

**AN ANALYSIS OF THE TENDER PROCESS IN THE GOVERNMENT OF NAMIBIA**

**A THESIS SUBMITTED IN PARTIAL FULFILMENT**

**OF THE REQUIREMENTS FOR THE DEGREE OF**

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## **ABSTRACT**

This research studied an analysis of the tender process in the government of Namibia. The findings of the study revealed that ethics, awareness and training influence the compliance of procurement regulations in government. The study acknowledges the importance of ethics, awareness and training in compliance to procurement procedures and regulations. However, a lot needs to be done to improve ethical conduct, knowledge of employees on procurement regulations and training because failure to comply with the regulations tendering committees and suppliers can lead to major losses of government funds.

The study used guided interviews approaches to gather data. Interviews with ministerial tender committees' chairpersons were carried out to collect information on the process of tendering used in the respective ministry. The study also recommends the following; it is important to offer ethics education to tendering committee members in order to ensure they serve in ultimate objectivity, accountability, and non discrimination. The government should organize both in-service and external training sessions for procurement staff and the members of the ministerial tender committee, especially those officer bearers who were involved in procurement procedures. Accounting officers (Permanent Secretaries) should, whilst setting standards and assigning responsibilities, promote the development of a tendering process management system that conforms to all regulations or directives as might be applicable.

## **ACKNOWLEDGEMENT**

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Everyone who has been there for me through this study process, in particular Martha Mengela for encouraging me to carry on with this study from first day of my MBA registration.

My MBA 2013/2014 classmates because of their inspirational moments we had throughout our studies.

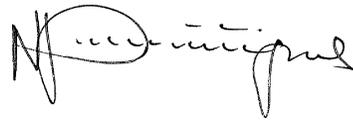
Above of all, to the Almighty God, whose blessings allowed me the privilege of completing this study in time. Without his compassion, generosity and love I can do nothing.

## DECLARATION

I Nellius Phillipus declare to the best of my ability that this report is as a result of my own efforts and has never been submitted for any academic award to this university and any other university or institution.

Name: Nellius Phillipus

Signature:

A handwritten signature in black ink, appearing to read "Nellius Phillipus". The signature is written in a cursive style with a large initial "N" and a long, sweeping tail.

Date: September, 2015

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## **CHAPTER ONE**

### **INTRODUCTION AND BACKGROUND OF THE STUDY**

#### **1.1. Introduction**

This chapter includes the following; orientation of the proposed study, statement of the problem, research questions, significance of the study and the limitation of the study.

#### **1.2. Orientation of the proposed study**

The Namibia Tender Board Act, (Act 16 of 1996) was signed by the president of the Republic of Namibia on 26 July 1996 and came into force on 1 October 1996. The objectives of the Act are to regulate the procurement of goods and services by the government, and the letting of hiring of anything, or the acquisition, or granting of rights and the disposal of property on behalf of the government. The Act also established the Tender Board of Namibia and defines its functions and powers (Tender Board Act, 1996). The importance of Tender Board Act is underscored by the fact that it is the means through which the government implements policies and programmes. In other words, procurement of public works, goods and services transforms government's programmes, policies, strategies and frameworks into concrete actions. Given the size and amount that government spends, it is important that leaders in government must recognise that tendering is a management function that is central to operations. Therefore, it should be treated at a senior management level. Government generally is an important sector of the economy, where in Namibia, national expenditure accounts for 25.2% of the country's Gross Domestic Product (GDP). According to the National Accounts 2012, this makes the government a critical player in the economy.

Any improvements in the public procurement system can have a direct and beneficial effect on the overall economic situation of a country. One measure of this fact is the emphasis which the World Bank and regional institutions like the African Development Bank are placing on assisting developing countries to review and revise their procurement systems. Within the Africa region, over one fourth of the countries has or will have an active public procurement improvement programme. It, therefore, became necessary for Namibia also to reform its procurement practices and procedures to conform to international standard, hence the Public Procurement Act, (Act 16 of 1996).

Public procurement systems are the bridge between public requirements such as roads, hospitals, and defence needs among others; and private sector providers. Government provides goods and services to meet the diverse needs of her citizens (Wittig, 1999). Inputs needed to produce these needs are obtained from either internal government organizations (hospitals, public works departments and others) or from sources external to the government in the private sector (domestic or international suppliers). In this sense, government traditionally uses its budget process to decide on making or buying through the procurement system, just as private companies make similar decisions in their enterprise resource plan.

However, unlike private sector procurement, public procurement is a business process within a political system, with distinct considerations of integrated, accountable, national interest and effectiveness (Wittig, 1999). Wittig continues that the business operations of governments as controlled by public procurement systems, affect many different elements of society. First are the procuring entities that have needs for material support (e.g. roads, hospitals, desks, educational supplies and others), to fulfil their designated national missions. Then there is the business

community of actual or potential suppliers to satisfy the government's identified requirements. But for the government agency's needs to be properly considered by a supplier, they must be expressed in clear terms compatible with public policies involving such areas as competition, social and economic goals, and transparency of the basic rules and procedures.

