



# Overview of government procurement procedures in sub-Saharan Africa

Angola, Botswana, Namibia & South Africa

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We believe this report will demonstrate the many opportunities for investors in the region: the strength of many of the regulatory frameworks, the existing policies to ensure transparency and shareholder participation as well as the experience of companies in and across the sector, of implementation and monitoring good practice.



British High Commission Pretoria



Her Excellency **Judith Macgregor**  
British High Commissioner to South Africa, Swaziland and Lesotho

The British High Commission's prosperity agenda aims to support an open and transparent business environment to create the conditions for global growth. We are therefore delighted to have partnered with EY on this report which takes as its theme state procurement policy in the sub-Saharan African countries of Angola, Botswana, Namibia and South Africa.

There are considerable opportunities for economic growth and development in the SADC region. The SADC Regional Infrastructure Development Programme will deliver projects valued around \$US560bn over the next 15 years. This report provides UK and other companies with greater clarity on the policies, plans and processes being followed by national governments. The work led by EY has focussed on documenting key elements of the public procurement system for these projects, with a view to increasing understanding and confidence for stakeholders.

We believe this report will demonstrate the many opportunities for investors in the region: the strength of many of the regulatory frameworks, the existing policies to ensure transparency and shareholder participation as well as the experience of companies in and across the sector, of implementation and monitoring good practice. We hope this report will also serve to highlight where experience from other countries, such as the UK, could help assist in the development of policy and practice in the SADC region.

Finally, I would like to offer my thanks to EY for their perseverance in engaging with our partners across the region to deliver this high quality and useful report which will inform our engagement with regional governments and business in the years ahead.

**Gloria Yekani-Peni**  
Associate Director

Advisory Services

+27 11 502 0078

+27 83 601 2801

+27 11 772 3000

Gloria.YekaniPeni@za.ey.com

**Cindy Felix**  
Senior Manager

Advisory Services

+27 11 772 4098

+27 72 072 4118

+27 11 772 3000

Cindy.Felix@za.ey.com

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## List of abbreviations

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AfDB	African Development Bank
BBBEE	Broad Based Black Economic Empowerment
BEE	Black Economic Empowerment
BMO	Business Monitor Online
CPAR	Joint Country Assessment Review
DFID	Department for International Development
DNPE	Direcção Nacional de Património do Estado
EDD	Economic Diversification Drive
EU	European Union
FDI	Foreign Direct Investment
GCC	General Conditions of Contract
GDP	Gross Domestic Product
GPA	Agreement on Government Procurement
GPI	Global Procurement Initiative
MFMA	Municipal Finance Management Act
NSPP	National Service of Public Procurement
OECD	Organisation for Economic Co-operation and Development
OECD DAC	OECD Development Assistance Committee
PER	Public Expenditure Review
PFMA	Public Finance Management Act of 1999
PPAD	Public Procurement and Asset Disposal Act of 2001
PPADB	Public Procurement and Asset Disposal Board
PPPFA	Preferential Procurement Policy Framework Act
PTN	Post Tender Negotiations
SANAS	South African National Accreditation System
SARB	South African Reserve Bank
SBD	Standard Bidding Documents
SCM	Supply Chain Management
SMEs	Small and Medium Enterprises
SNCP	Serviço Nacional da Contratação Pública
UNISA	University of South Africa
USTDA	United States Trade and Development Agency
VFM	Value For Money
WTO	World Trade Organisation
y-o-y	year on year

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# Executive summary

Over the past five years, EY has highlighted the steady rise of the African continent, through our Africa Attractiveness reports, our Strategic Growth Forums, and our own growth journey in working with companies and governments operating across the continent. It has become clear that the potential exists for us to be part of an African future that would have been virtually unimaginable a generation ago. The reality though is that the best case future for Africa is neither inevitable, nor will it happen without active participation and commitment from multiple stakeholders.

As the focus shifts to creating sustainable, inclusive growth in Africa, EY has championed the creation of shared value as a priority for action. The central premise behind creating shared value is that the competitiveness of a company and the health of the communities and economy around it are mutually dependent. It is a fundamental business philosophy that recognises that profit AND purpose can co-exist and be mutually reinforcing. For EY, a philosophy of shared value is underpinned by our core purpose as an organisation – building a better working world – a working world with increased trust and confidence in business and capital markets, the development of talent in all its forms, greater collaboration across private, public and social sectors, and inclusive, sustainable growth at its heart; a purpose that is more relevant in the African context than ever before.

The primary purpose of this study is to assist the British High Commission (BHC) in understanding government procurement procedures or systems in sub-Saharan Africa. In particular, the countries that have been chosen for this study are Angola, Botswana, Namibia and South Africa.

Companies have indicated that some government tender processes are perceived to be opaque in many countries in sub-Saharan Africa, with many contracts awarded without due process or with extremely short tender times. This makes it very difficult for companies to bid for these contracts, and compromises the most effective use of public funds which have to meet the rising needs of rapidly growing populations. This study is aimed at providing a better understanding of the public procurement landscape and an engagement platform that will eventually level the playing field giving all companies, including UK companies, an equal opportunity. In particular, the study will assist the BHC to:

- ▶ Support regional implementation of World Trade Organisation Government Procurement guidelines to make government tenders more transparent
- ▶ Highlight the benefits and share good procurement practices of a fair and transparent procurement process drawing on UK and regional expertise
- ▶ Identify and then work with regional partners to plug capacity/capability gaps

This study therefore serves a broader purpose than simply understanding the procurement landscape of governments in the region. This study will not only enable UK companies to more efficiently and effectively do business with governments, but will also empower local businesses, including SMEs, with the insight into how to navigate often complex and highly regulated public procurement processes in their countries. In turn, this study will provide the BHC with the opportunity to collaborate with governments in the region to share best practice in order to streamline processes and make procurement as transparent as possible. This will in turn improve the ease with which business is done in these countries. This is to the mutual benefit of both the private and the public sectors, allowing the latter to benefit from using public funds more efficiently and reducing wasteful expenditure while also encouraging investment.

Moreover, the report will serve to strengthen the ties between the UK Government and companies and their counterparts. Given the socio-economic imperative to develop local business and job creation, there is already much legislation in place that requires foreign companies to partner with local firms in doing business with governments in the region, and the information contained in this study will prove valuable to both sets of stakeholders, to ensure they are able to capitalise on the tremendous opportunities on this rising continent.

It is evident from the country assessments performed that the countries selected for this study have fairly robust legislation in most instances. However, the main challenge lies in the ability to execute for a variety of reasons. The most common barriers include the lack of effective procurement systems, people, information technology and efficient processes. As a consequence, the opportunities for improvement across the board have been identified to include people and organisational structures (mainly in terms of capacity building), data and technology, streamlining and centralisation, all of which should automatically improve areas of performance management. There are specific objectives unique to Africa relating to addressing past social and economic imbalances which are dealt with by most of these countries to varying degrees. The success thereof has not been discussed as part of this study. Other socio-economic objectives that could be considered include green policy initiatives, quality standards and health and safety considerations.

All information included in this report is based on desktop research, qualitative interviews with the relevant stakeholders and input from country representatives. However, verification interviews were not conducted with Angola and Namibia. Furthermore, it is worth noting that some of the information obtained through desktop research may have been subsequently updated.

## Scope of work

EY has been commissioned to conduct a study on government procurement procedures implemented within sub-Saharan regions. The countries within the scope are Angola, Botswana, Namibia, and South Africa.

The objectives of the project are to provide the UK Government and companies:

- ▶ With a greater level of understanding of the procurement processes followed in Southern African countries
- ▶ To enable UK companies during the bidding process for public tenders in Southern African countries and
- ▶ To assist the UK Government in identifying potential opportunities for collaboration and partnering when tendering for large-scale projects within Southern African countries.

The sustainability of this project will depend on the following critical success factors:

- ▶ The project will produce material that can be usable by any country's prosperity/trade officers to actively lobby on the benefits of a fair and transparent procurement process and
- ▶ The material could be made available to other countries in the future to run workshops

## Approach

The approach to the procurement study was a qualitative analysis of information consisting of internationally accepted procurement standards, qualitative interviews, structured questionnaires and publicly available information. We used internationally recognised instruments such as:

- ▶ The WTO (World Trade Organisation) procurement guidelines in the form of the GPA (Agreement on Government Procurement)
- ▶ The OECD (Organisation for Economic Co-operation and Development) procurement guidelines and
- ▶ European Union directives

The study was conducted using a three step approach.



An assessment of the public procurement system against the public procurement framework



Comparative study of the country's legal framework to GPA and EU directives



Validation of findings through interviews and discussions with the selected public procurement officials and agencies

In order to successfully perform the assessment (step one above) it was necessary to determine the basic requirements/standards of a public procurement system. The next section describes in detail the approach taken in determining these standards.

During this exercise we gathered data and inputs on the public procurement procedures in Southern African countries primarily in respect of the following policy areas:

- ▶ The regulatory framework
- ▶ The procurement processes, policies, and procedures
- ▶ The structure of the procurement organisation
- ▶ Technology and data
- ▶ Performance management and
- ▶ Socio-economic procurement goals and considerations



## The Public Procurement Framework

Table 2: Country Summary Assessment of the public procurement framework

Theme	Indicator	Country			
		Angola	Botswana	Namibia	South Africa
Regulatory Framework	Primary Legislation	Green	Green	Green	Green
	Key principles	Green	Green	Green	Green
	Ownership of the procurement process policies and procedures	Green	Green	Green	Green
	Coverage of the public procurement rules	Green	Green	Green	Green
	Access to information	Green	Green	Green	Green
Procurement Mechanisms	Pre-tendering	Green	Green	Green	Green
	Tendering	Green	Green	Green	Green
	Post tendering	Green	Green	Green	Green
People and Organisation	Organisational structure	Green	Green	Green	Green
	Education & training	Yellow	Yellow	Yellow	Yellow
	Employees skills and capabilities	Yellow	Yellow	Yellow	Red
Technology and Data	Methods of recording information	Green	Green	Yellow	Yellow
	E-procurement	Yellow	Yellow	Red	Red
	IT procurement tools	Yellow	Red	Red	Red
Performance Management	Performance management metrics	Yellow	Yellow	Yellow	Yellow
	Supplier monitoring	Green	Green	Green	Green
	Supply costs efficiency	Green	Green	Red	Green
Socio - economic	Social and Ethical	Yellow	Yellow	Red	Yellow
	Environment	Yellow	Yellow	Red	Red
	Health & Safety	Yellow	Yellow	Red	Red
	Quality Standards	Yellow	Green	Green	Green
	Green Procurement	Yellow	Yellow	Red	Red

Legend indicators:

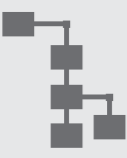





<span style="color: green;">■</span> Information is available in the legislation	<span style="color: yellow;">■</span> Mentioned in the legislation but limited evidence in respect of implementation	<span style="color: red;">■</span> Limited/no legislation implementation
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Table 1 below provides a description of each of the policy areas. Each of these areas was further unpacked into a questionnaire that addressed specific standards of a public procurement system. The standards were selected from two sources:

- ▶ The OECD/DAC Methodology for Assessing Procurement Systems and
- ▶ International Handbook of Public Procurement.

Table 1: Description of each dimension of the public procurement framework

Policy Area	Description
 Regulatory Framework	<p>The purpose of the review is to determine:</p> <ul style="list-style-type: none"> <li>a) the structure of the regulatory framework governing public procurement; b) the extent of its coverage; and c) public access to laws and regulations.</li> </ul> <p>Lack of or inadequate legislation on public procurement may lead to a system that is vulnerable to corruption, hindering market competition. This has a direct impact on public expenditures and therefore public resources.</p>
 Procurement Mechanisms	<p>The purpose of assessing procurement mechanisms is to establish whether the legal framework includes: a) a clear definition of the permissible procurement methods; and b) the circumstances under which each method is appropriate.</p> <p>The lack of adequate definitions of procurement mechanisms may leave the system exposed to:</p> <ul style="list-style-type: none"> <li>▶ Inconsistent access to information in the invitation to tender</li> <li>▶ Lack of competition or, collusive tendering resulting in inadequate prices</li> <li>▶ Conflict of interest situations that lead to bias and corruption in the evaluation and in the approval process</li> </ul>
 People and Organisation	<p>The public procurement system must have adequate human resources to support all the elements of the system. The lack of adequate and competent procurement staff will lead to poor execution of regulations.</p> <p>The purpose of this review is to establish the existence of permanent and relevant training programmes for new and existing staff in government procurement. These programmes are essential to maintain the supply of qualified procurement staff to public and private sectors.</p>
 Data and Technology	<p>An effective information management system is essential in ensuring that information is centralised and that information recorded is reliable and easily accessible.</p>
 Performance Management	<p>Monitoring and evaluation of the public procurement system is essential in order to evaluate the effectiveness of the system in meeting the objectives of the organisation and higher government objectives.</p> <p>The objective is to assess the extent to which the country or agency has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans. This requires among other things the availability of information systems, a capacity for analysis, feedback mechanisms and planning capacity for implementation of improvements.</p>
 Socio-Economic	<p>Public procurement is an economic activity therefore socio-economic objectives must be accounted for. However the application of these socio-economic objectives must be governed by law in order to not compromise the principle of fair competition.</p>

<sup>1</sup> OECD. 2009. Methodology for Assessing Procurement Systems. OECD publishing

<sup>2</sup> B.Raton. 2009. International Handbook of Public Procurement. FL, CRC Press

<sup>3</sup> OECD. 2008. Enhancing Integrity in Public Procurement: A checklist. OECD publishing

## Public Procurement Framework Summary Assessment

The Public Procurement Framework Summary Assessment is summarised below, including a country overview which takes key statistics from the World Bank's Ease of Doing Business survey and a summary of the public procurement system.

### Angola

#### Country Overview

It is the seventh fastest growing economy in Africa and large oil and mineral reserves. However, government expenditure is on a steady decline. There is a lack of transparency and the high degree of bureaucracy makes it extremely hard to do business in Angola. The country's rating in the World Bank Ease of Doing Business survey is 181 out of 189 countries and ranks 42 out of 47 on the continent. The GDP per capita is US\$ 6074.

#### Summary of the Public Procurement System

Area	Summary Assessment
Regulatory Framework	<ul style="list-style-type: none"> <li>▶ The legal framework is centred on the principles of economy and competitiveness, which are mentioned in the procurement law including the principle of value for money with respect to expenditure. These principles are outlined in the Presidential Decree and include equality, impartiality, transparency and probity, with a regulatory body. Functions are clearly assigned to various units within the government</li> <li>▶ The regulatory body National Service of Public Procurement (NSPP) is at an adequate level in government and financing for it is secured by the legal/regulatory framework. However, it is not responsible for direct procurement operations. This NSPP is established within the Ministry of Finance. Duties of Public Procurement include for example auditing, monitoring compliance, and supervision</li> <li>▶ Coverage of procurement is adequate and thresholds are established in Annex 1 of the procurement law, but procurement laws are inadequately enforced</li> </ul>
Procurement Mechanisms	<ul style="list-style-type: none"> <li>▶ The legal framework establishes allowable procurement methods, which includes four methods of contracting:               <ol style="list-style-type: none"> <li>(1) public tender</li> <li>(2) limited tender with pre-qualification</li> <li>(3) limited tender by invitation</li> <li>(4) negotiated procedure</li> </ol> </li> <li>▶ Requirement for approval which is subject to procurement thresholds is also included</li> <li>▶ The procurement law also requires a financial commitment from the NSPP which reports to the Ministry of Finance before any contract is signed, in order to reserve the necessary amount of financial resources from the available budget</li> </ul>
People and Organisation	<ul style="list-style-type: none"> <li>▶ Budget execution is decentralised. Thresholds set for authorisation are established in law, including delegation of powers</li> <li>▶ The Serviço Nacional da Contratação Pública (SNCP) is assigned to provide support to the procurement entities and to assist them in the adoption of best practice</li> </ul>
Data and Technology	<ul style="list-style-type: none"> <li>▶ There is a legal framework that requires document retention and appropriate record-keeping of procurement processes followed for investigation purposes</li> <li>▶ Information on procurement is easily accessible and the information is centralised e.g. information relevant to procurement processes is available on a portal, including legislation, updates, studies and memos</li> <li>▶ The regulatory authority has a mandate to oversee public procurement and report thereon every six months for the Statistical Bulletin</li> <li>▶ E-procurement is mentioned in the legislation and a pilot of e-auction was attempted in 2009. There is no further evidence of implementation, although there is a body responsible for development and management of e-procurement</li> <li>▶ An IT procurement information system does not seem to exist, a central suppliers database exists and is managed by DNPE</li> </ul>
Performance management	<ul style="list-style-type: none"> <li>▶ Contract management/supplier management legislation does exist. There is a regulatory body responsible for the registration and certification of suppliers e.g. Direcção Nacional de Património do Estado (DNPE)</li> <li>▶ The activities of public procurement are subject to supervision mechanisms established in the law</li> <li>▶ There is lack of clarity as to an effective communication and feedback system with suppliers</li> </ul>
Socio-economic	<ul style="list-style-type: none"> <li>▶ There is legislation that refers to quality standards and green procurement as part of DNPE responsibilities. However, from the suppliers' portal it seems that the audit procedure is not in place yet</li> <li>▶ There is no information relating to code of conduct/ethics in respect of green procurement/abuse of environment</li> <li>▶ The Angolan public procurement regulation has outlined measures to protect Small and Medium Enterprises (SMEs)</li> </ul>

## Botswana

### Country Overview

Botswana is one of the most stable countries in Africa. It has the longest history of democracy on the continent dating back to 1966. Botswana's policies drive public procurement transparency to ensure fairness in tender processes in order to achieve its social objectives. The country's economic growth over the next five years will be driven by private consumption and investor spending. The ease of doing business in Botswana is ranked 74 out of 189 in the world and on the continent 5 out of 47 according to the World Bank. The GDP per capita is US\$ 7318.

### Summary of the Public Procurement System

Area	Summary Assessment
Regulatory Framework	<ul style="list-style-type: none"> <li>There is a legal framework that is centralised with a procurement procedure manual issued by the Public Procurement and Asset Disposal Board (PPADB) with the objective of creating a standardised national approach to public procurement. Its primary role is to ensure due care in expending public funds, and that the process is economic, efficient, transparent and equitable</li> <li>Transparency is essential in procurement activities in Botswana to ensure taxpayers' money is accounted for and contracts are awarded in the most cost-efficient manner. The philosophy in Botswana is to continually introduce high standards to achieve best practice in public procurement</li> <li>The PPADB is responsible for oversight of public procurement and procuring entities are responsible for adherence to a code of good practice. There is also adequate coverage of public procurement rules in terms of the PPADB Operations Manual. The PPADB executes high value tenders and certain commodities and devolved the rest to committees in ministries based on predetermined thresholds</li> </ul>
Procurement Mechanisms	<ul style="list-style-type: none"> <li>The legal framework establishes all allowable procurement methods unambiguously and the choice is dependent on the nature and category of the item to be procured by officials. Approval is required by PPADB according to relevant financial thresholds</li> <li>The legal framework considers pre-tendering, tendering and post tendering. This includes planning to an aligned budget, tendering process e.g. publication of tenders, dealing with corruption, evaluation criteria etc. PPADB is responsible for approving and awarding tenders within respective thresholds</li> </ul>
People and Organisation	<ul style="list-style-type: none"> <li>PPADB has the authority to delegate its power within the set financial ceilings and is accountable in terms of section 61-65 of the Act and within the financial thresholds</li> <li>PPADB is responsible for training on policy and procedures including capacity building and also provides advice on changes to legislation and procedures relating to procurement</li> <li>There is a minimum set of qualifications required for board members or committees</li> <li>A study has been commissioned in partnership with the World Bank to develop standards on qualifications and skills</li> </ul>
Data and Technology	<ul style="list-style-type: none"> <li>All bids are to be advertised in the government Gazette, as well as media with wide international circulation where foreigners are included in pre-qualification. PPADB/Auditors will monitor procurement process at regular intervals</li> <li>All record keeping is required by the PPADB and must be recorded in procurement register/computer database within stated time-lines. Records must be kept for 7 years for all procuring entities</li> <li>No information was obtained on e-procurement and IT procurement tools</li> <li>Currently manual processes are in place. E-procurement is in the infancy stage and has been partly implemented</li> </ul>
Performance management	<ul style="list-style-type: none"> <li>There is a checklist by the PPADB regarding monitoring of supplier performance</li> <li>No information was obtained on performance management metrics and supplier development</li> <li>Contractors are placed on performance management contracts which includes their conduct.</li> </ul>
Socio - economic	<ul style="list-style-type: none"> <li>The Botswana citizen economic empowerment policy provides for the empowerment of local citizens. The policy is not enacted in a single act or law but is embedded in various laws. In the PPADB it gives preferential treatment to Botswana citizens or companies wholly owned by Botswana citizens in state procurement processes</li> <li>The Act mentions the need to monitor supplier green practices and that they consider environmental impact or green policy where appropriate</li> <li>Quality standard requirements are required in bid documents for evaluation. Information relating to staff performance requires more clarity, and socio economic instruments need to be considered</li> <li>There is protection in cases of whistle-blowers where there is risk to personal security</li> </ul>

## Namibia

### Country Overview

Namibia is a relatively new democracy, having gained independence in 1990. It is largely dependent on the extraction of minerals such as uranium, zinc and lead. The economy is forecast to grow by 4.3% over the next five years which can be attributed to developments in the mining and infrastructure sectors. Public procurement policy targets socio-economic objectives that look to uplift previously disadvantaged communities. Namibia is rated 88 out of 189 in the world and 7 out of 47 on the continent in terms of ease of doing business according to the World Bank. The GDP per capita is US\$ 5318.

### Summary of the Public Procurement System

Area	Summary Assessment
Regulatory Framework	<ul style="list-style-type: none"> <li>The legal framework is centred on the constitutional principles of a fair, equitable, cost effect and transparent system</li> <li>The regulations are clear, comprehensive and consolidated as a set (laws, decrees, regulations, procedures) available in a single and accessible place</li> <li>The Tender Board of Namibia is an independent regulatory authority specified in the regulations responsible for the coordination and management of public procurement</li> <li>Adequate responsibilities and duties of the regulatory authority are established in the regulations</li> <li>Coverage of procurement is adequate and thresholds are established</li> </ul>
Procurement Mechanisms	<ul style="list-style-type: none"> <li>The legal framework establishes all allowable procurement methods unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable</li> <li>The strategic alignment and importance between public procurement and the organisation's objectives is established</li> <li>The legal framework establishes rules of participation and procedural difference is identified</li> <li>There are closed tender processes for three quotes</li> </ul>
People and organisation	<ul style="list-style-type: none"> <li>There is no clarity regarding organisational structure defining the skills and knowledge profiles for specified procurement jobs</li> <li>The procurement function is centralised however information pertaining to co-ordination between central body and public sector entities requires further clarity with respect to procurement procedures</li> </ul>
Data and Technology	<ul style="list-style-type: none"> <li>There is no current legislation regarding e-procurement but there is an intention to adopt legislation in the future</li> <li>Government normally advertises in the public press for tenders</li> </ul>
Performance management	<ul style="list-style-type: none"> <li>A record of suppliers is kept</li> <li>No information could be obtained around performance management</li> </ul>
Socio - economic	<ul style="list-style-type: none"> <li>Most tenders have a local participation requirement, including for SMEs, black economic empowerment, Namibians, disabled persons</li> <li>ISO standards are applied</li> <li>Minimal or no provision with regard to health and safety or green procurement</li> </ul>

## South Africa

### Country Overview

South Africa is an extremely diverse country in terms of its people. It has a GDP per capita of US\$6 658. However, the economic outlook over the next two years indicates low growth levels of 2% mainly due to increasing inflation, power shortages and excessive industrial action which compromises productivity and limits investment by the private sector. Public procurement is seen as a driver for economic growth and a mechanism to implement South Africa's black economic empowerment laws, the latter empower previously disadvantaged communities. South Africa is rated 43 out of 89 in the world and 2 out of 47 on the continent in terms of ease of doing business according to the World Bank.

### Summary of the Public Procurement System

Area	Summary Assessment
Regulatory Framework	<ul style="list-style-type: none"> <li>▶ The legal framework is centred on the constitutional principles of a fair, equitable, cost-effect and transparent system</li> <li>▶ The regulations are clear, comprehensive and consolidated as a set (laws, decrees, regulations, procedures) available in a single and accessible place</li> <li>▶ The accounting officers of procuring entities are responsible for the coordination and management of public procurement. The National Treasury provides guidance with respect to procurement procedures to be followed by procuring entities</li> <li>▶ Adequate responsibilities and duties of the regulatory authority are established in the regulations</li> <li>▶ Coverage of procurement is adequate and thresholds are established</li> </ul>
Procurement Mechanisms	<ul style="list-style-type: none"> <li>▶ The legal framework establishes all allowable procurement methods unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable</li> <li>▶ The strategic alignment and importance between public procurement and the organisation's objectives are established</li> <li>▶ The legal framework establishes rules of participation and procedural difference are identified</li> </ul>
People and organisation	<ul style="list-style-type: none"> <li>▶ There is no requirement for defining the skills and knowledge profiles for specified procurement jobs</li> <li>▶ Each procuring entity is responsible for designing its own procurement structure. There is lack of standardisation</li> </ul>
Data and Technology	<ul style="list-style-type: none"> <li>▶ The legal framework sets the obligation to keep a record of the proceedings</li> <li>▶ Information on public procurement is decentralised</li> <li>▶ Establishment of reviews of the reliability of data stored on public procurement is not directly emphasized in the regulations</li> </ul>
Performance management	<ul style="list-style-type: none"> <li>▶ No direct provision is made for the establishment of an effective communication and feedback system with suppliers</li> <li>▶ Effective contract management is covered in the regulations. However, the guidelines on how this must be established and implemented by institutions are still murky</li> </ul>
Socio-economic	<ul style="list-style-type: none"> <li>▶ The PPPFA is the key instrument utilised to achieve socio-economic objectives through public procurement</li> <li>▶ No provisions are made for green procurement and supply chain sustainability</li> <li>▶ Quality Assurance techniques established in the regulations are inadequate (very minimal)</li> <li>▶ Health and Safety standards are not adequately provided for in the procurement regulations</li> </ul>

### Conclusion

The study has identified some challenges around the implementation of procurement policies and procedures across the four sub-Saharan countries in the scope of this study. There is a real opportunity for the UK Government to build capability and capacity of government structures, and to collaborate with governments and share good practice.

The British High Commission plans to close the capability and capacity gaps, with government commitment, may include:

- ▶ The publishing and distribution of this report
- ▶ Rollout or implementation plan and
- ▶ Involvement of any UK Government support (capability/capacity).

Angola	Botswana	Namibia	South Africa
<b>Overview</b>			
<ul style="list-style-type: none"> <li>▶ Angola has a decentralised procurement system</li> <li>▶ The regulatory authority appointed for procurement oversight provides assistance to procuring entities responsible for procurement spend. Operations are clearly established</li> <li>▶ Data collection is of a simple nature</li> <li>▶ Performance management is well-documented</li> </ul>	<ul style="list-style-type: none"> <li>▶ The procurement system is centralised, clear and well defined throughout</li> <li>▶ There is an effort to ensure that skills and development of employees is catered for</li> <li>▶ Botswana has well-developed data processing methods</li> <li>▶ Performance management is not monitored</li> </ul>	<ul style="list-style-type: none"> <li>▶ Namibia has centralised procurement policies</li> <li>▶ Mechanisms are clearly outlined throughout the documentation</li> <li>▶ There is limited information on people, organisation and data and technology</li> <li>▶ Socio-economic information is minimal</li> </ul>	<ul style="list-style-type: none"> <li>▶ South Africa has a decentralised procurement system</li> <li>▶ Implementation is performed by the organisation that requires the goods/service</li> <li>▶ The regulatory framework is well established</li> <li>▶ The processes are well covered in law</li> <li>▶ Performance management is not in place</li> <li>▶ Work still needs to be done in terms of skill development and knowledge profiles</li> <li>▶ Data is managed by each government department</li> </ul>
<b>Areas of opportunity</b>			
<ul style="list-style-type: none"> <li>▶ Implementation of E-procurement</li> <li>▶ Create awareness of Green procurement</li> <li>▶ Identify skills training requirements</li> <li>▶ Implementation of IT systems and data management processes</li> </ul>	<ul style="list-style-type: none"> <li>▶ Implementation of E-procurement</li> <li>▶ Monitoring of performance management</li> <li>▶ Develop a skills development programme</li> <li>▶ The time-frames to advertise for international tenders should be broadened</li> <li>▶ Payment and collection of tender documents should be electronic to accommodate international bidding companies</li> </ul>	<ul style="list-style-type: none"> <li>▶ Implementation of IT systems and data management processes</li> <li>▶ Introduce performance management measures</li> <li>▶ Implementation of E-procurement</li> <li>▶ Create awareness of Green procurement</li> <li>▶ Identify skills training requirements</li> </ul>	<ul style="list-style-type: none"> <li>▶ Proper accreditation and professionalising of procurement staff in public sector</li> <li>▶ Procurement mechanism improvements</li> <li>▶ Organisational design</li> <li>▶ Technology capabilities are still immature</li> <li>▶ Implementation of IT systems and data management processes</li> <li>▶ Implementation of E-procurement</li> <li>▶ Create awareness of Green procurement</li> <li>▶ Introduce performance management measures</li> <li>▶ Harmonize procurement legislation</li> <li>▶ Introduction of civilian oversight</li> <li>▶ Create non judicial mechanisms for tender disputes</li> </ul>

To create an increased level of transparency, namely:

1. Accelerate the implementation of e-procurement and to improve the effectiveness, efficiency and transparency of procurement procedures in a more streamlined manner. At present all of the countries assessed are using electronic tools for publication of tenders on websites only. From discussions with country representatives, the use of e-procurement is on the agenda. Expedition thereof remains stifled but its broadened the awareness
2. Green procurement, focussing on key opportunities where green procurement could improve socio-economic and cost efficiencies
3. Improve transparency of performance management which includes accountability of suppliers' performance and of government procuring entities. In addition, disputes should be managed utilising open and independent arbitration bodies other than the courts so as to reduce the cost and length of time to address such matters



4. Develop procurement capability to lift Africa's competitive advantage globally. The demand on procurement professionals is ever increasing. While the skills and experience within this sector remains limited

BHC has the opportunity to engage countries and share their knowledge, skills and lessons learnt, while taking into account the continent's unique political, economic and social dynamics.

In addition, further discussion is required on the following:

- ▶ How do governments establish governance structures and implementation of real-time procurement assurance to reduce corruption and increase accountability?
- ▶ How do governments create an independent body, free from political influence or interference?
- ▶ How do UK companies embrace socio-economic/anti-poverty agendas of emerging economies?
- ▶ How can UK firms partner with local SMEs to promote skills transfer and job creation while making profitable returns?



Appendix 1:

# Angola

## Government Procurement Procedures Assessment Report

## Project Overview

EY was commissioned to conduct a study on the Government procurement procedures implemented within sub-Saharan regions on behalf of the BHC. The countries in scope are Angola, Botswana, Namibia, and South Africa.

The objectives of the project are to provide the UK Government and companies:

- ▶ With a greater level of understanding of the procurement processes followed in Southern African countries
- ▶ Enable UK companies be more successful in the bidding process for public tenders in Southern African countries
- ▶ Assist the UK Government to identify potential opportunities for collaboration and partnering when tendering for large-scale projects within Southern Africa countries.

### Sources of Information

All information included in this report is based on desktop research, publicly available information and qualitative interviews with the relevant stakeholders. However, verification interviews with Angolan representatives could not be conducted during the period of this study.

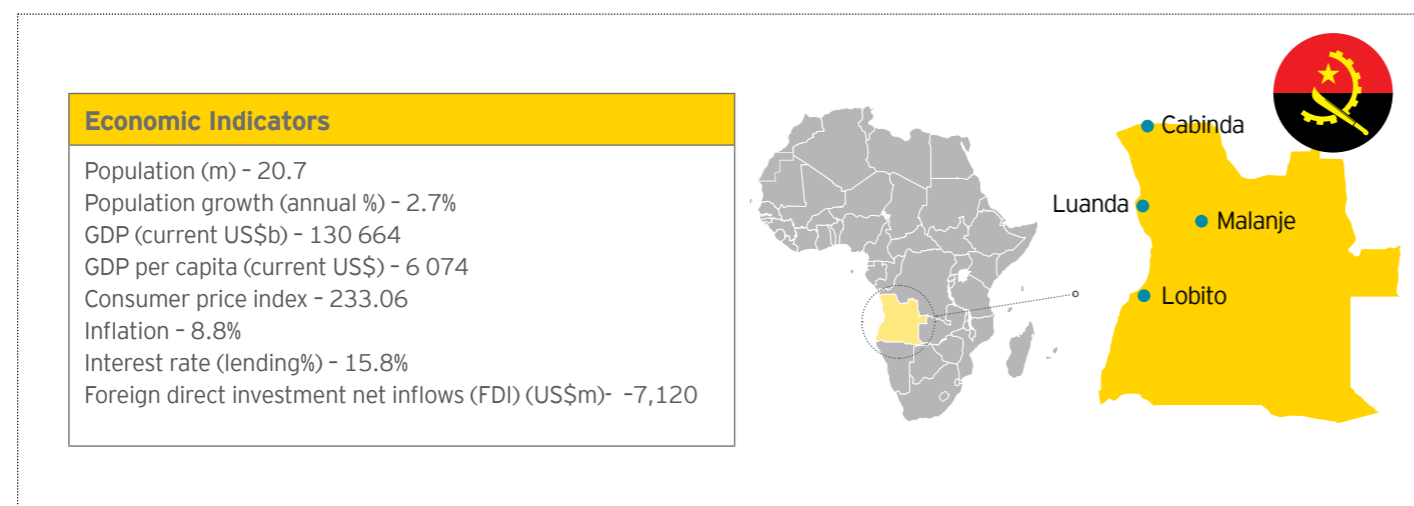


Figure1: Angola summary of key economic indicators, World Bank Data

Business Monitor Online’s most recent forecast has estimated that the country’s real GDP growth rate will be 5.0% in 2015 and 5.2% in 2016. This forecast takes into consideration a rise in inflation over the coming quarters due to the reduction of fuel subsidies<sup>4</sup>.

