov.na/web/oag/career-opportunities>

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<p>Based on OAG input to the Assessment Team in April 2024</p> <p>Based on input given by OAG during Validation Mission in April 2024, in the recent years there were limited opportunities for training of OAG Auditors which included one staff completing a post-graduate diploma in procurement management, e-GP training (1 day for 8 participants), procurement act induction workshop (1 day for 60 participants) and Fundamentals of Public Procurement Management (5 days for 7 participants).</p>
<p>Gap analysis</p> <p>There are limited opportunities for training of OAG to conduct procurement audit (also applies to Government Internal Auditors). There is no competency framework, or qualification requirement or specific procurement training program for external auditors (and internal auditors) or qualification requirement to conduct a high-quality procurement audit.</p>
<p>Recommendations</p> <p>To institute competency framework, qualification requirements and specific training to conduct high quality procurement audit by Government Internal Auditors and OAG Auditors</p>
<p>Assessment criterion 12(d)(b):</p> <p>The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Based on input by OAG to the Assessment Team Audit team competency is evaluated every time before an audit is commenced. As indicated above, there is no competency framework, or qualification requirement or specific procurement training program for external auditors (and internal auditors) or qualification requirement to conduct a high-quality procurement audit.</p>
<p>Gap analysis</p> <p>As at 12(d)(a)</p>
<p>Recommendations</p> <p>As at 12(d)(a)</p>
<p>Assessment criterion 12(d)(c):</p> <p>Auditors are selected in a fair and transparent way and are fully independent.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Based on input by OAG to the Assessment Team, “It all depends on if the team assigned to the auditee require certain competency, then such competency is solicited in other audit team members”.</p>
<p>Gap analysis</p>

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There is no competency framework, or qualification requirement or specific procurement training program for external auditors (and internal auditors) or qualification requirement to conduct a high-quality procurement audit.

Recommendations

As at 12(d)(a)

Indicator 13. Procurement appeals mechanisms are effective and efficient

Sub-indicator 13(a) Process for challenges and appeals
<p>Assessment criterion 13(a)(a): Decisions are rendered on the basis of available evidence submitted by the parties.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Decisions by the Review Panel are rendered on the basis of evidence submitted by the parties.</p> <p>PPR R42 Application for review requires an application for review to contain the grounds for review as well as any supporting documents plus an application fee of N\$5 000. PPR R43: The public entity concerned files a replying affidavit. The Review Panel may at any time before the date of hearing of a review application request any party to furnish additional information, with examples of such additional information listed in PPR R43(3). The Review Panel Secretariat operates in accordance with the Review Panel Operations Manual (RP Operations Manual) which sets out the procedures applying to all applications for review submitted to the Review Panel. This includes sections on receipt, review and collection of relevant evidence for consideration by the Review Panel.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 13(a)(b): The first review of the evidence is carried out by the entity specified in the law.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis PPR R. 38 provides bidders with a right for a bidder to request reconsideration by a public entity of an award decision and sets out the process to be followed which may result in the re-evaluation of bids, so first review of evidence is carried out by the public entity in the context of the request for reconsideration. Review of evidence on request for review is carried out by the Review Panel. PPR R.42 sets out requirements in relation to the information and documents which must be submitted by both the complainant and the procuring entity in a review process conducted by the Review Panel. The Review Panel makes its decision based on the information provided to it plus additional information it may request in accordance with PPR R.43.</p>

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Gap analysis
Recommendations
Assessment criterion 13(a)(c): The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *
Conclusion: No gap
Red flag: No
Qualitative analysis The High Court of Namibia has confirmed that applicants are duty-bound to comply and implement the decision of the Review Panel unless such decision is set aside according to law. ⁵³

Quantitative analysis

// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):
- number of appeals.
Source: Appeals body.

Applications to Review Panel for review under PPA S.58(1)(i)				
Year	Total Number of applications for review pursuant to PPA s.58(1)(i)	Decisions on application for review by Review Panel;		
		Dismissed (number)	Written decision issued by RP within statutory time frame* (number)	Written decision issued by RP outside statutory time frame* (number)
2019/2020	39	20	39	0
2020/2021	49	17	48	0
2021/2022	103	45	100	0
2022/2023	118	11	116	0
2023/2024	115	31	112	0

* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):
number (and percentage) of enforced decisions.
Source: Appeals body.

⁵³ Central Procurement Board v Chairperson of the Review Panel, High Court Case no: HC-MD-CIV-MOT-REV-2023/00301

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Data not available
Gap analysis
Recommendations
<p>Assessment criterion 13(a)(d): The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Challenging the award decision (standstill period): PPA s.55 requires a bidder or supplier to within 7 days of receipt of that notification apply to the Board of public entity to reconsider its selection of a bid for award. The Board or the public entity must, within 7 days of the date of receipt of the application, notify the bidder of its decision.</p> <p>General right to apply to the Review Panel for review of decisions or actions, including the outcome of the award decision challenge: PPA s.59(1) requires a bidder or supplier to submit an application for review to the Review Panel within seven days after the bidder or supplier is notified of the decision or action. PPA s.59 (3) provides that “The Review Panel must strive to make a decision within seven days of receipt of the application for review or as soonest as practical possible, but not later than 14 days.”</p>
Gap analysis
Recommendations
<p>Sub-indicator 13(b) Independence and capacity of the appeals body The appeals body:</p>
<p>Assessment criterion 13(b)(a): is not involved in any capacity in procurement transactions or in the process leading to contract award decisions</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis PPA s.58 Review Panel, provides that a Review Panel is made of up of 5 members, drawn from a list of 15 persons with relevant qualifications. The Minister compiles the list of qualified persons after an invitation of expressions of interest. The list is published in the Gazette and may be updated annually.</p> <p>Disclosure of interest: PPA s.76 Disclosure of Interest by members of Board and Review Panel, requires immediate disclosure of any direct or indirect financial, economic or personal interest in the matter brought before the Review Panel. Where a disclosure of interest is made, that member may not participate in the deliberations or take part in the decision-making process in relation to that matter unless the Review Panel directs otherwise, having considered the matter and having found that there is no conflict of interest. Reasons</p>

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must be recorded, and breach of these provisions may constitute an offence and result in fines or imprisonment.

Oath of office: PPA s.75 Oath of office requires a member of the Board (CPBN) or Review Panel to take the oath of office or affirmation on appointment. PPR R58, Annexure 6 contains the Oath or Affirmation in which the member must declare that they “will not without being duly authorised disclose to any person any information which [they] have obtained or which [they] had access” by virtue of their office.

The Minister may, subject to that person having a reasonable opportunity to be heard, remove a person from the list at any time if where that person is guilty of misconduct, default or breach of trust in the performance of his/her functions in any capacity or of an offence “of such a nature that warrants termination of the appointment of the member.”

The secretariat role in support of the Review Panel is provided by the PPU, which is part of the MoFPE and so full independence from the MoFPE (as procuring entity) cannot be guaranteed.

The Acceptance Form for Review Panel Members (at Annex 8 to the RP Operations Manual) signed by members on appointment to a panel, includes a declaration that they are independent, have no beneficial interest in the procedure and know of no material facts or circumstances which may call in to question their independence or partiality. There is an ongoing duty of disclosure.

Review Panel Members are paid according to remuneration provisions applying under the Public Enterprises Governance Act No.1 of 2019.

Gap analysis

The secretariat role in support of the Review Panel is provided by staff seconded from the MoFPE and so a potential for conflict arises in the activities of MoFPE both as procuring entity and provider of secretariat services in respect of the Review function.

This Gap is assigned a “Red flag” because independence of the system for review is an essential requirement with significant impact on the operation of an important aspect of the procurement ecosystem. In addition the funding and resourcing of the Review Panel Secretariat is a wider budget issue falling outside solely the procurement sphere.

Combined Recommendations for 13(b)(b), 13(b)(g), 13(c)(b)

Undertake a critical review of the operation in practice of the current system for applications for reconsideration and administrative review by the Review Panel to establish whether that system achieves the aims of delivering efficient and effective decision making and in a manner which is, and is perceived to be, fair and unbiased. The review should identify measures to improve or alter the system, including the institutional structure and standing of the Review Panel and its Secretariat, with particular reference to avoidance of conflicts of interest, to ensure that it is fit for purpose. The review will need to incorporate consideration and allocation of necessary resources to support operation of the Review Panel and its secretariat.