Procurement actions should encourage suppliers to value government business and provide satisfactory quality service and price in good time. There are also professional associations, academic entities, and public interest groups, which have important views on how public management institutions are to perform. The general public is more likely to feel satisfied when they know that expenditures made through the public procurement system are economical, rational and fair.

Subsequently, various countries both in developed and least developed countries have instituted procurement reforms involving laws and regulations. The major obstacle however, has been inadequate regulatory compliance. De Boer and Telgen (1998) confirm that non-compliance problem affects not only the Third World countries but also countries in the European Union. This position is further supported by Gelderman *et al.*, (2006) who contend that compliance in public procurement is still a major issue in public procurement.

Tendering is very critical and important for the operation of the government, since the government relies heavily on supply of goods and services, information and other inputs and these are obtained through tendering system. According to Water (2002), tendering is essential, and unless it is done well, operations are interrupted, product quality is poor, deliveries are late, the wrong quantities are delivered, costs rise, and customer services decline.

The Tender Board was established as a fully neutral and independent body with a clear agenda of setting up a strict regulatory mechanism of developing and applying clear policies and procedures that would ensure absolute fairness and transparency in tendering and procurement procedures carried out by ministries and other governmental institutions that are subjected to the law regulating government tenders and purchases.

Unless otherwise provided, the Board shall be responsible for the procurement of goods and services for the government, and, subject to the provisions of any other Act of Parliament, for the arrangement of the letting or hiring of anything or the acquisition or granting of any right for or on behalf of the government, and for the disposal of government property. The Board may for that purpose also, on behalf of the government, conclude an agreement with any person within or outside Namibia for the furnishing of goods or services to the government or for the letting, or hiring of anything, or the acquisition, or granting of any right for or on behalf of the government or for the disposal of government property with a view to conclude an agreement, invite tenders and determine the manner in which and the conditions subject to which such tenders shall be submitted.

Subject to the prescribed threshold and delegated powers in accordance with the Act, the board entrusted the accounting officers at the ministries and other public bodies with overall responsibility for the execution of the procurement process. There is an established procurement committee in every public body to oversee procurement process. The procurement committee consists of not less than three and not more than seven members at management level, appointed in writing by the accounting officer, and one of whom is appointed as chairperson, in accordance with the prescribed procedures. The chairperson of the ministerial tender committee is a key

person, responsible for all day to day activities of the committee and accountable for decisions made by the committee.

The government procurement process differs significantly from one authority to the next, but a tender is usually necessary when the public sector in question needs goods or services that exceed a certain value. Since the government procurement process is to guard against government corruption and waste of resources, the process should, therefore, normally be carefully monitored. The Tender Board helps ensure that the public sector does not unfairly favour one or more private companies over others, and also makes it possible for a greater, more diverse selection of companies to have equal access to government contracts. Government procurement processes can also assist companies which traditionally do not receive the majority of government contracts, such as companies owned by women and the marginalised and or minority groups.

Tendering is very critical and important for the operation of national government, since national government relies heavily on supply of goods and services, information and other inputs, and these are obtained through tendering system. According to Water (2002), tendering is essential, and unless it is done well, operations are interrupted, product quality is poor, deliveries are late, the wrong quantities are delivered, costs rise, and customer services decline. The problems afflicting the public sector procurement dispensation are, in a large sense, due to the shortcomings of the legislative framework and institutional weaknesses which have become entrenched, as a consequence of non adherence to the set rules and procedures.

Governments, like most consumer-oriented companies, continue to face significant challenges, and growth overwhelmingly tops the list. The reputation of Namibian governments suffered, and as a consequence the governments must undertake new activities to positively influence public

perception. Adapting to today's challenges requires leadership, vision and quickness.

According to Gildenhuis (2002), calling for tenders for the supply of goods and services is a standard procedure in government. Legislation compels governments to call for tenders before buying any goods or services. For any national department to deliver services to people successfully nowadays requires it to manage tendering and become involved in the way its suppliers do business. A successful department is often seen as a symbol of a country's economic success.

### **1.3. Statement of the problem**

The Tender Board of Namibia Act (Act 16 of 1996) enacted by the parliament of the Republic of Namibia seeks to provide for public procurement, make administrative and institutional arrangements for procurement, stipulate tendering procedures and provide for purposes connected with these. The objective is to harmonize the processes of public procurement in the public service to secure a careful, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner. The implementation of this system would be incomplete without proper procurement process in the national government.

Every institution that uses state funds for its operations is supposed to comply with the Public Tender Board Act, (Act 16) with effect from 1996. The implementation of the Tender Board Act is very crucial to these institutions. It is to address the loopholes in the system which millions of dollars of the state funds are misapplied through procurement.

The IPPR (2011), under the anti-corruption research programme stated that the current system is

outdated and is faced with lots of challenges such as corruption, conflict of interest, lack of uniformity, theft, inflation of prices, inadequate process and lack of proper monitoring. Visser and Erasmus (2007) state that government, as the largest buyer in the country, is responsible for ensuring that the tender system supports and attains overall economic objectives.