<sup>1</sup> J.Santos.2012.World’s fastest-growing economy in the last decade. The world Folio <www,the.worldfolio.com> [Accessed 24 January 2015]

<sup>2</sup> The World Bank. 2013.Africa Pulse: An Analysis of Issues Shaping Africa’s Economic Future. Washington, DC, World Bank

<sup>3</sup> Commerzbank. 2013. Renaissance in sub-Saharan Africa. AG, Commerzbank

<sup>4</sup> BMO database. Angola Economic Outlook Report. 2015. <https://bmo.businessmonitor.com> [Accessed 25 January 2015].

## Country overview

### Economic Outlook

Angola was the world’s fastest growing economy for the first ten years of the new millennium, and continues to be amongst the fastest growing economies on the continent<sup>1</sup>. This growth has been fuelled by foreign direct investment (FDI) capital inflows mainly due to Angola’s substantial oil and mineral reserves<sup>2</sup>. The country has the third largest economy in sub-Saharan Africa (after South Africa and Nigeria), with a growing middle class and an increasingly diversified economy. As a result, the country is attracting investors into sectors including: real estate, construction, telecommunications, financial services, agri-business and retail and consumer products<sup>3</sup>.

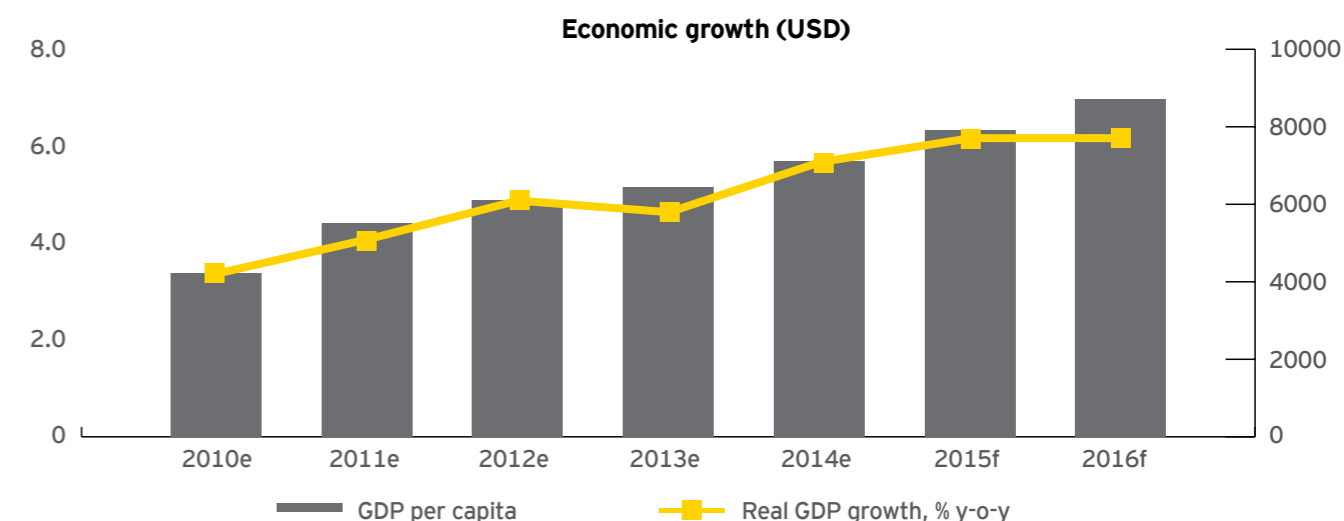


Figure 2: Economic growth indicators Angola, Africa Development Bank

### Public procurement and economic growth

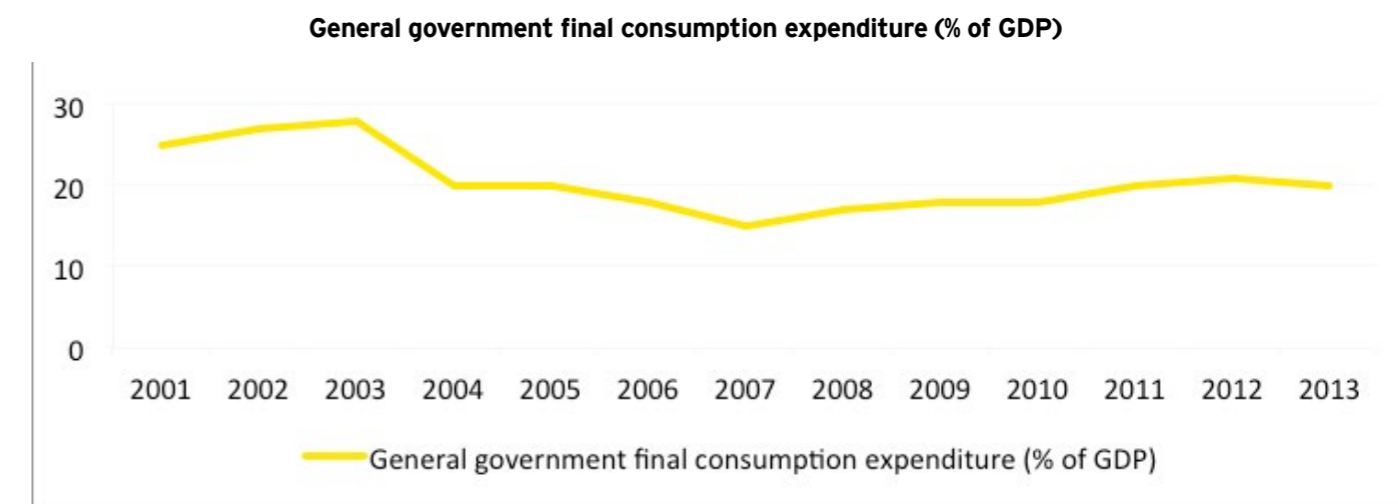


Figure 3: Public expenditure, World Bank

### Doing Business in Angola

The country’s rating in the World Bank Ease of Doing Business survey is 181 out of 189 countries and ranks 42 out of 47 on the continent<sup>6</sup>. This suggests that Angola is a difficult place to do business in comparison to other countries. The high degree of bureaucracy and lack of transparency is posing considerable challenges for international businesses to operate in the country. In addition physical infrastructure requires significant improvements. Despite these shortcomings, the country’s abundant natural resources continue to generate strong interest from foreign investors<sup>7</sup>.

<sup>5</sup> The African Development Bank Database

<sup>6</sup> The World Bank. 2013. Doing Business 2014: Understanding Regulations for Small and Medium Size Enterprises.

<sup>7</sup> BMO database. 2014. Angola, Business Environment Outlook. <https://bmo.businessmonitor.com> [Accessed 26 January 2015].



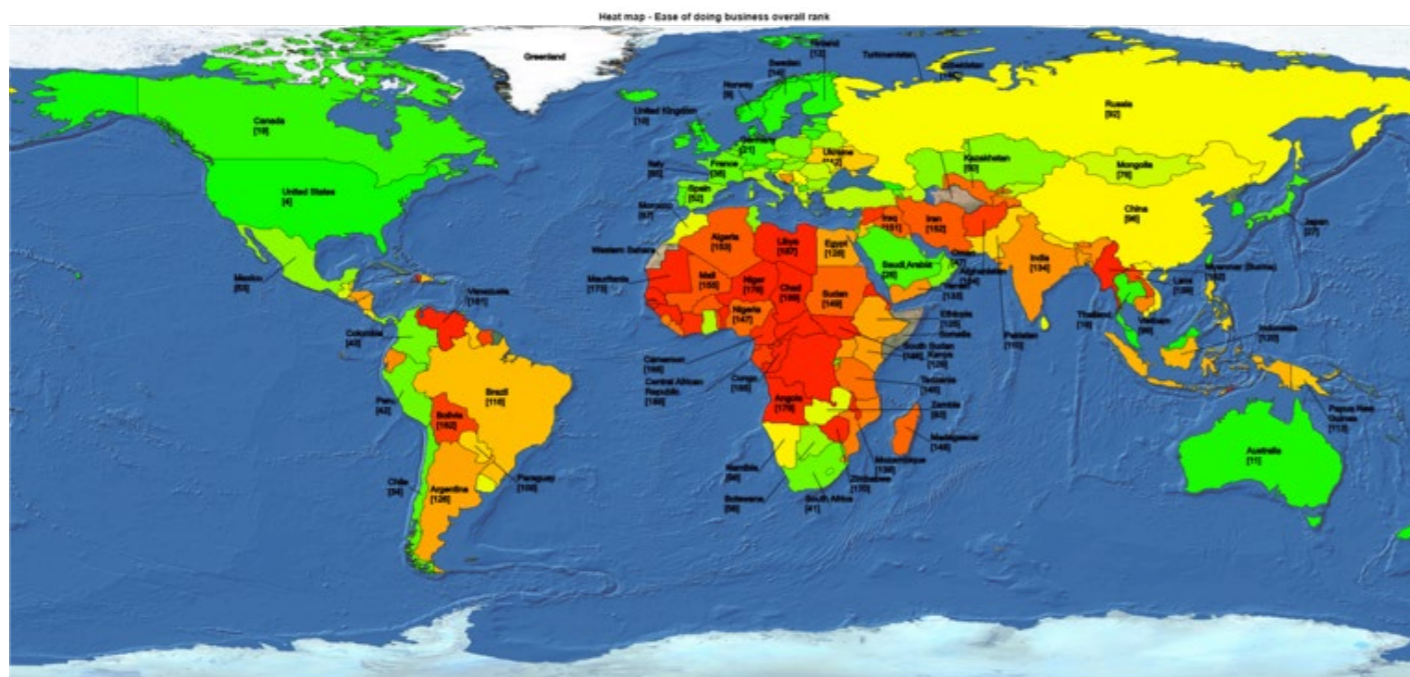


Figure 5: Business Environment Measures (Indicators have been obtained from the EY Growing Beyond Borders tool)

**Public Procurement Studies in Angola**

The period between 2008 and 2010 were eventful years for Angola in terms of political, institutional and economic changes. On the economic front the impact of the global crisis that began in 2008 exposed inherent weaknesses in the country's public financial management system including poor revenue management and weak control over budget expenditure<sup>8</sup>. The new procurement law (Lei de Contratação Pública N.20/10) which came into effect in 2010 was established in order to address some of these shortcomings. This law organises the previously scattered legal framework into one document, making it easier to refer to one single reference for decision making. Among the most important assets of this law is its focus on improved competition and stronger procurement expertise.

Transparency International UK performed a study titled "Identifying Corruption Threats in the Defence and Security Sector: Empirical evidence using the Government Defence Anti-Corruption Index". One of the policy areas assessed in this study was the Public Procurement Legal Framework of Angola.

The procurement landscape in the context of public defence and security was characterised by "low transparency and an absence of evidence of effective oversight in the procurement process." The study further described the effectiveness of the application of the procurement law as "questionable"<sup>9</sup>.

The comprehensive World Bank Country Procurement Assessment Report (CPAR) from 2002 identified a number of challenges in the procurement landscape. These included:

- ▶ Weaknesses of the legal framework
- ▶ Lack of adequate enforcement of the law
- ▶ Inefficient and costly procedures and practices
- ▶ Weak procurement organisation
- ▶ Inadequate capacity, audit and anti-corruption mechanisms.

**The Public Procurement Framework**

A public procurement framework that sets out leading practice guidelines was used in assessing the public procurement system in Angola. This framework defined six of the main policy areas for procurement in the public sector. These areas included:

- ▶ Regulatory Framework
- ▶ Procurement Mechanisms
- ▶ People and Organisation
- ▶ Data and Technology
- ▶ Performance Management
- ▶ Socio-economic.

Table 1 provides a description of each of the policy areas. Each of these areas was unpacked into an assessment that addressed specific standards of a public procurement system (Appendix A). The standards were selected from two sources:

- ▶ The OECD Development Assistance Committee (OECD DAC) Methodology for Assessing Procurement Systems<sup>10</sup>
- ▶ International Handbook of Public Procurement<sup>11</sup>.

Angola's public procurement system was mapped and assessed against the standards set out in the framework.

Table 1: Description of each policy area of the public procurement framework<sup>12</sup>

Policy Area	Description
Regulatory Framework	The purpose of the review is to determine: a) the structure of the regulatory framework governing public procurement; b) the extent of its coverage; and c) public access to laws and regulations. Lack of or inadequate legislation on public procurement may lead to a system that is vulnerable to corruption, hindering market competition. This has a direct impact on public expenditures and therefore public resources.
Procurement Mechanisms	The purpose of assessing procurement mechanisms is to establish whether the legal framework includes: a) a clear definition of the permissible procurement methods; and b) the circumstances under which each method is appropriate. The lack of adequate definitions of procurement mechanisms may leave the system exposed to: <ul style="list-style-type: none"> <li>▶ Inconsistent access to information in the invitation to tender</li> <li>▶ Lack of competition or, collusive tendering resulting in inadequate prices</li> <li>▶ Conflict of interest situations that lead to bias and corruption in the evaluation and in the approval process</li> </ul>
People and Organisation	The public procurement system must have adequate human resources to support all the elements of the system. The lack of adequate and competent procurement staff will lead to the poor execution of regulations. The purpose of this review is to establish the existence of permanent and relevant training programmes for new and existing staff in government procurement. These programmes are essential to maintain the supply of qualified procurement staff to public and private sectors.
Data and Technology	An effective information management system is essential in ensuring that information is centralised and that information recorded is reliable and easily accessible.
Performance Management	Monitoring and evaluation of the public procurement system is essential in order to evaluate the effectiveness of the system in meeting the objectives of the organisation and higher government objectives. The objective is to assess the extent to which the country or agency has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans. This requires among other things the availability of information systems, a capacity for analysis, feedback mechanisms and planning capacity for implementation of improvements.
Socio-Economic	Public procurement is an economic activity therefore socio-economic objectives must be accounted for. However the application of these socio-economic objectives must be governed by law in order to not compromise the principle of fair competition.

<sup>8</sup> CMI Report.2011.Reforms of the Angolan Budget Process.

<sup>9</sup> Transparency International UK. 2012. Procurement corruption risk areas of Angola (International defense & security programme. < www. Defenceindex.org/results/countries/Angola> [Accessed 20 January 2014].

<sup>10</sup> OECD. 2009. Methodology for Assessing Procurement Systems. OECD publishing

<sup>11</sup> B.Raton. 2009. International Handbook of Public Procurement. FL, CRC Press

<sup>12</sup> OECD. 2008. Enhancing Integrity in Public Procurement: A checklist. OECD publishing

## Public Procurement Framework Summary Assessment

### Summary of assessment results

The research revealed that Angola's procurement system is governed by a regulatory framework with oversight from the National Service of Public Procurement (NSPP) to allow decentralised execution. The detailed assessment has been attached as Appendix A which discusses in detail the six areas probed within the procurement framework.

### The Regulatory Framework

Angola's public procurement is governed by the legal framework in terms of the Law No. 20/10 of 7 September - the Public Procurement Law ("Lei da Contratação Pública"). This legislation sets out the general basis and the legal regime relating to public procurement in Angola.

The legislation gives effect to a decentralised public procurement system. A large extent of policy implementation is left to the relevant procuring entities. The principles that govern them include equality, competition, impartiality, transparency and probity within the scope of the public procurement procedures. Further to this the Presidential Decree 1/15 of the Annual State General Budget Execution Rules, Article 6 states that no expenses can be authorised if it does not meet the principles of economy, efficiency and effectiveness. However the decentralisation of the budget execution makes it difficult to assess the actual level of enforcement of key principles of value for money executed by the contracting authorities.

The NSPP which is governed by law as the legal body responsible for oversight of public procurement as well as supporting executives of the procuring entities with implementation of procurement policies is situated within the Ministry of Finance. All appointments to the NSPP are made by and supervised by the Ministry of Finance.

The NSPP is responsible for confirming contracts of public works in respect of the Public Investment Programme that exceeds the requisite thresholds. Thresholds for procurement procedures are defined in Annex 1 of the procurement law.

### Procurement Mechanism

Without sound procurement procedures and mapped out business processes, it can be impossible to operate in an efficient and cost-effective manner. Where practices are particularly weak, accountability and governance requirements may be compromised<sup>13</sup>.

The following contracting methods have been identified and defined in the procurement law:

- ▶ A public tender is applicable where the estimated value of the contract is between Kz500 million (£3 000 000-£7 000 000) and Kz1 100 million (with or without pre-qualification)
- ▶ A limited tender with pre-qualification or a limited tender by invitation is applicable Kz18 million (£110 400) and Kz500 million (£3 000 000)
- ▶ A negotiated procedure is used for contracts up to Kz36 million (£220 800) and in special cases this method can also be used for example in the case of urgency and intellectual protection rights.

Thresholds and authorisation procedures are established in Annexure 1 and 2 of the law. There is a certain overlapping of these thresholds which gives the contracting entity some flexibility in choosing the preferred procedure.

In terms of the Executive Decree 1/13 it is mandatory to create a commitment before any contracts are signed in order to reserve the necessary amount of financial resources from the available budget.

In the current legislative framework there is no clear and specific reference to a multi-year procurement plan. However the Executive Decree 107/12 assigns the task to prepare and develop a national purchasing strategy for standard categories of goods and services together with the procurement departments of the budgetary units within government. There was however no access to these national purchasing strategies available for review.

The legal framework meets a number of tendering and post tendering conditions detailed extensively in the Appendix A below. It covers rules of participation, publication of tenders, timeframes, exclusions, standards and evaluation criteria, confidentiality, contracting conditions and record keeping procedures.

### People and Organisation

In any organisation, getting the balance right between staffing levels and outcomes for the organisation is critical.

Information to assess the People and Organisation area of the procurement framework is limited. However the Presidential Decree 298/10 the SNCP is assigned to provide support to the procurement entities to assist them with adoption of best practices, including measures to improve practices of their employees and to develop and promote professional training.

There is no available information relating to defined skills and knowledge profiles, competitive recruitment or training programmes designed to address skills gaps to match the needs of the procurement system in Angola.

### Data and Technology

The importance of internal management of information is an accepted principle within organisations in the private or public sectors. It has many purposes and its value is emphasized in the following areas:

- ▶ Informing management of current results
- ▶ Informing management of current performance versus targets or plans
- ▶ Providing information for better decision making
- ▶ Providing information to support pursuit of improved performance
- ▶ Improving efficiency and effectiveness of procurement procedures<sup>14</sup>.

The SNCP in terms of Article 11 of the Presidential Decree 298/10 is responsible for the publishing of procurement information relating to procurement law and procedures, guidelines and instructions, amongst other standard documents, onto the public procurement portal, providing they do not contain classified materials, including awards of more than Kz91 million (£558 200). However the available information available is on tender notices only whereas information relating to contracts awarded is available on the Direção Nacional de Património do Estado (DNPE) portal. These sources don't seem to be connected with information on suppliers only accessible to Ministry of Finance employees.

The SNCP also publishes a Statistical Bulletin on Public Procurement in Angola every six months.

There is limited information around system audits for paper and electronic based applications. Procuring entities, however, are required to provide mandatory information accompanied by each proposal available to the SNCP for inspection and are obliged to co-operate and make information available for public inspection.

The legislation refers to the development and management of e-procurement tools, electronic formats including reverse auctions. In 2007 the Ministry of Finance launched a National Programme on public e-procurement and in 2009 one pilot e-auction was implemented, but no other evidence of its implementation is available.

### Performance Management

The monitoring and evaluation of the public procurement system is essential in order to evaluate the effectiveness of the system in meeting the objectives of the organisation and broader government objectives<sup>15</sup>.

Chapter 2, which covers the establishment and management of central buying procedures, requires that the performance of contractors in terms of contractual obligations must be measured.

As previously mentioned a central database of suppliers does exist and is managed by the DNPE within the Ministry of Finance. This Ministry also manages supplier monitoring which is decentralised at the budgetary unit level. There is no information relating to contract monitoring plans or risk-based strategies employed, however all contracting entities must employ and promote co-operation with supervisory bodies responsible for the inspection of contracts. The SNCP is the primary entity entitled to supervise such contracts.

### Socio-economic

Public procurement is an economic activity therefore socio-economic objectives must be accounted for. This includes consideration of quality standards, green procurement, health and safety and socio-economic instruments. However, the application of these socio-economic objectives must be governed by law in order not to compromise the principle of fair competition<sup>16</sup>.

The DNPE is responsible for managing, registering and certifying suppliers, including conducting audits on quality certificates in terms of quality assurance standards issued to suppliers. However, from the suppliers' portal the audit procedure does not seem to be in place as yet.

In terms of green procurement there is preference given to the purchasing of goods and services that promote environmental protection but no code of conduct and ethical practices to prevent the abuse of the environment is available.

Article 233 makes direct provision for health and safety and stipulates that the contractor must comply with the provision of the legislation with regards to protection, hygiene, health and safety at work.

<sup>13</sup> The Scottish Government. 2006. Procurement Practices and Business Processes. <[www.scotland.gov.uk/publications/2006](http://www.scotland.gov.uk/publications/2006)>[Accessed 17 January 2015].

<sup>14</sup> The Scottish Government. 2006. Procurement Practices and Business Processes. <[www.scotland.gov.uk/publications/2006](http://www.scotland.gov.uk/publications/2006)>[Accessed 17 January 2015].

<sup>15</sup> OECD. 2008. Enhancing Integrity in Public Procurement: A checklist. OECD publishing

<sup>16</sup> Raton. 2009. International Handbook of Public Procurement. FL, CRC Press



There are measures in place to protect Small and Medium Enterprises (SMEs). For example, budgetary units must reserve a minimum of 25% of their budget for purchasing goods and services to SMEs with a shorter payment term of 45 days from receipt of invoice. Large private companies are also obliged to reserve 10% of the value of the awarded public contracts for goods and services and in the case of civil works public contracts, 25% must be subcontracted to SMEs through an open procedure and competitive bidding process. Contracting authorities can also include the involvement of SMEs as a criterion for pre-qualification. Where proposals between candidates are tied, preference must be given to SMEs.

### Areas of Opportunity

Although Angola has regulatory frameworks in place for public procurement, there is not much evidence of transparency in the values that underpin procurement. Mechanisms and tendering process are generally well-defined. The implementation of procurement policy and procedures is de-centralised at budgetary unit level with oversight performed by a central body, the NSPP.

There are a number of opportunities for improvement to the procurement framework relating to the areas of assessment which include:

- ▶ People and organisation
- ▶ Business processes and operating procedures
- ▶ Data and technology for example use of an e-procurement platform and
- ▶ Performance management in terms of supplier risk management
- ▶ Socio-economic objectives can be enhanced to include more guidelines around green procurement.

## Appendix A: Detailed Assessment Results

### Approach

The approach to the procurement study was a standard data gathering exercise consisting of meetings and analysing documents. The purpose was to understand and compare how the country's public procurement system meets the requirements set out by internationally recognised instruments such as:

- ▶ The WTO (World Trade Organisation) procurement guidelines in the form of the GPA (Agreement on Government Procurement)
- ▶ The OECD (Organisation for Economic Co-operation and Development) procurement guidelines
- ▶ EU directives.

The study was conducted using a three step approach described below.



Assessment of the public procurement system against the public procurement framework



Comparative study of the country's legal framework to GPA and EU directives

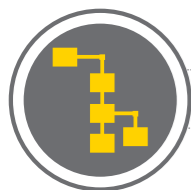


Validation of findings through interviews and discussions with the selected public procurement officials and agencies

In order to successfully perform the assessment (step one above) it was necessary to determine the basic requirements/standards of a public procurement system. The next section describes in detail the approach taken in determining these standards.

During this exercise we gathered data and inputs on the public procurement procedures in Southern African countries primarily in respect of the following policy areas:

- ▶ The regulatory framework
- ▶ The procurement processes, policies, and procedures
- ▶ The structure of the procurement organisation
- ▶ Technology and data
- ▶ Performance management
- ▶ Socio-economic procurement goals and considerations.



## The Regulatory Framework

### Primary Legislation

#### Questions

- ▶ What legal framework defines public procurement in Angola?

#### Assessment Criteria

- There are regulations that supplement and detail the provisions of procurement law that meets the following requirements:
  - ▶ They are clear, comprehensive and consolidated as a set of regulations available in a single and accessible place
  - ▶ They are updated regularly

The responsibility for maintenance is defined

#### Assessment Answers

- Law No. 20/10 of 7 September - the Public Procurement Law (“Lei da Contratação Pública”) - is the law that sets out the general bases and the legal regime relating to public procurement<sup>17</sup>. This is the only procurement law of Angola<sup>18</sup>. One article of Law 20/10 referring to evaluation committees has been partially modified through Law 3/13 of 5 April. The Public Procurement Law 20/10, together with all relevant laws, is published on the Public Procurement Portal, maintained by the Public Procurement Regulator on the SNCP’s<sup>19</sup> website<sup>20</sup>.

### Key Principles

#### Questions

- ▶ What key principles and objectives govern the public procurement policy?

#### Assessment Criteria

- The procurement rules reflect and reinforce the value for money (VFM) focus of the government's procurement policy
- The procurement rules cover the key principles of a fair, equitable, transparent, competitive and cost effective system with the provision of the use of procurement as a means to address discriminatory policies and procedures

#### Assessment Answers

- The principle of the economy and competitiveness is mentioned in procurement law. Also the Presidential Decree 1/15 (“Annual State General Budget Execution Rules”), Article 6, recalls the key principals of value for money, stating that no expenses can be authorised if they don’t meet the principles of economy, efficiency and effectiveness. However, in practice, there is no evidence that these principles are followed by the contracting authorities. The high level of decentralisation of the budget execution makes it difficult to assess the actual level of enforcement of value for money (VFM).
- The principles that govern the procurement law of Angola are that of: equality, competition, impartiality transparency and probity within the scope of the public procurement procedures<sup>21</sup>.

### Ownership

#### Questions

- ▶ Who is the independent regulatory authority responsible for the coordination and management of public procurement?
- ▶ What are the responsibilities of the regulatory authority?
- ▶ What is the judicial power of the regulatory authority?
- ▶ Where in the evaluation process is the regulatory authority involved?

#### Assessment Criteria

- There is a normative or regulatory body or the functions are clearly assigned to various units within the government which is specified in the legal and regulatory framework in an unambiguous way without gaps or overlaps
- The body has a defined set of responsibilities that include but are not limited to the following:
  - ▶ Providing advice to contracting entities
  - ▶ Drafting amendments to the legislative and regulatory framework and implementing regulations
  - ▶ Providing procurement information
  - ▶ Monitoring public procurement
  - ▶ Managing statistical databases
  - ▶ Reporting on procurement to other parts of the government
  - ▶ Developing and supporting implementation of initiatives for improvements of the public procurement system; and
  - ▶ Providing implementation tools and documents to support training and capacity development of implementing staff
- The regulatory body is at an adequate level in government and financing is secured by the legal/regulatory framework
- The body is not responsible for direct procurement operations and is free from other possible conflicts (e.g. by being part of evaluation committees, etc.)

#### Assessment Answers

- The National Service of Public Procurement<sup>22</sup> is a legal body with administrative and financial autonomy and its own assets<sup>23</sup>. The Service is governed by law, as well as the provisions contained in the Public Procurement Law and other applicable legislation<sup>24</sup>. This Service is established within the Ministry of Finance.
- The National Service of Public Procurement has the following duties regarding Public Procurement<sup>25</sup>:
  - ▶ Monitoring Compliance
  - ▶ Auditing
  - ▶ Supervision and Regulation
  - ▶ Recommendation
  - ▶ Promotion
  - ▶ Information
  - ▶ Injunction and Order Corrective Measures
  - ▶ Sanction
- The National Service of Public Procurement (NSPP) is under the Ministry of Finance supervision<sup>26</sup>. The Service Director, members of the Governing Council and the members of the Supervisory Board are appointed by the Minister of Finance (Article 14, pp 10).
- Article 40<sup>27</sup> deals with rules of conduct, impediments and conflicts of interest that apply to the staff of the National Service of Public Procurement. The NSPP is responsible for monitoring and market surveillance of public procurement, as well as supporting the executives of procuring entities in implementing public procurement policies.

<sup>17</sup> Law No. 20/10 of 7 September - the Public Procurement Law (“Lei da Contratação Pública”). Chapter 1, Article 1

<sup>18</sup> Global Experience, Local Expertise.2011. Investing in Angola New Rules on Public Procurement. News Lextter

<sup>19</sup> Formerly named GCP (“Gabinete da Contratação Pública”, Office of Public Procurement), in 2014 named SNCP (“Serviço Nacional da Contratação Pública”, National Service of Public Procurement) through the Presidential Decree No. 299/14 of 4 November

<sup>20</sup> <http://contratacao publica.minfin.gv.ao>

<sup>21</sup> Law No. 20/10 of 7 September - the Public Procurement Law (“Lei da Contratação Pública”).

<sup>22</sup> SNCP (“Serviço Nacional da Contratação Pública”, National Service of Public Procurement), formerly called GCP (“Gabinete da Contratação Pública”, Office of Public Procurement)

<sup>23</sup> Presidential Decree 298/10 (Legal framework of organization and functioning of the Office of Public Procurement, now National Service of Public Procurement), Article 1

<sup>24</sup> Presidential Decree 298/10, Article 2

<sup>25</sup> Presidential Decree 298/10, Article 4

<sup>26</sup> Presidential Decree 298/10, Article 32 and Presidential Decree 299/14, (“Estatuto Orgânico MINFIN”), Article 5

<sup>27</sup> Presidential Decree 298/10, Article 36



## Coverage of the public procurement rules

## Questions

- ▶ What type of procurement contracts are subject to regulation (must cover goods, services, and works (including consulting services)?
- ▶ What are the thresholds? Are these consistent with leading practice standards?

## Assessment Criteria

- a. Procurement law covers goods, works and services (including consulting services)
- b. The associated thresholds for each type of procurement is covered

## Assessment Answers

- a. The present public procurement law applies to the procurement of public works, the leasing and acquisition of movable property and real estate, and the purchase of services on the part of a contracting public entity. The present law is also applicable, with the necessary adaptations, to the formation of public works concessions and public services<sup>28</sup>.  
Contracts of public works, of services, of goods belonging to the Public Investment Programme, and of consulting and technical assistance, when over the thresholds defined in the law that approves the annual State Budget<sup>29</sup>, must undergo the confirmation of the National Service of Public Procurement<sup>30</sup>.  
All contracts, of any nature, that exceed the abovementioned thresholds must obtain the “visa” of compliance from the Court of Auditors<sup>31</sup>.
- b. The thresholds for procurement procedures are included in Annex 1 of the procurement law. A public tender (with or without pre-qualification) is required if the estimated value of the contract is between Kz500 million (£3 000 000) and Kz1100 million (7 000 000). Limited tender by invitation is possible for contracts between Kz18 million (£110 400) and Kz500 million (£3 000 000). The negotiated procedure is for contracts up to Kz36 million (£220 800). There is a certain overlapping of these thresholds, which gives the contracting entity some flexibility in choosing the preferred procedure. The negotiated procedure can be used for contracts higher than Kz36 million (220 800) in special cases such as: Article 28 - urgency, inability to estimate value of the contract, intellectual protection rights; Article 29 - raw materials, special market conditions of purchasing (e.g. insolvency, bankruptcy). For the services specified in Article 30, it is also possible to award a contract without a procedure according to certain rules as stated in the Article 37 and subject to the specific thresholds specified in Annex 2, number 4.

<sup>28</sup> Law No. 20/10 of 7 September - the Public Procurement Law (“Lei da Contratação Pública”). Article 2, Chapter 1

<sup>29</sup> Law 23/14 (Law that approves the 2015 General State Budget), Article 10, “Fiscalização preventiva”

<sup>30</sup> Executive Decree 155/14 (Contract Confirmation), Article 2

<sup>31</sup> Law 23/14 (Law that approves the 2015 General State Budget), Article 10, “Fiscalização preventiva”



## Procurement Mechanisms

## Pre-tendering

## Questions

- ▶ Are the processes and procedures for different procurement contracts clarified and established in the legal framework?
- ▶ How do you define which product to procure/conduct a needs assessment?
- ▶ How does the procurement approach vary per service/product?
- ▶ How many levels of approval are required to make the decision to procure?
- ▶ What are the validation process/requirements for approval?
- ▶ What is the planning and budgeting process for procurement?

## Assessment Criteria

- a. The legal framework establishes all allowable procurement methods unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable
- b. The law requires certification of availability of funds before solicitation of tenders takes place
- c. The planning process has three stages:
  - ▶ The preparation of multiyear plans for government agencies, from which annual operating plans are derived
  - ▶ Annual procurement plans are drawn up along with an estimation of associated expenditures
 The formulation of an annual budget

## Assessment Answers

- a. Four ways of contracting are identified in the procurement law: (1) public tender (2) limited tender with pre-qualification (3) limited tender by invitation (4) negotiated procedure. The procurement law provides the definitions of each of the abovementioned procedures. Thresholds and authorisations are established in Annexure 1 and 2 of the law (see section 5.1 (b) coverage of public procurement).
- b. Authorisation of expenditure is covered in the procurement law<sup>32</sup>. Annex 2 sets all the levels of authorisation subject to procurement thresholds.  
Law 15/10 (“Lei quadro do orçamento geral do estado”), Article 31, paragraph 2 makes it mandatory to create a commitment before any contract is signed, in order to reserve the necessary amount of financial resources from the available budget. The Executive Decree 1/13 clarifies the procedure to issue a commitment and introduces a “pre-commitment” to reserve the budget well in advance (Article 2), in those cases when the procurement procedure can take a long time (for instance in the open tenders).  
Presidential Decree 1/15, Article 1.3, reiterates this obligation: no expense can be authorised or paid without previous registration in the State Budget, and its execution must include the commitment step.
- c. In the current legislative framework there isn't any clear and specific reference to a multi-year procurement plan. The Executive Decree 107/12 (Internal rules of DNPE), Article 10.3.2.e, assigns to DAP (the Department inside DNPE for public procurement) the task of preparing and developing a national purchasing strategy for standard categories of goods and services, together with the procurement departments of the budgetary units. No evidence of these purchasing national strategies is available.

