



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE
OFFICE OF THE MINISTER

Address
of
Policymakers Workshop
On the
Public Procurement
NIPAM
08H30

Presented by
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Minister of Finance

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The Right Hon. Prime Minister,
Hon. Ministers,
Deputy Ministers,
Executive Directors and Officials,
Members of the Media,
Ladies and gentlemen,

1. A very good morning to all of us.
2. Let me take this opportunity to welcome all the Cabinet Ministers, Deputy Ministers and Senior Officials to this workshop. This is a critical session for us as policymakers to reflect on the effectiveness of the implementation of the public procurement law and its institutional arrangements. It is a sanctioned platform to provide policy guidance and recommendations on the immediate and long-term solutions to the identified shortcomings in the implementation of the public procurement law.
3. The principle policy elements in the Procurement Act and its regulations have been extensively debated and subsequently approved by Parliament. They are well aligned to international and regional best practices. The resulting practicalities and difficulties in implementing this new legislation have been brought forward and it is those that we need to address during this important workshop.
4. Notably, this workshop emanates from the Cabinet Decision to have a comprehensive assessment and make specific recommendations to address the constraints being experienced in the implementation of the public procurement law.
5. The main policy rationale for us as a country to upgrade the public procurement function, from the previous Tender Board Act of 1996 to the new Public Procurement Act and its institutional arrangements is to realize the Government's vision for a transparent, efficient and effective public procurement system as well as to align ourselves to best international practices. However, having the best law is only one side of the coin, the capacity to efficiently implement the law and realize its intended benefits are the other most important aspects.

6. There are at least SIX quintessential elements of an efficient public procurement system, namely:-

- timely delivery of goods and services to the public and timely flow of public investments in the economy,
- continued legal certainty of the procurement process and decisions,
- cost price efficiency and value for money as a result of competitive bidding process,
- transparency, accountability and good governance in the administration of public procurement function,
- effective institutional arrangements and commensurate institutional capacity, and
- deterrence of the risk of fraud and corruption in the execution of the procurement function.

7. The policy premise for having enacted and implemented a new law in the form of the current Public Procurement Act is to embed these efficiency value propositions in the public procurement framework, based on best practices such as the Model law of the United Nations Commission on International Trade Law (UNCITRAL), and taking into account our experiences and specific needs for Namibia.

8. Six key provisions distinguish the current Procurement Act from the previous Tender Board Act regime:-

First, the new law strengthens the public procurement governance and administration framework by bringing Public Enterprises and Sub-national governments into the same regulatory ambit, such that policy cohesion and consistent risk management are achieved,

Second, it introduces the Central Procurement Board staffed with professionals, independent from procuring entities for objectivity and efficiency,

Third, it strengthens the management and administrative structures by introducing checks and balances through three layers of institutions with specific obligations, namely the advisory Policy Unit, the Management Units at Offices/Ministries and Agencies and the *Ad hoc* Review Panel as a mechanism to resolve complaints arising from the bidding process,

Fourth, it introduces other forms of procurement such as emergency procurement, direct procurement and small value procurement, in addition to open bidding and exemptions,

Fifth, the new law codified the preferential procurement policy to empower local suppliers and offer growth incentives to the Small and Medium-sized Enterprises (SMEs) and the previously disadvantaged persons as measures for local economic development.

Six, the law makes specific provisions to protecting the integrity of the procurement process and avoiding conflict of interest situations,

9. This workshop is expected to provide concrete guidance on measures to enhance the efficiency of the public procurement regime.
10. The bid for urgency and specificity is in recognition of the reality that public procurement is central to the implementation of public sector programmes, which constitutes a significant part of the economy, and the day-to-day delivery of public services. One extreme, glitches in the public procurement function have the negative effect of compromising Value for Money and, on the other extreme, unduly delaying the provision of services to the public.
11. This is especially the case when contract cost prices or variations thereof are not competitive or the provision of basic supplies such as pharmaceuticals or the timeliness of infrastructure projects is affected by inefficiencies in the public procurement function, with related consequences of delayed positive impact on economic activity and jobs.