In 2005-06 financial year, the Tender Board approved tenders worth N\$619 million and tender exemptions worth N\$170.4 million. In the 2006-07 financial year, exemptions spiralled to N\$1.6 billion in value while awarded tenders amounted to N\$868.3 million. This trend continued through the 2007-08 financial year, when the value of government procurement climbed to over N\$4 billion, and the value of tender awards amounted to N\$624.3 million, compared to N\$3.4 billion spent on tender exempted procurement (IPPR, 2011). On 4 July 2013, the High Court (High Court of Namibia, 2013) sent back an application by an unsuccessful tenderer to review and set aside a tender award made to a competitor by the Tender Board of Namibia, created by Section 2 of the Tender Board of Namibia Act.

The cases above show that it is apparent that there is a failure to comply with set procedures which might be the reason tender exemptions, and court cases challenging tender awards, have increased over the last five years, casting most of public sector procurement into the shadows without the state or responsible agencies, such as the Tender Board, adequately or appropriately explaining why the situation has developed.

It is becoming public knowledge that the public tender system, including tender procedures and regulations as stipulated in the act is faced with lack of uniformity, inadequate processes, lack of proper monitoring by the public sector, conflicts of interest and to some extent corruption. This has prompted the researcher to conduct a research and analyse the tendering process in the

government of Namibia.

#### **1.4. Research Questions**

The main research question is; what is the current state of the government tender process, and what are the tendering problems facing government of Namibia?

The following are sub-research questions:

1. Does the ministerial tender committee's procurement ethic influence the procurement procedures?
2. Is the tendering process aligned with the relevant applicable enabling legislations?
3. What process is being followed in composition of ministerial tender committee?

#### **1.5. Significance of the study**

The findings of this study will have an influence on government initiatives and policies to successfully deal with tendering. Sustainable tendering can make an important contribution to service delivery in Namibia, and also since the field of tendering is extremely dynamic, the study of literature, trends, new developments and the research will contribute to the body of knowledge and provide a new angle into this field. The study will also act as a basis for further research to other researchers in the field of procurement in Namibia.

#### **1.6. Limitations of the study**

As the researcher is employed full time, one limitation could be the inability to be granted leave in order to timely collect primary data. The researcher, however, applied a time management principle in an attempt to conduct this research in a thorough and timely manner. In other words, the researcher made use of the available time in the most effective and efficient way, which amongst other things requires planning. Some respondents may view the study as more of an

audit than an academic study. Despite this, findings of the study to be kept confidential and intended for research purposes only. This may influence the manner in which the respondents may respond to some questions. The study requires the effective co-operation and the involvement of all the people in the study population and any attempt to shelve information will create a problem for effective recommendations as a result of faulty findings.

# **CHAPTER TWO**

## **LITERATURE REVIEW**

### **2.1. Introduction**

This chapter discusses the opinions, findings from different authors, publications, magazines, websites, and all possible sources as a basis of foundation for this research study. It starts off with key concepts and other parts are according to the research questions as seen below.

### **2.2. Key concepts**

Public procurement refers to “the acquisition of goods and services by government or public sector organizations” (Uyarra, 2010, p 123-43). Public procurement is seen as one of the key economic activities of government (Thai, 2001). In spite of its long history and significant scale, public procurement has only relatively recently been the subject of considerable academic research (Brulhart, 2004). Regarding the scale of public procurement, recent estimates suggest that between 8 and 25 per cent of the gross domestic product (GDP) of the Organisation for Economic Co-operation and Development (OECD) countries and 16 per cent of European Union (EU) GDP are attributable to government purchases of goods or services (Afonso, 2005). Prior research has differentiated between types of public procurement and has argued that procurement represents an important policy tool that could help to achieve outcomes in societies that are consistent with broader policy goals.

Public procurement is guided by a number of related policies and regulations. As indicated by Mathee (2006), compliance with these policies and regulations is a problem. Some of the practices relating to non-compliance with the rules and procedures relate to the tendency not to utilise a competitive process for both quotations and bids, and incorrect utilisation of the

preference points system. Van Zyl (2006) also asserts that there is a lack of appropriate bid committees; use of unqualified suppliers passing over of bids for incorrect reasons; utilisation of the incorrect procurement process in respect of the thresholds; extensions of validity periods; and incorrect utilisation of the limited bidding process. Furthermore, Ambe and Badenhorst-Weiss (2011) noted that there are inadequate controls and procedures for the handling of bids; appointment of bid committee members not aligned to policy requirements, and insufficient motivation for deviations from procurement procedures.

Although a wide range of issues have been addressed in public procurement research, two major themes have emerged in existing research. The first theme explores the impact of public procurement on the pattern of economic activity, with a particular focus on the tendency of public procurement to favour local companies over foreign suppliers (Brulhart, 2004), and in the case of the US “buy American” policies, these tendencies are institutionalised. Other studies examine the supply relationships between the private and public sectors, and the processes of tendering and contracting (Bovaird, 2006).