<sup>32</sup> Law No. 20/10 of 7 September - the Public Procurement Law (“Lei da Contratação Pública”). Section 2, article 34

## Tendering

## Questions

- ▶ How are requirements specified or designed to ensure that all suppliers or contractors established in country are treated on equal terms, to avoid discrimination on the grounds of origin?
- ▶ Does the legal framework specify the rules of participation and selection policies?
- ▶ What precautionary measures are applied to prevent conflict of interest, collusion and corruption and to promote integrity?
- ▶ Are the timescales clearly defined in the legal framework? Are the times defined adequately for each procurement method? What are the exceptions?
- ▶ What evaluation methodologies are in place? Are they consistently applied and records kept?
- ▶ What type of public procurement is not subject to the standard procedures outlined in the legislation or other legal text?

## Assessment Criteria

The legal framework meets the following conditions:

- a. The legal framework covers the rules of participation
- 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. Such timeframes are extended when international competition is sought
- c. Sufficient information is included to enable potential bidders to determine their ability and interest in bidding
- d. Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations
- e. Requires the use of neutral specifications citing international standards when possible.
- f. Requires recognition of standards which are equivalent when neutral specifications are not available
- g. The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents
- h. Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible
- i. During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process
- j. Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission
- k. Records of proceedings for bid openings are retained and available for review
- l. Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited. The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders

## Assessment Answers

- a. Title 3, Chapter 1, Section V, Article 51 makes provision for the promotion of Angolan business. Procurement procedures are to prioritise Angolan businesses. However, the procurement process must establish a margin of preference for candidates or national competitors that cannot exceed 10% of the price offered by Angolan competitors  
Title 3, Chapter 1, Section V, Article 99 establishes that the above requirement is also applicable when preference has been established in favour of goods produced, extracted or grown in the states that integrate the common market of Southern Africa<sup>33</sup>.  
Title 3, Chapter 1, Section V, Article 52 establishes additional rules that apply to the participation of foreign competitors. The candidates for international competition can nominate themselves or submit a proposal of a value that complies with the limits set out in Annex 3 of the law. Exceptions for this rule are provided for in conditions when: (1) the product or service does not exist in the Angolan market (2) for reasons of convenience the contracting entity so decides.
- b. Title 3, Chapter 2, Section 1, Article 59, makes provision for the advertising and publication of tenders. The announcement of the opening of tenders should be published in the 3<sup>rd</sup> Series of the Official Journal of the Republic, through the model set out in Annex 4 of the procurement law and a newspaper of mass-circulation in the country.

Deadline for submission of proposals depends on the type of procedure

- ▶ Public tender: no less than 20 days nor more than 120 (art. 73) from the date of the tender notice
- ▶ Limited tender with pre-qualification: no specific rules (the entity should define the deadline for submission of offer based on the complexity of the goods/ services)
- ▶ Limited tender by invitation: no less than 6 days from the invitation
- ▶ Negotiated procedures: no specific rules

The procuring entity must include the deadline for submission of proposals in the advertisement and in the invitation. The deadline must take into account the time necessary for its preparation depending on the nature, the characteristics, the volume and complexity of the service which are subject to the contract.

- c. Title 3, Chapter 2, Section 1, Article 60 sets out all the information that the tender documentation must include.
- d. Article 87 makes provision for exclusion of proposals on the grounds of: submission of false documentation or statements; violation of legal or regulatory provisions applicable; unacceptable supplier; reveal existence of strong evidence of acts, agreements, practices or information likely to distort competition. The evaluation committee may ask for clarification on the proposals to ensure that competitors do not contravene the information contained in the document. This includes information that may have been altered or supplemented in order to qualify for the tender (Article 89).
- e. Article 261 specifies the rules relating to the specifications of materials. (1) The material shall be applied by the contractor in absolute compliance with the technical specifications of the Contract. (2) In the absence of specifications official standards must be applied, if these do not exist, the contractor may propose an alternative process which is subject to approval.
- f. Same as above.
- g. Section 4 covers the rules relating to the qualification of competitor and analysis of proposals. The evaluations are conducted by the Evaluation Commission. The law states that the proposals of the qualified competitors should be analysed solely on the basis of the criteria for the award established (Article 86). Criteria are made available to competitors from the beginning, as they must be included in the tender programme (Article 60.1.k) and also in the tender notice (Article 99.7).
- h. Article 99 is on the awarding criteria. There isn't any specific rule or recommendation on the type of criteria to prefer.
- i. Article 6 covers the rules of conduct for procurement by public officials. Except as otherwise stipulated in the procurement law or in other applicable provisions, employees involved in procurement processes are bound by duty of confidentiality, and shall treat all information in this context as confidential. The members of the Evaluation Committee and the officials called to collaborate in the evaluation process are required to maintain secrecy and to ensure the confidentiality of the same elements. The violation of the duty of confidentiality shall incur the offender in civil responsibility, criminal and disciplinary action, in accordance with the law (Article 44).
- j. See (b) above.
- k. Law 20/10 sets some rules on records of proceedings for bid openings: Article 89 defines the "Relatório preliminar" as the preliminary report prepared by the commission with its evaluations. This is communicated to the candidates (Article 90), who then have five days to present an appeal. The same applies for the final decision assessed in the "Relatório final" (Article 97). No other requirement is in the law.
- l. Same as (i) above.
- m. The principle of efficiency is addressed in the law. Article 73 outlines the rules relating to the presentation of proposals in electronic format. Article 72 outlines the rules relating to the submission of proposals in paper format. The proposal and documents must be drawn up in Portuguese or, in the case where it has not been drawn up in Portuguese; the proposal must be accompanied by a legalised translation.

<sup>33</sup> For the purpose of evaluation and comparison of bids, an amount up to 10 percent of the bid amount shall be added to bids received from all bidders save those eligible for the preference (or an amount of up to 10% can be reduced from the bidders eligible for the preference to compare with non-eligible ones).



## Post-tendering

## Questions

- ▶ What are the rules and restrictions to post tender negotiations?
- ▶ Who is permitted to sign contracts? Who is reviewing and following-up contracts?
- ▶ How do you manage contract risks? Is the legal department consulted when contracts are developed?
- ▶ Is there guideline regarding use of contracts, Incoterms, or payment conditions?

## Assessment Criteria

**The legal framework provides for the following:**

- a. The right to review for participants in a procurement process
- b. Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review
- c. Establishes the matters that are subject to review and timeframes for issuance of decisions by the procuring agency and the administrative review body
- d. There are GCC (General Conditions of Contracts) for the most common types of contracts and their use is mandatory

## Assessment Answers

- a. Administrative law and challenges are covered in the law (Chapter 4). Remedies and other challenges relating to contract negotiations and non-performance (Articles 84, 90 and 126) are provided for in the legislation.
- b. Article 21 covers the right for judicial review. Any interested party has, in accordance with the law, recourse to legal proceedings.
- c. Article 14, states that administrative action is optional and the case can be applicable at any of the following stages of the procurement process: the qualification decision; the beginning of the negotiation phase; the decision of the award and the conclusion of the contract. When the administrative appeal has been made for either the qualification decision or the decision to award.
- d. Section 9 of the procurement law outlines general conditions of contracts. Article 110 provides guidelines in the drafting of contract conditions.



## People and Organisation

## Organisation Structure

## Questions

- ▶ What does the organisation structure look like for procuring?
- ▶ To what extent is the procurement function centralised/ decentralised?
- ▶ What is the level of coordination/ frequency of information sharing?

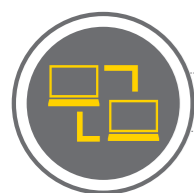
## Assessment Criteria

- a. Delegation of decision making authority is decentralised to the lowest competent levels consistent with the risks associated and the monetary sums involved
- b. Delegation is regulated by law
- c. Accountability for decisions is precisely defined

## Assessment Answers

- a. The expenditure and procurement processes ("budget execution") are highly decentralised, as stated in the preface of the Annual Rules for State General Budget (Decreto Presidential 1/15, preface). Each Budgetary Unit or Dependent Organ that has its own budget is responsible for its use ("execution"). At a single budgetary unit level, thresholds for authorisation are established in Law 20/10, Annex 2. Rules regarding the authorisation are described in Law 20/10; Section II (articles 34-40).
- b. Delegation is allowed (Law 20/10, Article 38: unless explicitly prohibited in other laws, and Article 40.7).
- c. Annex II of the Law 20/10 defines all competencies, conditions, thresholds and limits of responsibilities for the different levels of central and local government.

Education and Training
<b>Questions</b>
<ul style="list-style-type: none"> <li>▶ Are formal education and training programmes in place?</li> </ul>
<b>Assessment Criteria</b>
<ul style="list-style-type: none"> <li>a. There are defined skill and knowledge profiles for specialised procurement jobs</li> <li>b. There is systematic matching of skills against requirements for competitive recruitment</li> <li>c. There is a training and capacity building strategy that provides for:               <ul style="list-style-type: none"> <li>▶ Substantive permanent training programmes of suitable quality and content for the needs of the system</li> <li>▶ Evaluation and periodic adjustment based on feedback and need</li> <li>▶ Advisory service or help desk to absolve questions by procuring entities, suppliers, contractors and the public</li> </ul> </li> <li>d. Training programme design is based on a skills gap inventory to match the needs of the system</li> </ul>
<b>Assessment Answers</b>
<ul style="list-style-type: none"> <li>a. No evidence is available to assess this criteria.</li> <li>b. No evidence is available to assess this criteria.</li> <li>c. In the Presidential Decree 298/ 10 the SNCP (Serviço Nacional da Contratação Pública, formerly called the GCP, Gabinete da Contratação Pública) is the unit that is assigned to provide support to the procurement entities and to assist them in the adoption of "best practices" (Article 4, letter d and Article 10, letter b), to recommend to procurement entities the measures it deems necessary to improve their practices or their employees (Article 9), and to develop (directly or indirectly), encourage, promote or sponsor professional training (Article 10, letter c and d).</li> <li>d. No evidence is available to assess this criteria.</li> </ul>



## Data and Technology

Access to information
<b>Questions</b>
<ul style="list-style-type: none"> <li>▶ What methods are used at each stage of the procurement cycle to record information? How reliable are your procurement data? How much efforts are required to provide it?</li> <li>▶ To what extent does your organisation rely on your purchasing data?</li> </ul>

Assessment Criteria
<ul style="list-style-type: none"> <li>a. Information on procurement is easily accessible in media with wide circulation and availability. The information provided is centralised at a common place. Information is relevant and complete. Information is helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance</li> <li>b. There is a system that collects data on procurement by method, duration of different stages of the procurement cycle, awarding of contracts, unit prices for the most common types of goods and services and other information that allows analysis of trends, levels of participation, efficiency and economy of the purchases and compliance with requirements</li> <li>c. Reliability of the information is high (verified by audits)</li> <li>d. Analysis of information is routinely carried out, published and fed back into the system</li> <li>e. The legal/regulatory framework establishes a list of the procurement records that must be kept at the operational level and what is available for public inspection, including conditions for access</li> </ul> <p>The records should include:</p> <ul style="list-style-type: none"> <li>▶ Public notices of bidding opportunities</li> <li>▶ Bidding documents and addenda</li> <li>▶ Bid opening records</li> <li>▶ Bid evaluation reports</li> <li>▶ Formal appeals by bidders and outcomes</li> <li>▶ Final signed contract documents and addenda and amendments</li> <li>▶ Claims and dispute resolutions</li> <li>▶ Final payments</li> <li>▶ Disbursement data (as required by the country's financial management system)</li> </ul> <ul style="list-style-type: none"> <li>f. There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles</li> </ul>
<b>Assessment Answers</b>
<ul style="list-style-type: none"> <li>a. In Article 11, (Presidential Decree 298/10, Establishment of the SNCP): In the pursuit of their duties, the National Service of Public Procurement should:           <ul style="list-style-type: none"> <li>a. Publish in the portal of public procurement in the public access area, relevant quality information, in accordance with applicable law.</li> <li>b. Publish in the portal of public procurement in the public access area, information it may consider relevant, including legislation procurement and upgrades, studies, memos and quality dissertations which concern matters of hiring public, form type, technical type records, procedure type parts or other standard documents, instructions, guidelines or reports that do not contain classified matter or material intended to be only available in the restricted access area.</li> <li>c. To publish in major newspapers quality information relevant in accordance with their applicable legislation</li> </ul> <p>Awards of more than Kz 91 million (€558 282) are advertised on the portal of public procurement (Article 102). The portal is freely and publicly accessible. No registration is required.</p> </li> <li>b. The Presidential Decree 1-15, "Annual rules for the state general budget execution", defines SIGFE (Sistema Integrado de Gestão Financeira do Estado, Integrated System for the State Financial Management) as the main system for budget execution (Article 2). On Article 7 the Decree defines that all contracts must be registered in SIGFE. All contracts must be linked to a Commitment Note (in SIGFE, again). Information on contracts includes (among others) total value, payment plan, and type of procedure. Much more information is required from contracts to be "confirmed" by the SNCP (as stated in Executive Decree 155/14, Confirmação de Contratos, Article 4). However, at the moment this information seems not to be managed in any system yet.</li> <li>c. System audits for both paper based and electronic applications are not specified. The National Service of Public Procurement makes the decisions entrusted to it by law, in the time limit, in particular: (i) To give decisions with respect to complaints, challenges and administrative appeals provided for in public procurement law and to apply them; (ii) taking and enforcing remedies under the Procurement Law; (iii) decide on impediments procedures laid down by law; d) take the measures it deems appropriate following the audit of electronic platforms.</li> <li>d. The SNCP has the mandate of oversight on public procurement (Decreto Presidencial 298/10, Article 4, point 1, letter d). In this respect, the SNCP publishes a Statistical Bulletin on Public Procurement in Angola every six months, publicly available on the SNCP portal.<sup>34</sup></li> <li>e. The DNPE should also carry out statistical analyses on procurement (Decreto Executivo 107/12, Article 10, point 1), but there is not any evidence of the outcomes available.</li> <p>The procurement law establishes all mandatory information that must accompany each proposal (Article 69). The SNCP is the entity entitled to inspect, audit and supervise the procurement process (DP 298/10, Article 4, point 1, letter b). Public contracting entities must cooperate and make information available for public inspection (Article 4, point 4).</p> <li>f. No information available.</li> </ul>

<sup>34</sup> <http://www.contratacaopublica.minfin.gv.ao>



## E- Procurement

## Questions

- ▶ To what degree is electronic procurement practiced?

## Assessment Criteria

The WTO list the use of electronic means on its key principles

- The procurement agency places importance on, and encourages the use of, electronic means for procurement

## Assessment Answers

- Electronic public procurement is constantly mentioned in the Law 20/10. Article 12 refers to electronic platforms for procurement, but states that a specific law will define the rules to manage and operate it. Article 72 makes provision for the presentation of proposals and other documents in electronic format. Rules for submission are established. Section V (Articles 91-96) is on electronic reverse auctions. Article 353 covers “the principle of equivalence of the use of physical media or electronic media”. The state must ensure effective equivalence between the electronic proceedings of the procedures and the proceedings on physical media or paper. The Ministry of Finance launched in 2007 a “Programa Nacional sobre Compras Públicas Electrónicas (PNCPE)” (National Program on public e-procurement)<sup>35</sup>. One pilot e-auction was made in 2009<sup>36</sup>, but no other evidence of its implementation is available. The Presidential Decree 299/ 14 (Article 17, letter m) attributes to the DNPE the responsibility to develop and manage e-procurement tools.

## IT Procurement Tools

## Questions

- ▶ What methods are used at each stage of the procurement cycle to record information? How much effort is required to provide information on procurement?

## Assessment Criteria

- The objective of this indicator is to determine:
  - ▶ The existence and capacity of the procurement information system in the country
  - ▶ The accessibility of the information system
  - ▶ The coverage of the information system
  - ▶ Whether the system provides a one-stop service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes

## Assessment Answers

A procurement information system doesn't exist. Information on procurement is spread across different systems or portals. Publicly available information is on tender notices only, as they are published on the SNCP portal (<http://aquisicaopublica.minfin.gv.ao>). Information on contracts awarded and their link to the budget and payments is in SIGFE (following Article 6.3 of Presidential Decree 1/15). Information on suppliers is in the DNPE portal (<http://fornecedores.minfin.gv.ao>). These sources don't seem to be connected. Accessibility seems to be very limited (SIGFE to Budgetary Units, the suppliers' information on the DNPE portal to Ministry of Finance employees only).



## Performance Management

## Performance management metrics

## Questions

- ▶ Are metrics calculated and used to support the procurement process management through a scorecard? What are you focusing in performance measurement on?

## Assessment Criteria

- Performance measures are used to evaluate the usefulness of the procurement function to support the agency's mission.

## Assessment Answers

- Performance of the contractor relative to contractual obligations must be measured.

## Supplier Monitoring

## Questions

- ▶ How do you manage your supply base and the relationships to your suppliers? What areas are you focusing on?

## Assessment Criteria

- An effective communication and feedback system has been established with the suppliers by:
  - ▶ Designating an authoritative person as a single interface with the key supplier
  - ▶ Using integrated teams to facilitate sharing of information
  - ▶ Establishing an objective basis for providing feedback by setting performance measures and expectations in terms of quality, responsibility, timelines, and cost
  - ▶ Providing periodic “report cards” and meeting formally with key suppliers to discuss issues
  - ▶ Using surveys, supplier meetings, and formal agency - supplier councils or supplier advisory councils to assess existing customer-supplier working arrangements to identify problem areas, and report back to suppliers
- The agency employs contract monitoring plans or risk-based strategies, and tracks contractor performance
- The agency regularly reviews contract oversight processes, identifies areas needing improvement, and establishes and implements corrective action plans
- The agency monitors the effectiveness of policies and processes, completes a cost benefit analysis when considering alternative policies and processes, and follows up on findings identified in monitoring efforts
- The agency's suppliers have established earned value management systems, and the agency verifies that it and its suppliers effectively implement earned value management processes and procedures on all applicable programs

## Assessment Answer

- A central suppliers' database exists and is managed by the DNPE. This database manages the supplier registration and certification process, (as stated in Executive Decree 107/12, Article 10.3.1.e)<sup>37</sup>. Contract management and supplier management from the government side is decentralised at the budgetary unit level.
- No information available.
- Title 7 of the law covers final provisions of the contract. The activities of public procurement are subject to supervision mechanisms established in the law. All the contracting entities and their employees and agents, as well as other participants in the process of hiring must, in accordance with the law, promote cooperation integral with the supervisory bodies and inspection. SNCP is the primary entity entitled to supervise contracts (Decreto Presidential 298/10, Article 4.1.b).
- No evidence is available to assess this criteria.
- No evidence is available to assess this criteria.

<sup>35</sup> [http://www.minfin.gv.ao/oldnews/oldnews\\_168.htm](http://www.minfin.gv.ao/oldnews/oldnews_168.htm) and [http://www.minfin.gv.ao/oldnews/oldnews\\_170.htm](http://www.minfin.gv.ao/oldnews/oldnews_170.htm)

<sup>36</sup> [http://www.portalangop.co.ao/angola/pt\\_pt/noticias/economia/2009/6/27/Programa-Nacional-Compras-Electronicas-reduz-gastos-publicos,df50b52d-1247-4df6-a724-7e617e4bd984.html](http://www.portalangop.co.ao/angola/pt_pt/noticias/economia/2009/6/27/Programa-Nacional-Compras-Electronicas-reduz-gastos-publicos,df50b52d-1247-4df6-a724-7e617e4bd984.html)

<sup>37</sup> <http://fornecedores.minfin.gv.ao>

Supplier development	
<b>Questions</b>	
▶ Are there any supplier development programmes in place? How do you certify and develop suppliers (new or existing)?	
<b>Assessment Criteria</b>	
a. The objective of this question is to obtain descriptive data on supplier development programs that each country has implemented	
<b>Assessment Answers</b>	
a. In its mission, the National Service of Public Procurement also has to provide information on public procurement in Angola to all the entities involved (including suppliers and their organisations) (Article 4, Presidential decree 298/10). The DNPE (through its department, the DAP), manages the registration and certification of suppliers, whose information is then made available to public entities on their portal (Article 10.3.1.e and 10.3.2.c, Exec Dec 107/12).	



## Socio-economic

Quality Standards	
<b>Questions</b>	
▶ What quality standards are applied throughout the procurement system e.g. ISO standards? To what extent are these standards met?	
<b>Assessment Criteria</b>	
The quality standards should as a minimum:	
a. Provide quality assurance standards and a monitoring system for procurement processes and products	
b. Provide for a staff performance evaluation process based on outcomes and professional behaviors	
c. Ensure that operational audits are carried out regularly to monitor compliance with quality assurance standards	
<b>Assessment Answers</b>	
a. The DNPE (through its department, the DAP), manages the registration and certification of suppliers (Article 10.3.1.e and 10.3.2.c, Exec Dec 107/12): registration is on general information only, while certification is the registration of specific certificates that suppliers may have obtained from international certification authorities <sup>38</sup> .	
b. No information available.	
c. Audits on quality certificates submitted and on quality assurance standards are part of DNPE (DAP) responsibilities. However, from the suppliers portal it seems that the audit procedure is not in place yet.	

<sup>38</sup> <http://www.fornecedores.minfin.gv.ao>

Green Procurement	
<b>Questions</b>	
▶ Is green procurement covered in the legislative framework? To what extent is green procurement considered important in the selection of supplier/contracts?	
<b>Assessment Criteria</b>	
a. Green procurement is considered in the legislative framework	
b. Code of conduct and ethical practices to prevent the abuse of the environment are stated in the regulations	
<b>Assessment Answers</b>	
a. The Procurement Law 20/10 defines some "guiding principles" (Article 174), particularly referred to as Central Purchasing Bodies. Among other principles, section (d) states that preference must be given to products and services that promote the environmental protection.	
b. No evidence is available to assess this criteria.	

Health and Safety	
<b>Questions</b>	
▶ Does the legal framework make provision for essential security or defense interests and safety for the health and life of humans, animals, plants?	
<b>Assessment Criteria</b>	
a. Specific provisions are made for the protection of confidentiality of information which, if disclosed, might impede law enforcement; essential security or defense interests; public morals, order, or safety; human, animal or plant life or health; or might prejudice fair competition between suppliers, might prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property, or might otherwise be contrary to the public interest	
<b>Assessment Answers</b>	
a. There is direct provision for health and safety (Article 233). The contractor must comply with the provisions of the legislation on hygiene, health and safety at work.	

Socio-economic instruments	
<b>Questions</b>	
▶ What are the key instruments utilised to achieve socio-economic objectives through public procurement?	
<b>Assessment Criteria</b>	
a. Secondary procurement objectives must be regulated by law	
<b>Assessment Answers</b>	
a. The Angolan public procurement regulation has set measures to protect Small and Medium Enterprises (SMEs). The Executive Decree n.º 157/14 of 4 Junho approves the regulation of State support defined in the Law n.º 30/11 of 13 September - "Lei das Micro, Pequenas e Médias Empresas" (SMEs Law). The Decree defines that state entities must reserve a minimum of 25% of their budget for purchasing goods and services from SMEs, and also defines a shorter payment term - 45 days from an invoice being received in the case of SMEs. The Decree also defines that large private companies (non-SMEs) must reserve 10% of the value of awarded goods and services public contracts and 25% of awarded civil works public contracts for contracting SMEs (subcontracting). The awarding of the contracts to SMEs must be carried by large private companies in an open procedure and competitive bidding. The decree also defines that for the public awarding of contracts and subcontracting, if candidates or proposals are tied, the preference must be for an SME. Also the decree defines that for goods and services, contracting authorities can define the involvement of SMEs as a criterion of pre-qualification.	



“

This is an exciting time for Africa. The world is taking a stronger interest in the potential we have to offer. Our vision is to actively participate in accelerating the opportunities to build and grow with our people and clients. We are already operating as one integrated business across the continent. We are a truly African business.

Ajen Sita,  
CEO, EY Africa

”



Appendix 2:

## Botswana

### Government Procurement Procedures Assessment Report

## Project Overview

EY was commissioned to conduct a study on the Government procurement procedures implemented within sub-Saharan regions on behalf of the BHC. The countries within the scope are Angola, Botswana, Namibia, and South Africa.

The objectives of the project are to provide the UK Government and companies:

- ▶ With a greater level of understanding of the procurement processes followed in Southern African countries
- ▶ To enable UK companies during the bidding process for public tenders in Southern African countries and
- ▶ To assist the UK Government to identify potential opportunities for collaboration and partnering when tendering for large-scale projects within Southern Africa countries.

### Sources of Information

All information included in this report is based on desktop research, publicly available information and qualitative interviews with the relevant stakeholders. The Public Procurement and Asset Disposal Board (PPADB) of Botswana was consulted during this study on their views relating to the areas of their procurement system under review. Permission was granted by the PPADB in respect of the use of the information contained in this report.

## Country overview

### Economic Outlook

Botswana is one of the most stable countries in Africa, and has the longest serving multi-party democracy in Africa<sup>1</sup>. Botswana was officially formed in 1966<sup>1</sup>. The ruling party is the Botswana Democratic Party which has won the last ten elections since 1966<sup>1</sup>. Botswana is the world's largest producer of diamonds, although the country is making efforts to reduce its dependency on diamonds<sup>1</sup>. Botswana has been grappling with extremely high rates of HIV and this is seen as the biggest social challenge facing the country at the moment<sup>2</sup>.

The average real GDP growth of the economy between 2015 and 2019 is forecast at 4.18%<sup>3</sup>. According to the World Bank, Botswana had net inflows of foreign direct investment of US\$188m in 2013<sup>4</sup>.

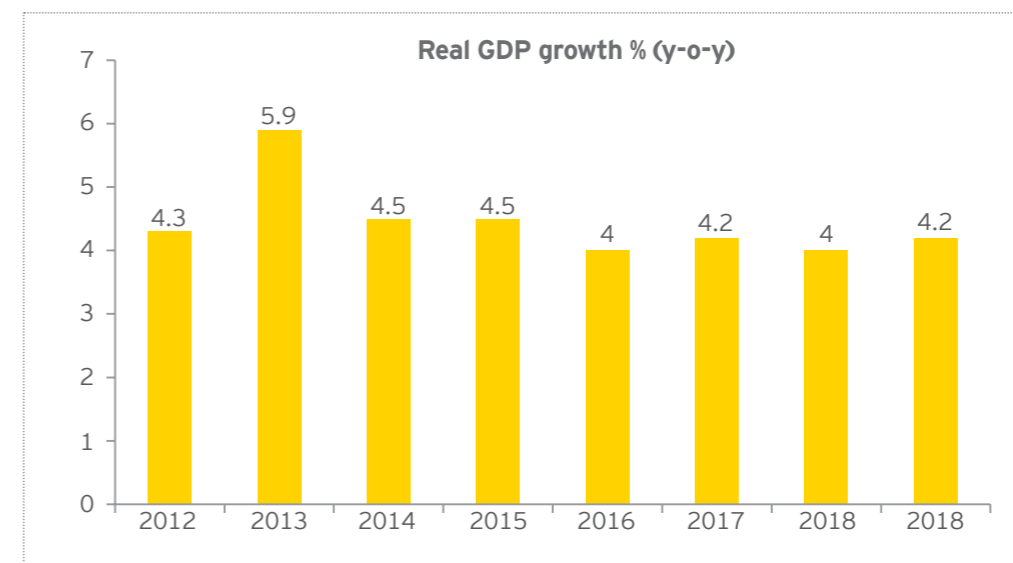


Figure 2: Economic growth forecast for Botswana

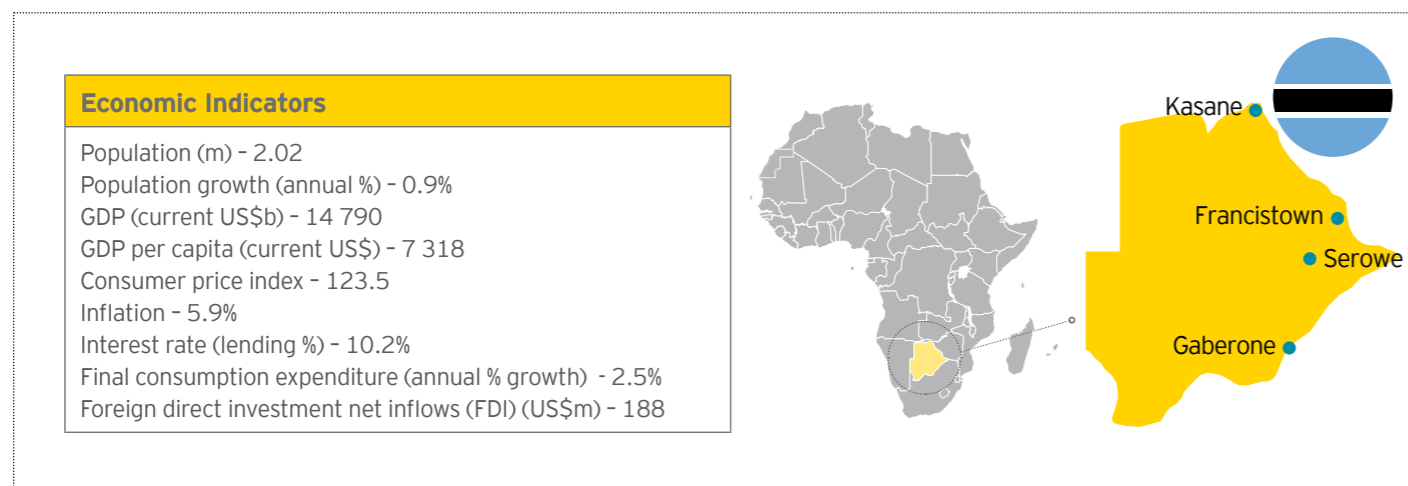


Figure 1: Summary of Botswana's economic indicators according to World Bank data

### Public Procurement and Economic Growth

The PPADB is charged with creating citizen empowerment through the proactive implementation of reservation and preference schemes. These have been designed by the government to enhance citizen participation in economic activities with the objective of increasing employment and capacity building<sup>5</sup>. Botswana is currently pursuing an Economic Diversification Drive (EDD) which is a long term strategy to create a well-developed economy that has the potential for growth long after the export of diamonds has declined. It has the following key objectives<sup>6</sup>:

- ▶ To develop globally competitive sectors that will act as growth pillars of the Botswana economy
- ▶ To diversify exports and export markets through a vibrant and competitive private sector
- ▶ To make Botswana an investor and investment destination of choice for a globally competitive private sector
- ▶ To develop goods and services that, comply with domestic and international standards
- ▶ To develop a diversified vibrant technology-driven economy that creates sustainable employment
- ▶ To conduct research and development for informed decision making
- ▶ To develop entrepreneurship culture for business growth and enhanced citizen participation in the economy.

The Government of Botswana sees the national budget as an empowering tool, and is currently seeking measures to empower SMEs. They are looking to forge partnerships in sectors such as mining, ICT, financial services, tourism, agriculture and manufacturing. Empowerment of citizens happens through the Botswana Development Corporation, which is responsible for leveraging external investors to help empower citizens<sup>7</sup>.

### Botswana Public Expenditure Review

The unifying theme of the Public Expenditure Review (PER) is the impending need for Botswana to incorporate into its policy making and planning framework a series of measures to help it transition into an era of diminished diamond revenues. While diamond revenues have enabled rapid development, they have also allowed government to swell, and the public sector is today, along with the diamond industry, a mainstay of the economy. With the decline of diamond mining on the horizon, it has become increasingly urgent for Botswana to review and question its management of public finances and the role and objectives of the public sector in the economy, particularly given large and persistent human and social development needs. While the global economic crisis has helped to bring these issues to the fore, they are long-term challenges that are independent of today's temporary economic difficulties<sup>8</sup>.

### Doing Business in Botswana

The World Bank rates Botswana at 74th in terms of ease of doing business. This places it as 5th in Africa<sup>9</sup>. The country has a well-developed financial services sector and scores well in literacy and education<sup>10</sup>. Botswana is known to have good governance practices, and has low levels of corruption. Botswana has some of the lowest operational risk in the region. The country does, however, have an undeveloped transport system, poor contract enforceability and unpredictable utility costs. What makes Botswana attractive are its good tax breaks, market-orientated economy and limited security risks. The corporate tax rate is 22% in Botswana<sup>11</sup>.

<sup>1</sup> BBC News Africa, Botswana country profile. <http://www.bbc.com/news/world-africa-13040376>

<sup>2</sup> Business Monitor International. Political Risk Report, Botswana. 14 Jan 2015

<sup>3</sup> Business Monitor International. Economic Risk Analysis. 14 Jan 2015

<sup>4</sup> World Bank database, Indicators, <http://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD>

<sup>5</sup> PPADB website: <http://www.ppadb.co.bw/about.html>.