The review should also include consideration of the reasons why applications for review at earlier stages in the procurement process, prior to the notice on selection for award, are relatively rare (see 1(h)(c)), for example at the stage of clarification of bidding documents. It may also be appropriate to investigate whether/to what extent fees paid by applicants inhibit access by concerned parties and/or act as an effective disincentive to frivolous complaints.

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<p>Assessment criterion 13(b)(b): does not charge fees that inhibit access by concerned parties</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis PPR R42 Application for review requires payment of an application fee of N\$5,000.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 13(b)(c): follows procedures for submission and resolution of complaints that are clearly defined and publicly available</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The procedure for submission and resolution of complaints is defined in PPA ss.59 to 61 and PPR R42 to R45. The rules cover: the process for submission of complaints including timelines and pleadings to be submitted; the provision of additional information, documents or evidence; confidentiality of information and proceedings; orders/remedies which the Review Panel may make; keeping of the Review Register. PPR R44 Review Proceedings, provides that review proceedings “are conducted in such a manner as the Review Panel considers most suitable to resolve the issues.”</p> <p>The Reference Guide to Public Procurement (May 2021), available on-line,⁵⁴ includes a section on submission of applications for review and conduct of the review process.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 13(b)(d): exercises its legal authority to suspend procurement proceedings and impose remedies</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Analysis by the MAPS Assessment Team of sample decisions by the Review Panel⁵⁵ confirms that the Review Panel makes a range of orders and imposes remedies.</p>

⁵⁴ Reference Guide to Public Procurement (v.1.0, 01 May 2021), PPU.

<https://eprocurement.gov.na/documents/46410/53646/Reference+Guide+to+Public+Procurement+V1.pdf/afa3bb68-c205-032d-7f8c-77d48c712c1c?t=1630660406146>

⁵⁵ Sample of 20 decisions made in 2023.

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Gap analysis				
Recommendations				
Assessment criterion 13(b)(e): issues decisions within the time frame specified in the law/regulations*				
Conclusion: No gap				
Red flag: No				
Qualitative analysis All decisions are rendered within statutory time frames.				
Quantitative analysis				
<i>Quantitative indicator to substantiate assessment of sub-indicator 13(b) assessment criterion (e):</i>				
• <i>appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).</i>				
Applications to Review Panel for review under PPA S.58(1)(i)				
		Decisions on application for review by Review Panel		
Year	Total Number of applications for review pursuant to PPA s.58(1)(i)	Dismissed (number)	Written decision issued by RP within statutory time frame* (number)	Written decision issued by RP outside statutory time frame* (number)
2019/2020	39	20	39	0
2020/2021	49	17	48	0
2021/2022	103	45	100	0
2022/2023	118	11	116	0
2023/2024	115	31	112	0
<i>Source: Appeals body.</i>				
Gap analysis				
Recommendations				
Assessment criterion 13(b)(f): issues decisions that are binding on all parties				
Conclusion: No gap				
Red flag: No				
Qualitative analysis				

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<p>PPR R8(a) Procedures and processes for procurement management units, requires the procurement management unit to implement decisions of the Review Panel.</p> <p>Review Panel decisions sampled by the MAPS Assessment Team which require immediate action by the public entity include specific orders for the public entity to provide proof of or a report on compliance/implementation of the Review Panel’s decision by a specified date to the Review Panel Secretariat.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 13(b)(g): is adequately resourced and staffed to fulfil its functions.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis PPA s.58(8) Secretariat services are provided by staff seconded from MoFPE who are also provided with some administrative support and basic IT resources. There is no permanent Review Panel Secretariat structure or establishment. The current staff support is insufficient to respond to the demands arising from the large number of applications for review received.</p>
<p>Gap analysis The Review Panel is insufficiently resourced and staffed to respond to the demands arising from the large number of applications for review received.</p> <p>This Gap is assigned a “Red flag” because effective operation of the system for review is an essential requirement with significant impact on the wider procurement ecosystem. In addition, resourcing (financial, human resources and other support) of the Review Panel is a higher-level budget issue not lying solely within the procurement sphere.</p>
<p>Recommendations See combined Recommendations at 13(b)(a).</p>
<p style="text-align: center;">Sub-indicator 13(c) Decisions of the appeals body</p> <p style="text-align: center;">Procedures governing the decision making process of the appeals body provide that decisions are:</p>
<p>Assessment criterion 13(c)(a): based on information relevant to the case.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Analysis by the MAPS Assessment Team of sample decisions by the Review Panel⁵⁶ confirms that decisions are based on information relevant to the case.</p>

⁵⁶ Sample of 20 decisions made in 2023.

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According to an Opinion of the Attorney General, based on analysis of relevant legal provisions and court decisions, the Review Panel may not adjudicate and raise matters beyond the grounds laid down for review in the application for review submitted to the Review Panel. ⁵⁷
Gap analysis
Recommendations
Assessment criterion 13(c)(b): balanced and unbiased in consideration of the relevant information.*
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis Analysis by the MAPS Assessment Team of sample decisions by the Review Panel ⁵⁸ indicates that decisions are balance and unbiased. In cases where there are dissenting opinions from Review Panel members this is noted in the decision. In contrast, the Private Sector survey results shows rather high levels of distrust in the review and appeals system. In answer to the question “Overall, how do you rate the review system?”, 50 out of 87 (57%) of participants responded that the system either never or rarely works according to the law and is not predictable. A large majority of the participants who have submitted an application for reconsideration to the Board or public entity or application for review to the Review Panel are of the view that the process was not trustworthy and fair.
Quantitative analysis <i>Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b):</i> - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses). Source: Survey.

⁵⁷ Information provided by Review Panel and Review Panel Secretariat, April 2024.

⁵⁸ Sample of 20 decisions made in 2023.

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31. Have you ever submitted an application for reconsideration to a public entity or Central Procurement Board for review of a procurement decision taken by that public entity or the Central Procurement Board?

● Yes 28
● No 56



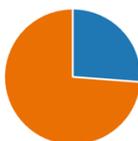
32. Please indicate if you felt the process was trustworthy and fair.

● Yes 3
● No 25



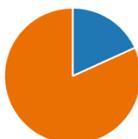
33. Have you ever submitted an application for review to the public procurement Review Panel?

● Yes 22
● No 62



34. Did you feel that the process was trustworthy and fair?

● Yes 4
● No 18



36. Overall, how do you rate the review system?

● The system always works acco... 8
● The system works, in most cas... 26
● The system very rarely works a... 29
● The system does not work acc... 21



Gap analysis

The system for reconsideration and review is actively used by bidders, as evidenced by the number of applications considered by the Review Panel. Bidders are also prepared to use the court system to appeal against decisions of the Review panel. This may be implied to indicate a satisfactory level of confidence in the system but the responses to the private sector survey indicate otherwise. It is therefore not possible to conclude that the appeals system is seen to be operating in a fair manner, as required by the MAPs Methodology.

This Gap is assigned a “Red flag” because bidder confidence in the system for review is an essential requirement with significant impact on the operation of an important aspect of the procurement ecosystem. In addition, this is a whole-system issue with measures to resolve the Gap requiring high level governmental leadership

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and cross sectoral (public and private sector as well as civil society) cooperation to investigate and properly understand shortfalls and to identify and deliver improvements, learning and support to tackle the perception of unfairness.

Recommendations

See combined Recommendations at 13(b)(a).

Assessment criterion 13(c)(c):

result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*

Conclusion: No gap

Red flag: No

Qualitative analysis

Analysis by the MAPS Assessment Team of sample decisions by the Review Panel⁵⁹ demonstrate that a range of remedies is used, including orders for correction of process/procedures where relevant.

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).

Applications to Review Panel for review under PPA S.58(1)(i)						
Year	Total number of written decisions issued	Decided in favour of Board/public entity		Decided in favour of applicant (i.e. remedy/ies granted)		Number of RP decisions appealed to High Court (number)
		number	%	number	%	
2019/2020	39	27	69	12	31	3
2020/2021	49	30	61	19	39	6
2021/2022	100	67	67	33	33	7
2022/2023	116	64	55	52	45	10
2023/2024	112	77	69	35	31	11

Source: Appeals body.

Gap analysis

Recommendations

⁵⁹ Sample of 20 decisions made in 2023.