Waters (2002) correctly mentions that procurement’s main objective is to find the combination of products and suppliers that best satisfies one’s needs. According to Van Bon (2005), after the acquisition initiation has been completed, the procurement phase starts. The procurement phase consists of tendering, supplier selection, negotiation and signing the contract. The study focuses on tendering process which is discussed below in detail.

According to Burke (2007), there are nine knowledgeable areas as defined by the Project Management Body of Knowledge (PMBOK) and one of the nine is Procurement Management. Burke (2007), further states that procurement management includes the process to acquire goods and services from outside the organisation, which consists of procurement planning, solicitation,

source selection, contract administration and contract closeout. He further highlighted that procurement and contract management is one of the key deliverable objectives.

All of the above-mentioned concepts contain the key elements of procurement and procurement management. The concepts clearly identify that the purpose of procurement is to acquire goods and services and the main objectives of procurement are to be fair, equitable, transparent, competitive and cost effective. It is also clear from the concepts that tendering is part and parcel of procurement. As a result, the study focuses on tendering which is discussed here and subsequent sections of the study.

A second important body of research examines the role that government procurement can play as a stimulus for innovative activity among companies within a region. Public procurement has been at the centre of recent discussions on innovation policies on both European and national levels (Aho, 2006). This theme is consistent with research in the private sector that has shown how value chain activities affect innovation. For example, within the value chain, procurement activities are associated with greater product quality and innovation (Prajogo, 2008). In the context of the public sector, research in this area has shown that government procurement is a key part of a demand-oriented innovation policy (Aschhoff and Sofka, 2008).

The existing Tender Board Act of 1996 has become outdated, if not shown to be deemed primitive when compared to other regional and international frameworks. In addition, it is considered a liability in some sense, it is probably not an argument worth having, and thus on the flipside, attempts to update or upgrade the legislative environment as well as institutional framework governing public sector procurement is commendable on a number of fronts (IPPR, 2011). The pace at which this is being done is of grave concern, for it appears that the process has been caught out and overtaken by events, most notably the need to respond to the country's

high unemployment rate of over 50 percent (Namibia Labour Force Survey, 2008), which has prompted government to push through the Targeted Intervention Programme for Employment and Economic Growth (TIPEEG). The latter makes provision for procurement requirements – envisaged to run into multibillions of Namibia dollars – to effectively bypass the Tender Board, by merely applying for tender exemptions on all projects under the employment stimulating scheme. It is evident that this does not bode well for the public procurement dispensation as well as the monitoring of how taxpayers’ monies are spent.

### **2.3. Procurement**

Procurement is a major part of supply chain management and the study focuses mainly on procurement and specifically on the tendering process in the government. According to Moeti *et al.* (2007), goods and services acquired by national government represent a substantial amount of public resources spent and, on the other hand, a substantial source of income to private service providers. Therefore, it is required that measures be put in place to ensure that national government receive the best possible supply of goods and services at the most economical price, whilst at the same time ensuring that the potential service providers are afforded the opportunity to compete for contracts on a fair and equitable basis taking into account, in both Namibian and South African context, the government’s intentions to redress past discrimination.

The study focuses on the procurement of goods and services by national government. Moeti *et al.* (2007) correctly noted that most fraud and corruption in national government occur through poor procurement management and control. Moeti *et al.* further define procurement as the purchasing of goods and services by government from the private sector. Procurement is the acquisition of goods and/or services. Procurement revolves around making buying decisions, and all buying decisions include factors such as delivery and handling, marginal benefit, and price

fluctuations.

## **2.4. Tendering**

Woods (2008), define tendering as a process whereby an organization invites for the supply of goods and services, and awards the contract to the best offer according to predetermined criteria without negotiation. Woods further argues that tendering can be seen as an essential anti-corruption approach and a tender is a proposal to provide a good or service in competition with other potential suppliers.

According to Kovacs (2008), open tendering procedures and restricted tendering are the two normal tendering methods. Kovacs further states that open tendering procedures happen when theoretically all potential bidders from the four corners of the world are allowed to submit a bid. There are no limitations and restrictions of partaking, and the procurement is advertised nationwide. On other hand, restricted tendering means a procurement whereby the group of eligible bidders is significantly reduced to a few qualified bidders who are invited to partake in competition.

## **2.5. Scope of tendering process**

The Tender Board of Namibia Act (Act 16 of 1996) stated that competitive bids should be advertised in at least the Government Tender Bulletin and in other appropriate media should ministry deem it necessary to ensure greater exposure to potential bidders. The responsibility for advertisement costs will be that of the relevant ministry.

Goods, works or services may not deliberately be split into parts or items of lesser value merely

for the sake of procuring the goods, works or services other than through the prescribed procurement process. When determining transaction values, a requirement for goods, works or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction, revealed The Tender Board of Namibia Act (Act 16 of 1996).