<sup>6</sup> Economic Diversification Drive. Ministry of Trade and Industry, Botswana

<sup>7</sup> The Citizen Economic Empowerment Policy, Paper No1 of 2012, Republic of Botswana

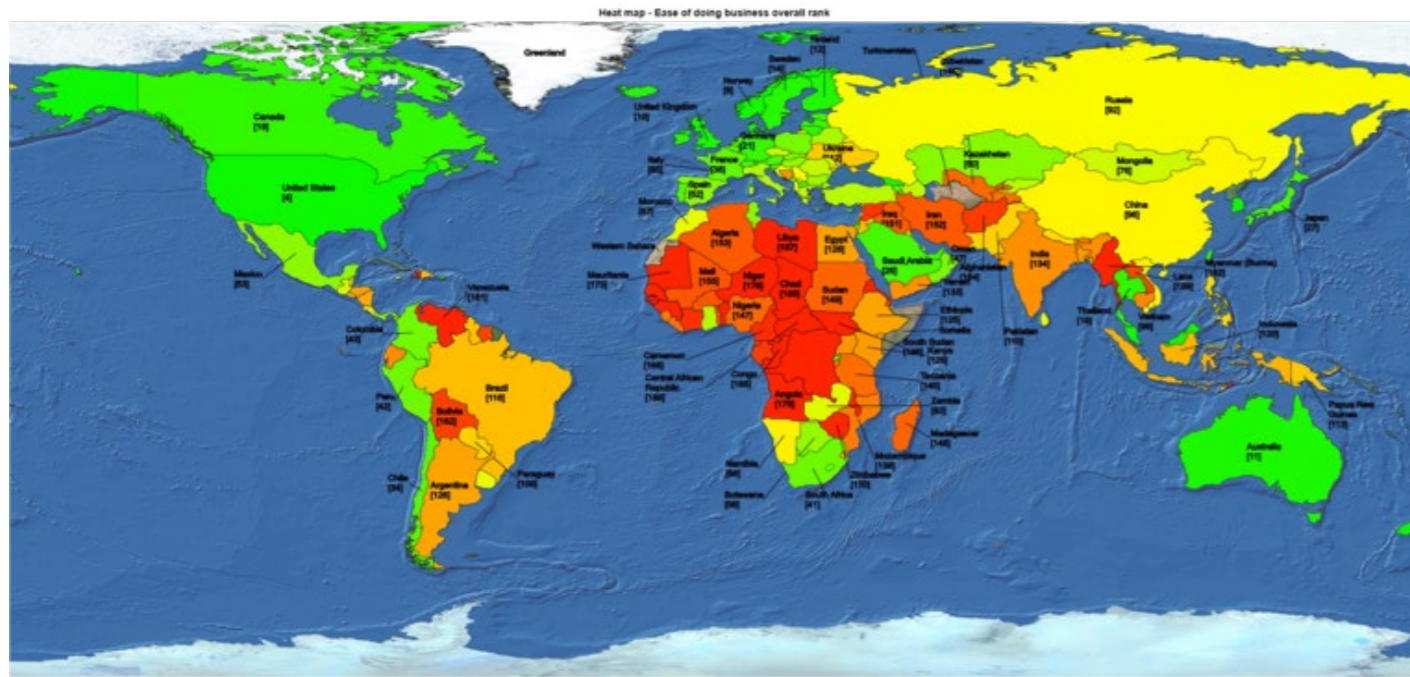
<sup>8</sup> <https://openknowledge.worldbank.org/handle/10986/12574>

<sup>9</sup> The World Bank Group. Doing Business, measuring business regulations. <http://www.doingbusiness.org/data/exploreeconomies/botswana/>

<sup>10</sup> Business Monitor International Country Risk Report, Quarter 2, 2015

<sup>11</sup> The World Bank Group. Doing Business, measuring business regulations <http://www.doingbusiness.org/data/exploreeconomies/botswana/paying-taxes/>





World Bank. 2013. Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises

### Public Procurement Studies in Botswana

A 2007 pilot study titled Methodology for the assessment of the benchmarking tool:

Report of the Assessment of Public Procurement System in Botswana (for OECD-DAC Joint Venture on Procurement) carried out by the PPADB, had the intention of assessing the procurement system to see if there were any weaknesses.

The following competencies were rated as follows out of a maximum score of 3<sup>12</sup>:

- ▶ Legislative and regulatory framework 2.36 (78.7%)
- ▶ Integrity and transparency 2.39 (79.7%)
- ▶ Institutional and management capacity 2.45 (81.7%)
- ▶ Procurement operations and market practices 2.63 (87.7%).

They then used this information to address weaknesses in the system, and decided to act on the following factors<sup>13</sup>:

- ▶ Put in place a robust information system (generation and dissemination)
- ▶ Undertake capacity development in all sectors
- ▶ Strengthen oversight structures
- ▶ Strengthen performance audit mechanisms
- ▶ Provide for role clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions
- ▶ Provide for procurement planning that informs the budgetary process
- ▶ Make mandatory provisions for these requirements in the legislation.

The study did not take into account socio-economic factors<sup>12</sup>

### The Public Procurement Framework

A public procurement framework that sets out leading practice guidelines was used in assessing the public procurement system in Botswana. This framework defined six of the main policy areas for procurement in the public sector. These areas included:

- ▶ Regulatory Framework
- ▶ Procurement Mechanisms
- ▶ People and Organisation
- ▶ Data and Technology
- ▶ Performance Management and
- ▶ Socio-economic.

Table 1 provides a description of each of the policy areas. Each of these areas was unpacked into an assessment that addressed specific standards of a public procurement system (Appendix A). The standards were selected from two sources:

- ▶ The OECD Development Assistance Committee (OECD DAC) Methodology for Assessing Procurement Systems<sup>14</sup> and
- ▶ International Handbook of Public Procurement<sup>15</sup>.

Botswana's public procurement system was mapped and assessed against the standards set out in the framework.

<sup>12</sup> Public Procurement and Asset Disposal Board, Report of the Assessment of Public Procurement System in Botswana (for OECD-DAC Joint Venture on Procurement), I Joseph, D Mokotedi, I Marumo, L Kennekae T Sayed, K Keloneilwe, G Daniel, A Ragalase. 200713 Business Monitor International. Political Risk Report, Botswana. 14 Jan 2015

<sup>13</sup> Public Procurement and Asset Disposal Board, Report of the Assessment of Public Procurement System in Botswana (for OECD-DAC Joint Venture on Procurement), I Joseph, D Mokotedi, I Marumo, L Kennekae T Sayed, K Keloneilwe, G Daniel, A Ragalase. 2007

<sup>14</sup> OECD. 2009. Methodology for Assessing Procurement Systems. OECD publishing

<sup>15</sup> B.Raton. 2009. International Handbook of Public Procurement. FL, CRC Press

Table 1: Description of each policy area of the public procurement framework<sup>16</sup>

Policy Area	Description
Regulatory Framework	The purpose of the review is to determine: a) the structure of the regulatory framework governing public procurement; b) the extent of its coverage; and c) public access to laws and regulations. Lack of or inadequate legislation on public procurement may lead to a system that is vulnerable to corruption, hindering market competition. This has a direct impact on public expenditures and therefore public resources.
Procurement Mechanisms	The purpose of assessing procurement mechanisms is to establish whether the legal framework includes: a) a clear definition of the permissible procurement methods; and b) the circumstances under which each method is appropriate. The lack of adequate definitions of procurement mechanisms may leave the system exposed to: <ul style="list-style-type: none"> <li>▶ Inconsistent access to information in the invitation to tender</li> <li>▶ Lack of competition or, collusive tendering resulting in inadequate prices</li> <li>▶ Conflict of interest situations that lead to bias and corruption in the evaluation and in the approval process</li> </ul>
People and Organisation	The public procurement system must have adequate human resources to support all the elements of the system. The lack of adequate and competent procurement staff will lead to the poor execution of regulations. The purpose of this review is to establish the existence of permanent and relevant training programmes for new and existing staff in government procurement. These programmes are essential to maintain the supply of qualified procurement staff to public and private sectors.
Data and Technology	An effective information management system is essential in ensuring that information is centralised and that information recorded is reliable and easily accessible.
Performance Management	Monitoring and evaluation of the public procurement system is essential in order to evaluate the effectiveness of the system in meeting the objectives of the organisation and higher government objectives. The objective is to assess the extent to which the country or agency has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans. This requires among other things the availability of information systems, a capacity for analysis, feedback mechanisms and planning capacity for implementation of improvements.
Socio-Economic	Public procurement is an economic activity therefore socio-economic objectives must be accounted for. However the application of these socio-economic objectives must be governed by law in order to not compromise the principle of fair competition.

<sup>16</sup> OECD. 2008. Enhancing Integrity in Public Procurement: A checklist. OECD publishing

## Public Procurement Framework Summary Assessment

### Summary of assessment results

The results of the desktop review reveal that Botswana's procurement system is governed by a strong regulatory framework with centralised oversight and a clear mandate executed through a State Tender Board function that was enacted by the PPAD Act of 2002. A detailed assessment of the results in support of the findings has been attached to Appendix A which discusses in detail the six areas probed within the procurement framework.

### The Regulatory Framework

Botswana procurement is governed by the following legal framework<sup>17</sup>:

- ▶ Public procurement is governed by the PPAD Act of 2002 for central government
- ▶ Public Procurement and Asset Disposal Regulations of 2006
- ▶ Independent Complaints Review Committee Regulations of 2006
- ▶ PPADB Operations Manual of 2008.

Table 2 below provides a summary of how each primary act supports and regulates public procurement<sup>18</sup>.

Act	What it does in respect of public procurement
PPAD Act of 2002	Deals with all aspects of the procurement system from central government
Public Procurement and Asset Disposal Regulations of 2006	Responsible for explaining procurement methods, rules and regulations, functions of procuring entities and the handling of complaints
Independent Complaints Review Committee Regulations of 2006	Details the process of how complaints are going to be processed and the operations thereof
PPADB Operations Manual	Discusses the standard operations and procedures for public procurement in Botswana

The legal framework is centered on the constitutional principles of a fair, equitable, cost-effective and transparent system and is clear, comprehensive and consolidated as a set of laws, decrees, regulations, and procedures available in a single and accessible place. Transparency in public procurement activities is essential in Botswana as taxpayers' money needs to be accounted for cost efficiently whilst being compliant with the underlying principles of fairness for awarding contracts. Botswana's philosophy with regard to public procurement is the continuous achievement of high standards as detailed in Appendix A.

The PPADB is the independent regulatory authority responsible for the coordination and management of public procurement to ensure due care is taken in the expenditure of public funds established by an Act of Parliament. The regulatory body is a centralised function and acts as an oversight and advisory body to procuring entities that are responsible for the implementation of the legal framework of procurement. The PPADB is not responsible for direct procurement operations and is free from possible conflicts.

Coverage of the public procurement rules are covered extensively in the legislation and supporting guidelines such as the PPADB Manual. The PPADB Manual covers three main categories of procurement activities i.e. procurement of supplies, services or works.

Procuring entities will select the procurement methods applicable to the category and nature of the expenditure and also are required to adhere to set thresholds which are reviewed from time to time so as to promote efficiency within the procurement system.

### Procurement Mechanism

Without sound business practices and processes, it is impossible to operate in a way that is internally efficient and that also delivers good value in procurement cost. Where practices are particularly weak there is also, potentially, an impact on accountability and governance needs<sup>19</sup>.

The PPADB Manual stipulates the use of the following procurement mechanisms:

- ▶ Open domestic bidding
- ▶ Open international bidding
- ▶ Restricted international bidding
- ▶ Restricted domestic bidding
- ▶ Quotations proposals procurement
- ▶ Direct procurement.

<sup>17</sup> Public procurement legislation in Africa, G.Quinot, S. Arrowsmith, Cambridge. 2013, pg25-47

<sup>18</sup> Public procurement legislation in Africa, G.Quinot, S. Arrowsmith, Cambridge. 2013, pg25-47

<sup>19</sup> The Scottish Government. 2006. Procurement Practices and Business Processes. <www.scotland.gov.uk/publications/2006>[Accessed 17 January 2015].



The PPADB and its committees are responsible for approving and awarding procurement contracts within their allowed expenditure thresholds and financial ceilings. Furthermore the PPAD Act requires a signed warrant verifying the availability of adequate funds, or written assurance from the Ministry of Finance and Development Planning confirming that funds required will be made available to cover the expected expenditure of the procurement prior to any procurement activity taking place.

Procuring entities are also required to prepare annual procurement plans aligned to the annual master plan and budget.

The PPADB Manual covers tendering and post tendering procedures which includes rules relating to advertising of tenders and minimum timeframes of the different procurement methods. There is also a requirement to disclose evaluation criteria for bid evaluation and the awarding of the contract including post tender negotiations. This is among other procedural requirements during these stages of procurement, as detailed extensively in Appendix A.

The PPAD Act requires adherence to mandatory standardized bidding packages for contracts which are circulated and amended by the Board where necessary to all procuring entities.

## People and Organisation

In any organisation, getting the balance right between staffing levels and outcomes for the organisation is critical<sup>20</sup>.

The PPADB has the authority to delegate power to its committees as per the Act (section 61-65) but within the set financial ceilings.

There are minimum requirements for PPADB members to have multi-disciplined expertise. Procuring entities perform their own recruitment function. The PPADB is responsible for training matters relating to policy and procedures, including capacity building. Training modules have been developed for procuring entities to implement and conduct procurement practices transparently and efficiently. The training is in the form of short courses and the PPADB is currently investigating accredited courses on procurement that can be rolled out across procuring entities so as to enhance the standardisation and specialised knowledge required in procuring entities.

The PPADB also advises government on procurement procedures and provides recommendations to changes in the law.

## Data and Technology

The importance of internal management of information is an accepted principle within organisations, whether private or public. It has many purposes and its value can be summarised in the following areas<sup>20</sup>:

- ▶ Informing management of current results
- ▶ Informing management of current performance versus targets or plans
- ▶ Providing information for better decision making and
- ▶ Providing information to support the pursuit of improved performance
- ▶ Improving efficiency and effectiveness of procurement procedures.

All bids are required to be advertised in the Government Gazette and alternative media sources including international circulation where the pre-qualification process may include foreign bidders.

The legal framework requires procuring entities to keep a record of procurement information, in particular the number, nature and value of contracts awarded and the procurement method used for each contract which must be kept for seven years. This information is recorded in the Procurement Register or a computer database by each procuring entity. There is no procurement system that is centrally implemented or an e-procurement platform; however there is a current project which is in pilot phase for the roll-out of such a platform to improve efficiency of the procurement process.

The PPADB and its Committees or Auditors formally monitor the procurement and disposal activities and procurement practices or project implementation. This is carried out regularly - at least annually - by compliance teams of the PPADB.

## Performance Management

The monitoring and evaluation of the public procurement system is essential in order to evaluate the effectiveness of the system in meeting the objectives of the organisation and broader government objectives<sup>21</sup>.

There are no specific performance management metrics for the procurement function currently in place, however all procurement matters are reported and dealt with by the PPADB. Complaints are dealt with at various levels, including adjudication/arbitration, PPADB, Independent Complaints Directorate and eventually a court of law.

There is clear guidance in the PPAD Manual and a checklist that must be used to evaluate and monitor supplier performance. Supplier development is also encouraged so as to enhance the supplier market in Botswana.

## Socio-economic

Public procurement is an economic activity therefore socio-economic objectives must be accounted for. This includes consideration of quality standards, green procurement, health and safety and socio-economic instruments. However, the application of these socio-economic objectives must be governed by law in order not to compromise the principle of fair competition<sup>22</sup>.

The PPAD Manual requires quality requirements to be stated in bid documents and how these will be evaluated. Furthermore the Act requires the monitoring of supplier practices and ensures that suppliers are aware of and considers environmental or sustainable procurement where applicable.

However, no clear procedures about the implementation of green procurement is currently in place. There are no specific health and safety provisions in the Act or PPAD Manual. There are specific regulations around the disclosure of information and security for whistleblowers to protect the identity of such persons who are required to report any suspicious or ethical issues to the appropriate management, PPADB or any other oversight bodies.

International companies are encouraged to subcontract or enter into joint ventures with local companies so that skills transfer can be effected locally. Preference is given to those companies which are willing to work with local companies.

## Areas of Opportunity

Botswana has a well-defined regulatory framework in place for public procurement, with transparency and value for money underpinning its procurement practices. Procurement methods, tendering and post tendering processes are documented comprehensively. The regulatory body is a centralised function and independent of the procurement entities that are responsible for direct procurement.

The legislation is clear in respect of the areas covered during the procurement study, while noting that some opportunities exist to enhance implementation in the following areas:

- ▶ Support with implementation of data and technology systems
- ▶ Skills and the training framework for development of people and the organisations involved in public procurement
- ▶ Developments in performance management of supplier contracts and
- ▶ Socio-economic objectives such as green procurement.

Based on discussion with the PPADB, e-procurement has been implemented on a trial basis and the opportunity for a full roll-out exists. The PPADB is currently investigating opportunities of a training framework to roll-out across public procurement entities with recognised institutions.

The government also wants to implement time limits for responses to bids: four weeks for local bids and six weeks for international bids, with the intention that advertising will be published through all the relevant channels. There has been a common misunderstanding that foreign companies need to send a representative from their country to make payment of tenders, whereas it can in fact be done by local representatives. This being said, payment methods have been seen to be a bottleneck in the process and these will be reviewed by the PPADB.

<sup>20</sup> The Scottish Government. 2006. Procurement Practices and Business Processes. <[www.scotland.gov.uk/publications/2006](http://www.scotland.gov.uk/publications/2006)>[Accessed 17 January 2015].

<sup>21</sup> OECD. 2008. Enhancing Integrity in Public Procurement: A checklist. OECD publishing

<sup>22</sup> Raton. 2009. International Handbook of Public Procurement. FL, CRC Press

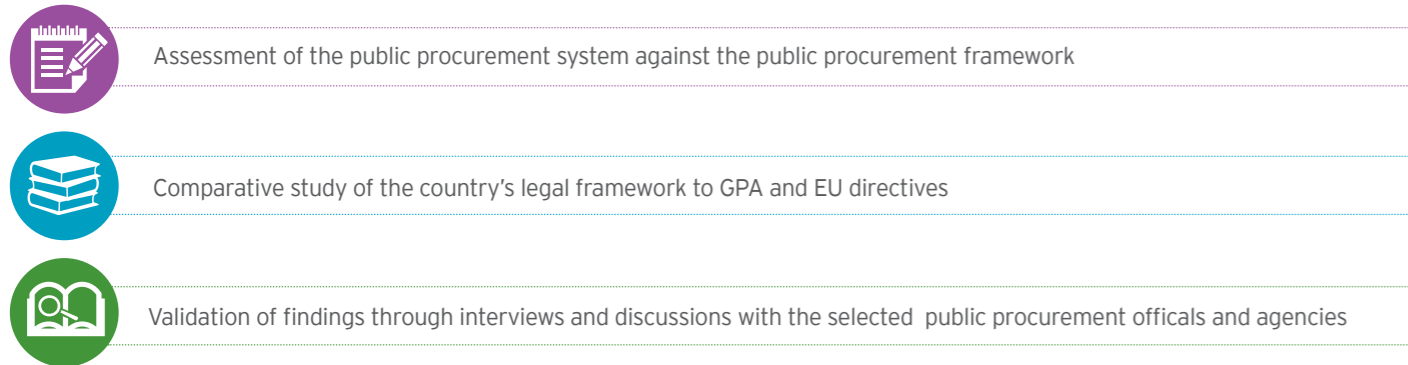
# Appendix A: Detailed Assessment Results

## Approach

The approach to the procurement study was a standard data gathering exercise consisting of meetings and analysing documents. The purpose was to understand and compare how the country's public procurement system meets the requirements set out by internationally recognised instruments such as:

- ▶ The WTO (World Trade Organisation) procurement guidelines in the form of the GPA (Agreement on Government Procurement)
- ▶ The OECD (Organisation for Economic Co-operation and Development) procurement guidelines
- ▶ EU directives.

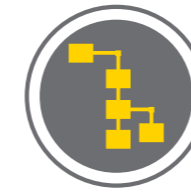
The study was conducted using a three step approach described below.



In order to successfully perform the assessment (step one above) it was necessary to determine the basic requirements/standards of a public procurement system. The next section describes in detail the approach taken in determining these standards.

During this exercise we gathered data and inputs on the public procurement procedures in Southern African countries primarily in respect of the following policy areas:

- ▶ The regulatory framework
- ▶ The procurement processes, policies, and procedures
- ▶ The structure of the procurement organisation
- ▶ Technology and data
- ▶ Performance management
- ▶ Socio-economic procurement goals and considerations.



## The Regulatory Framework

Primary Legislation
<b>Questions</b>
▶ What legal framework defines public procurement in Botswana?
<b>Assessment Criteria</b>
<ul style="list-style-type: none"> <li>a. There are regulations that supplement and detail the provisions of procurement law that meets the following requirements:                             <ul style="list-style-type: none"> <li>▶ They are clear, comprehensive and consolidated as a set of regulations available in a single and accessible place</li> <li>▶ They are updated regularly</li> </ul> </li> </ul> The responsibility for maintenance is defined
<b>Assessment Answers</b>
The legal framework of Botswana is governed as follows: <ul style="list-style-type: none"> <li>▶ Public Procurement and Asset Disposal Act of 2001, Public Procurement and Asset Disposal Board (PPADB), Operations Manual of 2013 and the Public Procurement and Asset Disposal Regulations of 2006. The PPADB Manual is a document that constantly changes due to changing circumstances and to changes in the Act and Regulations. The objective of the manual is to create a standardised national approach to public procurement activities<sup>23</sup> and that is clear, comprehensive and accessible to all Botswana citizens and non-citizens.</li> <li>▶ The PPADB's aim is to ensure that due care is taken in the expenditure of public funds and that the process is undertaken in an economic and efficient manner, is transparent, and offers equal opportunity for eligible competitors.</li> </ul>

Key Principles
<b>Questions</b>
▶ What key principles and objectives govern the public procurement policy?
<b>Assessment Criteria</b>
<ul style="list-style-type: none"> <li>a. The procurement rules reflect and reinforce the value for money (VFM) focus of the government's procurement policy</li> <li>b. The procurement rules cover the key principles of a fair, equitable, transparent, competitive and cost effective system with the provision of the use of procurement as a means to address discriminatory policies and procedures</li> </ul>

23 Operations Manual Standard Operating Policies and Procedures for Public Procurement, Chapter 2, 2.5, Page 28 of 166



## Assessment Answers

- a. Transparency in procurement activities in Botswana is essential. The expenditure of taxpayer's money needs to be accounted for to ensure that contracts are awarded in the most cost efficient manner, are open to fair competition and offer value for money<sup>24</sup>.
- b. The philosophy of public procurement in Botswana is to continually introduce higher standards and to include the following attributes<sup>25</sup>:
- ▶ Open, fair and transparent tendering and commercial practices
  - ▶ Uphold integrity, impartiality, anti-corruption practices
  - ▶ Abide by a Code of Conduct and Ethics
  - ▶ Specifications offering the widest participation of competition - neither to favour, nor discriminate against any potential contractors
  - ▶ Specifications to be open and generic in nature (they may be an international, regional or a national standard)
  - ▶ Greater cost effectiveness in the acquisition of goods, materials, services, works, resulting in value for money
  - ▶ Changes to levels of authority, responsibility and accountability in the Tender Committees of Procuring Entities
  - ▶ Business opportunities for all sectors of the economy
  - ▶ Tenders are to be widely advertised
  - ▶ Provide the same information to all contractors
  - ▶ Public opening of tenders
  - ▶ Clear criteria for the evaluation process
  - ▶ Fair commercial and technical analysis for both the procurer and bidders
  - ▶ Advertising of contracts awarded
  - ▶ Documents available for inspection by oversight bodies
  - ▶ A robust complaint handling mechanism for contractors
  - ▶ Monitoring compliance of Procuring Entities and Board Committees by the PPADB.
- b. There is also a focus on social and economic objectives. These are mentioned in the PPAD Act<sup>26</sup>.

## Ownership

## Questions

- ▶ Who is the independent regulatory authority responsible for the coordination and management of public procurement?
- ▶ What are the responsibilities of the regulatory authority?
- ▶ What is the judicial power of the regulatory authority?
- ▶ Where in the evaluation process is the regulatory authority involved?

## Assessment Criteria

- a. There is a normative or regulatory body or the functions are clearly assigned to various units within the government which is specified in the legal and regulatory framework in an unambiguous way without gaps or overlaps
- b. The body has a defined set of responsibilities that include but are not limited to the following:
- ▶ Providing advice to contracting entities
  - ▶ Drafting amendments to the legislative and regulatory framework and implementing regulations
  - ▶ Providing procurement information
  - ▶ Monitoring public procurement
  - ▶ Managing statistical databases
  - ▶ Reporting on procurement to other parts of the government
  - ▶ Developing and supporting implementation of initiatives for improvements of the public procurement system and
  - ▶ Providing implementation tools and documents to support training and capacity development of implementing staff
- c. The regulatory body is at an adequate level in government and financing is secured by the legal/regulatory framework
- d. The body is not responsible for direct procurement operations and is free from other possible conflicts (e.g. by being part of evaluation committees, etc.)

## Assessment Answers

- a. The PPADB was established by an Act of Parliament as an independent parastatal authority, accounting administratively to the Ministry of Finance & Development Planning, responsible for the coordination and management of public procurement of works, supplies, services for central government and the disposal of assets. The Public Procurement and Asset Disposal Act came into force on 2 July 2002<sup>27</sup>.
- b. The Procuring Entities are governed by the Public Procurement and Asset Disposal Act which may be amended from time to time by a decree of the Government of Botswana. The provisions of the Act shall apply to all entities of central government which are involved in public procurement or the disposal of public assets, whether they are located abroad, or within Botswana (PPAD Act)<sup>28</sup>. All Procuring Entities are obliged to:<sup>29</sup>
- i) Ensure that their requirements for goods, works, services, and the disposal of assets, are met through a transparent, open and fair process that provides the maximum degree of competition and optimum value for money to the Government of Botswana.
  - ii) Ensure that bidders are given a reasonable time frame within which to prepare and submit their bids
  - iii) Give competent Botswana companies the chance to participate in government tenders, so as to promote national economic development.
  - iv) Encourage businesses in Botswana to be competitive and to develop and sustain quality product development and service level improvements.
  - v) Comply with international agreements covering relations with SADC countries and other trading and development partners.
  - vi) All respective Accounting Officers for every procuring entity are to be held accountable for the execution of all procurement decisions.
- c. The PPADB was established by an Act of Parliament as an independent parastatal authority, accounting administratively to the Ministry of Finance & Development Planning, responsible for the coordination and management of public procurement of works, supplies, services for central government and the disposal of assets<sup>30</sup>.
- d. The PPADB's role is to principally adjudicate on the recommended tender awards submitted by the procuring entities of various ministries and departments of government<sup>31</sup>.

## Coverage of the public procurement rules

## Questions

- ▶ What type of procurement contracts are subject to regulation (must cover goods, services, and works (including consulting services)?
- ▶ What are the thresholds? Are these consistent with leading practice practices?

## Assessment Criteria

- a. Procurement law covers goods, works and services (including consulting services).
- b. The associated thresholds for each type of procurement is covered

## Assessment Answers

- a. The PPADB Manual covers three main categories of procurement activities that an entity can choose from when contracting with a potential contractor as follows<sup>32</sup>:
1. Procurement of supplies
  2. Procurement of services
  3. Procurement of Public Works
- The choice of the type of procurement method depends on the category and nature of the item or service that needs to be provided<sup>33</sup>.
- b. The PPADB Manual states that procuring entities and committees must adhere to set thresholds. The board will from time to time review thresholds for procurement methods in order to improve efficiency in the public procurement and asset disposal system<sup>34</sup>. There is a micro-procurement threshold which involves amounts below P20,000 (Pula) (estimated £1 355), here documentation is not required and where it is usually sufficient just to have an invoice handed over<sup>35</sup>.

<sup>24</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Chapter 2, 2.2, Page 26 of 166

<sup>25</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Chapter 2, 2.2, Page 25-26 of 166

<sup>26</sup> Public procurement legislation in Africa, G.Quinot, S. Arrowsmith, Cambridge, 2013, pg25-47

<sup>27</sup> Operations Manual Standard Operating Policies and Procedures for Public

Procurement, Chapter 2, 2.5, Page 28 of 166

<sup>29</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Chapter 2, 2.5 (5), Page 28 of 166

<sup>30</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Chapter 2, 2.5 (1), Page 28 of 166

<sup>31</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Chapter 2, 2.5 (2), Page 28 of 166

<sup>32</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 8.2, Page 28 of 166

<sup>33</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 8.2, Page 28 of 166

<sup>34</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 4.6 & 8.15, Pages 39 and 80 of 166

<sup>35</sup> Public procurement legislation in Africa, G.Quinot, S. Arrowsmith, Cambridge, 2013,pg25-47

## Pre-tendering

## Questions

- ▶ Are the processes and procedures for different procurement contracts clarified and established in the legal framework?
- ▶ How do you define which product to procure/conduct a needs assessment?
- ▶ How does the procurement approach vary per service/product?
- ▶ How many levels of approval are required to make the decision to procure?
- ▶ What are the validation process/requirements for approval?
- ▶ What is the planning and budgeting process for procurement?

## Assessment Criteria

- a. The legal framework establishes all allowable procurement methods unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable
- b. The law requires certification of availability of funds before solicitation of tenders takes place
- c. The planning process has three stages:
  - ▶ The preparation of multiyear plans for government agencies, from which annual operating plans are derived
  - ▶ Annual procurement plans are drawn up along with an estimation of associated expenditures

The formulation of an annual budget

## Assessment Answers

a. The PPADB Manual allows the use of the following procurement methods<sup>36</sup>:

- i. Open Domestic Bidding - Participation is open to all bidders.
- ii. Open International Bidding- as above but using government gazettes.
- iii. Restricted International Bidding - Time frames are imposed on the tender, no advertising.
- iv. Restricted Domestic Bidding- Time frames are imposed on the tender, no advertising.
- v. Quotations Proposals Procurement- emergency proposals, bids less than P100,000 (around £6 775).
- vi. Direct Procurement - Used in emergencies when only one provider is available.

The choice of type of procurement method depends on the category and nature of the item or service that needs to be provided. The manual further states that methods shall be used within the parameters of the PPAD Act and Regulations and government directives as pronounced from time to time.<sup>37</sup>

The PPADB Board and its Committees are responsible for approving and awarding procurement contracts within their allowed expenditure thresholds and financial ceilings.<sup>38</sup> The tender with the least cost will generally be chosen, to follow a value for money protocol. Quality along with cost becomes a factor when using consulting services.<sup>39</sup>

- b. The PPAD Act states that the procuring entity must check the availability of funds. No procurement activity may commence without a signed certificate (warrant) verifying the availability of adequate funds or with suitable written assurance received from the Ministry of Finance and Development Planning that, suitable funds will be made available to cover the expected expenditure of the procurement, prior to any procurement activity, or before the awarding of a contract<sup>40</sup>.
- c. Procuring entities are obliged to prepare annual procurement plans that are in line with the annual master plan and budget of each procuring entity<sup>41</sup>.

## Tendering

## Questions

- ▶ How are requirements specified or designed to ensure that all suppliers or contractors established in country are treated on equal terms, to avoid discrimination on the grounds of origin?
- ▶ Does the legal framework specify the rules of participation and selection policies?
- ▶ What precautionary measures are applied to prevent conflict of interest, collusion and corruption and to promote integrity?
- ▶ Are the timescales clearly defined in the legal framework? Are the times defined adequately for each procurement method? What are the exceptions?
- ▶ What evaluation methodologies are in place? Are they consistently applied and records kept?
- ▶ What type of public procurement is not subject to the standard procedures outlined in the legislation or other legal text?

## Assessment Criteria

The legal framework meets the following conditions:

- a. The legal framework covers the rules of participation
- 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. Such timeframes are extended when international competition is sought
- c. Sufficient information is included to enable potential bidders to determine their ability and interest in bidding
- d. Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations
- e. Requires the use of neutral specifications citing international standards when possible
- f. Requires recognition of standards which are equivalent when neutral specifications are not available
- g. The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents
- h. Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible
- i. During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process
- j. Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission
- k. Records of proceedings for bid openings are retained and available for review
- l. Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited. The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders

<sup>36</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 8.3, Page 71 of 166

<sup>37</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 8.1 & 8.2, Page 71 of 166

<sup>38</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 7.3, Page 68 of 166

<sup>39</sup> Public procurement legislation in Africa, G.Quinot, S. Arrowsmith, Cambridge, 2013 pg25-47

<sup>40</sup> Public Procurement and Asset Disposal Act, Section 45

<sup>41</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 7.5 (11), Page 69 of 166



## Assessment Answers

- a. The PPAD Manual covers tendering procedures for open domestic bidding, open international bidding, restrictive domestic bidding and restrictive international bidding<sup>42</sup>.
- b. Adverts are placed in the Government Gazette, and other media with wide international circulation when the pre-qualification will include foreign bidders. The prequalification period should be no less than 14days<sup>43</sup>. Time frames for the advertisement of bid invitations for the different types of procurement methods are stipulated.<sup>44</sup>
- c. Bid documents must be prepared in accordance with PPAD Regulation 30 and must include the evaluation criteria for bid evaluation and contract award. The details in the bidding documents will depend upon the nature and technicality of the proposed contract. The bidding documents shall specify clearly the<sup>45</sup>:
- ▶ The items required
  - ▶ The technical and quality characteristics (Specification / TOR)
  - ▶ The bidding procedure used
  - ▶ Each criterion to be used in the bid evaluation
- d. The PPAD Manual states that, ,a tender document shall include the following clause:  
*"Any company, consultant, or employee(s), present or previous, who were involved in creating, or establishing either the standards, specification, terms of reference, or scope of work, shall not be allowed to partake, offer advice or assistance in the preparation of the tender bidding documents to a potential bidder. This will cover all individuals, companies, consultants or previous employees of any organisation involved in the creation or preparation of any of the above activities, for a minimum period of 12 months following the finalisation of those requirements"*<sup>46</sup>.
- e. The PPAD manual states that item specifications should be those most suited to the general function for which it is intended. They should not only be based upon the design, cost or quality of the product. It is very important to avoid the use of brand names in order to be objective<sup>47</sup>.
- f. Answered above.
- g. The PPAD Act states that, in the evaluation and adjudication of bids, no factor outside those explicitly stated in the bid documents should be taken into account by the evaluators or adjudicators in arriving at the recommendation or award, unless this is based on an objective criterion<sup>48</sup>.
- h. The evaluation criteria are set per tender by the procuring entities. The Act is not specific on how these must be set.
- i. The PPAD Manual states that the evaluation team members will sign a Declaration of Secrecy Form committing them to secrecy and confidentiality. The points recorded on the evaluation forms should be kept secret and hidden from the other committee members. Discussion about the merits, or otherwise, of the bids are strictly not allowed. The Committee should work in silence apart from scheduled breaks. Cross-talking, or asking opinions of the other panel members, is not allowed<sup>49</sup>.
- j. Procedures for public opening of tenders are specified in the PPAD Manual<sup>50</sup>.
- k. Prospective bidders who are not able to attend the bid opening may request the information to be communicated to them by the procuring entity<sup>51</sup>.
- l. The bid opening shall be conducted by a bid opening team of at least three members of the Bid Opening Committee, in the presence of bidders' representatives if they wish to attend<sup>52</sup>.
- m. The procedures for open international bidding states that the bid documents must specify the date, time, place, and format for the submission and opening of bids<sup>53</sup>.