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Assessment criterion 13(c)(d): decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis Review Panel decisions are published on the e-GP Portal, “Review Panel Reports” tab. E-GP Guidelines issued by the PPU (29 March 2022) ⁶⁰ require Review Panel outcomes to be published on the e-GP Portal within 7 working days of the Review Panel’s decision/findings. It is the responsibility of the Review Panel to upload decisions to the e-GP portal. Review panel decisions are not all published within this specified time frame. The MAPS Assessment Team observed, on reviewing the Review Panel Reports pages on 12 January 2024 that there were no reports published on-line for the period October to December 2023. On revisiting the same page in March 2024, 26 reports were published for that period and for the subsequent period from January to March 2024.
Quantitative analysis <i>// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %). Source: Centralised online portal.*</i>
Data not available
Gap analysis In financial year 2023/2024, Review Panel decisions were not all published on the e-GP portal within the specified time frame of 7 working days, thus reducing transparency in the operation of the procurement system. This Gap is assigned a “Red flag” because bidder confidence in the system for review is an essential requirement with significant impact on the operation of an important aspect of the procurement ecosystem and lack of transparency negatively impacts confidence. In addition, the likely cause and remedy is linked to resourcing (financial, human resources and other support) of the Review Panel, which is a higher-level budget issue not lying solely within the procurement sphere.
Recommendations To ensure transparency and enhance confidence in the review process, put into place relevant resources and support to ensure that all Review Panel decisions are published on the e-GP portal within the specified time frame of 7 working days. Consider also, publishing information on applications for Review so that all stakeholders are aware of such applications and can track cases and their outcomes.

⁶⁰ Electronic Public Procurement Phase 1 Guidelines V3 (29 March 2022), applicable from 01 April 2022, PPU.

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Indicator 14. The country has ethics and anticorruption measures in place

Sub-indicator 14(a)

Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties

The legal/regulatory framework provides for the following:

Assessment criterion 14(a)(a):

definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

The PPA and PPR do not include definitions of fraud, corruption, and other prohibited practices in procurement. There are, however, provisions at PPA s.67 Conduct of bidders and suppliers, which define consequences (offences and fines) for bidders and suppliers engaging in corrupt, fraudulent practices, collusive and coercive practices. "Collusion among bidders" is defined at PPA s.54(5).

The Anti-Corruption Act, 2003⁶¹ does not define the terms such as fraud and corruption. Anti-Corruption Act Chapter 4 Corrupt Practices and Penalties contains provisions relating to a number of practices and offences, including corrupt acquisition of private interest by a public officer, corruption in relation to tenders and corruptly accepting and receiving "gratification". Gratification is further defined.

Standard Bidding Document⁶² defines, corrupt, fraudulent, collusive, coercive, and obstructive practices, as further explained under Indicator 14(b).

There are other related acts: Prevention of Organised Crime Act, 2004⁶³ and Financial Intelligence Act, 2012⁶⁴ also to provide for the combating of money laundering and financing of terrorism activities.

Namibia signed the UNCAC in 2003 and ratified it on 27 April 2004. There have been two UNODC reviews: Cycle with a full Country Review report published in 2016 on implementation of Chapters III and IV of UNCAC⁶⁵ (UNODC UNCAC 2016 Report) and an executive summary published in 2023 on implementation of Chapters II and V.⁶⁶

According to the Anti-Corruption Commission (ACC), most of the recommendations in the 2016 Report have been adopted. The ACC refers to seven (7) pieces of policy/legislation that were implemented based on the recommendations of the first review cycle.

⁶¹ Anti-Corruption Act No.8 of 2003

[DOWNLOADS - ACC - GRN Portal \(gov.na\)](#)

⁶³ Prevention of Organised Crime Act No.29 of 2004

⁶⁴ Financial Intelligence Act No. xx of 2012

⁶⁵ UNODC Country Review Report of the Republic of Namibia – implementation of articles 15-42 of Chapter III and articles 44-50 of Chapter IV UNCAC

https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_01_29_Namibia_Final_Country_Report_.pdf

⁶⁶ <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/10-14June2024/CAC-COSP-IRG-II-5-1/2318152E.pdf>

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Namibia developed its first National Anti-Corruption Strategy and Action Plan (2016-2019) The Cabinet approved the second National Anti-Corruption Strategy and Action Plan (NACSAP) for 2021-2025 on 9 December 2021 and this was launched on 16 March 2022 for implementation by all relevant institutions.

According to the Anti-Corruption Commission (ACC), most of the recommendations in the 2016 UNCAC Report (see analysis at 14(a)(a)) have been adopted. The ACC refers to seven (7) pieces of policy/legislation that were implemented based on the recommendations of the first review cycle.

The ACC notes as follows: “These policies /legislations include: (i) Standardized regulations for public enterprises; Consolidation of the Public Enterprises Government Act; (ii) Amendment to Namibia's Extradition Act, 1996 (Act No. 11 of 1996); (iii) Amendment to the International Cooperation in Criminal Matters Act, 2000 (Act No.9 of 2000); (iv) Whistleblower Protection Act, 2017 (Act No.10 of 2017); (v) Witness Protection Act, 2017 (Act No. 11 of 2017); (vi) The Access to Information Act was signed into law in December 2022; and (vii) Self-Regulatory Code of Ethics and Conduct for Namibia Print, Broadcast, and Online media has been completed. These mechanisms aim to ensure that corrupt practices are exposed, investigated, and prosecuted, thus safeguarding the interests of our nation and its citizens”.

Based on a briefing paper ⁶⁷ of IPPR in 2016 Namibia has been commended by the UN Office on Drugs and Crime (UNODC) for its overall progress in meeting its obligations under the Convention so far, the reviewers of the paper nevertheless emphasized that much still needed to be done. The issues highlighted are indicated as (i) Anti-corruption policies not coordinated; (ii) Lack of comprehensive approach to conflict of interest; and (iii) Lack of comprehensive approach to the declaration of assets by public servants.

Gap analysis

Anti-corruption Act No.8 of 2003 does not clearly define the terms such as fraud and corruption, nor does PPA 2015. Such definitions are there in the Standard Bidding Document and Anti-corruption policies which are not coordinated. There is lack of comprehensive approach to conflict of interest and to the declaration of assets by public servants as pointed out in the briefing paper of IPPR.

Note: amendment to definition of “public officer” in ACA as amended in 2016 not available.

Recommendations

There needs to be direct reference to PPA/PPR in anti-corruption legislation and consistency in definition of terms fraud and corruption for better clarity.

Assessment criterion 14(a)(b):

definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.

Conclusion: **Minor gap**

Red flag: **No**

Qualitative analysis

PPA s.66 Conduct of staff members of public entities, and PPA s.66A Disclosure of interest by staff members of public entities, both stipulate the consequences of noncompliance as “A person who contravenes or fails to comply

⁶⁷ [IPPR Corruption UNCAC.pdf](#)

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with this subsection (1) or (2) commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment”.

PPA s.67 on Conduct of bidders and suppliers, stipulates consequences as for an offence relating to corrupt or fraudulent practices or engaging in coercive practice as “liable to a fine not exceeding N\$5 000 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment”.

Anti-Corruption Act, Chapter 4, ss.32 to 44, (Section 32 to 44) deals with corrupt practices and penalties which *inter alia* defines “public body” “public officer” and further elaborates on “Offence of corruptly accepting gratification”, “Offence of corruptly giving gratification”, “Corrupt acquisition of private interest by public officer (Corruption in relation to tenders, Bribery of public officer etc.)” “Corruption of witnesses, Bribery of foreign public officials”, “Bribery in relation to auctions”, “Bribery for giving assistance in relation to contracts”, “Corruptly using office or position for gratification” that includes definition of relative and associate.

In particular, Corruption in relation to tenders under section 37 is defined as: A person commits an offence who, directly or indirectly - (a) gives or offers to give to any person any *gratification as an inducement or a reward* for, or otherwise on account of, the withdrawal of, or the refraining from the making of, any *tender for a contract invited by any public body*, private organization, corporate body or other organization or institution to perform any work, provide any service, supply any article, material or substance or for doing anything; or (b) solicits or accepts or agrees to accept for himself or herself or any other person any gratification as an inducement or a reward for or otherwise on account of the withdrawal of, or the refraining from the making of, a tender for a contract referred to in paragraph (a).

Bribery of public officer under Section 38 is defined as:” A person who offers or gives or agrees to give to a public officer, or who, being a public officer, solicits or accepts or agrees to accept, any gratification as an inducement or a reward for, or otherwise on account of *inter alia* performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act.

ACC s.49 Penalties sets out the following consequences of not complying with provisions under ACC Chapter 4: “A person convicted of an offence under any provision of this Chapter is liable to a fine not exceeding N\$500 000 or to imprisonment for a term not exceeding 25 years, or to both such fine and such imprisonment”.