The ministry should apply the prescripts of the Preferential Tender Board Act, Act 16 of 1996 and its associated procedures and Regulations for all procurement equal to or above NAD 5 000 (VAT included). However, these prescripts may be applied for procurement with a value of less than R 5 000, if, and when, appropriate.

## **2.6. Tender Procedures**

Accordingly Pauw *et al.* (2002), there are number of issues of principle that the department should take into account when introducing the policies and procedures, which include aspect of ethics, honesty, accountability, openness, fairness, impartial and transparency. “The Board is required to publish all tenders and prequalification tenders in the Government Gazette and at least once in each newspaper contracted by government and on the notice board of the Secretariat”. (The Tender Board of Namibia Act (Act 16 of 1996))

Tender Board Act also revealed that the board shall determine the manner, form and time period in which an application for prequalification should be submitted, and if applications for prequalification were invited, the Board shall only consider those applications for the award of tenders.

As stipulated in the Tender Board of Namibia Act (Act 16 of 1996), the call for tenders (title of tender) shall as far as practicable, contain at least the following information:

- Instructions for preparing tenders;

- Technical and quality characteristics of the goods to be procured or services to be rendered or 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 closing date for submission of tenders;
- The period during which tenders shall be in effect; and
- The tender security to be furnished and conditions for its refund. (1996, p 8).

“If the Board is of the opinion that goods will not be supplied from stocks readily available in Namibia or will not be manufactured from materials or components grown, produced or manufactured in Namibia, the Board shall fix the closing date for the submission of tenders at a date not exceeding sixty days, but not less than thirty days from the date the tender was issued. The Board may, however, extend the above periods at its own discretion”. (The Tender Board of Namibia Act (Act 16 of 1996)). (1996, p 9).

The Board shall not consider a tender unless it complies with all the characteristics, terms, conditions and other requirements set out in the title of tender. The Board may condone minor deviations from the title of tender. The Board may at any time request any tenderer to clarify, in such manner as may be determined by the Board, his or her tender in order to assist the Board in the examination, evaluation and comparison of tenders. If the Board does not accept the lowest tender, the reasons for not accepting the lowest tender must be recorded.

In 1997 the Board under the Tender Board of Namibia Act (Act 16 of 1996), adopted a Code of Procedure that sets out the tender process and the evaluation of tenders in more detail. The following issues are dealt with in the Code: Reference to certain specifications, Determination of

closing date of tenders, Tender prices and delivery periods, General agreements, Samples, Determination of validity period of tenders, Submission of tenders, Closing date and hour of tenders, Telegraphic and late tenders, Tenders received open or without endorsement, Opening of tenders, Tenders for portion of items or specified quantities, Consideration of tenders, Comparison of tenders, Definition of domestic value, Recommendations of the offices, ministries and agencies, Acceptance of equal tenders, Acceptance of tenders for unspecified quantities, Security, Cession of agreements, Communication with Board and Availability of information.

On completion of the evaluation process and once a tender has been awarded the Board must inform the tenderers concerned in writing of the acceptance of their tenders and also inform all the other tenderers. On written request of a tenderer, the Board shall give the reasons for the rejection of his or her bid. Within thirty days, or such other period as the Board may determine, after the said notification and acceptance by the tenderer, the Board shall enter into a written agreement with the tenderer (The Tender Board of Namibia Act (Act 16 of 1996)).

## **2.7. Exemption from Tender Procedures**

The Board as directed by the Tender Board of Namibia Act (Act 16 of 1996) may grant an exemption from tender procedures if the estimated value of the goods or service does not exceed N\$10,000 or if the contracting party is a statutory body, local authority or regional council in Namibia or within another country, which the Minister has approved. The Board may also grant exemption, in any particular case, on good cause deems it impracticable or inappropriate to invite tenders. When exemption is granted the reasons for not inviting tenders shall be kept on record by the Board.

## **2.8. Price Preference Policy**

In comparing tenders, the Board as directed by the Tender Board of Namibia Act (Act 16 of 1996) shall give effect to the price preference policy. The preference policy is set out in Tender Board of Namibia: Preferences regulation. The regulation gives certain preference points for:

- 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. (page number 10).

The regulation gives the following definition of goods produced or manufactured in Namibia.

“Goods produced or manufactured in the Republic of Namibia” means when at least 25 % of the manufacturing cost of these goods, which shall constitute local content as determined in this Code, as represented by materials produced and direct labour performed and the last process in the manufacture of those goods has taken place in Namibia, provided that:

- a) The last process of manufacture is substantial and sufficient to change the nature of the product and give it new, essential and distinct characteristics and it was performed in a firm equipped for that purpose;
- b) The final product represents a completely new product process or at least an important state in the manufacturing;
- c) Each type of article or set shall qualify separately in its own right. (The Tender Board of Namibia Act (Act 16 of 1996)).

The regulation also defines 'local content' as the percentage of materials which are grown, produced or manufactured and the direct labour cost involved in the manufacturing process. It goes further and lists the costs that should be excluded and included in terms of the definition.