<sup>42</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 8.3, Page 71 of 166

<sup>43</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 8.4 (3) , Page 72 of 166

<sup>44</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 11.16 (4) , Page 120 of 166

<sup>45</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 11.4 , Page 1116 of 166

<sup>46</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 11.5 , Page 116 of 166

<sup>47</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 11.6 (5) , Page 117 of 166

<sup>48</sup> Public Procurement and Asset Disposal Act, Section 36

<sup>49</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 6.13 , Page 63 of 166

<sup>50</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 11.21 , Page 121 of 166

<sup>51</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 11.21(3) , Page 122 of 166

<sup>52</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 11.21(1) , Page 121 of 166

<sup>53</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 8.7 (g) , Page 75 of 166

## Post-tendering

## Questions

- ▶ What are the rules and restrictions to post tender negotiations?
- ▶ Who is permitted to sign contracts? Who is reviewing and following-up contracts?
- ▶ How do you manage contract risks? Is the legal department consulted when contracts are developed?
- ▶ Is there guideline regarding use of contracts, Incoterms, or payment conditions?

## Assessment Criteria

## The legal framework provides for the following:

- a. The right to review for participants in a procurement process
- b. Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review
- c. Establishes the matters that are subject to review and timeframes for issuance of decisions by the procuring agency and the administrative review body
- d. There are GCC (General Conditions of Contracts) for the most common types of contracts and their use is mandatory

## Assessment Answers

- a. The PPAD Manual states that in technical and complex tenders, Post Tender Negotiations (PTN) have to be held in order to agree responsibilities, prior to the signing of the contract documents<sup>54</sup>.
- b. PTN are not, as many people think, a way to re-negotiate parts of a tender, or to make changes to the conditions of contract, or the main set of deliverables expected. They are a final clarification of the previously held discussions and a recording of the agreements that were reached during those discussions. **Note:** There may be certain minor modifications to the contract, but they should be exactly that, minor modifications<sup>55</sup>.
- c. After PTN negotiations (clarifications) are complete, the contract documents must be signed by the appropriate authorities of all parties, before it becomes a legal contract (offer and acceptance)<sup>56</sup>.
- d. The PPAD Act states that there are standardised bidding packages that are mandatory for contracts that must be used when procuring and disposing assets. These are circulated and amended by the Board where necessary to all Procuring Entities<sup>57</sup>.

<sup>54</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 6.15 , Page 55 of 166

<sup>55</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 6.15 , Page 55 of 166

<sup>56</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 11.37 , Page 126 of 166



## People and Organisation

### Organisation Structure

#### Questions

- ▶ What does the organisation structure look like for procuring?
- ▶ To what extent is the procurement function centralised/ decentralised?
- ▶ What is the level of coordination/ frequency of information sharing?

#### Assessment Criteria

- a. Delegation of decision making authority is decentralised to the lowest competent levels consistent with the risks associated and the monetary sums involved
- b. Delegation is regulated by law
- c. Accountability for decisions is precisely defined

#### Assessment Answers

- a. The PPADB has the authority to delegate its power as per Section 61-65 of the Act within the set financial ceilings to its Committees<sup>58</sup>. The PPADB is required to set up various committees which it provides power to make decisions in the public procurement space. These committees are the Ministerial Tender Committees (MTCs) for each central government ministry as well as District Administration Tender Committees (DATCs). There is also a Special Procurement and Asset Disposal Committee which deals with what are seen as sensitive matters<sup>59</sup>.
- b. Delegation is as per PPAD Act<sup>60</sup>. As above, power is delegated to smaller committees, but all final decisions taken are the responsibility of the PPADB<sup>61</sup>.
- c. Accountability for decisions is as per delegation of authority and financial ceilings<sup>62</sup>. The PPADB is responsible for final decisions as above.

### Education and Training

#### Questions

- ▶ Are formal education and training programmes in place?

#### Assessment Criteria

- a. There are defined skill and knowledge profiles for specialised procurement jobs
- b. There is systematic matching of skills against requirements for competitive recruitment
- c. There is a training and capacity building strategy that provides for:
  - ▶ Substantive permanent training programmes of suitable quality and content for the needs of the system
  - ▶ Evaluation and periodic adjustment based on feedback and need
  - ▶ Advisory service or help desk to absolve questions by procuring entities, suppliers, contractors and the public
- d. Training programme design is based on a skills gap inventory to match the needs of the system

<sup>58</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 10.3 , Page 92 of 166

<sup>59</sup> Public procurement legislation in Africa, G.Quinot, S. Arrowsmith, Cambridge, 2013,pg25-47

<sup>60</sup> Public Procurement and Asset Disposal Act, Section 61-65

<sup>61</sup> Public procurement legislation in Africa, G.Quinot, S. Arrowsmith, Cambridge, 2013,pg25-47

<sup>62</sup> Public Procurement and Asset Disposal Act, Section 61-65

### Assessment Answers

- a. There are minimum requirements for PPADB members to have a multi-disciplined committee. The procuring entities do their own recruitment.
- b. The PPADB tends to give some responsibility to the accounting officers. For each procuring entity these officers must establish a group of capable people that are responsible for the procurement within that unit. These people have to be qualified to an appropriate level. People are recruited from the procurement planning stage up to contract management and reporting.<sup>63</sup>
- c. It is the PPADB's responsibility to train on policy and procures including capacity building.<sup>64</sup>  
Procuring Entities and other organisations will be responsible for their own procurement training expenses. A full set of capacity building and procurement training modules has been developed and reviewed, and is supported by suitable training programmes to enable procuring entities to conduct the Procurement and Asset Disposal transparently, efficiently and in an accountable manner<sup>65</sup>.  
The Regulatory Authority advises the government on procurement procedures and potential changes to the law, as well as introducing any recommendations required by the government<sup>66</sup>.
- d. Training to the procuring entities is conducted by the PPADB but only short courses are offered at this stage. The PPADB is currently investigating accredited courses on procurement that can be offered to staff.



## Data and Technology

### Access to information

#### Questions

- ▶ What methods are used at each stage of the procurement cycle to record information? How reliable are your procurement data? How much efforts are required to provide it?
- ▶ To what extent does your organisation rely on your purchasing data?

<sup>63</sup> Public procurement legislation in Africa, G.Quinot, S. Arrowsmith, Cambridge, 2013pg25-47

<sup>64</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 2.5 , Page 28 of 166

<sup>65</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 2.3 , Page 27 of 166

<sup>66</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 2.3 , Page 27 of 166



Assessment Criteria
<p>a. Information on procurement is easily accessible in media with wide circulation and availability. The information provided is centralised at a common place. Information is relevant and complete. Information is helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance</p> <p>b. There is a system that collects data on procurement by method, duration of different stages of the procurement cycle, awarding of contracts, unit prices for the most common types of goods and services and other information that allows analysis of trends, levels of participation, efficiency and economy of the purchases and compliance with requirements</p> <p>c. Reliability of the information is high (verified by audits)</p> <p>d. Analysis of information is routinely carried out, published and fed back into the system</p> <p>e. The legal/regulatory framework establishes a list of the procurement records that must be kept at the operational level and what is available for public inspection, including conditions for access</p> <p>The records should include:</p> <ul style="list-style-type: none"> <li>▶ Public notices of bidding opportunities</li> <li>▶ Bidding documents and addenda</li> <li>▶ Bid opening records</li> <li>▶ Bid evaluation reports</li> <li>▶ Formal appeals by bidders and outcomes</li> <li>▶ Final signed contract documents and addenda and amendments</li> <li>▶ Claims and dispute resolutions</li> <li>▶ Final payments</li> <li>▶ Disbursement data (as required by the country's financial management system).</li> </ul> <p>f. There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles</p>
Assessment Answers
<p>a. All bids are to be advertised in the Government Gazette, and another media with wide international circulation, when the pre-qualification will include foreign bidders<sup>67</sup>.</p> <p>b. The Procurement Unit of a procuring entity is required to record all the management information concerning the procurement activities which will, at least, include the number, nature and value of contracts awarded and the procurement method used for each contract. Such procurement information will be recorded in a Procurement Register, or a computer database. The Procurement Unit must collate and compile all information relating to procurement in the organisation and its agencies<sup>68</sup>.</p> <p>c. Either the PPADB, or its Committees, or the Auditors (technical audits), will formally monitor the procurement and disposal activities and procurement practices or project implementation. The monitoring will be carried out at regular intervals and at least once annually, by compliance teams of the PPADB<sup>69</sup>.</p> <p>d. There are no procurement systems in place. Procurement systems are at a pilot stage.</p> <p>e. Procuring entities are required to have record keeping and management systems. The PPAD Manual has clear guidelines on what records must be kept and time-lines<sup>70</sup>.</p> <p>f. All records must be kept for at least seven years from the date of a decision to terminate the disposal action, or the date of contract completion whichever is the later. All records, documents and information created or received in the course of procurement activity should be retained within the populated records and no disposition should take place without assurance that the records, documents and information are no longer needed, that no work is outstanding and that no litigation or investigation is current or pending which requires records as evidence<sup>71</sup>.</p>

<sup>67</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 8.4 , Page 72 of 166

<sup>68</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 3.4 (2), Page 31 of 166

<sup>69</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 3.4 (1), Page 31 of 166

<sup>70</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 10.12, Page 108-109 of 166

<sup>71</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 14.2 (vii), Page 146 of 166

E- Procurement
Questions
<ul style="list-style-type: none"> <li>▶ To what degree is electronic procurement practiced?</li> </ul>
Assessment Criteria
<p>The WTO list the use of electronic means on its key principles.</p> <p>a. The procurement agency places importance on, and encourages the use of, electronic means for procurement</p>
Assessment Answers
<p>a. There is no procurement system in place. The PPAD is currently investigating a system that will be used by all procuring entities and this is at pilot stage.</p>

IT Procurement Tools
Questions
<ul style="list-style-type: none"> <li>▶ What methods are used at each stage of the procurement cycle to record information? How much effort is required to provide information on procurement?</li> </ul>
Assessment Criteria
<p>a. The objective of this indicator is to determine:</p> <ul style="list-style-type: none"> <li>▶ The existence and capacity of the procurement information system in the country</li> <li>▶ The accessibility of the information system</li> <li>▶ The coverage of the information system</li> <li>▶ Whether the system provides a one-stop service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes</li> </ul>
Assessment Answers
<p>a. The PPAD is currently investigating a system that will be used by all procuring entities and this is at pilot stage. Information is kept manually and electronic use is minimal.</p>



## Performance Management

Performance management metrics
Questions
<p>Are metrics calculated and used to support the procurement process management through a scorecard? What are you focusing in performance measurement on?</p>
Assessment Criteria
<p>Performance measures are used to evaluate the usefulness of the procurement function to support the agency's mission</p>
Assessment Answers
<p>There are no performance management metrics for the procurement functions. However all procurement matters are reported and dealt with by the PPADB.</p>

## Supplier Monitoring

## Questions

- ▶ How do you manage your supply base and the relationships to your suppliers? What areas are you focusing on?

## Assessment Criteria

- An effective communication and feedback system has been established with the suppliers by:
  - ▶ Designating an authoritative person as a single interface with the key supplier
  - ▶ Using integrated teams to facilitate sharing of information
  - ▶ Establishing an objective basis for providing feedback by setting performance measures and expectations in terms of quality, responsibility, timelines, and cost
  - ▶ Providing periodic “report cards” and meeting formally with key suppliers to discuss issues
  - ▶ Using surveys, supplier meetings, and formal agency - supplier councils or supplier advisory councils to assess existing customer-supplier working arrangements to identify problem areas, and report back to suppliers
- The agency employs contract monitoring plans or risk-based strategies, and tracks contractor performance
- The agency regularly reviews contract oversight processes, identifies areas needing improvement, and establishes and implements corrective action plans
- The agency monitors the effectiveness of policies and processes, completes a cost benefit analysis when considering alternative policies and processes, and follows up on findings identified in monitoring efforts
- The agency’s suppliers have established earned value management systems, and the agency verifies that it and its suppliers effectively implement earned value management processes and procedures on all applicable programs

## Assessment Answer

- The PPAD Manual provides clear guidance and a checklist that must be used to evaluate and monitor supplier performance<sup>72</sup>.

## Supplier development

## Questions

- ▶ Are there any supplier development programmes in place? How do you certify and develop suppliers (new or existing)?

## Assessment Criteria

- The objective of this question is to obtain descriptive data on supplier development programs that each country has implemented

## Assessment Answers

- The PPADB Manual encourages development and provision of practical help to develop supplier market in Botswana<sup>73</sup>.



## Socio-economic

## Quality Standards

## Questions

- ▶ What quality standards are applied throughout the procurement system e.g. ISO standards? To what extent are these standards met?

## Assessment Criteria

The quality standards should as a minimum:

- Provide quality assurance standards and a monitoring system for procurement processes and products
- Provide for a staff performance evaluation process based on outcomes and professional behaviors
- Ensure that operational audits are carried out regularly to monitor compliance with quality assurance standards

## Assessment Answers

- The PPAD Manual requires quality requirements to be stated in the bid documents and how it will be evaluated<sup>74</sup>. It is the responsibility of the PPADB, or its Committees or its auditors to monitor procurement activities<sup>75</sup>.

## Green Procurement

## Questions

- ▶ Is green procurement covered in the legislative framework? To what extent is green procurement considered important in the selection of supplier/contracts?

## Assessment Criteria

- Green procurement is considered in the legislative framework
- Code of conduct and ethical practices to prevent the abuse of the environment are stated in the regulations

## Assessment Answers

The Act requires monitoring of supplier practices, ensuring that suppliers are aware and consider environmental (green) or sustainable procurement where and when this is appropriate<sup>76</sup>.

<sup>72</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 12.7, Page 133 of 166

<sup>73</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 14.9, Page 150 of 166

<sup>74</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 11.4, Page 150 of 166

<sup>75</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 3.4, Page 31 of 166

<sup>76</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 14.9, Page 151 of 166



Health and Safety

Questions

- ▶ Does the legal framework make provision for essential security or defense interests and safety for the health and life of humans, animals, plants?

Assessment Criteria

- a. Specific provisions are made for the protection of confidentiality of information which, if disclosed, might impede law enforcement; essential security or defense interests; public morals, order, or safety; human, animal or plant life or health; or might prejudice fair competition between suppliers, might prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property, or might otherwise be contrary to the public interest

Assessment Answers

- a. Where there is any element or suspicion of behaviour, which seems inappropriate or raises any ethical concerns at any stage in the course of a procurement action, then any person(s) who observes or acquires knowledge of such behaviour is required to immediately report that concern to a senior colleague or superior, or report such behaviour to the PPADB or any appropriate oversight body. The Board will ensure that the identity of such an individual is protected and is not disclosed so as not to compromise the investigation process or the safety and/or security of the whistle-blower<sup>77</sup>.

Socio-economic instruments

Questions

- ▶ What are the key instruments utilised to achieve socio-economic objectives through public procurement?

Assessment Criteria

- a. Secondary procurement objectives must be regulated by law

Assessment Answers

- a. International companies are encouraged to subcontract or have joint ventures with local companies so that skills can be transferred. Preference is given to those companies that are willing to work with local companies.



<sup>77</sup> Operations Manual Standard Operating Policies and Procedures for Public Procurement, Section 14.2, Page 151 of 166



## Project Overview

EY was commissioned to conduct a study on the Government procurement procedures implemented within sub-Saharan regions on behalf of the BHC. The countries within the scope are Angola, Botswana, Namibia, and South Africa.

The objectives of the project are to provide the UK Government and companies:

- ▶ With a greater level of understanding of the procurement processes followed in Southern African countries
- ▶ To enable UK companies during the bidding process for public tenders in Southern African countries
- ▶ To assist the UK Government to identify potential opportunities for collaboration and partnering when tendering for large-scale projects within Southern Africa countries.

### Sources of Information

All information included in this report is based on desktop research, publicly available information and qualitative interviews with the relevant stakeholders. However, verification interviews could not be obtained with Namibian representatives during the period of this study

## Country overview

### Economic Outlook

Namibia is a large country on the south-western coast of Africa. Namibia gained independence from South Africa in 1990<sup>1</sup>.

The Namibian economy is highly dependent on the extraction and processing of minerals which the country exports. Namibia is currently the fourth largest exporter of non-fuel minerals, the fifth largest exporter of uranium and produces large quantities of lead, zinc, tin, silver and tungsten. Namibia had foreign direct investment (FDI) net inflows of US\$900m in 2013. Figure 1 below is a summary of key economic indicators<sup>2</sup>.

### Economic Indicators

Population (m) - 2.4  
 Population Growth (annual %) - 1.5%  
 GDP (current US\$b) - 12 268  
 GDP per capita(current US\$ ) -5 318  
 Consumer Price Index - 118.2  
 Inflation- 5.6%  
 Interest Rate (lending)- 8.3%  
 Final Consumption expenditure(annual %) - 10.2  
 Foreign Direct Investment net inflows (US\$m) - 900



Adapted from World Bank Data

According to Business Monitor International (BMI), it is anticipated that Namibia will post an annual growth rate of 4.3% over the next five years. This will mainly be due to developments in the mining and infrastructure sectors and the export of diamonds and uranium<sup>3</sup>.

### Public Procurement and economic growth

Public procurement in Namibia is a key aspect of the public financial management system<sup>4</sup>. Public procurement contributes largely to the GDP of the country, and is therefore a very important function of government<sup>4</sup>.

The way these processes are designed in turn has a very important impact on socioeconomic development<sup>4</sup>. Public procurement is targeted at local firms using price preferences.

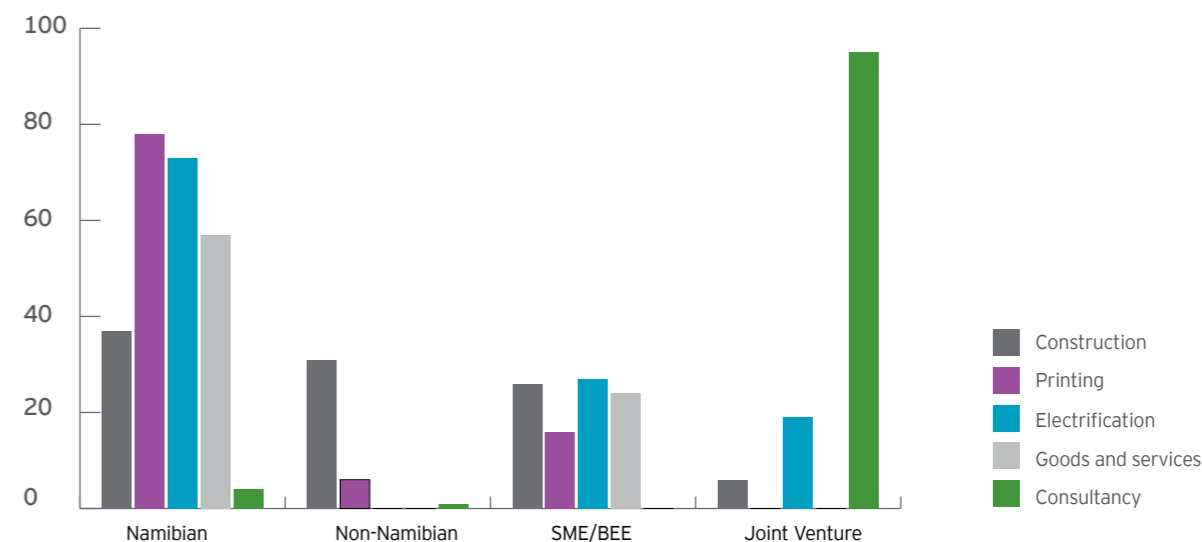
This means that a higher price (up to a certain percentage) will be accepted if the bidder is a local Namibian enterprise. This principle forms part of the legal framework governing procurement<sup>4</sup>.

A study carried out by the University of Namibia in 2013, revealed the following information with regard to public procurement expenditure and protocol<sup>5</sup>:

- ▶ Central government procurement represented a total of N\$ 6 billion (£300 000 000) in 2010/2011 and N\$ 13.9 billion (£750 000 000) during 2012/2013 financial years
- ▶ The distribution of contracts was allocated primarily to Namibian citizens with smaller allocations to Small Medium Enterprises and Black Economic Empowerment businesses in all categories with the exception of consultancy services

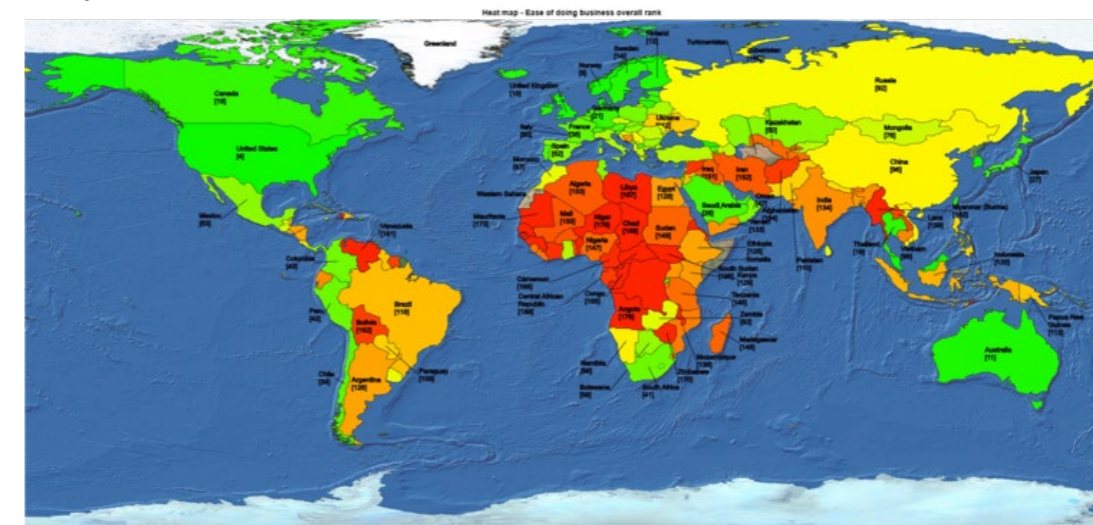
- ▶ Contracts up to N\$15 million were restricted to wholly Namibian-owned enterprises that are regarded as SMEs
- ▶ IT related services, catering, cleaning, security services and other related services were restricted to Namibian companies only
- ▶ Foreign companies are encouraged to form partnerships with local companies in order to build local capacity.

Percentage Distribution of allocation of public procurement contracts by ownership



Adapted from: Research report, Scope of procurement and relevance in Namibia

### Doing Business in Namibia



World Bank. 2013. Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises

<sup>1</sup> BBC News Africa. Namibian Profile. 2014. <http://www.bbc.com/news/world-africa-13890726>

<sup>2</sup> Growing Beyond Borders™ EY proprietary visual mapping tool and The World Bank database. Indicators. Accessed January 2015

<sup>3</sup> Business Monitor International. Economic Outlook quarter 1 2015.

<sup>4</sup> Targeting Development. Procurement, tied aid and the use of country systems in Namibia. Page 14 .Bodo Ellmers

<sup>5</sup> Research report assessing the scope procurement and relevance of procurement financing in Namibia for SME's. Multidisciplinary Research Center, University of Namibia. Indongo, T.Maharero, M.Hangula,



Namibia is rated 88 out of 189 in the world and 7 out of 47 on the continent in terms of ease of doing business according to the World Bank<sup>6</sup>. The survey measures business regulations and their enforcement to determine the ease of doing business in that country.

Namibia's strong infrastructure, open trade environment and a politically stable space presents strong opportunities for those looking to invest in sub-Saharan Africa<sup>7</sup>. The country maintained a stable position over the past decade with lower levels of corruption, ranking persistently in the moderately corrupt range and falling just outside the ranking of the least corrupt, a free press and strong adherence to the rule of law<sup>6</sup>.

However, Namibia has a high level of unemployment, people are poorly educated, poor health care services, crime rates are high and there is a large rural population<sup>6</sup>. These pose the greatest risk when looking to do business in the country<sup>6</sup>. These risks are enhanced by a very under-developed financial system which limits access to credit<sup>6</sup>. Of all these risks the highest is posed by the unskilled labour force<sup>6</sup>. The corporate tax rate is currently at 34%, and income tax works on a sliding scale depending on how much the individual earns<sup>8</sup>.

## Public Procurement Studies in Namibia

The study that we assessed was carried out by the Multidisciplinary Research Centre of the University of Namibia, titled "Research report assessing the scope of procurement and the relevance of procurement financing in Namibia for SMEs". The goal of the study was to assess the extent that procurement empowers SMEs. It also looked at the scope of both public and private procurement, and related these to the challenges faced by SMEs.

The study examined the scope of procurement financing in Namibia and also touched on the amended Public Procurement Draft Bill of 2013 that is currently in the process of being reviewed by Parliament, and aims to address the following<sup>9</sup>:

- ▶ The institutional structure for public procurement. The draft bill proposes the establishment of a Procurement Policy Office and a Central Procurement Board to replace current structures

- ▶ A methodological approach that entrenches good governance structures, consistency and accountability
- ▶ The adoption of e-procurement as a means of simplifying and improving accessibility to a transparent procurement process
- ▶ The alignment of procurement of parastatals through a unified governance system
- ▶ Integrity provisions to control unethical conduct, abuses, conflicts of interest and corruption.

## The Public Procurement Framework

A public procurement framework that sets out leading practice guidelines was used in assessing the public procurement system in Namibia. This framework defined six of the main policy areas for procurement in the public sector. These areas included:

- ▶ Regulatory Framework
- ▶ Procurement Mechanisms
- ▶ People and Organisation
- ▶ Data and Technology
- ▶ Performance Management
- ▶ Socio-economic.

Table 1 provides a description of each of the policy areas. Each of these areas was unpacked into an assessment that addressed specific standards of a public procurement system (Appendix A). The standards were selected from two sources:

- ▶ The OECD Development Assistance Committee (OECD DAC) Methodology for Assessing Procurement Systems<sup>10</sup>
- ▶ International Handbook of Public Procurement<sup>11</sup>.

Namibia's public procurement system was mapped and assessed against the standards set out in the framework.

Table 1: Description of each policy area of the public procurement framework<sup>12</sup>

Policy Area	Description
Regulatory Framework	The purpose of the review is to determine: a) the structure of the regulatory framework governing public procurement; b) the extent of its coverage; and c) public access to laws and regulations. Lack of or inadequate legislation on public procurement may lead to a system that is vulnerable to corruption, hindering market competition. This has a direct impact on public expenditures and therefore public resources.
Procurement Mechanisms	The purpose of assessing procurement mechanisms is to establish whether the legal framework includes: a) a clear definition of the permissible procurement methods; and b) the circumstances under which each method is appropriate. The lack of adequate definitions of procurement mechanisms may leave the system exposed to: <ul style="list-style-type: none"> <li>▶ Inconsistent access to information in the invitation to tender</li> <li>▶ Lack of competition or, collusive tendering resulting in inadequate prices</li> <li>▶ Conflict of interest situations that lead to bias and corruption in the evaluation and in the approval process</li> </ul>
People and Organisation	The public procurement system must have adequate human resources to support all the elements of the system. The lack of adequate and competent procurement staff will lead to the poor execution of regulations. The purpose of this review is to establish the existence of permanent and relevant training programmes for new and existing staff in government procurement. These programmes are essential to maintain the supply of qualified procurement staff to public and private sectors.
Data and Technology	An effective information management system is essential in ensuring that information is centralised and that information recorded is reliable and easily accessible.
Performance Management	Monitoring and evaluation of the public procurement system is essential in order to evaluate the effectiveness of the system in meeting the objectives of the organisation and higher government objectives. The objective is to assess the extent to which the country or agency has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans. This requires among other things the availability of information systems, a capacity for analysis, feedback mechanisms and planning capacity for implementation of improvements.
Socio-Economic	Public procurement is an economic activity therefore socio-economic objectives must be accounted for. However the application of these socio-economic objectives must be governed by law in order to not compromise the principle of fair competition.

<sup>6</sup> The World Bank Group. Doing Business, measuring business regulations. <http://www.doingbusiness.org/data/exploreeconomies/namibia/>

<sup>7</sup> Business Monitor International. Country Risk Report, Quarter 1 2015.

<sup>8</sup> PKF International Tax Committee. Namibia Tax Guide 2013

<sup>9</sup> Research report assessing the scope of procurement and relevance of procurement financing in Namibia for SME's. Multi-disciplinary Research Center, University of Namibia. Indongo, T.Maharero, M.Hangula

<sup>10</sup> OECD. 2009. Methodology for Assessing Procurement Systems. OECD publishing

<sup>11</sup> B.Raton. 2009. International Handbook of Public Procurement. FL, CRC Press

<sup>12</sup> OECD. 2008. Enhancing Integrity in Public Procurement: A checklist. OECD publishing

## Public Procurement Framework Summary Assessment

### Summary of assessment results

The research reveal that Namibia's procurement system is governed by a strong regulatory framework as well as adequately defined procurement processes and procedures, with centralised oversight and a clear mandate executed through a State Tender Board function enacted by the Tender Board Act of 1996. However, there are several areas of improvement which may start to be addressed by the new procurement amendment bill of 2013. A detailed assessment of the results in support of the findings has been attached to Appendix A which discusses in detail the six areas probed within the procurement framework.

Primary Acts that regulate public procurement summarised in the table below:

Act	What it does in respect of public procurement
Tender Board Act, 1996. Act 16 of 1996	Outlines the general framework involved during the tendering process <sup>13</sup>
Tender Board of Namibia Code of Procedure. Act 191 of 1997	Deals with the regulatory aspects of the Tender Board Act of 1996 <sup>14</sup>
Tender Board of Namibia Code of Procedure. Act 191 of 1997	Looks at processes when going through the Tender Process <sup>15</sup>
State Finance act 31 of 1991	Regulates government spending <sup>16</sup>
Regional Council Tender Board Regulations	Governs procurement at a regional level <sup>17</sup>
Local Authority Tender Board Regulations	Governs procurement at a local level <sup>12</sup>

There is a general legal framework set out in the Tender Board Act of 1996 followed by the Code of Procedure by the Tender Board which defines and clearly determines the procurement processes to be followed during the tender process. Administrative requirements prescribe a transparent system where procurement processes are required to be conducted fairly, reasonably and lawfully.

It should be noted that the Tender Board Act only provides procurement for central government and statutory bodies, local authorities and regional councils are not covered, whilst state-owned enterprises have their own procurement rules and policies. The Tender Board Regulations applies to regional and local authorities with the purpose of ensuring good governance in terms of policies and procedures. That being said the guiding legislation is the Tender Board Act.

The Tender Board Act is currently undergoing a review so as to align it with the aims of government so as to promote economic development through local enterprise and economic empowerment.

### The Regulatory Framework

The Namibian procurement policies are governed by the following legal frameworks:

- ▶ Tender Board of Namibia Act, 1996 (Act 16 of 1996) - national level Ministries/agencies
- ▶ Tender Board Regulations No 237 of 1996 - national level ministries/agencies
- ▶ Tender Board of Namibia Code of Procedure No. 191 of 1997 - national & regional level
- ▶ State Finance Act 31 of 1991 & Treasury Instruction - national & regional level
- ▶ Regional Council Tender Board Regulations, Gazette No. 2492, 2001 - regional council level
- ▶ Tender Board Regulations - Local Authority level

The Act stipulates the Tender Board of Namibia as its centralised regulatory body which is a part of the Ministry of Finance and is responsible for making decisions over N\$10,000. Where the expenditure is below the prescribed threshold then decisions are left to the respective ministries. There are no threshold specifications for goods, services or works, the threshold applies to all categories of expenditure.

The Tender Board has specific roles and responsibilities which include acting on behalf of government to invite and determine conditions of tender as well as to conclude tenders with participants in respect of all goods and services purchased by the Namibian government. The default procurement procedure is an open tender process unless it is below the stipulated threshold or meets other exemption clauses as stipulated in Section 17 of the Act, where good cause deems the open tender process impractical or inappropriate or where the party to the agreement is a public entity in Namibia, or external public entity approved by the Minister of Finance.