Gap analysis

UNODC UNCAC 2016 Report at s.2 (p.3) observed that the definition of “public officer” in Anti-Corruption Act 2003 (ACA) s.32 does not cover unpaid persons or other persons performing public functions of providing a public service (in accordance with UNCAC article 2.) it noted that there is also uncertainty whether all categories of person holding legislative, administrative or judicial offices are covered. Recommended to adopt a definition of public office in line with UNCAC art.2. (see also pp16-18) Various other recommendations to amend legislation including to cover acts of indirect bribery and third-party beneficiaries for all bribery offences under ACA, measure to criminalize trading in influence, liability of legal persons.

Recommendations

Recommendation of UNCAC report of 2016 on definition of “public officer” and related matters to be adopted.

Assessment criterion 14(a)(c):

definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.

Conclusion: Minor gap

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Red flag: No

Qualitative analysis

PPA Part 10, ss.65 to 68 covers Procurement Integrity. PPA s.66 requires a staff member of the Board (CPBN) or a public entity involved in planning or conducting procurement process at 1(c) “to avoid any conflict of interest to arise in the carrying out of his or her functions and in conducting himself or herself”; at 1(e) “not to deal or negotiate on behalf of the contractor or supplier for a contract he or she had specifically dealt with while in the service of the Board or public entity” .If a staff member of the Board or a public entity involved in the bid preparation process, at any stage of a bid indicates that he or she wishes to recuse himself or herself because of conflict of interest, the staff member may not participate in the bidding process as a bidder or supplier.

PPA s.66ADisclosure of interest by staff members of public entities, requires (1) A staff member of the Board or public entity (a) who is a member of the procurement committee, bid evaluation committee or procurement management unit of the public entity; (b) who is involved in planning or conducting procurement process or contract administration in relation to the public entity or Board; or (c) who has a close relative, associate or friend, with a direct or indirect financial, economic or personal interest in the bidding entity or a matter that requires the decision of the Board, procurement committee, bid evaluation committee or procurement management unit, must disclose that interest... “ (2) the staff member referred to in subsection (1), with an interest referred to in that subsection— (a) must immediately inform the relevant Minister, chairperson or the accounting officer of the interest; and (b) may not participate in the deliberations or take part in the decision-making process in relation to that matter, unless the relevant decision-making body directs otherwise after having considered the matter and having found that there is no conflict of interest. (3) The public entity or Board must record the disclosure of interest made in terms of this section in the minutes of the meeting at which it is made”.

Further as per PPA s.75 on Disclosure of interest by members of Board and Review Panel, (1) A member of the Board or Review Panel who has, any direct or indirect financial interest in any matter brought before the Board or Review Panel, or who has a close relative, associate or friend with a direct or indirect financial, economic or personal interest in the matter brought before the Board or Review Panel, or who has a close relative, associate or friend with a direct or indirect financial, economic or personal interest in the matter brought before the Board or Review Panel— (a) must immediately inform the chairperson of the Board or Review Panel of the interest; and (b) may not participate in the deliberations or take part in the decision-making process in relation to that matter, unless the Board or the Review Panel directs otherwise after having considered the matter and having found that there is no conflict of interest

Further Anti-Corruption Act s.43Corruptly using office or position for gratification, stipulates that “(1) A public officer commits an offence who, directly or indirectly, corruptly uses his or her office or position in a public body to obtain any gratification, whether for the benefit of himself or herself or any other person. (2) For the purposes of subsection (1), proof that a public officer in a public body has made a decision or taken action in relation to any matter in which the public officer, or *any relative or associate* of his or hers has an interest, whether directly or indirectly, is, in the absence of evidence to the contrary which raises reasonable doubt, sufficient evidence that the public officer has corruptly used his or her office or position in the public body in order to obtain a gratification”.

The terms “relative” and “associate” are defined further in section 43, but there is no mention of “friend” as in PPA at Section 66.

Gap analysis

There is no explicit mention of cooling-off period for former public officials either in PPA/PPR or the Anti-corruption Act.

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<p>The definitions of relative/associate/friend are not consistent between PPA and Anti-corruption Act.</p>
<p>Recommendations To make explicit mention of cooling-off period for former public officials either in PPA/PPR or Anti-Corruption Act. The definitions of relative/associate/friend to be made consistent between PPA and Anti-corruption Act.</p>
<p>Sub-indicator 14(b) Provisions on prohibited practices in procurement documents</p>
<p>Assessment criterion 14(b)(a): The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis As indicated above, Standard Bidding Document⁶⁸ defines, corrupt, fraudulent, collusive, coercive, and obstructive practices, which is broadly based on definition as adopted by International Financial Institution (IFIs) like the World Bank. But such definitions are not contained in the legal and regulatory framework.</p>
<p>Gap analysis There is lack of consistency between the use of terms corrupt, fraudulent, collusive, coercive, and obstructive practices in the public procurement legal and regulatory framework (PPA and PPR) and Anti-Corruption Act, 2003, and there is no mandatory requirement or precise instruction on how to incorporate the matter in procurement and contract documents.</p>
<p>Recommendations To ensure consistency between the use of terms corrupt, fraudulent, collusive, coercive, and obstructive practices in the public procurement legal and regulatory framework (PPA and PPR) and Anti-Corruption Act, 2003, provided precise instruction on how to incorporate the matter in procurement and contract documents.</p>
<p>Assessment criterion 14(b)(b): Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Based on examination of sample procurement and contract document on e-Procurement website of PPU⁶⁹, which are: Standard Bidding Document (SBD) for Works, Non-Consulting Services, Goods, IT System and Consulting Services, it is seen that provisions on fraud, corruption and other prohibited practices follows the definition as in the SBDs of IFI (like the World Bank).</p> <p>The SBDs, in the section on Fraud and Corruption stipulates that the purchaser “will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question; and will sanction</p>

⁶⁸ <https://eprocurement.gov.na/documents>

⁶⁹ <https://eprocurement.gov.na/documents>

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a firm or an individual, at any time, in accordance with prevailing legislations, including by publicly declaring such firm or individual ineligible, for a stated period of time: (i) to be awarded a public contract; and (ii) to be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a public contract”.

Gap analysis

As noted at 14(b)(a) there is lack of consistency between the public procurement and anti-corruption legal frameworks. This lack of consistency continues in respect of the provisions on fraud, corruption and other prohibited practices in the procurement and contract documents which are based on International Financial Institution (IFI) terms.

The Bidding form in the SBD have no reference to establish bidder’s eligibility based on declaration on Suspension and Debarment and Fraud and corruption in accordance with the provision of Anti-Corruption Act and PPL.

Recommendations

To make provisions on fraud, corruption, and other prohibited practices consistent between public procurement and legal framework. Bidding form in SBD to include reference to establish bidder’s eligibility based on declaration on Suspension and Debarment and Fraud and corruption in accordance with the provision of Anti-Corruption Act and PPL. Bidding form in SBD to include reference to establish bidder’s eligibility based on declaration on Suspension and Debarment and Fraud and corruption in accordance with the provision of Anti-Corruption Act and PPL.

Sub-indicator 14(c)

Effective sanctions and enforcement systems

Assessment criterion 14(c)(a):

Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

In accordance with PPA s. 7 (4) (b) if, in the discharge of its functions, the Policy Unit finds that there has been a non-compliance with any provision of this Act, directives, code of procedures or guidelines made under this Act, the Minister may refer any matter of non-compliance to the Namibian Police, Anti-Corruption Commission or any other competent authority for investigation, when it thinks appropriate, and must inform the public entity concerned.

However, it is implied that such reference to ACC/NAMPOL is on account of allegation of fraud, corruption, and other prohibited practices.

The Anti-Corruption Act No.8 of 2003, Section 48 places duty on public officials and members of the public to report corrupt activities to the Commission as per the following provisions:

Duty to report corrupt transactions 48. (1) A public officer to whom any gratification is promised, offered, or given in contravention of any provision of this Chapter must, as soon as possible, report such fact, together with the name or any other information relating to the identity of the person or persons concerned to his or her supervisor and to the Commission. (2) If any gratification has been demanded, solicited, accepted or obtained from any person in contravention of any provision of this Chapter, or if an attempt has been made to demand, solicit, accept or obtain any gratification from any person in contravention of any provision of this Chapter, that person must, as

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soon as possible, report such fact together with the name or any other information relating to the identity of the other person or persons involved to the Commission. (3) A person commits an offence who fails to comply with subsection (1) or (2).