The regulation as stated in the Tender Board of Namibia Act (Act 16 of 1996 also defines a 'bona fide Namibian dealer or merchant' as someone who is:

- a) in possession of a general dealer's licence at the time of tendering; or
- b) In possession of a wholesaler's licence and who holds reasonable stock at hand; or
- c) Is a registered Namibian company. (1996, p 11)

## **2.9. Tendering Governance**

According to Gildenhuis (2002), legislation compels governments to call for tenders before buying any goods or services. Only in very exceptional cases are governments allowed to buy goods or services without first calling for tenders.

## **2.10. Legislation**

The government tender process is subject to a range of legislation. The following acts and regulations have been identified as being the most pertinent in this regard:

- Constitution - In terms of articles 56 of the Constitution (1996), when an organ of state in the national 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.
- Promulgation of Tender Board of Namibia Act, 1996 (Act 16 of 1996), of the Parliament.
- Tender Board of Namibia Code of Procedure - The Tender Board of Namibia has in

terms of regulation 2(9) of the Tender Board regulation, 1996, made under section 20 of the Tender Board of Namibia Act 1996 (Act 16 of 1996), adopted the Code of Procedure set out in the Schedule. (The Tender Board of Namibia Act (Act 16 of 1996)).

### **2.11. Code of best practice**

According to Pauw *et al.* (2002), managers must consider the following best practices, which have been developed through international experience in both the private and public sectors:

- Introduce the greater flexibility as regards dialogue between purchasers and suppliers.
- Encourage the use of modern information and communications technologies.
- Use negotiation only in exceptional circumstances; it should not preclude competition.
- Evaluate supply offers against recognised technical specifications such as ISO 9000.
- Consider the economic and financial feasibility of the supplier and its technical abilities and experience, when making selections.
- Use benchmarking to compare the costs and methods of industrial and consumer products.
- Allow the tendering process to take place swiftly because this can significantly reduce transactions costs.
- Avoid the tendency for public tender procedure to become complex and slow. (1996, p 11).

### **2.12. The Tender Board Bill Of 2010**

According to the Tender Board Bill of 2010, the Tender Board is established as “an autonomous board”, which is a first for and highly significant concept, in terms of terminological incorporation into the proposed law, for Namibia in the context of a state agency. The

establishing provision goes on to state: “On the date of the commencement of this Act the Tender Board of Namibia established in terms of the Tender Board Act of Namibia 1996 (Act 16 of 1996), shall cease to exist and as from that date a reference in any law or otherwise to such board shall be construed as a reference to the board established by subsection (1) of the Act.” (Page number 2)

The Institute of the Public Policy Research - IPPR (2011) argued that the concept of autonomy appears to be disconnected from and even contradictory to the rest of the provisions. In that, it does not appear to be given force of the proposed legislation from the initial establishing provision. The bill, in line with the existing law, goes on to grant the line minister various powers throughout. If the concept of autonomy is made a central aspect of the founding of a new tender board, it could go a long way in minimizing or mitigating the spectre of political influence as a potential corruption-inducing factor in the awarding of public procurement contracts, not that such has been widespread in the Namibian context.

However, such a provision would only be truly enlivened if the board is composed of independent-thinking, financially experienced and/or technically skilled individuals from a cross-section of socio-economic spheres.

As it stands, the envisaged tender board would basically be a carbon copy of the existing one in that it would be composed of the various government representatives from each ministry and agency (in practice these have been Permanent Secretaries), their alternatives and the two independent members, plus their alternatives.

IPPR (2011) further states that with non-attendance and sporadic attendance of board members

having been the bane and embarrassment of the tender board over the years, a missed opportunity appears to be in the offing in the sense that a new tender board could be made smaller, thus encouraging greater responsibility, on both a personal and collective level, as well as greater efficiency. The smaller tender board is something long in existence in such developed nations as Australia and the United Kingdom. In addition, government representatives with specialized skills should be used on the tender board. The current situation in which permanent secretaries have made up the bulk of the board is not tenable – mainly because in Namibia permanent secretaries are *de facto* political appointments – hence the tender board could be seen as a ‘party political club’ that could be influenced by the political allegiances of those applying for contracts.

On the theme of responsibility, under Tender Board of Namibia Act, 1996 (Act 16 of 1996) provision dealing with disclosure of interest (Section 6) it states:

- A member who has a direct or indirect personal interest in a tender shall declare 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 (1). Any member who contravenes or fails to comply with a provision of subsection (2) shall be guilty of an offence and on conviction be liable to a fine determined by the minister in the gazette or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment.
- The provision of this section shall apply *mutatis mutandis* to any official who shall declare such interest to the Accounting Officer.

IPPR (2011) revealed that apart from the fact that as with the existing legislation the proposed

law would remain passive on the issue of ethics, board members are relied upon to disclose instead of the proactive implementation and enforcement of a code of ethical conduct there is another crucial element to the disclosure provisions of the bill, specifically the apparent reduction of the penalties in instances where disclosure has not taken place and a member has been found to have acted contrary to the law.