### Procurement Mechanism

Without sound business practices and processes, it is impossible to operate in a way that is internally efficient and that also delivers good value for money. Where practices are particularly weak there is also an impact on accountability and governance<sup>18</sup>.

The procurement processes and procedures as defined in the Tender Board Regulations and Act promote an open market tendering system, with some exceptions as noted above. There are however no clear guidelines as to the different type of procurement contracts.

Where the value of the tender is below N\$10,000 the respective ministries are allowed to make decisions and where it is higher the tender process is centralised at the Tender Board.

The regulatory framework has tendering and post tendering rules which include participation and selection rules, minimum requirements for the bid proposal, and exclusions in terms of interests. Timescales are not clearly defined, however a phased approach is applied in terms of planning, tendering, evaluation and implementation.

Advertising of tenders in terms of the Tender Board Act is published in the Government Gazette and at least once in each of the newspapers contracted by Government. All central government tenders are published on the website of the Ministry of Finance, while parastatals publish their tenders in local newspapers and some on their own websites.

Tenders are evaluated according to evaluation criteria or grid which must identify the best technical quality and most economical tender. There is also disqualifying criteria for example, insolvency or lack of tax compliance, amongst other examples provided for in Appendix A.

### People and Organisation

In any organisation, getting the balance right between staffing levels and outcomes for the organisation is critical<sup>19</sup>.

The procurement system of Namibia is predominantly centralised with decentralised procurement functions taking place below the stipulated threshold. Information relating to invitations to tender and awarding of tenders is published through newspapers.

The Tender Board is responsible for hiring of staff. There seem to be no specific education and training requirements in place, however there is a general government recruitment standard in place for job applicants in respect of government posts. One of the major challenges seems to be the limited capacity and professional skills of the Tender Board staff, with half of the posts vacant<sup>20</sup>.

### Data and Technology

The importance of internal management of information is an accepted principle within organisations in both private and public sectors. It has many purposes and its value is emphasized in the following areas<sup>21</sup>:

- ▶ Informing management of current results
- ▶ Informing management of current performance versus targets or plans
- ▶ Providing information for better decision making
- ▶ Providing information to support pursuit of improved performance
- ▶ Improving efficiency and effectiveness of procurement procedures.

The procurement system seems to be mainly a manual system with no specific IT systems in place to record and keep track of procurement related information. This limits the efficiency of the procurement process.

There is also no e-procurement system in place as yet however there seems to be an intention to introduce such a system in the future which may take place with the adoption of the revised procurement bill.

### Performance Management

The monitoring and evaluation of the public procurement system is essential in order to evaluate the effectiveness of the system in meeting the objectives of the organisation and broader government objectives<sup>22</sup>.

There is a process of meeting minimum criteria whilst tendering, however there seems to be no information relating to performance management of supplier contracts and/or the procurement function. Record keeping seems to be kept by some ministries but generally Tender Board processes and records are not computerized, therefore limiting the efficiency of the procurement process<sup>23</sup> and as a consequence performance management and reporting.

### Socio-economic

Public procurement is an economic activity therefore socio-economic objectives must be accounted for. This includes consideration of quality standards, green procurement, health and safety and socio-economic instruments. However, the application of these socio-economic objectives must be governed by law in order not to compromise the principle of fair competition<sup>24</sup>.

<sup>13</sup> Government Gazette of the Republic of Namibia. Powers and functions of board. 1996

<sup>14</sup> Tender Board Regulations, Act 237 of 1996. 12th September 1996

<sup>15</sup> Tender Board of Namibia Code of Procedure. Act 191 of 1997. Government Gazette. 30th September 1991. Pg2

<sup>16</sup> State Finance Act No 31 of 1991. Government Gazette. 30 December 1991

<sup>17</sup> Public procurement legislation in Africa. Sue Arrowsmith, Geo Quinot. Pg129

<sup>18</sup> The Scottish Government. 2006. Procurement Practices and Business Processes. <www.scotland.gov.uk/publications/2006>[Accessed 17 January 2015].

<sup>19</sup> The Scottish Government. 2006. Procurement Practices and Business Processes. <www.scotland.gov.uk/publications/2006>[Accessed 17 January 2015].

<sup>20</sup> Public Procurement Regulation in Africa, edited by Geo Quinot and Sue Arrowsmith, p 140.

<sup>21</sup> The Scottish Government. 2006. Procurement Practices and Business Processes. <www.scotland.gov.uk/publications/2006>[Accessed 17 January 2015].

<sup>22</sup> OECD. 2008. Enhancing Integrity in Public Procurement: A checklist. OECD publishing

<sup>23</sup> Public Procurement Regulation in Africa, edited by Geo Quinot and Sue Arrowsmith, p 140.

<sup>24</sup> .Raton. 2009. International Handbook of Public Procurement. FL, CRC Press



The Tender Board is required to apply mandated price preferences aimed at benefiting disadvantaged groups during the award process which supports their affirmative action policy so as to redress social and economic imbalances. Therefore most tenders have specific local requirements in the procurement process.

ISO standards are applied to transactions depending on the nature of the goods and services being procured by government. There are, however, no specific provisions in the procurement legislation on health and safety standards or green procurement and supply chain sustainability.

### Areas of Opportunity

Namibia has a regulatory framework in place for public procurement evident in the Tender Board Act and regulations. However, the procurement framework is fragmented within the different spheres of government which may lead to the procurement system being vulnerable and inefficient.

The Namibian Government is in the process of revising its current procurement framework with the adoption of a new procurement bill to address these shortcomings in the near future and align to its procurement regulatory system to international standards. These reforms present opportunities of collaboration and the sharing of UK/OECD best practice.

Opportunities exist to enhance implementation in the following areas:

- ▶ Capacity building with respect to its people and organisational structures to enhance execution of tender processes
- ▶ Improved data and technology to assist with automation of tenders for example e-procurement and streamlining of procurement data
- ▶ Effective performance management of supplier contracts and
- ▶ Socio-economic objectives such as green procurement.

## Appendix A: Detailed Assessment Results

### Approach

The approach to the procurement study was a standard data gathering exercise consisting of meetings and analysing documents. The purpose was to understand and compare how the country's public procurement system meets the requirements set out by internationally recognised instruments such as:

- ▶ The WTO (World Trade Organisation) procurement guidelines in the form of the GPA (Agreement on Government Procurement)
- ▶ The OECD (Organisation for Economic Co-operation and Development) procurement guidelines
- ▶ EU directives.

The study was conducted using a three step approach described below.



Assessment of the public procurement system against the public procurement framework



Comparative study of the country's legal framework to GPA and EU directives

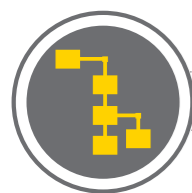


Validation of findings through interviews and discussions with the selected public procurement officials and agencies

In order to successfully perform the assessment (step one above) it was necessary to determine the basic requirements/standards of a public procurement system. The next section describes in detail the approach taken in determining these standards.

During this exercise we gathered data and inputs on the public procurement procedures in Southern African countries primarily in respect of the following policy areas:

- ▶ The regulatory framework
- ▶ The procurement processes, policies, and procedures
- ▶ The structure of the procurement organisation
- ▶ Technology and data
- ▶ Performance management
- ▶ Socio-economic procurement goals and considerations.



## The Regulatory Framework

### Primary Legislation

#### Questions

- ▶ What legal framework defines public procurement?

#### Assessment Criteria

- There are regulations that supplement and detail the provisions of procurement law that meets the following requirements:
  - ▶ They are clear, comprehensive and consolidated as a set of regulations available in a single and accessible place
  - ▶ They are updated regularly

The responsibility for maintenance is defined

#### Assessment Answers

- The Procurement process involves the following Legal Framework<sup>25</sup>:
  - ▶ Tender Board of Namibia Act, 1996 (Act 16 of 1996) - national level ministries/agencies
  - ▶ Tender Board Regulations No 237 of 1996 - national level ministries/agencies
  - ▶ Tender Board of Namibia Code of Procedure No. 191 of 1997- national & regional level
  - ▶ State Finance Act 31 of 1991 & Treasury Instruction - national & regional level
  - ▶ RC Tender Board Regulations, Gazette No. 2492, 2001 - regional council level
  - ▶ LA Tender Board Regulations - Local Authority level

### Key Principles

#### Questions

- ▶ What key principles and objectives govern the public procurement policy?

#### Assessment Criteria

- The procurement rules reflect and reinforce the value for money (VFM) focus of the government's procurement policy
- The procurement rules cover the key principles of a fair, equitable, transparent, competitive and cost effective system with the provision of the use of procurement as a means to address discriminatory policies and procedures

#### Assessment Answers

- The reduction of inequalities and the uplifting of formerly disadvantaged groups, in particular due to Affirmative Action and BEE policies<sup>26</sup>.
- The "Namibianization" of the economy. Through targeting and channeling of public spending to Namibian owned companies<sup>26</sup>.
- The promotion of SMEs, which are particularly useful for job creation<sup>26</sup>.
- The industrialisation and diversification of Namibia which is currently an extremely commodity-dependent economy<sup>26</sup>.

### Ownership

#### Questions

- ▶ Who is the independent regulatory authority responsible for the coordination and management of public procurement?
- ▶ What are the responsibilities of the regulatory authority?
- ▶ What is the judicial power of the regulatory authority?
- ▶ Where in the evaluation process is the regulatory authority involved?

#### Assessment Criteria

- There is a normative or regulatory body or the functions are clearly assigned to various units within the government which is specified in the legal and regulatory framework in an unambiguous way without gaps or overlaps
- The body has a defined set of responsibilities that include but are not limited to the following:
  - ▶ Providing advice to contracting entities
  - ▶ Drafting amendments to the legislative and regulatory framework and implementing regulations
  - ▶ Providing procurement information
  - ▶ Monitoring public procurement
  - ▶ Managing statistical databases
  - ▶ Reporting on procurement to other parts of the government
  - ▶ Developing and supporting implementation of initiatives for improvements of the public procurement system and
  - ▶ Providing implementation tools and documents to support training and capacity development of implementing staff
- The regulatory body is at an adequate level in government and financing is secured by the legal/regulatory framework.
- The body is not responsible for direct procurement operations and is free from other possible conflicts (e.g. by being part of evaluation committees, etc.)

#### Assessment Answers

- The regulatory body is the Tender Board of Namibia, which is part the Ministry of Finance<sup>27</sup>
- The following roles and responsibilities are assigned to the Tender Board<sup>28</sup>
  - ▶ Act on behalf of the government to conclude deals with tenders
  - ▶ Responsibility to invite tenders, and determine conditions
  - ▶ Inspect and test goods or services that are being offered
  - ▶ Take steps or cause steps to be taken to enforce any agreement
  - ▶ Accept or reject tenders
  - ▶ Abandon agreements or claim damages if need be
  - ▶ Exempt and condone compliance with agreements
  - ▶ Negotiate or amend agreements
  - ▶ Adhere to thresholds within legislature

Exercise powers conferred on it by this act

It is important to note that regional, local authorities and state owned companies are governed by their own guidelines make their own procurement decisions<sup>29</sup>.

- They are also allowed to appoint a board for a specific case and appoint a chairperson. The Board is allowed to do this when it involves the powers as attributed to them by this act. The Board will have full control of the committee.<sup>30</sup>

- They are involved from the bidding to the awarding of the tender<sup>31</sup>.

<sup>25</sup> Business information on Government Procurement. Page 4. 2011. Presented by Tender Board of Namibia.

<sup>26</sup> Targeting Development? Procurement, tied aid and the use of country systems in Namibia. Page 15-16 .Bodo Ellmers

<sup>27</sup> Business information on Government Procurement. Page 3. 2011. Presented by Tender Board of Namibia.

<sup>28</sup> Government Gazette of the Republic of Namibia. Powers and functions of board. 1996

<sup>29</sup> Public procurement legislation in Africa, G.Quinot, S. Arrowsmith, Cambridge, 2013, pg25-47

<sup>30</sup> Government Gazette of the Republic of Namibia. Committees of board and delegation of powers. 1996

<sup>31</sup> Government Gazette of the Republic of Namibia. Powers and functions of board. 1996

## Coverage of the public procurement rules

## Questions

- ▶ What type of procurement contracts are subject to regulation (must cover goods, services, and works (including consulting services)?
- ▶ What are the thresholds? Are these consistent with leading practice practices?

## Assessment Criteria

- a. Procurement law covers goods, works and services (including consulting services).
- b. The associated thresholds for each type of procurement is covered

## Assessment Answers

- a. The law regulates all goods and services to be purchased by the Namibian Government<sup>32</sup>.  
Goods. This includes the following:
  - ▶ Meet technical specifications
  - ▶ Delivery
  - ▶ Environmentally sound
  - ▶ Quality Assurance
  - ▶ Accuracy of documentation
  - ▶ Speed of response
  - ▶ Customer service
- Services:
  - ▶ Provides Technical Solutions
  - ▶ Competency
- b. Tender bid must exceed N\$ 10 000 (£500). Preference given to capacity, integrity and financial status of the tenderer. There are also price preferences, which mean that the tender is not necessarily given to the lowest bidder<sup>33</sup>.  
The following is considered when a bid is made
  - ▶ If the bid is local
  - ▶ If the bid comes from a communal or undeveloped area
  - ▶ Whether or not the goods are manufactured locally
  - ▶ And if the bidder employs BEE practices

<sup>32</sup> United Nations Development Programme. Link: <http://www.na.undp.org/content/namibia/en/home/operations/procurement.html>

<sup>33</sup> Targeting Development? Procurement, tied aid and the use of country systems in Namibia. Page 16 .Bodo Ellmers

## Pre-tendering

## Questions

- ▶ Are the processes and procedures for different procurement contracts clarified and established in the legal framework?
- ▶ How do you define which product to procure/conduct a needs assessment?
- ▶ How does the procurement approach vary per service/product?
- ▶ How many levels of approval are required to make the decision to procure?
- ▶ What are the validation process/requirements for approval?
- ▶ What is the planning and budgeting process for procurement?

## Assessment Criteria

- a. The legal framework establishes all allowable procurement methods unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable.
- b. The law requires certification of availability of funds before solicitation of tenders takes place
- c. The planning process has three stages:
  - ▶ The preparation of multiyear plans for government agencies, from which annual operating plans are derived
  - ▶ Annual procurement plans are drawn up along with an estimation of associated expenditures
  - ▶ The formulation of an annual budget

## Assessment Answers

- a. The procurement processes and procedures are clear and are based on an open market tendering system. The regulations do not state any guidelines for different types of procurement contracts. Exemptions from the tendering processes can be allowed by the board, if the tenders are less than N\$10 000 (£550) or if the tender is a statutory body<sup>34</sup>.
- b. There currently is no process that deals with a planned way of procuring goods<sup>35</sup>
- c. There is no threshold as well as no differentiation that governs the procurement of goods, services and works<sup>36</sup>
- d. This firstly depends on the size of the tender. If the tender is below N\$10 000, ministries are allowed to make the decisions. If it is higher than the tender has to go through the Central Tender Board which is housed in the Ministry of Finance.
- e. Tenders are evaluated <sup>37</sup>
  - ▶ Evaluation criteria or grids must be developed to identify the best technical quality and more economical (price) tender.
  - ▶ Tailor made evaluation grids are developed for each evaluation
  - ▶ Weigh the technical quality against the price at a ratio of 80% for the technical tender; and 20% for the price tender, (varies depending on the nature of the tender), considered on a case by case basis
  - ▶ Evaluation requires approximately one week in order to give the assessors time to scrutinize the tender documents and for the Tender Board to sit

It is also important to note the that certain factors disqualify the bid

A bidder can be disqualified if it:

- ▶ is deemed not to be capable of fulfilling its obligations
- ▶ is insolvent
- ▶ has been convicted of an offence concerning professional conduct
- ▶ is guilty of grave professional misconduct
- ▶ has neglected its social security contributions, taxes or levies
- ▶ is guilty of serious misrepresentation in supplying information required by the regional council for its participation in the tender
- ▶ has conflicting interests in the tender (for example if a bidding company is known to be owned by a member of the Tender Board, and he or she is involved in the tender process
- ▶ does not comply with the requirements set forth in the ITT (for example late submission of the tender or failure to separate the price and technical proposal in a double envelope tender)
- ▶ proposes personnel, which are included in other competing tenders

Price preferences are an important part of the process. These provide certain preferences for:<sup>38</sup>

- ▶ goods manufactured and assembled in Namibia by persons, companies or partnerships domiciled or registered in Namibia
- ▶ services rendered by persons, companies or partnerships domiciled or registered in Namibia
- ▶ goods kept by bona fide dealers or merchants in Namibia
- ▶ Goods conforming to national or international standard specifications

- f. It is not a well-defined process. Starts with annual budgets at the beginning of the financial year. The ministries must have their documents ready from beginning of financial year. Tenders must be called immediately once papers have been approved<sup>39</sup>.

<sup>34</sup> Institute Public Policy Research. The Tender Board need for root and branch reform. Paper 3. 2011. Page 6-7

<sup>35</sup> Targeting Development? Procurement, tied aid and the use of country systems in Namibia. Page 17 .Bodo Ellmers

<sup>36</sup> Targeting Development? Procurement, tied aid and the use of country systems in Namibia. Page 17 .Bodo Ellmers

<sup>37</sup> Tenders Procedures Presentation. James Sankwasa

<sup>38</sup> Institute Public Policy Research. The Tender Board need for root and branch reform. Paper 3. 2011, Page 7

<sup>39</sup> Tenders Procedures Presentation. James Sankwasa



## Tendering

## Questions

- ▶ How are requirements specified or designed to ensure that all suppliers or contractors established in country are treated on equal terms, to avoid discrimination on the grounds of origin?
- ▶ Does the legal framework specify the rules of participation and selection policies?
- ▶ What precautionary measures are applied to prevent conflict of interest, collusion and corruption and to promote integrity?
- ▶ Are the timescales clearly defined in the legal framework? Are the times defined adequately for each procurement method? What are the exceptions?
- ▶ What evaluation methodologies are in place? Are they consistently applied and records kept?
- ▶ What type of public procurement is not subject to the standard procedures outlined in the legislation or other legal text?

## Assessment Criteria

The legal framework meets the following conditions:

- a. The legal framework covers the rules of participation
- 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. Such timeframes are extended when international competition is sought
- c. Sufficient information is included to enable potential bidders to determine their ability and interest in bidding
- d. Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations
- e. Requires the use of neutral specifications citing international standards when possible
- f. Requires recognition of standards which are equivalent when neutral specifications are not available
- g. The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents
- h. Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible
- i. During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process
- j. Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission.
- k. Records of proceedings for bid openings are retained and available for review
- l. Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited. The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders

## Assessment Answers

- a. The current procurement policies mean that Namibians are favoured in the tendering process. If services cannot be sourced locally, tenders from abroad will be considered. BEE practices are also employed. There is also an emphasis on previously disadvantaged groups such as women, youth and the disabled<sup>40</sup>.
  - b. It is important to note the following with regards to participation and selection:<sup>41</sup>
    - ▶ Decisions of the Board shall be conveyed in writing to the person concerned by the Secretary in a manner approved by the Board and shall be obtained by means of meetings, and minutes must be kept
    - ▶ Reason for acceptance of a tender shall be recorded in the minutes
    - ▶ No decision of the Board shall be invalid because it is merely based on an erroneous calculation or bona fide incorrect application of these regulations
    - ▶ The Tender Board shall not be obliged to accept the lowest tender or in case of property disposal, the highest tender or any other tender
    - ▶ The Tender Board may accept, where a tender relates to more than one item, the part of such tender only in respect of any one or more specific items
    - ▶ The Tender Board may accept any tender notwithstanding the fact that such tender was not made in response to any particular tender invitation
    - ▶ The Tender Board shall not accept a tender if the tender price is quoted in relation to the price tendered or quoted in all other tenders or any specific tender
- Bids should at least contain the following:<sup>42</sup>
- ▶ technical and quality characteristics of the goods to be procured
  - ▶ services to be rendered, property to be disposed of or the nature of
  - ▶ rights to be acquired or granted, including, where appropriate, technical
  - ▶ specifications, plans and drawings
  - ▶ currency in which the tender price is to be formulated and expressed
  - ▶ the manner, place and losing date for the submission of tenders
  - ▶ the period during which tenders shall be in effect
  - ▶ tender security to be furnished and the conditions for its refund
- The following members are excluded<sup>43</sup>
- ▶ A member who has or intends to acquire a direct or indirect personal interest in a tender on an agreement, shall in writing declare the nature, extent and particulars of such interest to the Board
  - ▶ A member shall not take part in any consideration or discussion of, or exercise any vote on, a matter in which he or she has an interest as contemplated in subsection
  - ▶ Any member who contravenes or fails to comply with a provision of subsection shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 10 years. Alternatively, to both such fine and such imprisonment
  - ▶ The provisions of this section shall apply mutatis mutandis to any official involved in the drafting of a submission to the Tender Board
- c. Timescales are not clearly defined. They follow a structured process, which contains the following phases<sup>44</sup>
    - ▶ Planning phase: identification of type and nature of procurement assessment of market conditions and choice of tendering procedure
    - ▶ Tendering procedure: preparation of tender document; invitation to tender; receipt of tenders and opening of tenders
    - ▶ Evaluation and award of tender phase
    - ▶ Implementation and completion of contract phase

<sup>40</sup> Institute Public Policy Research. The Tender Board need for root and branch reform. Paper 3. 2011, Page 5-6

<sup>41</sup> Tenders Procedures Presentation. James Sankwasa

<sup>42</sup> Government Gazette of the Republic of Namibia. Powers and functions of board. 1996

<sup>43</sup> Government Gazette of the Republic of Namibia. Powers and functions of board. 1996

<sup>44</sup> Tenders Procedures Presentation. James Sankwasa

- d. The evaluation methods are as follows and are based on the following evaluation criteria: attachments, tender conditions, specifications and price, expertise, and record of accomplishment. Processes are as follows<sup>45</sup>:
- ▶ Evaluation criteria or grids must be developed to identify the best technical quality and more economical (price) tender
  - ▶ Tailor made evaluation grids are developed for each evaluation
  - ▶ Weigh the technical quality against the price at a ratio of 80% for the technical tender; and 20% for the price tender, (varies depending on the nature of the tender), to be considered on a case by case basis
  - ▶ Evaluation requires approximately one week in order to give the assessors time to scrutinize the tender documents and for the Tender Board to sit
  - ▶ The relevant ministry (and external experts if need be), submits its recommendations to the Tender Board in writing
  - ▶ When the ministry does not recommend the lowest tender, the head of the ministry must certify in writing that the recommendation is made in the best interest of, and represents the best value to the ministry concerned
  - ▶ Where only one tender is received and that tender is recommended, the head must state in the recommendation whether the tender price is considered fair and reasonable
- e. Exemptions from tenders can be applied to the following<sup>46</sup>:
- ▶ The estimated value thereof does not exceed N\$ 10 000
  - ▶ The opposite party to an agreement to be entered into is a statutory body, local authority or regional council in Namibia
    - i. Approved by the Minister.
    - ii The government of, or any statutory body, local authority or regional council in, a country other than Namibia, which statutory body, local authority or regional council the Minister has likewise approved.
  - ▶ The Board in any particular case for good cause deems it impracticable or inappropriate to invite tenders

#### Post-tendering

##### Questions

- ▶ What are the rules and restrictions to post tender negotiations?
- ▶ Who is permitted to sign contracts? Who is reviewing and following-up contracts?
- ▶ How do you manage contract risks? Is the legal department consulted when contracts are developed?
- ▶ Is there guideline regarding use of contracts, Incoterms, or payment conditions?

##### Assessment Criteria

###### The legal framework provides for the following:

- a. The right to review for participants in a procurement process
- b. Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review
- c. Establishes the matters that are subject to review and timeframes for issuance of decisions by the procuring agency and the administrative review body
- d. There are GCC (General Conditions of Contracts) for the most common types of contracts and their use is mandatory

##### Assessment Answers

- a. Usually the price is fixed when the tender is accepted and approved by the Tender Board and there are no negotiations afterwards. Any changes to the price after Tender Board approval are referred to the Tender Board for approval.
- b. Signing power lies with the Board. There is no specific mention of who on the Board has this power. It is important to remember that when a bid is below the threshold the specific ministry and not the Board will make the decision. It is unclear who on the board has signing power. The permanent secretaries of the line ministries sign the contracts.
- c. Contract information has not been disclosed. This would require further consultation with members on the Board. Therefore information regarding payments, contracts and so forth is very unclear. The line ministries use a standard contract that has been vetted by the office of the attorney general.
- d. Same as above.

<sup>45</sup> Tenders Procedures Presentation. James Sankwasa

<sup>46</sup> Government Gazette of the Republic of Namibia. Powers and functions of board. 1996



## People and Organisation

### Organisation Structure

#### Questions

- ▶ What does the organisation structure look like for procuring?
- ▶ To what extent is the procurement function centralised/ decentralised?
- ▶ What is the level of coordination/ frequency of information sharing?

#### Assessment Criteria

- a. Delegation of decision making authority is decentralised to the lowest competent levels consistent with the risks associated and the monetary sums involved
- b. Delegation is regulated by law
- c. Accountability for decisions is precisely defined

#### Assessment Answers

- a. The Central Tender Board which falls under the Ministry of Finance responsible for procuring decisions, which then tender for the ministries.
- b. The tender structure is centralised.
- c. Information is mainly shared through newspapers where new tenders and awarding of tenders is disclosed.

### Education and Training

#### Questions

- ▶ Are formal education and training programmes in place?

#### Assessment Criteria

- a. There are defined skill and knowledge profiles for specialised procurement jobs
- b. There is systematic matching of skills against requirements for competitive recruitment
- c. There is a training and capacity building strategy that provides for:
  - ▶ Substantive permanent training programmes of suitable quality and content for the needs of the system
  - ▶ Evaluation and periodic adjustment based on feedback and need
  - ▶ Advisory service or help desk to absolve questions by procuring entities, suppliers, contractors and the public
- d. Training programme design is based on a skills gap inventory to match the needs of the system

#### Assessment Answers

There are no specific education and training protocols in place. Certain requirements are in place for when people apply for jobs, these are as per government recruiting standards.





## Data and Technology

### Access to information

#### Questions

- ▶ What methods are used at each stage of the procurement cycle to record information? How reliable are your procurement data? How much efforts are required to provide it?
- ▶ To what extent does your organisation rely on your purchasing data?

#### Assessment Criteria

- a. Information on procurement is easily accessible in media with wide circulation and availability. The information provided is centralised at a common place. Information is relevant and complete. Information is helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance
- b. There is a system that collects data on procurement by method, duration of different stages of the procurement cycle, awarding of contracts, unit prices for the most common types of goods and services and other information that allows analysis of trends, levels of participation, efficiency and economy of the purchases and compliance with requirements
- c. Reliability of the information is high (verified by audits)
- d. Analysis of information is routinely carried out, published and fed back into the system
- e. The legal/regulatory framework establishes a list of the procurement records that must be kept at the operational level and what is available for public inspection, including conditions for access.  
The records should include:
  - ▶ Public notices of bidding opportunities
  - ▶ Bidding documents and addenda
  - ▶ Bid opening records
  - ▶ Bid evaluation reports
  - ▶ Formal appeals by bidders and outcomes
  - ▶ Final signed contract documents and addenda and amendments
  - ▶ Claims and dispute resolutions
  - ▶ Final payments
  - ▶ Disbursement data (as required by the country's financial management system).
- f. There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles

#### Assessment Answers

No systems are in place to record information.

### E- Procurement

#### Questions

- ▶ To what degree is electronic procurement practiced?

#### Assessment Criteria

The WTO list the use of electronic means on its key principles.

- a. The procurement agency places importance on, and encourages the use of, electronic means for procurement.

#### Assessment Answers

- a. The country has not yet introduced an e-procurement system. There is an intention to introduce it in the near future<sup>47</sup>.

<sup>47</sup> Public Procurement Bill, 2013 as at 25 July 2013. Page 12

### IT Procurement Tools

#### Questions

- ▶ What methods are used at each stage of the procurement cycle to record information? How much effort is required to provide information on procurement?

#### Assessment Criteria

- a. The objective of this indicator is to determine:
  - ▶ The existence and capacity of the procurement information system in the country
  - ▶ The accessibility of the information system
  - ▶ The coverage of the information system
  - ▶ Whether the system provides a one-stop service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes

#### Assessment Answers

- a. There are no specific IT systems in place to record and keep track of information



## Performance Management

### Performance management metrics

#### Questions

Are metrics calculated and used to support the procurement process management through a scorecard? What are you focusing in performance measurement on?

#### Assessment Criteria

- a. The objective of this indicator is to determine
  - ▶ The existence and capacity of the procurement information system in the country;
  - ▶ The accessibility of the information system
  - ▶ The coverage of the information system
  - ▶ Whether the system provides one stop service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes

#### Assessment Answers

- a. Normally selection criteria is developed for each tender which covers a number of items and weights are applied to each criteria and a final score arrived at. For example, the weight for fees would be 30% and 70% for technical (technical would further be broken down into: experience / credentials, team composition, qualifications of team, etc.) These are also related to ministries which manage how work is being developed.

## Supplier Monitoring

## Questions

- ▶ How do you manage your supply base and the relationships to your suppliers? What areas are you focusing on?

## Assessment Criteria

- An effective communication and feedback system has been established with the suppliers by:
  - ▶ Designating an authoritative person as a single interface with the key supplier
  - ▶ Using integrated teams to facilitate sharing of information
  - ▶ Establishing an objective basis for providing feedback by setting performance measures and expectations in terms of quality, responsibility, timelines, and cost
  - ▶ Providing periodic “report cards” and meeting formally with key suppliers to discuss issues
  - ▶ Using surveys, supplier meetings, and formal agency - supplier councils or supplier advisory councils to assess existing customer-supplier working arrangements to identify problem areas, and report back to suppliers
- The agency employs contract monitoring plans or risk-based strategies, and tracks contractor performance
- The agency regularly reviews contract oversight processes, identifies areas needing improvement, and establishes and implements corrective action plans
- The agency monitors the effectiveness of policies and processes, completes a cost benefit analysis when considering alternative policies and processes, and follows up on findings identified in monitoring efforts
- The agency’s suppliers have established earned value management systems, and the agency verifies that it and its suppliers effectively implement earned value management processes and procedures on all applicable programs

## Assessment Answer

Government normally advertises in the public press for tenders. In some cases, closed tenders are used, where government ministries would contact at least three suppliers and obtain quotes from them. Some ministries tend to keep a record of suppliers.

## Supplier development

## Questions

- ▶ Are there any supplier development programmes in place? How do you certify and develop suppliers (new or existing)?

## Assessment Criteria

- The objective of this question is to obtain descriptive data on supplier development programs that each country has implemented

## Assessment Answers

- No supplier development programmes are in place.



## Socio-economic

## Quality Standards

## Questions

- ▶ What quality standards are applied throughout the procurement system e.g. ISO standards? To what extent are these standards met?

## Assessment Criteria

- The objective of this question is to obtain descriptive data on supplier development programs that each country has implemented

## Assessment Answers

- ISO standards are applied to some transactions depending on the nature of the items/services provided (where applicable).

## Green Procurement

## Questions

- ▶ Is green procurement covered in the legislative framework? To what extent is green procurement considered important in the selection of supplier/contracts?

## Assessment Criteria

The quality standards should as a minimum:

- Provide quality assurance standards and a monitoring system for procurement processes and products
- Provide for a staff performance evaluation process based on outcomes and professional behaviours
- Ensure that operational audits are carried out regularly to monitor compliance with quality assurance standard

## Assessment Answers

No provision for green procurement or supply chain sustainability is in place.

## Health and Safety

## Questions

- ▶ Does the legal framework make provision for essential security or defense interests and safety for the health and life of humans, animals, plants?

## Assessment Criteria

- Green procurement is considered in the legislative framework
- Code of conduct and ethical practices to prevent the abuse of the environment are stated in the regulations

## Assessment Answers

No specific provisions are accounted for.



Socio-economic instruments

**Questions**

▸ What are the key instruments utilised to achieve socio-economic objectives through public procurement?

**Assessment Criteria**

a. Specific provisions are made for the protection of confidentiality of information which, if disclosed, might impede law enforcement; essential security or defense interests; public morals, order, or safety; human, animal or plant life or health; or might prejudice fair competition between suppliers, might prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property, or might otherwise be contrary to the public interest

**Assessment Answers**

Namibia does not have specific instruments per se. However, there is consistent mention that socio economic goals are key factors when deciding on tenders .Most tenders have a requirement for the participation of local businesses, SMEs and/or black economic empowerment firms, previously disadvantaged Namibians or people living with disabilities<sup>48</sup>.



<sup>48</sup> Targeting Development? Procurement, tied aid and the use of country systems in Namibia. Page 15-16 .Bodo Ellmers

## Project Overview

EY was commissioned to conduct a study on the Government procurement procedures implemented within sub-Saharan regions on behalf of the BHC. The countries within the scope are Angola, Botswana, Namibia, and South Africa.

The objectives of the project are to provide the UK Government and companies:

- ▶ With a greater level of understanding of the procurement processes followed in Southern African countries
- ▶ To enable UK companies during the bidding process for public tenders in Southern African countries and
- ▶ To assist the UK Government to identify potential opportunities for collaboration and partnering when tendering for large-scale projects within Southern Africa countries.