There is link on ACC website to report cases of Fraud and Corruption which could be anonymous, asking to describe the incident/alleged corrupt practices in as much detail as possible:

[Submit a Report Online - ACC - GRN Portal \(gov.na\)](#)

Procedure for reporting allegations of fraud, corruption, and other prohibited practices: In practice, public entities do not come forth with the names of these underperforming companies (which though may not necessarily relate to Fraud and Corruption) to be debarred based on media reports⁷⁰ Similar reports are available under IPPR publication⁷¹, explained later as well.

Gap analysis

No consistency and clarity between PPA and Anti-corruption Act to report allegations of fraud, corruption, and other prohibited practices to law enforcement authorities to ensure enforcement. Based on Annual Report of ACC for 2021/22 there are few cases (3 to 4) on cases relating to procurement and contract award under the section on notable and ongoing cases. For procurement related cases no substantial evidence is available on enforcement.

Recommendations

ACC and PPU may agree on a protocol/ procedure advising Public Entities to report cases of fraud and corruption and these are investigated and enforced. Various institutional stakeholders to work together in the anti-corruption sphere - Police, competition authorities, PPU, ACC, Audit to collaborate and work towards, support public procurement system reform, and enhance accountability in budget management in line with National Anti-Corruption Strategy and Action Plan (2021-2025).

Assessment criterion 14(c)(b):

There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

As per feedback from ACC, Public entities and members of the public constantly report allegations of corruption to the Commission. ACC also has a website where allegations of corruption are reported and whistle-blowers contacted to provide information pertaining to the allegations. The allegations are evaluated, analyzed and then investigated if allegations are based on reasonable grounds.

Based on Annual Report of ACC for 2021/22 there are few cases (3 to 4) on cases relating to procurement and contract award under the section on notable and ongoing cases⁷².

Gap analysis

As in 14(c)(a)

⁷⁰ <https://www.namibian.com.na/public-entities-promoting-underperforming-companies/>

⁷¹ <https://ippr.org.na/wp-content/uploads/2023/08/PTN-23-web.pdf> (Issue No 23 of August 2023)

⁷² <https://acc.gov.na/documents/31390/2784969/Annual+Report++2021++2022.pdf/78c208bf-edda-ccd5-5f73-ba304c3112f7>

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Recommendations As in 14(c)(a)
Assessment criterion 14(c)(c): There is a system for suspension/debarment that ensures due process and is consistently applied.
Conclusion: Minor gap
Red flag: No
Qualitative analysis Grounds for suspension or debarment: PPA s.68 Suspension, debarment and disqualification of bidders and suppliers, sets out grounds for suspension or debarment, as follows: “(a) supplying false information in the process of submitting a bid or pre-qualification application; (b) bid rigging or collusion between the bidders or a bidder and a supplier, agent, or staff member concerning the formulation of any part of the bidding documents; (c) interference by a supplier with the participation of competing bidders; (d) misconduct relating to the submission of bids, including corruption, bid rigging, price fixing, a pattern of underpricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier; (e) conviction for an offence relating to obtaining or attempting to obtain a procurement contract within five years prior to the bidding; or (f) conviction for an offence related to dishonesty or fraud or corruption in his or her professional activity within 10 years prior to the bidding and was sentenced to imprisonment without the option of a fine.” In 2022, PPU issued Instruction Note (09 December 2022) reminding all Accounting Officers of the availability of suspension or debarment under PPA s.68(1)(d) as a consequence of non-performance of contractual obligations (i.e. misconduct relating to execution of procurement contracts.) Decisions on debarment: Applications for debarment can be made by a public entity. Decisions on debarment are made by the Review Panel following the process described in PPA s.68. Debarment is for a maximum period of 5 years. The Review Panel has discretion to suspend a supplier pending completion of disqualification or debarment proceedings. PPR Part 9 ss.46 to 51 Procurement Integrity, set out further requirements concerning the process of suspension and debarment, including application, consideration and determination, conduct of proceedings, effects, disclosure and register. The PPU is required to publish decisions on suspension and debarment and establish and maintain the Register of Suspension or Debarment and make it available to any person who wishes to inspect it. There are a limited number of applications to the Review Panel for debarment. Based on media reports in 2023 ⁷³ “public entities do not come forth with the names of these underperforming companies to be debarred” and the Ministry of Finance and Public Enterprises is planning to amend and strengthen the Procurement Act on debarment of underperforming or transgressing companies. Similar reports are available under IPPR publication ⁷⁴ “it appears that there are many non-performing or transgressing bidders, contractors or suppliers within the public procurement system, but at the time of publication only three were blacklisted on the e-Procurement Client System”. There is a list of debarred and suspended firm on e-Procurement Portal ⁷⁵ which shows 11 active debarment/suspension cases mostly on ground of supplying false information, with 2 cases on providing fraudulent, forged or unauthentic document. The address of the firm is as PO Box and in one case with no address.

⁷³ <https://www.namibian.com.na/public-entities-promoting-underperforming-companies/>

⁷⁴ <https://ippr.org.na/wp-content/uploads/2023/08/PTN-23-web.pdf> (Issue No 23 of August 2023)

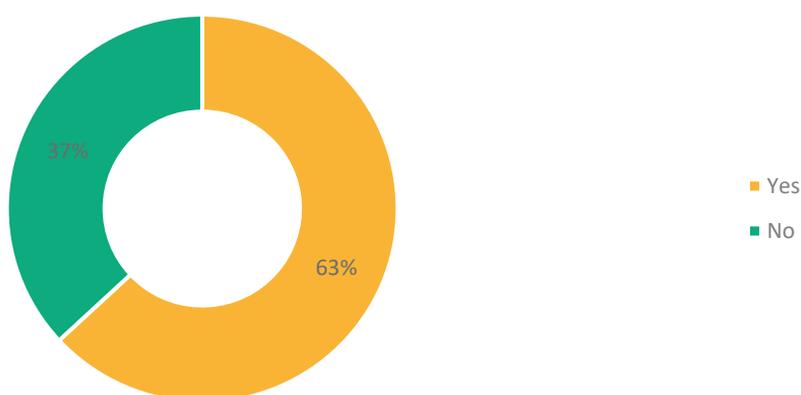
⁷⁵ <https://egp2.gov.na/forms/SearchSuspendedBidders.jsf>

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Gap analysis As indicated at sub-indicator 1 (d)(c) There is no specific reference to disqualification on the grounds of conviction for terrorism, money laundering, drug and people trafficking or child labor related offences (refer to sub-indicator 1 (d) (c)). To make provisions on fraud, corruption, and other prohibited practices consistent between public procurement and legal framework. Bidding form in SBD to include reference to establish bidder's eligibility based on declaration on Suspension and Debarment and Fraud and corruption in accordance with the provision of Anti-Corruption Act and PPL.
Recommendations As indicated at 1(d)(c) Include in the legal framework specific provisions listing grounds for ineligibility due to conviction by final judgment for specified organised crime, terrorist and trafficking offences (participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labour; and all forms of trafficking in human beings).
Assessment criterion 14(c)(d): There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*
Conclusion: Substantive gap
Red flag: No
Qualitative analysis If an official contravenes the Public Procurement Act No. 15 of 2015 will be charged according to section 4(8) and Chapter 4 of the Anti-Corruption Act.
Quantitative analysis <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d):</i> - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Source: Normative/regulatory function/anti-corruption body. - Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Source: Normative/regulatory function/anti-corruption body. - Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). Source: Private Sector Survey. Based on private sector survey, there is a perception that firms are expected to offer some kind of bonus/offers/gift to secure a contract in public sector.

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Based on your experience, do you think it is expected that companies offer some kind of bonuses/offers to secure a contract in the public sector?



As per feedback from ACC, for the cases investigated by ACC, only one person was convicted and sentenced for corruption related to tender over the three-year period (2020-2021, 2021-2022 & 2022-2023). While some of the cases investigated by the Anti-Corruption Commission are still awaiting the Prosecutor General’s decision, some are still in court and other cases, investigations are still ongoing.

ACC publishes its annual reports and they are accessible on the ACC website: www.acc.gov.na.

Gap analysis

As in 14(c)(a)

Recommendations

As in 14(c)(a)

Sub-indicator 14(d)

Anti-corruption framework and integrity training

Assessment criterion 14(d)(a):

The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

There is a National Anti-Corruption Strategy and Action Plan (2021-2025)⁷⁶ which has “Specific Objective 2.6: Support public procurement system reform and enhance accountability in budget management”.