### **2.13. Liability of the Board**

The Board as directed under Tender Board of Namibia Act, 1996 (Act 16 of 1996) shall not be personally liable for any loss or damage arising out of or in connection with the performance of its duties, unless the loss or damage is due to its wilful misconduct, gross negligence or wilful failure to comply with any provision of, or direction or decision under this Act or any regulations or instructions issued under it.

IPPR, (2011), counter argued that it is interesting in the sense that while the penalties appear to have been softened considerably, Tender Board members could be held personally liable in the event of a dereliction and/or abdication of duty, which would constitute “wilful misconduct, gross negligence or wilful failure to comply with any provisions” of the proposed law. (2011, p 5).

### **2.14. Tender committee**

The tender committee handles almost all the tenders issued by the departments. According to Gildenhuis (2002), submission to the Tender Committee must be in writing, and no tenderer is allowed to address these bodies during the adjustment of a specific tender. Any member of such a body, declare this and recuse themselves. And any person involved in the evaluation of a

tender may not be part of the adjudication panel. The recommendations of the body must be based on the conditions, specifications, and criteria contained in the tender invitation.

## **CHAPTER THREE**

### **METHODOLOGY**

#### **3.1. Introduction**

This chapter gives a detailed description of the methods and techniques used in the study for the collection, analysis and presentation of data.

#### **3.2. Research Design**

The study adopted a qualitative research design to examine the findings and come up with conclusions and recommendations to implement factors affecting the tender process of the government of Namibia. Qualitative research aims to produce new knowledge about how things work in real-life context (Eriksson & Kovalainen 2008, p 3). As well as in quantitative business research, qualitative research also relies on several methods of data collection and analysis (Eriksson & Kovalainen 2008, p 3).

The study asked respondents to react to unstructured questions by means of guided interviews to analyse the tendering process. For this type of research to be successful, the number of respondents was drawn from a large number to make sure they are a representative sample of the targeted population.

#### **3.3. Population**

The study population was made up of 189 members of the various tender committees from government ministries. The national government consist of 27 ministries, of which each ministry has its tender committee comprising of maximum seven members. The population of the study is

arrived at by multiplying the seven members of the ministerial tender committee with the total of 27 ministerial committees.

### **3.4. Sample**

A purposive non probability sampling method was adopted for this research. This method exposes the researcher to various stakeholders who have different experiences with the issues under study.

The study targeted 27 respondents. The respondents are the chairpersons of tender committees from 27 government ministries. Each committee has a chairperson, therefore 27 ministerial committees provided 27 committees chairpersons.

This study purposively selected respondents from government ministries' tender committees as follows: The Ministry of Agriculture, Water and Forestry, Ministry of Education, Ministry of Environment & Tourism, Ministry of Fisheries and Marine Resources, Ministry of Health and Social Services, Ministry of Regional, Local Government and Housing, Ministry of Trade and Industry, Ministry of Mines and Energy, Ministry of Works and Transport, National Planning Commission, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Labour and Social Services, Office of the Prime Minister, Ministry of Gender Equality and Child Welfare, Ministry of Home Affairs, Ministry of Veterans, Ministry of Information and Communication Technology, Ministry of Defense, Ministry of Land and Resettlements, Ministry of Youth, Sport and Culture, Ministry of Justice, Ministry of Safety and Security, Office of Presidential Affairs, Office of Auditor General, Office of Attorney General and Parliament Office.

### **3.5. Research Instruments**

The study used guided interviews approach to gather data. As advanced by Warwick (1975), methods chosen for data collection should provide high accuracy and convenience for obtaining data from the respondents. Interviews with tender committee's chairpersons were carried out to collect information on the process of tendering used in the respective ministry. The following comprised instruments that were employed for collecting data; unstructured questionnaire, face to face interview and documentary analysis.

### **3.6. Procedure**

Both primary and secondary data were used in this research. The primary data was collected by means of interview while secondary data was obtained by means of a desk study to contribute toward background information. Secondary data was collected from available published records such as Procurement policy documents, Tender Board website, newspaper reports as well as other research documents relating to procurement in the Namibian public sector.

### **3.7. Data analysis**

The responses received from the interviews were coded, organised and analysed using thematic analysis. Care was taken by the researcher to note the number of times a view was expressed and the number of respondents that expressed that view. This formed the basis for drawing conclusions.

## **4. Research Ethics**

For the purpose of minimising the fears and also to have access to the sectors, consent was sought from these organisations. Letters for permission was written to all these authorities. In the

preamble to the questionnaire, respondents were be made to understand that the study is meant for academic purposes only and not for fault finding and or victimisation.

The study also proposed solutions and recommendations to improve upon the existing practice for effective and efficient use of the scarce resources, especially of the state. The respondents were again informed that names of the respondents of the questionnaire would not be disclosed. They, therefore, were urged to be frank in the responses to the questionnaire.