### Sources of Information

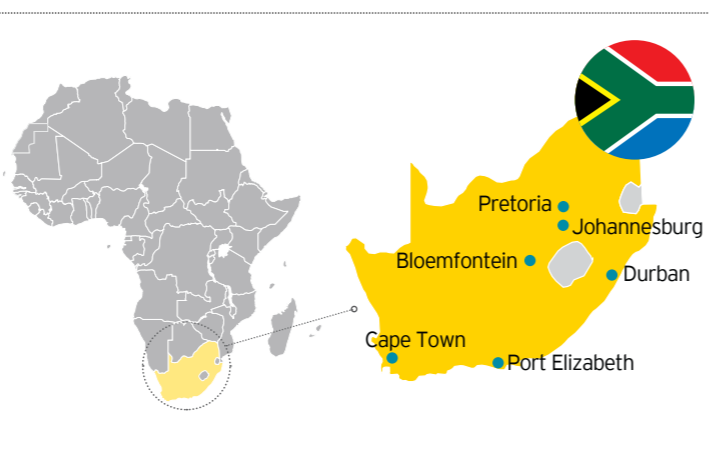
All information included in this report is based on desktop research, publicly available information and qualitative interviews with the relevant stakeholders. The National Treasury of the Republic of South Africa (the National Treasury) was consulted during this study on their views relating to the areas of their procurement system under review.

## Country overview

### Economic Outlook

Diversity is a key feature of South Africa, where 11 languages are recognised as official. This is among the highest of any country in the world<sup>1</sup>. However, it wasn't until 27 April 1994 that South Africa became a constitutional state and that these diverse communities received representation in the Government<sup>2</sup>.

Prior to this period, under the previous apartheid regime South Africa was to a large extent isolated from the rest of the world. Sanctions were placed on the country and significantly affected its international trade<sup>3</sup>. This forced South Africa to become self-sufficient. Since 1994, the sanctions have been lifted and the economy has experienced much change, including South Africa's incorporation back into the international trading community. Foreign investment and trade has increased significantly and FDI inflows are today valued at US\$4.369m<sup>4</sup>. Figure 1 is a summary of South Africa's economic indicators.



Economic Indicators	
Population (m)	- 52.8
Population growth (annual %)	- 0.6
GDP (current US\$b)	- 351 540
GDP per capita (current US\$)	- 6 658
Consumer price index	- 154.95
Inflation	- 5.8
Interest rate (lending%)	8.5
Final consumption expenditure (annual % growth)	- 3.9
Foreign direct investment net inflows (FDI) (US\$m)	- 4.369

Figure1: Summary of key economic indicators in South Africa. World Bank Data

Business Monitor Online's most recent forecast has estimated that the country will post economic growth of just 1.5% in 2014 and 2.1% in 2015 as the consumer sector struggles with inflationary pressures coupled with the risk of rising interest rates. Intermittent industrial action and power shortages will also impact economic growth<sup>5</sup>.

Figure 2 depicts data released by the South African Reserve Bank (SARB)<sup>6</sup>. The graph demonstrates that South Africa is forecasted to experience slow economic growth over the coming years.

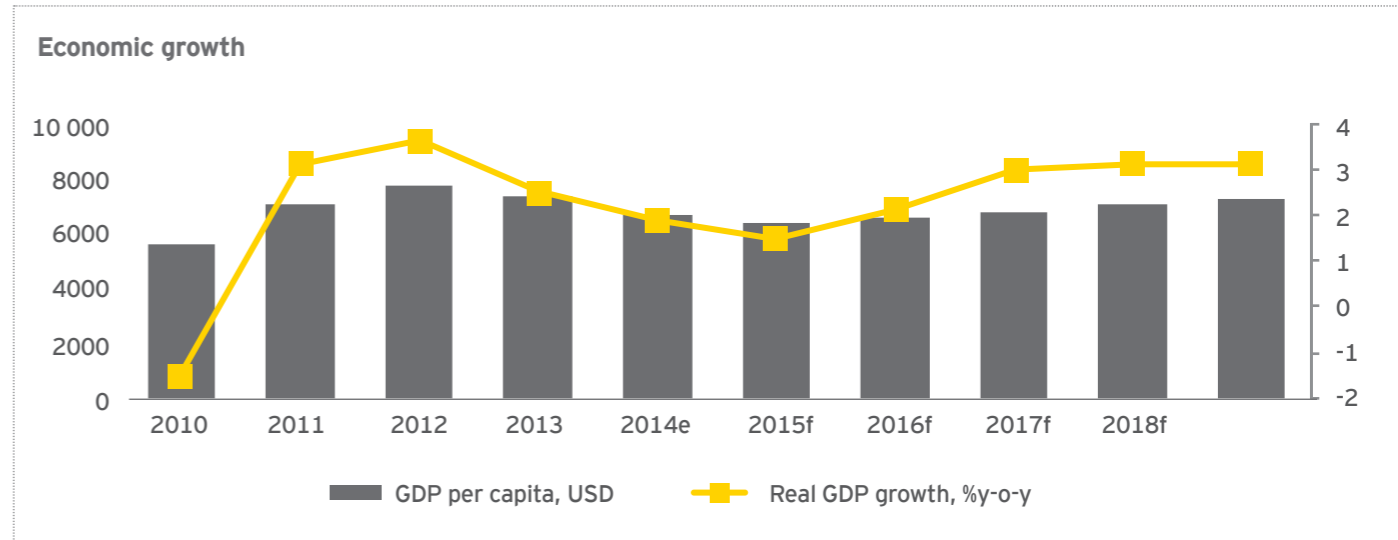


Figure 2: Economic growth indicators South Africa, South African Reserve Bank

## Public Procurement and Economic Growth

Public procurement is a core function of public financial management and service delivery. An efficient and effective public procurement system is the backbone of a well-functioning government<sup>7</sup>. Public procurement contributes to promoting a level playing field for the private sector and in delivering effective services to the public.

There has thus been a markable growth in the economic significance of public procurement in South Africa.

Figure 3 illustrates total public expenditure as well as the year-on-year growth from between 2009 and 2014, with forecasts for 2015 and 2016<sup>9</sup>.

In South Africa from 2009 to 2013 public procurement was estimated to contribute on average 30% of the country's GDP. In 1994, South Africa's public sector procurement was estimated to amount to approximately 14% of the nation's GDP<sup>8</sup>.

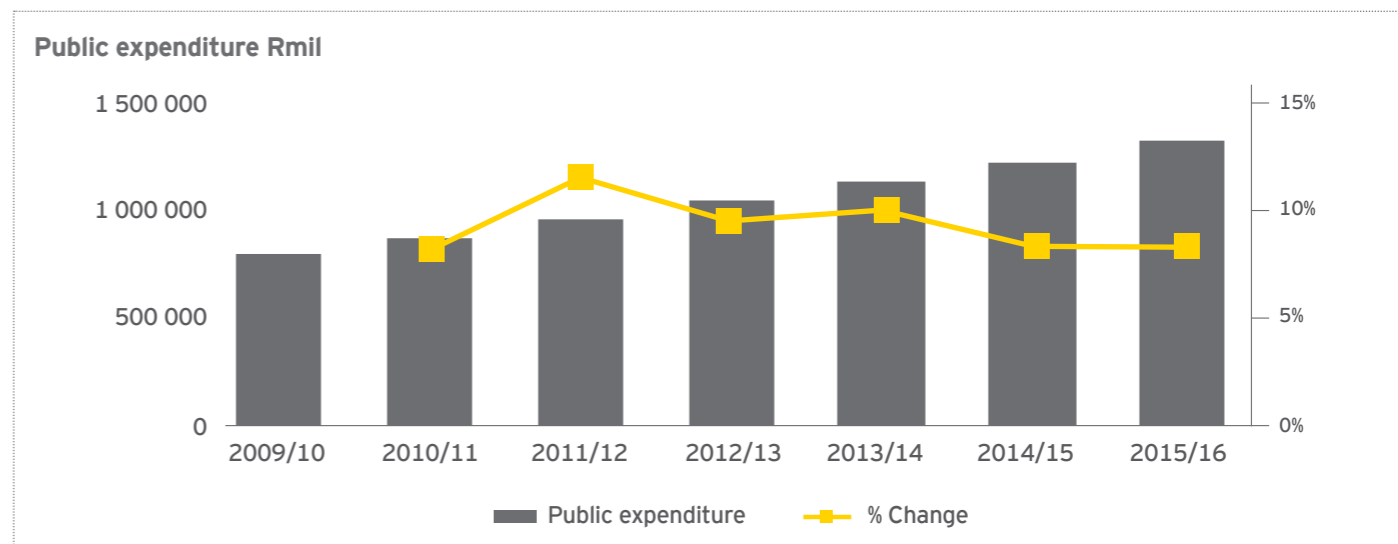


Figure 3: Public expenditure South Africa 2009-2016, National Treasury

<sup>1</sup> South Africa fast facts .2007. <http://www.southafrica.info> [Accessed 15 January 2015].

<sup>2</sup> The Constitution of the Republic of South Africa .1996. <www.treasury.gov.za> [Accessed 31 October 2014]

<sup>3</sup> Bayoumi, Tamim. 1990. Output, Employment and Financial Sanctions in South Africa. IMF Working Paper No. 90/113.

<sup>4</sup> The World Bank database. World development indicators <data.worldbank.org/data-catalog/world-development-indicators>[Accessed 02 January 2015].

<sup>5</sup> BMO database. South Africa Economic Risk Report. 2014. <https://bmo.businessmonitor.com> [Accessed 16 January 2015].

<sup>6</sup> The South African Reserve Bank database. Economic and Financial Data for South Africa. <http://www.resbank.co.za/webindicators/EconFinDataForSA.aspx> [Accessed 16 January 2015].

<sup>7</sup> OECD, Public Procurement for Sustainable and Inclusive Growth Enabling reform through evidence and peer reviews. OECD publishing.

<sup>8</sup> Mkhize, Z. 2004. Supply Chain Management Conference: Transforming Government Procurement System. Paper presented at the Supply Chain Management Conference, 22-23 Nov, Durban, Republic of South Africa.

<sup>9</sup> National Treasury National Budget estimations. 2014. <www.treasury.gov.za> [Accessed 17 January 2015]



The composition of this expenditure is described in figure 4. For the past five years the top three areas of public expenditure are: health and social protection, education and related functions, and defence, public order and safety<sup>10</sup>.

**Composition of public expenditure**

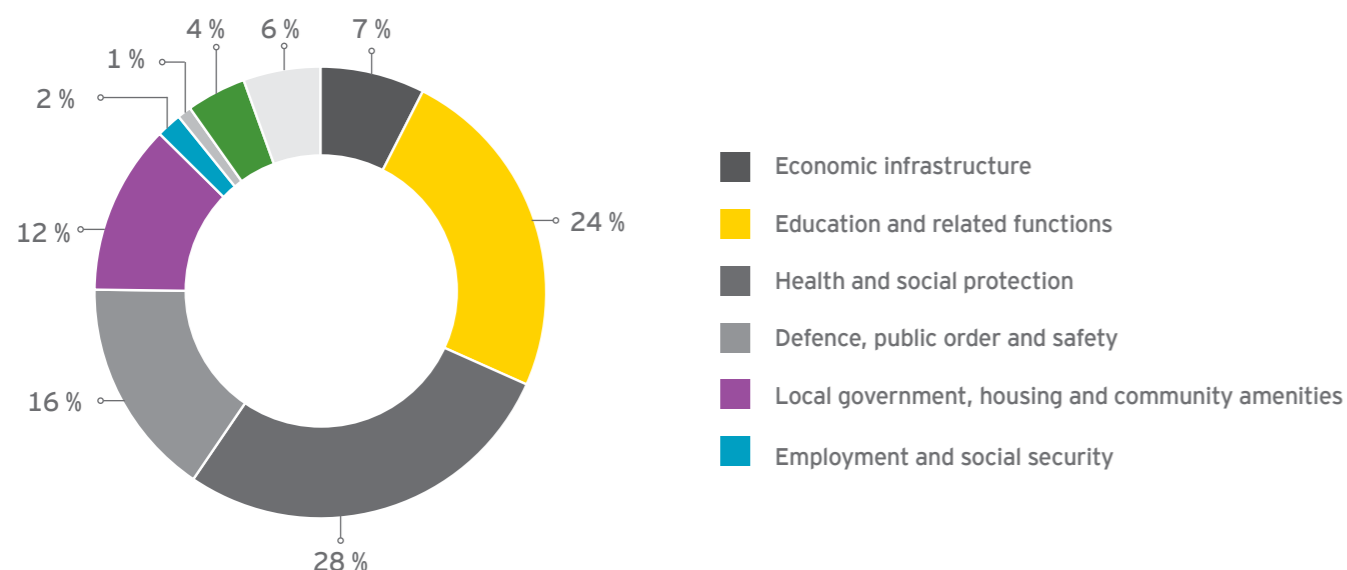


Figure 4: Average composition of public expenditure 2009-2014, National Treasury

**Doing Business in South Africa**

South Africa is rated 43 out of 89 in the world and 2 out of 47 on the continent in terms of ease of doing business according to the World Bank<sup>10</sup>. This indicates that South Africa overall is an attractive country for investors (see figure 5)<sup>11</sup>.

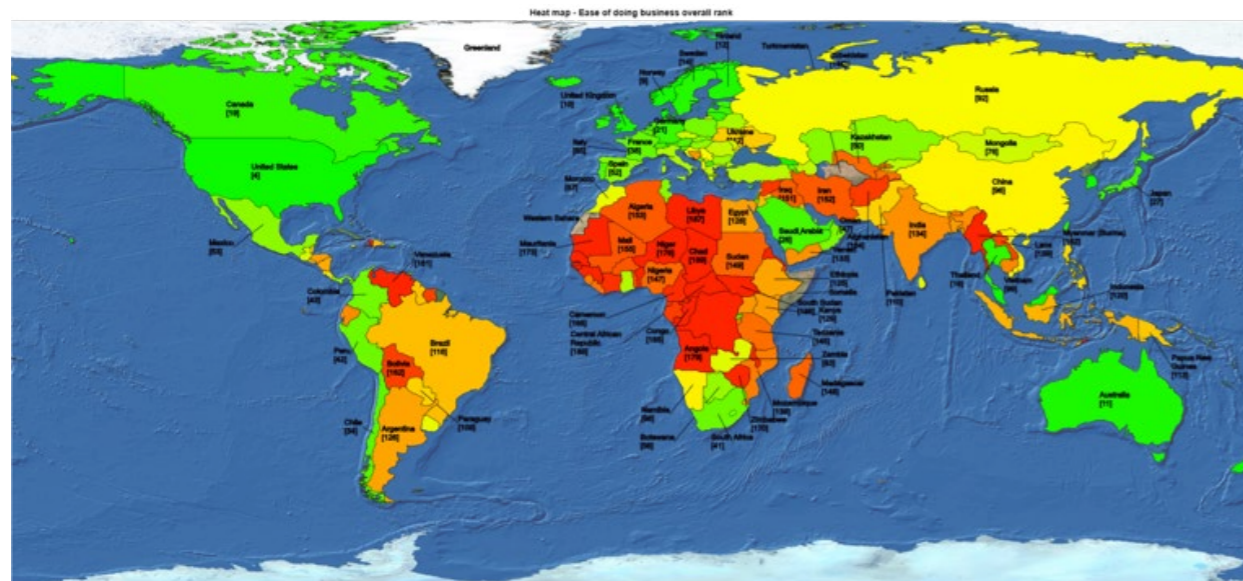


Figure 5: Business Environment Measures (indicators have been obtained from the EY Growing beyond borders tools)

South Africa is a low risk country by regional standards, although not the most attractive due to a limited and largely unskilled labour force, powerful unions, high crime rate and underdeveloped utilities infrastructure. However, in spite of these considerations, the limited security risks, well-regulated open markets and good quality transport network serve to reduce overall operational risks. South Africa is a regional leader for Operational Risk<sup>12</sup>.

Moreover, the overall legislative environment, good contract enforceability and the protection of intellectual property rights offset the minor risks stemming from the lengthy registration and business opening times. Equally, the tax environment is clearly defined and regulated, and more attractive than much of the rest of sub-Saharan Africa, with a standard 28% corporate tax, a sliding rate income tax (up to 40%), and 14% VAT<sup>13</sup>.

**Public Procurement System in South Africa**

There have been a number of studies that explore the field of procurement within the South African public sector. The World Bank completed a joint Country Procurement Assessment Review (CPAR) with the National Treasury to assess procurement practices throughout the public sector<sup>14</sup>. Certain deficiencies relating to governance, interpretation and implementation of the Preferential Procurement Policy Framework Act (PPPFA) and its associated regulations were highlighted in this study.

I. Ambe, 2004 conducted a study titled “Supply Chain Management challenges in South African Public Sectors”<sup>15</sup>. The objective of this study was to articulate the challenges that restrain the implementation of supply chain management practices in South Africa’s public sector. The research utilised a cross-case analysis of case studies conducted for the certificate in the Advanced Programme in Sourcing and Supply Chain Management at the University of South Africa (UNISA).

The findings of the research revealed that:

- ▶ SCM has been fully employed across all spheres of government and customised policies developed as required by the SCM policy.
- ▶ There are challenges that restrain full execution to achieve its potential. These challenges stem from:
  - ▶ non-compliance with SCM policies and regulations
  - ▶ fraud and corruption
  - ▶ lack of proper capacity, knowledge and skills.

The research concluded by suggesting a framework that could improve the public sector supply chain and ensure efficient and effective SCM implementation.

**The Public Procurement Framework**

A public procurement framework that sets out leading practice guidelines was used in assessing the public procurement system in South Africa. This framework defined six of the main policy areas for procurement in the public sector. These areas included:

- ▶ Regulatory Framework
- ▶ Procurement Mechanisms
- ▶ People and Organisation
- ▶ Data and Technology
- ▶ Performance Management and
- ▶ Socio-economic.

Table 1 provides a description of each of the policy areas. Each of these areas was unpacked into an assessment that addressed specific standards of a public procurement system (Appendix A). The standards were selected from two sources:

- ▶ The OECD Development Assistance Committee (OECD DAC) Methodology for Assessing Procurement Systems<sup>16</sup> and
- ▶ International Handbook of Public Procurement<sup>17</sup>.

South Africa’s public procurement system was mapped and assessed against the standards set out in the framework.

<sup>10</sup> The World Bank. 2013. Doing Business 2014: Understanding Regulations for Small and Medium Size Enterprises.  
<sup>11</sup> BMO database. South Africa Operational Risk Report. 2014. <https://bmo.businessmonitor.com> [Accessed 16 January 2015].  
<sup>12</sup> BMO database. South Africa Operational Risk Report. 2014. <https://bmo.businessmonitor.com> [Accessed 16 January 2015].  
<sup>13</sup> BMO database. South Africa Risk Report. 2014. <https://bmo.businessmonitor.com> [Accessed 16 January 2015].

<sup>14</sup> The World Bank. 2003. South Africa Country Procurement Assessment Report: Refining the Public Procurement System.  
<sup>15</sup> I.Ambe, A. Johanna, & W.Badenhorst. 2012. Supply Chain Management Challenges in South African Public Sector. African Journal of Business Management, Vol.6(44), pp11003-11014.  
<sup>16</sup> OECD. 2009. Methodology for Assessing Procurement Systems. OECD publishing  
<sup>17</sup> B.Raton. 2009. International Handbook of Public Procurement. FL, CRC Press

**Table 1: Description of each policy area of the public procurement framework<sup>18</sup>**

Policy Area	Description
Regulatory Framework	The purpose of the review is to determine: a) the structure of the regulatory framework governing public procurement; b) the extent of its coverage; and c) public access to laws and regulations. Lack of or inadequate legislation on public procurement may lead to a system that is vulnerable to corruption, hindering market competition. This has a direct impact on public expenditures and therefore public resources.
Procurement Mechanisms	The purpose of assessing procurement mechanisms is to establish whether the legal framework includes: a) a clear definition of the permissible procurement methods; and b) the circumstances under which each method is appropriate. The lack of adequate definitions of procurement mechanisms may leave the system exposed to: <ul style="list-style-type: none"> <li>▶ Inconsistent access to information in the invitation to tender</li> <li>▶ Lack of competition or, collusive tendering resulting in inadequate prices</li> <li>▶ Conflict of interest situations that lead to bias and corruption in the evaluation and in the approval process</li> </ul>
People and Organisation	The public procurement system must have adequate human resources to support all the elements of the system. The lack of adequate and competent procurement staff will lead to the poor execution of regulations. The purpose of this review is to establish the existence of permanent and relevant training programmes for new and existing staff in government procurement. These programmes are essential to maintain the supply of qualified procurement staff to public and private sectors.
Data and Technology	An effective information management system is essential in ensuring that information is centralised and that information recorded is reliable and easily accessible.
Performance Management	Monitoring and evaluation of the public procurement system is essential in order to evaluate the effectiveness of the system in meeting the objectives of the organisation and higher government objectives. The objective is to assess the extent to which the country or agency has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans. This requires among other things the availability of information systems, a capacity for analysis, feedback mechanisms and planning capacity for implementation of improvements.
Socio-Economic	Public procurement is an economic activity therefore socio-economic objectives must be accounted for. However the application of these socio-economic objectives must be governed by law in order to not compromise the principle of fair competition.

A public procurement framework that sets out leading practice guidelines was used in assessing the public procurement system in South Africa. This framework defined six of the main policy areas for procurement in the public sector. These areas included:

## Public Procurement Framework Summary Assessment

### Summary of assessment results

The findings reveal that South Africa's procurement system is governed by a strong regulatory framework. However, the mechanism within which these regulations are executed has faced various challenges that prompted, the National Treasury to consider possible reforms that will seek to address these gaps.

A detailed assessment of the results in support of the findings has been attached to Appendix A which discusses in detail the six areas probed within the procurement framework.

<sup>18</sup> OECD. 2008. Enhancing Integrity in Public Procurement: A checklist. OECD publishing

<sup>19</sup> National Treasury. Legislation - Public Finance Management Act - PFMA - Supply Chain Management. <www.treasury.gov.za> [Accessed 20 October 2014]

## The Regulatory Framework

South Africa's public procurement is governed by the following legal framework<sup>19</sup>:

- ▶ Section 217 of the Constitution of the Republic of South Africa Act No. 108 of 1996 (as amended)
- ▶ Public Finance Management Act (PFMA) (No.1 of 1999 as amended by Act 29 of 1999)
- ▶ Local Government, Municipal Finance Management Act (MFMA) act 56 of 2003
- ▶ Local Government, Municipal Systems Act No. 32 of 2000
- ▶ Preferential Procurement Policy Framework Act (PPPPFA) 5 of 2000
- ▶ General procurement guidelines
- ▶ Supply Chain Management: A guide for Accounting Officers and Accounting Authorities.

Table 2 provides a summary of how each primary act supports/ regulates public procurement. The PFMA in essence echoes the requirements of the Constitution. It is a framework act which does take the constitutional principles of public procurement further. It is left to the regulations to give effect to these principles.

A significant number of important issues, for example the compiling and evaluation of bidding documentation, are discussed in more detail in the practice notes and guidelines issued by the National Treasury.

**Table 2: Primary Acts that regulate public procurement<sup>20</sup>**

Act	What it does in respect of public procurement
Section 217 of the Constitution of the Republic of South Africa Act No. 108 of 1996	Stipulates that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
Public Finance Management Act 1 of 1999	Establishes a regulatory framework for SCM, which includes procurement in national and provincial departments and state-owned enterprises.
Local Government: Municipal Finance Management Act 56 of 2003	Establishes a regulatory framework for SCM which includes procurement in municipalities and municipal entities
Preferential Procurement Policy Framework Act 5 of 2000	Establishes the manner in which preferential procurement policies are to be implemented.
Broad-based Black Economic Empowerment Act 56 of 2003	To promote the achievement of Constitutional right to equity, increase broad-based participation of black people in the economy of South Africa, and to promote economic unity of the nation and equal opportunity and access to government services.
Supply Chain Management: A guide for Accounting Officers and Accounting Authorities	Sets out the philosophy behind the adoption of an integrated Supply Chain Management (SCM) function across government and will assist stakeholders to understand the responsibilities this implies.

The legal framework is centred on the constitutional principles of transparency, fairness, equality, cost effectiveness and competitiveness. The legislation gives effect to a decentralised public procurement system. A large degree of policy implementation is left to the relevant procuring entities to devise a system within the framework given by the Constitution, the PFMA, the regulations and the practice notes.

There is an independent regulatory authority within National Treasury responsible for the co-ordination and management of the procurement regulatory framework which provides oversight and advisory support to procuring entities across government (the Office of the Chief Procurement Officer - OCPO). The responsibility with respect to the supply chain function is delegated to the accounting officer of the procuring entity. Challenges/concerns raised in view of the legislative framework stem from the inadequacies in control environments relating to institutions in the various spheres of government. These ultimately affect their performance in terms of the execution of their mandates and compliance with the regulatory framework.

## Procurement Mechanism

Without sound business practices and processes, it is impossible to operate in a way that is internally efficient and that also delivers

good value in procurement cost. Where practices are particularly weak there is also, potentially, an impact on accountability and governance needs<sup>21</sup>.

The legal framework establishes all allowable procurement methods unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable.

The strategic alignment and relationship between public procurement and the organisation's objectives is established along with rules of participation and procedures. Although procurement mechanisms meet all criteria set out in the framework there is a need to further elaborate on how unsolicited bids or exceptions are qualified. These are inadequately provided for in the supply chain guidelines for accounting officers/ authorities released by the National Treasury.

The management of process documentation in terms of the establishment of timelines of when process manuals and guidelines need to be updated or revised are not provided for in the procedural guidelines or in the regulations.

<sup>20</sup> I.Ambe, A. Johanna, & W.Badenhorst. 2012. Supply Chain Management Challenges in South African Public Sector. African Journal of Business Management, Vol.6(44), pp11003-11014

<sup>21</sup> The Scottish Government. 2006. Procurement Practices and Business Processes. <www.scotland.gov.uk/publications/2006>[Accessed 17 January 2015]



## People and Organization

In any organisation, getting the balance right between staffing levels and outcomes for the organisation is critical.

There are key challenges identified from the procurement assessment, namely:

- ▶ The regulatory framework does not make provision for the regulatory body or procuring agency to define skills and knowledge profiles for specified procurement jobs
- ▶ The regulatory framework does not specify where in the organisational structure the procurement office must be strategically placed.

Each procuring entity is responsible for identifying their own organisational procurement structure.

## Data and Technology

The importance of internal management of information is an accepted principle within organisations in both the private and public sectors. It has many purposes and its value is summarised in the following areas<sup>22</sup>:

- ▶ Informing management of current results
- ▶ Informing management of current performance versus targets or plans
- ▶ Providing information for better decision making and
- ▶ Providing information to support pursuit of improved performance
- ▶ Improving efficiency and effectiveness of procurement procedures.

The legal framework in South Africa provides for the obligation to keep a record of the proceedings however information stored on public procurement systems is decentralised and must be kept by the procuring entities. Moreover, the use of common IT systems is not regulated or implemented. Each procuring entity may use different IT systems providing they comply with National Treasury regulations.

The regulatory framework does not establish timeframes or requirements for the reliability of data stored on public procurement systems. Currently no e-procurement mechanisms are in place. However, National Treasury has recently released a brief to public sector entities on changes to be effected to the co-ordination and management of supply chain. This includes the use of e-procurement systems to promote efficiency within the supply chain across National Government and to reduce the costs and administrative burden of the procurement process.

## Performance Management

The monitoring and evaluation of the public procurement system is essential in order to evaluate the effectiveness of the system in meeting the objectives of the organisation and broader government objectives<sup>23</sup>.

The regulations in South Africa cover the principles of contract management. However, the guidelines on how this must be established are inadequate. Nor is there provision for the implementation of an effective communication and feedback system with suppliers.

Publication of procurement performance targets in the annual performance plan and their benchmarking thereof is not available or regulated at this point.

## Socio-economic

Public procurement is an economic activity therefore socio-economic objectives must be accounted for which includes consideration of quality standards, green procurement, health and safety and socio-economic instruments. However the application of these socio-economic objectives must be governed by law in order to not compromise the principle of fair competition<sup>24</sup>.

The PPPFA is the key instrument used to achieve socio-economic objectives through public procurement. A preferential scoring system applies to all tenders to promote transformation and the economic empowerment of previously disadvantaged persons.

Quality assurance techniques established in the regulations are inadequate (very minimal) and health and safety standards are not adequately provided for in the regulations. The regulations do not directly specify the quality assurance techniques and processes that must be implemented in the supply chain system. However, the principle of a cost-effective supply chain system indirectly addresses the need for quality assurance techniques. Bidders need to comply with any health and safety standards requirements set out by the procurement entities in their tender documents.

Green procurement is not mentioned in the regulations as a means of achieving the socio-economic objectives of the country. The PPPFA does not make provision for preferential treatment on the grounds of preserving the environment i.e. green procurement. The PPPFA emphasises preferential treatment on the grounds of previous disadvantage. Furthermore, no specific provisions are made for:

- ▶ The protection of public morals, order, or safety; human, animal or plant life or health; or provisions that might prejudice fair competition between suppliers
- ▶ That may prejudice the legitimate commercial interests of particular persons; and; protection of intellectual property, or
- ▶ Provisions that may otherwise be contrary to the public interest.

## Areas of Opportunity

South Africa has a regulatory framework in place for public procurement, which is centred on the constitutional principles of transparency, fairness, equality, cost effectiveness and competitiveness. Procurement methods and pre or post tendering processes are documented comprehensively. However, the legislation gives effect to a decentralised public procurement system. This allows too much flexibility for the different entities to determine the detail of their procurement mechanism. This may result in varied procurement mechanisms. It may not always be practical to obtain information on these different methods as no central register exists where such information is kept. This could compromise transparency, effectiveness and competition in the procurement process.

Based on discussions with the National Treasury certain considerations with respect to public procurement were mentioned. The harmonization of procurement legislation with oversight by a central body applicable to all government structures. The introduction of non-judicial mechanisms to address tender disputes and the possibility of civilian oversight during tender processes. The capacity and capability building issues related to resources within public sector would require proper accreditation of professionals within public sector.

The National Treasury issued a brief in February 2015 (Public Sector Supply Chain Management Review) to all public sector entities detailing best practice changes/reform that needs to take place in the near future within the public sector supply chain.

These reforms present opportunities of collaboration and the sharing of UK/OECD best practice. Areas of focus are as follows:

- ▶ Improved demand planning
- ▶ Spend consolidation by using transversal sourcing and contracting opportunities
- ▶ Effective contract and supplier relationship management
- ▶ Creation of a centralised supplier database
- ▶ Capacity building of procurement professionals in public sector
- ▶ Integrated information system platforms for improved performance management and reporting which if implemented successfully will address many of the shortcomings currently experienced within the public procurement system.

<sup>22</sup> The Scottish Government. 2006. Procurement Practices and Business Processes. <[www.scotland.gov.uk/publications/2006](http://www.scotland.gov.uk/publications/2006)>[Accessed 17 January 2015]

<sup>23</sup> OECD. 2008. Enhancing Integrity in Public Procurement: A checklist. OECD publishing

<sup>24</sup> Raton. 2009. International Handbook of Public Procurement. FL, CRC Press



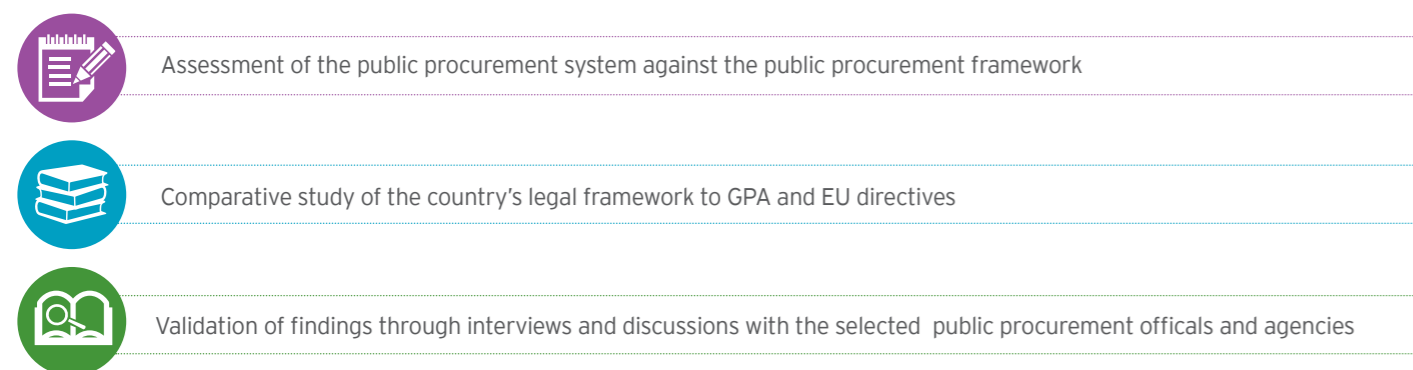
# Appendix A: Detailed Assessment Results

## Approach

The approach to the procurement study was a standard data gathering exercise consisting of meetings and analysing documents. The purpose was to understand and compare how the country's public procurement system meets the requirements set out by internationally recognised instruments such as:

- ▶ The WTO (World Trade Organisation) procurement guidelines in the form of the GPA (Agreement on Government Procurement)
- ▶ The OECD (Organisation for Economic Co-operation and Development) procurement guidelines
- ▶ EU directives.

The study was conducted using a three step approach described below.



In order to successfully perform the assessment (step one above) it was necessary to determine the basic requirements/standards of a public procurement system. The next section describes in detail the approach taken in determining these standards.

During this exercise we gathered data and inputs on the public procurement procedures in Southern African countries primarily in respect of the following policy areas:

- ▶ The regulatory framework
- ▶ The procurement processes, policies, and procedures
- ▶ The structure of the procurement organisation
- ▶ Technology and data
- ▶ Performance management
- ▶ Socio-economic procurement goals and considerations.