⁷⁶

<https://acc.gov.na/documents/31390/1298143/Final+NACS+3+November+2022.pdf/43617cc0-0913-4a8f-e5a7-3eed6426eb2d>

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The perception survey was done by ACC in 2016, even though as per ACC they intend to do it every five years.

Quantitative analysis

**Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):
- percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).*

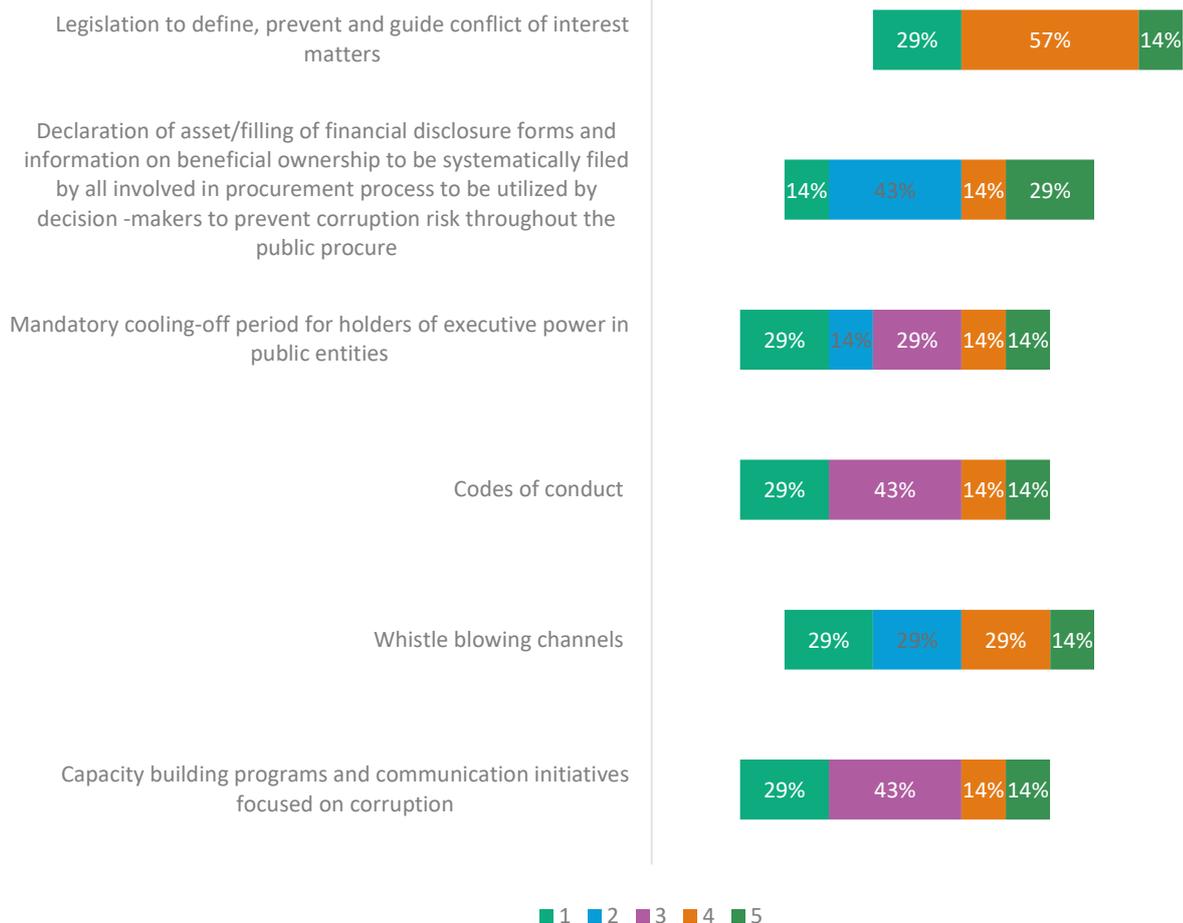
Source: Survey.

The ACC conducts a perception survey every five years however the last Perception survey was last done in 2016. It can be accessed at the ACC website: www.acc.gov.na.

As part of MAPS Assessment, a private sector survey was conducted in 2023-24. The results on opinions by the public (private sector) on the effectiveness of anti-corruption measures are as below:

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Considering the below initiatives to fight corruption, please rate them on a scale of 1-5 according to their effectiveness:
(1 least 5 most effective)



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Considering the anti-corruption measures and related offences listed below, please rate them on the basis of what you consider to be their likely effectiveness:



Source: Private sector Survey 2023-24

The above survey shows significant gaps and lack of effectiveness (from more 60-70% not effective) of anti-corruption measures in the area of public procurement.

Gap analysis

The private sector survey shows significant gaps and lack of effectiveness (from more 60-70% not effective) of anti-corruption measures in the area of public procurement. It is not clear how the various institutional stakeholders work together in the anti-corruption sphere - Police, competition authorities, PPU, ACC, Audit etc. No recent perception survey in particular those related to procurement related integrity risk and needed action for better service delivery. Evidence of enforcement in procurement related corruption is missing. Not much evidence on procurement related fraud and corruption training to Public Entities and private sector.

Recommendations

Various institutional stakeholders to work together in the anti-corruption sphere - Police, competition authorities, PPU, ACC, Audit to collaborate and work towards, support public procurement system reform, and enhance accountability in budget management in line with National Anti-Corruption Strategy and Action Plan (2021-2025). To enhance support from CSO for their effective participation to safeguard against inefficient and ineffective use of public resources. ACC and PPU to consider conducting jointly training on procurement and integrity related topics to public entities and private sector. Based on discussions in pre-validation mission in April 2024, action being taken by PPU and ACC.

Assessment criterion 14(d)(b):

As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.

Conclusion: Minor gap

Red flag: No

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<p>Qualitative analysis</p> <p>ACC has a preventative tool called Corruption Risk Assessment (CRA) in place that identifies risks and mitigate these risks at any public or private entities. The PEs are required in the National Anti-Corruption Strategy to organize in partnership with the ACC such training on CRA.</p> <p>Corruption Risk Assessments (CRAs): CRA is a tool that ACC uses to assess the corruption vulnerability of public and private institutions. This assessment aims to help public and private institutions to identify corruption risks and loopholes that internal and external factors may cause. The CRA further aims to secure the revision of practices, systems, and procedures that may be prone or conducive to corrupt practices. The exercise helps to minimize as much as possible the detrimental effects of corruption on an institution and increase the quality of public service delivery as much as possible. Staff eligible to participate in the CRA process are those in the middle management level to high management level. Through its Strategic Objective 2, the National Anti-Corruption Strategy and Action Plan (NACSAP) 2021-2025 requires Anti-Corruption Commission (ACC) to prevent corruption in government offices, ministries and agencies, public enterprises, regional councils, local and traditional authorities and address public institutions specific vulnerabilities by systematic implementation of preventative measures.</p> <p>As a response to this call, ACC – DPECP conducted nineteen (18) CRAs during the period under review.</p>
<p>Gap analysis</p> <p>As in 14(d)(a)</p>
<p>Recommendations</p> <p>As in 14(d)(a)</p>
<p>Assessment criterion 14(d)(c):</p> <p>As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>ACC publishes annual reports at every end of the financial years as required by the Anti-Corruption Act No.8 of 2008 and are accessible at the ACC website: www.acc.gov.na.</p> <p>But cases on procurement related fraud and corruption in the Annual Report of ACC for 2021/2022⁷⁷ there are 3-4 cases (under notable and ongoing cases) related to procurement and contract award, but no details on proceedings and conviction is available.</p>
<p>Gap analysis</p> <p>As in 14 (d) (a)</p>
<p>Recommendations</p> <p>As in 14 (d) (a)</p>
<p>Assessment criterion 14(d)(d):</p> <p>Special measures are in place for the detection and prevention of corruption associated with procurement.</p>
<p>Conclusion: Minor gap</p>

⁷⁷ <https://acc.gov.na/documents/31390/2784969/Annual+Report+-+2021+-+2022.pdf/78c208bf-edda-ccd5-5f73-ba304c3112f7>