Main Constraints in the Implementation of the Act

12. Two years after the implementation of the new law, it is necessary that we assess the effectiveness of the new law and its institutional structures in relation to the intended policy objectives.
13. While the new law provides for sound processes, it has to be conceded that several operational and institutional challenges have come to the fore, significantly impacting on the realization of the intended policy objectives:-

14. At the legal level,-

- certain provisions of the Act are ambiguous, giving room to different interpretations and practices,
- in some other instances, the subsidiary regulations, standards and guidelines are still to be developed, resulting in difficulties to implement the relevant provisions,
- arising from this experience, amendments to the current Act, formulation and adoption of the remaining subsidiary legislation become urgently necessary to better enable the smooth implementation of the law

15. At the institutional level:-

- the management and administrative structures, particularly the Central Procurement Board and Policy Unit continue to face inadequate staffing, with a cascade effect on their capacity for timely deliverables and delays in evaluation, assessment and contract awards, and
- similarly, procuring entities consistently cite the need for capacity building to understand their obligations and the new procurement process,

- non-compliance with regulations and statutory provisions by procuring entities result in time consuming back and forth correspondence, lengthening turnaround times unnecessarily.

16. At the operational level:-

- lengthy processes as a result of, mainly, capacity challenges across institutional levels,
 - complex documentation and absence of key bidding documents, standard contracts and regulations, and
 - inadequate information systems and monitoring and evaluation frameworks to assess the impact of public procurement on service delivery and the developmental objectives in general.
17. The prevalence of the binding constraints set forth a vicious back-and-forth cycle, which significantly impact on the delivery of goods and services.

Objectives and Expected Output of Workshops

Honourable Ministers,

Ladies and gentlemen,

18. The primary objective of this workshop is for the executive to provide recommendations and policy guidance on the specific areas of constraint experienced and new opportunities for improvement, within the overall framework of the Procurement Act.
19. This is to be achieved against the backdrop of a comprehensive assessment of the strengths, weaknesses and opportunities experienced since the commencement of the new law. I trust the input presentation by the Ministry of Finance, the Central Procurement Board and the Private Sector perspective will provide the workshop with such input assessment.
20. Specifically, the objective is to ensure that a turnaround in the management and administration of public procurement function is achieved by providing short-term alternative measures for immedi-

ate implementation in terms of the law as well as guidance on medium to long-term proposals for which the implementation modalities require more time to develop.

21. Such high-level recommendations and policy guidance must be translated into implementation modalities at the technical level in the shortest possible timeline, consistent with the national priority attached to the role of public procurement in the economy and service delivery to the public.
22. In terms of output, therefore, this workshop must provide realistic but specific recommendations on the immediate implementation modalities in all areas of binding constraints, while developing longer term solutions.

Conclusion

23. To conclude, much has been said about the binding constraints affecting efficient execution of the public procurement function.
24. This is not a workshop to undo the law, but to render it more amenable to speedy implementation and to define the modalities to that end. The overriding consideration is not whether we have a good legal framework, but rather the capacity to implement the law efficiently in terms of its institutional and operational arrangements as well as the need for legal drafting aspects such as possible amendments to the Act and the requisite subsidiary laws.
25. I must emphasize that the urgency for short-term solutions for immediate implementation arises from the overriding principle commitment to ensure uninterrupted delivery of public services and to unleash the potential of public procurement in the economy, noting the persistent recessionary pressures in the domestic economy. One such example of immediate solutions is the recent issuance of the Directive on local sourcing of goods, works and services by the Minister of Finance, while the relevant regulations are being developed. A departure from business as usual in other areas of persistent challenges is needed to speed up the design and implement of innovative approaches not inconsistent with the law.

26. Let me thank you all Honourable Ministers, Deputy Ministers and Senior Government Officials to your expected active participation. There is great public expectation on the outcome of our deliberations here today and on the timely implementation of the recommendations emanating from these deliberations.

Thank you for your attention.