## The Regulatory Framework

Primary Legislation
<b>Questions</b>
▶ What legal framework defines public procurement in Botswana?
<b>Assessment Criteria</b>
<ul style="list-style-type: none"> <li>a. There are regulations that supplement and detail the provisions of procurement law that meets the following requirements:                             <ul style="list-style-type: none"> <li>▶ They are clear, comprehensive and consolidated as a set of regulations available in a single and accessible place</li> <li>▶ They are updated regularly</li> </ul> </li> </ul> The responsibility for maintenance is defined
<b>Assessment Answers</b>
The Procurement process involves the following Legal Framework <sup>25</sup> : <ul style="list-style-type: none"> <li>a. The legal framework is organised as follows: The Constitution of South Africa, the Public Finance Management Act (No.1 of 1999 as amended by Act 29 of 1999), the Local Government, Municipal Finance Management Act (MFMA), the Local Government, Municipal Systems Act, the Preferential Procurement Policy Framework Act (Procurement Act), General procurement guidelines (Supply Chain Management: A guide for Accounting Officers and Accounting Authorities).</li> </ul> Chapter 9 of the PFMA outlines all rules relating to the publication and issuing of regulations and instructions applicable to departments which state that draft regulations must be published for public comment in the Government Gazette before their enactment <sup>26</sup> . These regulations are available to the public at no cost. <p>Timelines for publication and updating of policies are not established in the Treasury Regulations, notes, instructions etc.</p>

Key Principles
<b>Questions</b>
▶ What key principles and objectives govern the public procurement policy?
<b>Assessment Criteria</b>
<ul style="list-style-type: none"> <li>a. The procurement rules reflect and reinforce the value for money (VFM) focus of the government's procurement policy</li> <li>b. The procurement rules cover the key principles of a fair, equitable, transparent, competitive and cost effective system with the provision of the use of procurement as a means to address discriminatory policies and procedures</li> </ul>
<b>Assessment Answers</b>
<ul style="list-style-type: none"> <li>a. Section 217 of the Constitution of South Africa outlines five key principles of a fair, equitable, transparent, competitive and cost effective system<sup>27</sup>. These key principles are both repeated in the PFMA<sup>28</sup>, MFMA<sup>29</sup> and the Treasury regulations<sup>30</sup>. The procurement system must be consistent with the PPPF Act and the BBBEE Act (this is a secondary objective established in the Constitution)<sup>31</sup>.</li> <li>b. In addition to the above, value for money is listed as one of the five pillars of procurement in the procurement guideline<sup>32</sup>.</li> </ul>

<sup>25</sup> National Treasury. Legislation - Public Finance Management Act- PFMA -Supply Chain Management. <www.treasury.gov>[Accessed 20 October 2015].

<sup>26</sup> Public Finance Management Act (No. 1 of 1990 as amended by Act 29 of 1999). Chapter 9, 78. pp 63

<sup>27</sup> The Constitution of the Republic of South Africa Second Amendment Act No. 21 of 2002. Section 217, pp 71

<sup>28</sup> Public Finance Management Act (No. 1 of 1990 as amended by Act 29 of 1999). Chapter 9, 76. pp 62

<sup>29</sup> The Local Government, Municipal Finance Management Act No 56 of 2003. Chapter ii part 1, 112

<sup>30</sup> Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 2005. Section 16A3.2

<sup>31</sup> The Constitution of the Republic of South Africa Second Amendment Act No. 21 of 2002. Section 217, pp 71

<sup>32</sup> National Treasury. General procurement guidelines. <www.treasury.gov.za>[Accessed 20 October 2014], pp 3

Ownership
<b>Questions</b>
<ul style="list-style-type: none"> <li>▶ Who is the independent regulatory authority responsible for the coordination and management of public procurement?</li> <li>▶ What are the responsibilities of the regulatory authority?</li> <li>▶ What is the judicial power of the regulatory authority?</li> <li>▶ Where in the evaluation process is the regulatory authority involved?</li> </ul>
Assessment Criteria
<p>a. There is a normative or regulatory body or the functions are clearly assigned to various units within the government which is specified in the legal and regulatory framework in an unambiguous way without gaps or overlaps</p> <p>b. The body has a defined set of responsibilities that include but are not limited to the following:</p> <ul style="list-style-type: none"> <li>▶ Providing advice to contracting entities</li> <li>▶ Drafting amendments to the legislative and regulatory framework and implementing regulations</li> <li>▶ Providing procurement information</li> <li>▶ Monitoring public procurement</li> <li>▶ Managing statistical databases</li> <li>▶ Reporting on procurement to other parts of the government</li> <li>▶ Developing and supporting implementation of initiatives for improvements of the public procurement system and</li> <li>▶ Providing implementation tools and documents to support training and capacity development of implementing staff</li> </ul> <p>c. The regulatory body is at an adequate level in government and financing is secured by the legal/regulatory framework</p> <p>d. The body is not responsible for direct procurement operations and is free from other possible conflicts (e.g. by being part of evaluation committees, etc.)</p>
Assessment Answers
<p>a. Section 216 of the Constitution provides that national legislation must establish a National Treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of the government by introducing (a) generally recognised accounting practices (b) uniform expenditure classification and (c) uniform treasury norms and standards.<sup>33</sup> The PFMA gives effect to the above constitutional obligations. Chapter 2 and 6 of the PFMA lists the functions and powers of the National Treasury<sup>34</sup>.</p> <p>b. The National Treasury must make regulations or issue instructions applicable to departments, concerning the treatment of any specific expenditure, financial management and internal control<sup>35</sup>. The Treasury Regulations further provide that the National Treasury may issue instructions to accounting officers and accounting authorities. These instructions are referred to as practice notes. The practice notes issued relate to General Conditions of Contract (GCC) and Standard Bidding Documents (SBD), threshold values for petty cash expenditures, written and verbal quotations and competitive tender procedures, the compilation of lists of prospective suppliers, and a code of conduct for supply chain management practitioners<sup>36</sup>.</p> <p>c. The National Treasury consists of the Minister, who is the head of Treasury and the national department or departments responsible for financial and fiscal matters<sup>37</sup>.</p> <p>d. The accounting authority/officer of an institution is responsible for the execution of the regulations<sup>38</sup>.</p> <p>The regulations do not directly specify the exclusion of any direct involvement of the National Treasury in the procurement process.</p>

<sup>33</sup> The Constitution of the Republic of South Africa Second Amendment Act No. 21 of 2002. Section 216 pp 70

<sup>34</sup> Public Finance Management Act (No. 1 of 1990 as amended by Act 29 of 1999). Chapter 2, 6, pp 13

<sup>35</sup> Public Finance Management Act (No. 1 of 1990 as amended by Act 29 of 1999). Section 9, 76 pp 60

<sup>36</sup> The National Treasury. 2005. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 16A

<sup>37</sup> Public Finance Management Act (No. 1 of 1990 as amended by Act 29 of 1999). Chapter 2, 5 pp 13

<sup>38</sup> The National Treasury. 2005. Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 16A4.1

Coverage of the public procurement rules
<b>Questions</b>
<ul style="list-style-type: none"> <li>▶ What type of procurement contracts are subject to regulation (must cover goods, services, and works (including consulting services)?</li> <li>▶ What are the thresholds? Are these consistent with leading practice practices?</li> </ul>
Assessment Criteria
<p>a. Procurement law covers goods, works and services (including consulting services)</p> <p>b. The associated thresholds for each type of procurement is covered</p>
Assessment Answers
<p>a. The Treasury Regulations cover the acquisition of goods and services; and the disposal and letting of state assets, including the disposal of goods no longer required.<sup>39</sup> Provision is made for procurement through either a tender process or by way of quotations, depending on the value of the goods or services<sup>40</sup>.</p> <p>b. The National Treasury in terms of Treasury Regulation 16A6.1 prescribes that accounting officers/authorities should apply to the threshold values published by the Treasury.</p>

<sup>39</sup> The National Treasury. 2005. Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 16A3.1

<sup>40</sup> The National Treasury. 2005. Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 16A6.1



## Procurement Mechanisms

### Pre-tendering

#### Questions

- ▶ Are the processes and procedures for different procurement contracts clarified and established in the legal framework?
- ▶ How do you define which product to procure/conduct a needs assessment?
- ▶ How does the procurement approach vary per service/product?
- ▶ How many levels of approval are required to make the decision to procure?
- ▶ What are the validation process/requirements for approval?
- ▶ What is the planning and budgeting process for procurement?

#### Assessment Criteria

- a. The legal framework establishes all allowable procurement methods unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable
- b. The law requires certification of availability of funds before solicitation of tenders takes place
- c. The planning process has three stages:
  - ▶ The preparation of multiyear plans for government agencies, from which annual operating plans are derived
  - ▶ Annual procurement plans are drawn up along with an estimation of associated expenditures
  - ▶ The formulation of an annual budget

#### Assessment Answers

- a. In the Treasury regulations provision is made for procurement either by way of quotations or through a bidding process.<sup>41</sup> The regulations allow for other methods of competitive bidding than those specified. The accounting officer/authority must approve and record the reasons for deviating from inviting competitive bids.<sup>42</sup> The MFMA provides for tenders, quotations, auctions and other types of bidding.<sup>43</sup> Such flexibility may be misused. Procedural clarity is provided for in the SCM guidelines for each procurement type.<sup>44</sup> Its hierarchical manner is unclear and qualifying criteria for exceptions are not directly defined.
- b. The Treasury regulations established the requirement of a supply chain system that makes provision for demand management procedures.<sup>45</sup> This is further elaborated in the Supply Chain guidelines where the institution is to ensure that acquisition requirements are linked to the budget before the solicitation of tenders take place.<sup>46</sup>
- c. All requirements of public procurement for goods and services must be part of the strategic objectives of the institution. It is the responsibility of the accounting officers/authorities to ensure that requirements are linked to the budget and the need forms part of the strategic plan of the institution. The supply chain guidelines issued by the National Treasury views procurement as a strategic asset in support of the border government initiatives<sup>47</sup>.

### Tendering

#### Questions

- ▶ How are requirements specified or designed to ensure that all suppliers or contractors established in country are treated on equal terms, to avoid discrimination on the grounds of origin?
- ▶ Does the legal framework specify the rules of participation and selection policies?
- ▶ What precautionary measures are applied to prevent conflict of interest, collusion and corruption and to promote integrity?
- ▶ Are the timescales clearly defined in the legal framework? Are the times defined adequately for each procurement method? What are the exceptions?
- ▶ What evaluation methodologies are in place? Are they consistently applied and records kept?
- ▶ What type of public procurement is not subject to the standard procedures outlined in the legislation or other legal text?

#### Assessment Criteria

The legal framework meets the following conditions:

- a. The legal framework covers the rules of participation
- 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. Such timeframes are extended when international competition is sought
- c. Sufficient information is included to enable potential bidders to determine their ability and interest in bidding
- d. Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations
- e. Requires the use of neutral specifications citing international standards when possible
- f. Requires recognition of standards which are equivalent when neutral specifications are not available
- g. The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents
- h. Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible
- i. During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process
- j. Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission
- k. Records of proceedings for bid openings are retained and available for review
- l. Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited. The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders

<sup>41</sup> The National Treasury. 2005. Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 16A6.1

<sup>42</sup> The National Treasury. 2005. Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 16A6.4

<sup>43</sup> Local Government: Municipal Finance Management Act 56 of 2003. Chapter ii part 1, 112

<sup>44</sup> The National Treasury. 2005. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. <www.treasury.gov.za> [Accessed 20 October 2014].

<sup>45</sup> The National Treasury. 2005. Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 16A3.2

<sup>46</sup> The National Treasury. 2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. pp 9 and pp 26

<sup>47</sup> The National Treasury. 2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. pp 26 and pp 30



## Assessment Answers

- a. A distinction is made between domestic and international procurement. Procedural differences are established in the supply chain management guide.<sup>48</sup>
- b. The regulations state that bids should be advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer/authority may determine. The institution should maintain a list of responses to the advertisement. The related pre-qualification or bidding document, as the case may be, should be available on the publication date of the advertisement.<sup>49</sup>

No direct reference is made to advertising timelines of international bids.

- c. The tender documentation and the general conditions of the contract must be in accordance with the instructions of the National Treasury, or the prescripts of the Construction development board.<sup>50</sup> Evaluation and adjudication criteria, including the criteria prescribed in terms of the PPPFA and the BBEEA must be included in the tender documentation.<sup>51</sup> Section 4 of the supply chain guidelines sets out the leading practice criteria for compiling tender documentation which are in line with the PFMA regulations.<sup>52</sup>
- d. Prior to awarding any contract, the accounting officer/authority must ensure that, in terms of the National Treasury's database, no recommended tenders or any of its directors is listed as a company or person prohibited from doing business with the public sector. Any tender from a supplier who fails to provide written proof from the South African Revenue Service that that supplier either has outstanding tax obligations or has made arrangements to meet outstanding tax obligations must be rejected. If the recommended tender has committed a corrupt or fraudulent act in competing for the particular contract this tender must be rejected.<sup>53</sup> A contract awarded to a supplier which committed any corrupt or fraudulent act during the tender process or execution of that contract must be cancelled.<sup>54</sup> If any official or other player committed any corrupt or fraudulent act during the tender process or the execution of the contract benefited the supplier, the contract must be cancelled.<sup>55</sup> Chapter 10 of the PFMA deals with the regulations on financial misconduct procedures.<sup>56</sup> The accounting officer/authority must take all reasonable steps to ensure that abuse of the SCM system is prevented. This includes the investigation of any allegations against an official or other roleplayer of corruption, improper conduct or failure to comply with the SCM system. Necessary steps must be taken and the National Treasury informed where justified. All conduct that may constitute an offence must be reported to the South African Police Service.<sup>57</sup>
- e. Standards and technical specifications quoted in bidding documents should promote the broadest possible competition, while assuring that critical elements of performance or other requirements for the goods, services and/or works being procured are achieved. It is recommended that as far as possible, the institution should specify accepted standards such as those issued by Standards South Africa (the division of the South African Bureau of Standards responsible for standards), the International Standards Organization or an authority recognised by the South African National Accreditation System (SANAS) with which the equipment, materials or workmanship should comply.<sup>58</sup>
- f. Institutions should customise and use the appropriate Standard Bidding Documents (SBDs) issued by the National Treasury with minimum changes acceptable to the accounting officer/authority, as necessary to address contract- and project-specific issues. Where no relevant standard bidding documents have been issued, the institution should use other internationally recognised standard contract forms acceptable to the accounting officer/authority, in concurrence with the relevant Treasury.<sup>59</sup>

## Assessment Answers

- g. Accounting officers/authorities should ensure that a formal set of delegations is issued to bid evaluation/adjudication committees, which should be constituted of at least three members, of whom at least one should be a SCM practitioner. When it is deemed necessary, independent experts may also be co-opted to a bid evaluation/adjudication committee in an advisory capacity. The method of evaluation, including the allocation of points, must be clearly specified in the bidding documents. Amending the evaluation criteria after closure of the bids should not be allowed, as this would jeopardise the fairness of the system.<sup>60</sup>
- h. The evaluation of the proposals should be carried out in two stages: first the functionality (quality) and then the price.<sup>61</sup>
- i. After public opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning awards should not be disclosed to bidders or other persons not officially concerned with the process, until the successful bidder is notified of the award.<sup>62</sup>
- j. The public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission. Bids should be opened in public, that is, bidders or their representatives should be allowed to be present. If requested by any bidder, the name of the bidders and if practical the total amount of each bid and of any alternative bids, should be read aloud. The names of the bidders and their individual total prices should be recorded when bids are opened.<sup>63</sup>
- k. Any interested party wishing to access procurement records can do so in terms of PAIA (Promotion of Access to Information Act 2 of 2000). The primary purpose of this Act is give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith. The Act aims to foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information; and actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights.<sup>63</sup>
- l. Bidders should be permitted to submit bids by mail or by hand. The deadline and place for receipt of bids should be specified in the invitation to bid. To standardise the closing time of bids, it is recommended that bids should close at 11:00<sup>64</sup>. The time for the bid opening should be the same as for the deadline for receipt of bids or promptly thereafter and should be announced, together with the place for bid opening, in the invitation to bid. The institution should open all bids at the stipulated time and place. Bids should be opened in public, that is, bidders or their representatives should be allowed to be present. If requested by any bidder, the name of the bidders and if practical the total amount of each bid and of any alternative bids, should be read aloud. The names of the bidders and their individual total prices should be recorded when bids are opened.<sup>65</sup>

<sup>48</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 4.5, pp 29 and Section 4.7.3 pp 31

<sup>49</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 16A6.3

<sup>50</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 16A6.3(a)

<sup>51</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 16A6.3(b)

<sup>52</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 4 pp 28

<sup>53</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A9.1(d)

<sup>54</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A9.1(f(i))

<sup>55</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A9.1(f(ii))

<sup>56</sup> Public Finance Management Act (No. 1 of 1990 as amended by Act 29 of 1999). Chapter 10

<sup>57</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A9.1

<sup>58</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 3.4.1 pp27

<sup>59</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 4.8 pp44

<sup>60</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 1.6.1 pp13

<sup>61</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 5.9.5.5 pp66

<sup>62</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 4.10 pp44

<sup>63</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 4.10 pp44

<sup>64</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 4.8 pp37

<sup>65</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 4.10 pp44

## Post-tendering

## Questions

- ▶ What are the rules and restrictions to post tender negotiations?
- ▶ Who is permitted to sign contracts? Who is reviewing and following-up contracts?
- ▶ How do you manage contract risks? Is the legal department consulted when contracts are developed?
- ▶ Is there guideline regarding use of contracts, Incoterms, or payment conditions?

## Assessment Criteria

## The legal framework provides for the following:

- a. The right to review for participants in a procurement process
- b. Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review
- c. Establishes the matters that are subject to review and timeframes for issuance of decisions by the procuring agency and the administrative review body
- d. There are GCC (General Conditions of Contracts) for the most common types of contracts and their use is mandatory

## Assessment Answers

- a. Sections 32 and 33 of the Constitution provides for the right to access to information and for just administrative action.
- b. Effective remedies are ensured by requiring a proper record of the proceedings and reasons to be given for certain decisions.<sup>66</sup> This is also attained through the principle of transparency listed in the Constitution.<sup>67</sup>

The National Treasury and each provincial treasury must establish a mechanism:-

- ▶ to receive and consider complaints regarding alleged non-compliance with the prescribed minimum norms and standards and
- ▶ To make recommendations for remedial actions to be taken if non-compliance of any norms and standards is established, including recommendations of criminal steps to be taken in the case of corruption, fraud or other criminal offences.<sup>68</sup>
- ▶ The MFMA Regulations provide that procedures for proper record keeping must be in place<sup>69</sup>.

- c. Contract management is specifically provided for in section 116 of the MFMA.

The MFMA provides for contract management and dispute settling procedures<sup>70</sup>.The MFMA provides for the negotiation of the final terms of contracts.<sup>71</sup>

The accounting officer or accounting authority must ensure that - bid documentation and the general conditions of a contract are in accordance with - The instructions of the National Treasury; or the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry <sup>72</sup>.

<sup>66</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A6.3

<sup>67</sup> The Constitution of the Republic of South Africa Second Amendment Act No. 21 of 2002. Section 217, pp 71

<sup>68</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A9.3

<sup>69</sup> Local Government: Municipal Finance Management Act 56 of 2003. Chapter 8 part 1,62 (b)

<sup>70</sup> Local Government: Municipal Finance Management Act 56 of 2003. Chapter 2 part 112 (1)(p)

<sup>71</sup> Local Government: Municipal Finance Management Act 56 of 2003. Chapter 2 part 112 (1)(h)(iii)

<sup>72</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A6.3 (a)



## People and Organisation

## Organisation Structure

## Questions

- ▶ What does the organisation structure look like for procuring?
- ▶ To what extent is the procurement function centralised/ decentralised?
- ▶ What is the level of coordination/ frequency of information sharing?

## Assessment Criteria

- a. Delegation of decision making authority is decentralised to the lowest competent levels consistent with the risks associated and the monetary sums involved
- b. Delegation is regulated by law
- c. Accountability for decisions is precisely defined

## Assessment Answers

- a. The accounting officer or accounting authority must establish a separate supply chain management unit within the office of that institution's chief financial officer, to implement the institution's supply chain management system that is consistent with section 217 of the Constitution. This entails that every state department, trading entity, constitutional institution and public entity can have its own procurement system as long as it falls within the prescribed framework.<sup>73</sup>
- b. See above.
- c. No evidence to substantiate this in the law.

## Education and Training

## Questions

- ▶ Are formal education and training programmes in place?

## Assessment Criteria

- a. There are defined skill and knowledge profiles for specialised procurement jobs
- b. There is systematic matching of skills against requirements for competitive recruitment
- c. There is a training and capacity building strategy that provides for:
  - ▶ Substantive permanent training programmes of suitable quality and content for the needs of the system
  - ▶ Evaluation and periodic adjustment based on feedback and need
  - ▶ Advisory service or help desk to absolve questions by procuring entities, suppliers, contractors and the public
- d. Training programme design is based on a skills gap inventory to match the needs of the system

## Assessment Answers

- a. Currently not stated in any of the regulations
- b. Same as above
- c. The accounting officer or accounting authority must ensure that officials implementing the institution's supply chain management system are trained and deployed in accordance with the requirements of the Framework for Minimum Training and Deployment issued by the National Treasury<sup>74</sup>.
- d. Same as (a) above.

<sup>73</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A4.1

<sup>74</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A5.1



## Data and Technology

### Access to information

#### Questions

- ▶ What methods are used at each stage of the procurement cycle to record information? How reliable are your procurement data? How much efforts are required to provide it?
- ▶ To what extent does your organisation rely on your purchasing data?

#### Assessment Criteria

- a. Information on procurement is easily accessible in media with wide circulation and availability. The information provided is centralised at a common place. Information is relevant and complete. Information is helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance
- b. There is a system that collects data on procurement by method, duration of different stages of the procurement cycle, awarding of contracts, unit prices for the most common types of goods and services and other information that allows analysis of trends, levels of participation, efficiency and economy of the purchases and compliance with requirements
- c. Reliability of the information is high (verified by audits)
- d. Analysis of information is routinely carried out, published and fed back into the system
- e. The legal/regulatory framework establishes a list of the procurement records that must be kept at the operational level and what is available for public inspection, including conditions for access

The records should include:

- ▶ Public notices of bidding opportunities
  - ▶ Bidding documents and addenda
  - ▶ Bid opening records
  - ▶ Bid evaluation reports
  - ▶ Formal appeals by bidders and outcomes
  - ▶ Final signed contract documents and addenda and amendments
  - ▶ Claims and dispute resolutions
  - ▶ Final payments
  - ▶ Disbursement data (as required by the country's financial management system)
- f. There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles

#### Assessment Answers

- a. Any interested party wishing to access procurement records can do so in terms of PAIA (Promotion of Access to Information Act 2 of 2000). The primary purpose of this Act is to give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith. The Act aims to foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information; and actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights.
- b. The PFMA regulations make provision for the recording of data throughout the procurement cycle on a procurement system that complies with the constitutional principles (see notes above). There are no standardised technical specifications on efficiency, effectiveness or the robustness of the system. The decision on the type of database that is to be established lies with the accounting officer/authority of the particular institution.
- c. The PFMA brings light to this requirement only through the Constitution through the principle of transparency and cost-effectiveness.<sup>75</sup>
- d. No evidence to substantiate this in the law.
- e. The accounting officer or accounting authority must submit to the relevant treasury such supply chain management information as that treasury may require in the prescribed format.<sup>76</sup>
- f. The National Treasury and each provincial treasury must establish a mechanism:-  
to receive and consider complaints regarding alleged non-compliance with the prescribed minimum norms and standards; and to make recommendations for remedial actions to be taken if non-compliance of any norms and standards is established, including recommendations of criminal steps to be taken in the case of corruption, fraud or other criminal offences.<sup>77</sup>  
The MFMA Regulations provide that procedures for proper record keeping must be in place<sup>78</sup>.

<sup>75</sup> The Constitution of the Republic of South Africa Second Amendment Act No. 21 of 2002. Section 217, pp 71

<sup>76</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A11.1

<sup>77</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A9.3

<sup>78</sup> Local Government: Municipal Finance Management Act 56 of 2003. Chapter 8 part 1, 62 (b)

### E- Procurement

#### Questions

- ▶ To what degree is electronic procurement practiced?

#### Assessment Criteria

The WTO list the use of electronic means on its key principles.

- a. The procurement agency places importance on, and encourages the use of, electronic means for procurement.

#### Assessment Answers

- a. Electronic communication is not directly referred to in the regulations. However the supply chain management guide does state that the accounting officer/authority must, prior to the request for information or any bids regarding the introduction of an e-procurement system, liaise with and obtain permission from the relevant treasury to commence with the establishment and maintaining of such a system. This prerequisite is prescribed to ensure compatibility with other electronic systems utilised by government.<sup>79</sup>

### IT Procurement Tools

#### Questions

- ▶ What methods are used at each stage of the procurement cycle to record information? How much effort is required to provide information on procurement?

#### Assessment Criteria

a. The objective of this indicator is to determine:

- ▶ The existence and capacity of the procurement information system in the country
- ▶ The accessibility of the information system
- ▶ The coverage of the information system
- ▶ Whether the system provides a one-stop service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes

#### Assessment Answers

- a. No evidence to substantiate this in the law.

<sup>79</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 4.12 pp47





## Performance Management

### Performance management metrics

#### Questions

- ▶ Are metrics calculated and used to support the procurement process management through a scorecard? What are you focusing in performance measurement on?

#### Assessment Criteria

- Performance measures are used to evaluate the usefulness of the procurement function to support the agency's mission.

#### Assessment Answers

- The supply chain system implemented by the institutions must provide for a regular assessment of supply chain performance<sup>80</sup>. Regulation 16A8 makes provision for the exclusion of tenders on the grounds of non-performance - "failure to perform on previous government contracts"<sup>81</sup>. It is recommended that at completion stage of each project, an assessment of the supplier/service provider (including consultants where applicable) be undertaken and that this assessment should be available for future reference. Accounting officers/authorities should take cognisance of the fact that when suppliers do not perform according to their contractual obligations and the accounting officer/authority does not address him/her in this regard during the execution of the contract, such non-performance cannot be deemed as sound reason for passing over the bid of such supplier when adjudicating future bids<sup>82</sup>.

### Supplier Monitoring

#### Questions

- ▶ How do you manage your supply base and the relationships to your suppliers? What areas are you focusing on?

#### Assessment Criteria

- An effective communication and feedback system has been established with the suppliers by:
  - ▶ Designating an authoritative person as a single interface with the key supplier
  - ▶ Using integrated teams to facilitate sharing of information
  - ▶ Establishing an objective basis for providing feedback by setting performance measures and expectations in terms of quality, responsibility, timelines, and cost
  - ▶ Providing periodic "report cards" and meeting formally with key suppliers to discuss issues
  - ▶ Using surveys, supplier meetings, and formal agency - supplier councils or supplier advisory councils to assess existing customer-supplier working arrangements to identify problem areas, and report back to suppliers
- The agency employs contract monitoring plans or risk-based strategies, and tracks contractor performance
- The agency regularly reviews contract oversight processes, identifies areas needing improvement, and establishes and implements corrective action plans
- The agency monitors the effectiveness of policies and processes, completes a cost benefit analysis when considering alternative policies and processes, and follows up on findings identified in monitoring efforts
- The agency's suppliers have established earned value management systems, and the agency verifies that it and its suppliers effectively implement earned value management processes and procedures on all applicable programs

### Assessment Answer

- In terms of the PPPFA (2000), an organ of state must, upon detecting that a preference in terms of the Act and these regulations has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, act against the person awarded the contract.
- Contract management is specifically provided for in Section 116 of the MFMA. The Treasury Regulations 16A.3.2 (d) and the MFMA Regulation 9 provide that the supply chain management system must provide for at least risk management and the regular assessment of the supply chain<sup>83</sup>. The National Treasury regulations recommend that the risk management process must contain provisions for the identification, consideration and avoidance of potential risks<sup>84</sup>. The regulations specify that the supply chain management policies at local government level must provide for screening processes and security clearance for prospective tenders for procurement above a prescribed value, for tender security, insurance and/or performance guarantees to be provided by tenders, that it be ensured that tenders are not awarded to tenderers that appear on the list of persons prohibited from doing business with the public sector, have outstanding tax obligations, committed a corrupt or fraudulent act in competing for the particular contract, committed any corrupt or fraudulent act during the tender process or the execution of that contract, or if any official or other role player committed any corrupt or fraudulent act during the tender process or the execution of that contract that benefited that supplier; for the compulsory disclosure of any conflicts of interest a tenderer might have in a specific tender and the barring of such a tenderer from participating and, for contract management and dispute settlement procedures<sup>85</sup>.
- Contract management is specifically provided for in Section 116 of the MFMA. The Treasury Regulations 16A.3.2 (d) and the MFMA Regulation 9 provide that the supply chain management system must provide for at least risk management and the regular assessment of the supply chain<sup>86</sup>.
- This is not outlined in the procurement regulations.
- Same as (d) above.

### Supplier development

#### Questions

- ▶ Are there any supplier development programmes in place? How do you certify and develop suppliers (new or existing)?

#### Assessment Criteria

- The objective of this question is to obtain descriptive data on supplier development programs that each country has implemented

#### Assessment Answers

- Apart from the promotion of small and medium enterprises (SMEs), no supplier development-specific legislation and framework.

<sup>80</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A3.2

<sup>81</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities 16A8

<sup>82</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 8 pp91

<sup>83</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A.3.2 (d)

<sup>84</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. Section 12

<sup>85</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities 6A9.1

<sup>86</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A.3.2 (d)



## Socio-economic

### Quality Standards

#### Questions

- ▶ What quality standards are applied throughout the procurement system e.g. ISO standards? To what extent are these standards met?

#### Assessment Criteria

The quality standards should as a minimum:

- Provide quality assurance standards and a monitoring system for procurement processes and products
- Provide for a staff performance evaluation process based on outcomes and professional behaviors
- Ensure that operational audits are carried out regularly to monitor compliance with quality assurance standards

#### Assessment Answers

- The regulations make provision for the institution to specify quality standards in bidding documentation and service delivery<sup>87</sup>. The regulations do not directly specify the quality assurance techniques and process that must be implemented in the supply chain system. The principle of a cost-effective supply chain system indirectly addresses the need for quality assurance techniques. The accounting officer and authority must by all means take all reasonable steps to prevent abuse of the supply chain management system<sup>88</sup>. This clause in the regulations will indirectly address the requirement of audit procedures to ensure integrity is still maintained.
- In terms of behavior of employees, the accounting office/authority investigates any allegations against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system<sup>89</sup>.
- The Auditor-General of South Africa has a constitutional mandate and, as the supreme audit institution (SAI) of South Africa, it exists to strengthen our country's democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence. The AGSA annually produces audit reports on all government departments, public entities, municipalities and public institutions. Over and above these entity-specific reports, the audit outcomes are analysed in general reports that cover both the Public Finance Management Act (PFMA) and Municipal Finance Management Act (MFMA) cycles. In addition, reports on discretionary audits, performance audits and other special audits are also produced. The AGSA tables reports to the legislature with a direct interest in the audit, namely Parliament, provincial legislatures or municipal councils. These reports are then used in accordance with their own rules and procedures for oversight.

<sup>87</sup> The National Treasury.2004. Supply Chain Management: A Guide for Accounting Officers and Accounting Authorities. Section 5.4 pp 57 and section 5.9.3.2 pp62

<sup>88</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A9.1

<sup>89</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A9.1(b)

### Green Procurement

#### Questions

- ▶ Is green procurement covered in the legislative framework? To what extent is green procurement considered important in the selection of supplier/contracts?

#### Assessment Criteria

- Green procurement is considered in the legislative framework
- Code of conduct and ethical practices to prevent the abuse of the environment are stated in the regulations

#### Assessment Answers

- No provision for green procurement or supply chain sustainability is made
- Both the regulations issued in terms of the PFMA and the MFMA provide for role players to comply with ethical standards in order to promote an environment where business can be conducted with integrity and in a fair and reasonable manner. Such ethical standards must be provided for in the supply chain management policies of the procuring entities<sup>90</sup>. National Treasury has issued a supply chain management practice note which provides for a code of conduct for supply chain management practitioners<sup>91</sup>. The Local Government: Municipal Systems Act 32 of 2000 provides in schedule 2 thereof for a code of conduct for Municipal staff.

### Health and Safety

#### Questions

- ▶ Does the legal framework make provision for essential security or defense interests and safety for the health and life of humans, animals, plants?

#### Assessment Criteria

- Specific provisions are made for the protection of confidentiality of information which, if disclosed, might impede law enforcement; essential security or defense interests; public morals, order, or safety; human, animal or plant life or health; or might prejudice fair competition between suppliers, might prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property, or might otherwise be contrary to the public interest

#### Assessment Answers

- The purpose of Occupational Health and Safety Act No. 85 of 1993 is to provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery; the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work. Various state entities require their bidders to comply with this Act.

<sup>90</sup> The National Treasury. 2005.Treasury Regulations for departments, trading entities, constitutional institutions and public entities. 16A8.1 and Local Government: Municipal Finance Management Act 56 of 2003. Regulation 46

<sup>91</sup> Practice Note MFMA 4 of 2003



Socio-economic instruments

Questions

- What are the key instruments utilised to achieve socio-economic objectives through public procurement?

Assessment Criteria

- a. Secondary procurement objectives must be regulated by law

Assessment Answers

- a. The PPPFA is the key instrument utilised to achieve socio-economic objectives through public procurement. All institutions wishing to implement preferential treatment during the awarding of tenders must do so in terms of the PPPFA<sup>92</sup>.



<sup>92</sup> Preferential Procurement Policy Framework Act 5 of 2000



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