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<p>Red flag: No</p>
<p>Qualitative analysis ACC does not have any special measure directly for procurement however during the Corruption Risk Assessment (CRA), members of the procurement units of the particular institution where CRA is conducted identify the risks within their procurement units.</p>
<p>Gap analysis As in 14(d)(a)</p>
<p>Recommendations As in 14(d)(a)</p>
<p>Assessment criterion 14(d)(e): Special integrity training programmes are offered and the procurement workforce regularly participates in this training.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Based on feedback from ACC, as per the National Anti-Corruption Strategy and Action Plan (NACSAP) 2021-2025, the Anti-Corruption Commission (ACC) is required to conduct ethics and integrity training for OMAs, Private Bodies and Public Enterprises. The purpose of the training is to strengthen a culture of integrity, trust and to set high standards of ethics that will cultivate an honest public official. It also aims to promote accountability and support transparency.</p> <p>Based on ACC feedback, one of the key mandates of ACC – Public Education and Corruption Prevention Directorate is to educate the public and disseminate information on the evil and dangers of corruption. Anti-corruption education awareness is carried out through various platforms, such as media awareness campaign or public outreach by means of sensitization, seminars, workshops, forums, debates or presentations. Through these means, ACC aims to reach every Namibian and enhance anti-corruption education. Although it is not in all cases, in most cases, the anti-corruption education goes hand-in-hand with CRA and Ethics and Integrity training, thus there are similarities in institutions where the three were delivered.</p> <p>A total number of ninety (90) anti-corruption public education sessions were held in thirteen regions (13), and four thousand two hundred and twenty-six (2,226) people were reached. ACC expects those who have received information on how to report and fight corruption to be agents of change against corruption in their institutions and communities.</p> <p>ACC has an ethics and integrity training program offered to all public and private entities which can as well be attended by the procurement workforce.</p> <p>The Monitoring and Evaluation (M&E) process complements the CRA in monitoring the progress made by institutions where CRA was conducted. It meant to evaluate the implementation of the Corruption Risk Mitigation Plan (CRMP). During the period under review, ACC – DPECP planned to conduct twenty – one (21) M&Es, and fourteen (14) were conducted.</p>

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Fourteen (14) M&E reports were produced, approved and given to the respective stakeholders for further actions where necessary. At first, the Directorate of PECP faced a challenge of not having a common M&E tool, but during the period under review, the Directorate found it necessary to have one M&E Tool template. A team of three PECPOs were selected to work out on the tool template. A tool was developed, piloted, finalized and it is now in use.

Gap analysis
As in 14(d)(a)

Recommendations
As in 14(d)(a)

Sub-indicator 14(e) Stakeholder support to strengthen integrity in procurement

Assessment criterion 14(e)(a):

There are strong and credible civil society organisations that exercise social audit and control.

Conclusion: Substantive gap

Red flag: No

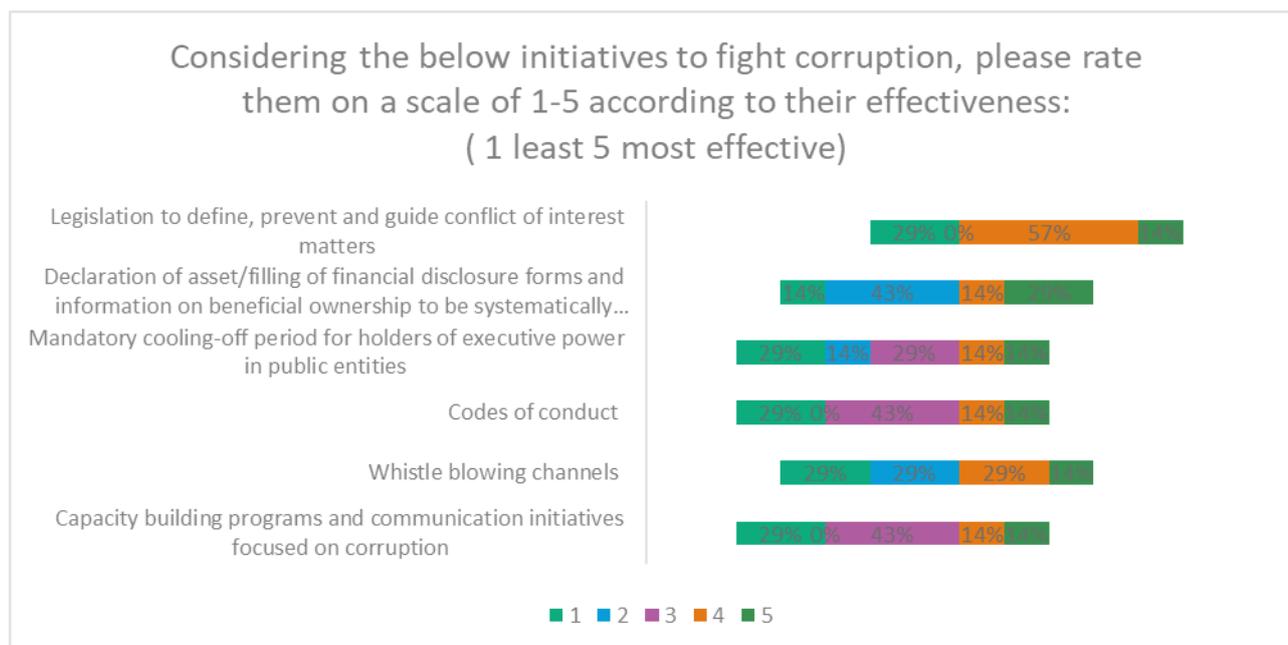
Qualitative analysis

ACC through the National Anti-Corruption Strategy and Action Plan (2021-2025), Strategic objective 6, specific objective 6.1 is engaging the civil society to play its role in constraining corruption.

This can be found on the IPPR website:

<https://ippr.org.na/publication/assessing-changes-to-the-public-procurement-law/>

But based on feedback from CSO Survey, the results are as under:



The above feedback from CSO lack of initiatives and effectiveness (majority opinion) to fight corruption.

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Gap analysis Lack of effective participation by a broad range of CSO participants to fight against procurement related fraud and corruption., also due to lack of enabling environment. Very few organizations are active in the area of improving integrity in public procurement. No internal compliance measures Suppliers and business associations to support integrity and ethical behavior in public procurement.
Recommendations To enhance support from wider group of CSO for their effective participation to safeguard against inefficient and ineffective use of public resources. Suppliers and business associations to develop internal compliance measures to ensure ethical behavior while competing for government contracts.
Assessment criterion 14(e)(b): There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The Civil Society Organizations play an oversight role in advocating for general compliance to the PPA and operationalization thereof. They also play a critical role in identifying loopholes in the existing legislation (Public Procurement Act and others) and propose amendments to close loopholes of corruption in the procurement sector. They also publish all the activities they carry out on their websites such as IPPR: https://ippr.org.na/publication/assessing-changes-to-the-public-procurement-law/ These initiatives by IPPR need to be converted into action by PPU/ACC through an enabling environment.
Gap analysis As in 14(e)(a)
Recommendations As in 14(e)(a)
Assessment criterion 14(e)(c): There is evidence that civil society contributes to shape and improve integrity of public procurement.*
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Civil Society contributes in assessing and contribute to changes to be made to the Public Procurement Law – IPPR and Minister may appoint members from the civil society as part of the Review Panel in terms of Section 58. This can be found on the IPPR website: https://ippr.org.na/publication/assessing-changes-to-the-public-procurement-law/

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<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c):</i> <i>- number of domestic civil society organisations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement.</i> <i>Source: Survey/interviews.</i></p> <p>No data</p>
<p>Gap analysis As in 14(e)(a)</p>
<p>Recommendations As in 14(e)(a)</p>
<p>Assessment criterion 14(e)(d): Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis There is no internal compliance measures Suppliers and business associations to support integrity and ethical behavior in public procurement.</p>
<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d):</i> <i>- number of suppliers that have internal compliance measures in place (in %).</i> <i>Source: Supplier database.</i></p> <p>No data</p>
<p>Gap analysis As in 14(e)(a)</p>
<p>Recommendations As in 14(e)(a)</p>
<p style="text-align: center;">Sub-indicator 14(f) Secure mechanism for reporting prohibited practices or unethical behaviour</p>
<p>Assessment criterion 14(f)(a): There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

<p>Qualitative analysis</p> <p>Based on feedback from ACC, ACC has a website and toll-free number accessible on a twenty-four-hour basis for the public to report alleged corrupt practices. There are also integrity committees established within the Offices/Ministries/Agencies (OMAs) and Regional Councils to oversee unethical behavior within their institutions to report such unethical behaviors to their accounting officers.</p> <p>As part of its mandate, ACC receives reports of alleged corrupt practices that includes corruption and fraud and are handled with confidentiality.</p>
<p>Gap analysis</p> <p>There is no evidence of enforcement on procurement related fraud and corruption or data/follow-up on whistle blower complaint on procurement.</p>
<p>Recommendations</p> <p>PPU and ACC to collaborate to develop a functioning system on follow-up of procurement related Fraud and Corruption including from the whistleblower.</p>
<p>Assessment criterion 14(f)(b):</p> <p>There are legal provisions to protect whistle-blowers, and these are considered effective.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Informers and information are protected according to Section 52 of the Anti-Corruption Act No.8 of 2008.</p> <p>There is protection available by not to (a) disclose the identity or address of any informer or person who assisted the Commission in an investigation into an alleged or suspected offence under this Act; or (b) state any matter which may disclose the identity or address of such informer or person.</p> <p>In terms of part 7 of the Whistle-blower Protection Act no 10 of 2017⁷⁸, which is quite comprehensive providing in Section 45 on whistle-blower protection, section 46 on protection of confidential information and section 47 on immunity from civil or criminal proceedings.</p>
<p>Gap analysis</p> <p>As in 14(f)(a)</p>
<p>Recommendations</p> <p>As in 14(f)(a)</p>
<p>Assessment criterion 14(f)(c):</p> <p>There is a functioning system that serves to follow up on disclosures.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>

⁷⁸ <https://www.lac.org.na/laws/summaries/Whistleblower.pdf>

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<p>Qualitative analysis The disclosure is done according to the Anti-Corruption Act No.8 of 2008.</p>
<p>Gap analysis As in 14(f)(a)</p>
<p>Recommendations As in 14(f)(a)</p>
<p>Sub-indicator 14(g) Codes of conduct/codes of ethics and financial disclosure rules</p>
<p>Assessment criterion 14(g)(a): There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis There is Public Service Code of Conduct, Integrity and Ethics⁷⁹ to which all public servants have to adhere. This code of conduct has provisions on not to misuse official position, not to accept gifts, and declaring conflict of interest.</p> <p>There is Public Service Code of Conduct, Integrity and Ethics to which all public servants have to adhere. This code of conduct has provisions on not to misuse official position, not to accept gifts, and declaring conflict of interest. PPA Part 10 concerns Procurement Integrity and contains various provision on matters such as conflict and disclosure. There is no separate code of conduct for officials involved in public financial management and procurement. As per clarification provided by PPU based on directive of internal structure issued on 5 August 2022 all staff in the Internal Structures are required to sign the Public Procurement Code of Ethics and Conduct.</p>
<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):</i> - share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). <i>Source: Normative/regulatory function.</i></p> <p>No data on enforcement</p>
<p>Gap analysis There is no evidence of enforcement on following mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities).</p>
<p>Recommendations To enforce mandatory code of conduct or ethics, with particular provisions for those involved in public financial management.</p>

⁷⁹ [https://www.lac.org.na/laws/codes/Public Service Code of Conduct.pdf](https://www.lac.org.na/laws/codes/Public%20Service%20Code%20of%20Conduct.pdf)

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

Assessment criterion 14(g)(b):

The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

This provision is made under the Public Service Act where public officials are required to declare their interests including financial disclosure, but there is no mention on beneficial ownership.

In accordance with Section 26 of Anti-Corruption Act, ACC while investigating have “Power to obtain information concerning assets If, in the course of an investigation into an alleged corrupt practice, the Director is satisfied that it could assist or expedite the investigation, the Director may, by notice in writing, require - (a) any suspected person to furnish a statement in writing - (i) enumerating all movable or immovable property belonging to or possessed by him or her in Namibia or elsewhere or held in trust for him or her in Namibia or elsewhere.....”.

But the above provision is in the course of an investigation, not a systematic declaration of asset.

There is no systematic asset/financial disclosure and annual filing by officials involved in public financial management and procurement (as also other public officials). In several other countries, Anti-Corruption Office or Office of Ombudsman is responsible for ensuring compliance to asset declaration/financial disclosure.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b):*

- officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.

No data

Gap analysis

There is no evidence of enforcement on following mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). There is no systematic asset/financial disclosure and annual filing by officials involved in public financial management and procurement (as also other public officials). In several other countries, Anti-Corruption Office or Office of Ombudsman is responsible for ensuring compliance to asset declaration/financial disclosure. No data for this indicator at the Anti-Corruption Commission. Based on input of ACC, the Conflict-of-Interest statements, financial disclosure forms and information on beneficial ownership are filed by Human Resources department at the Office of the Prime Minister.

This gap is assigned a “Red flag”.

Recommendations

GRN to enforce provision on code of conduct and make it mandatory to file financial disclosure/asset declaration forms (including on beneficial ownership in the absence of a legislation) by official involved in procurement and financial management and ACC to analyze such report and track compliance and follow-up.

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<p>Assessment criterion 14(g)(c): The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis As per ACC, Public Service Code of Conduct, Integrity and Ethics referred above is mandatory and there are consequences of non-compliance. But enforcement is missing due to any systematic asset disclosure requirement.</p>
<p>Gap analysis As in 14(g)(b)</p>
<p>Recommendations As in 14(g)(b)</p>
<p>Assessment criterion 14(g)(d): Regular training programmes are offered to ensure sustained awareness and implementation of measures.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Based on feedback from ACC, in line with the ACC mandate, ACC targets to train stakeholders in ethics and integrity and all staff members involved in procurement signs a Public Procurement Code of ethics and conduct upon appointment.</p> <p>Based on ACC feedback, the ACC advocates for anti-corruption awareness and ethics and integrity trainings.2022/2023 FY- As a result, during the period under review, ACC conducted Ethics and Integrity Training sessions at several locations. Total participants undergone ethics and integrity training: 2216 as per the tabulation given by ACC.</p> <p>2021/22 FY- The Commission conducted Ethics and Integrity Training with various institutions through its DPECP. The purpose of the training is to strengthen a culture of integrity, trust and highest standards of ethics to facilitate an honest public service. Reached 1407 people.</p> <p>2020/2021- Ethics and integrity training became one of the effective ways or means to sensitize society on evil and dangers of committing crimes- which is not limited to corruption only. It also encompasses the moral behavior of an individual and how any human being should treat him or herself in society. Institutions were trained to uplift those ethical standards in their respective organizations. A total of 638 people reached.</p>
<p>Gap analysis There are several programs on awareness of ethics and anti-corruption measures conducted by ACC, but not focused on procurement related fraud and corruption.</p>
<p>Recommendations ACC /PPU/ Office of Auditor General to collaborate on integrity training related to procurement.</p>
<p>Assessment criterion 14(g)(e):</p>

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Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilised by decision makers to prevent corruption risks throughout the public procurement cycle.

Conclusion: **Substantive gap**

Red flag: **Yes**

Qualitative analysis

No data for this indicator at the Anti-Corruption Commission.

Based on input of ACC, the Conflict-of-Interest statements, financial disclosure forms and information on beneficial ownership are filed by Human Resources department at the Office of the Prime Minister.

Gap analysis

As in 14(g)(b)

Recommendations

As in 14(g)(b)



MAPS

Methodology for Assessing
Procurement Systems

Republic of Namibia



Assessment of the Public Procurement System

VOLUME III - APPENDICES



Republic of Namibia

Ministry of Finance & Public Enterprises



List of Appendices

Appendix 1- Concept Note



MAPS Secretariat
Concept Note Namibi

Appendix 2: Consultations with Private Sector and results of Private Sector Survey



MAPS- Namibia-
Appendix 2_Private Se

Appendix-3: Consultations with CSOs and feedback



MAPS-
Namibia-Appendix 3_

Appendix – 4: Briefing Notes to Steering Committee



MAPS- Namibia-
Status Report for MA



MAPS- Namibia-



MAPS- Namibia-
Status Report for MA
Status Report - Dec 1:

Appendix -5- Management Letter and Aide Memoire



AM ML Namibia
MAPS (Sep 11-15 202



AM Namibia MAPS
(Sep 11-15 2023).pdf



AM ML - Namibia



AM - Namibia MAPS
(April 8 to 19 2024 - April 8 to 19 2024 M

Appendix – 6: Master File on Analysis of Sample Cases - Indicator-9



MAPS-
Namibia-Appendix_7_

Appendix – 7: Resource List- Web links to involved institutions, other assessments, relevant laws, statistics, etc.



NAM_Legal
resources list_24_Mar