Information collected during the study is kept safe until such a period the final approval by the research committee. The electronic information is kept in the researcher's hard-drive under security coded folder. Hard materials such as completed questionnaires are kept in the safe box which can be opened with access code known only by the researcher.

The researcher will keep the data collected through-out the study for the period of three months after approval and entirely complete all the processes required to award the required degree. Electronic data will be permanently deleted from the folder, while hard materials such as questionnaires will be destroyed using a shredding machine.

# CHAPTER FOUR

## DATA ANALYSIS, PRESENTATION AND DISCUSSIONS OF THE FINDINGS

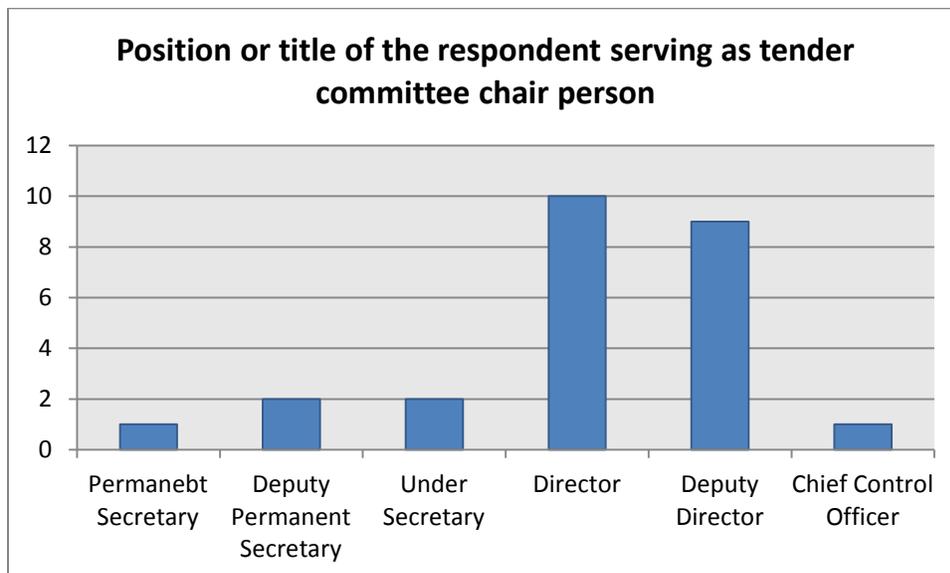
### 4.1. Introduction

This chapter presents the analysis of data collected from various ministries and government agencies. Specifically, data that was collected from the chairpersons of ministerial or agency tender committees in line with the topic “An analysis of the tender process in the government of Namibia”.

### 4.2. Data Presentation

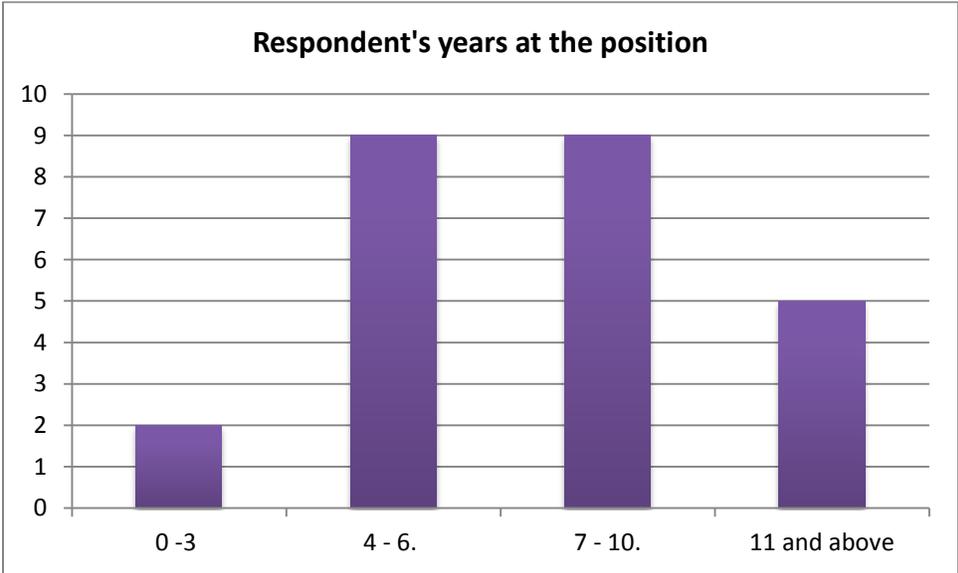
#### 4.2.1. General Information

**Figure 1: Position or title of the respondents**



The study focused on the chairpersons of the tender committees as Accounting Officers from various ministries and government agencies. According to figure 1, the respondents to this study were made up of ten Directors, nine Deputy Directors two Deputy Permanent Secretary, two under secretaries, one Permanent Secretary and one Chief Control Officer. In total, all the respondents were 25.

**Figure 2: Respondent’s years at the position**



The respondents’ numbers of years serving at the current position were grouped as shown in figure 2. Nine of the respondents have served at their current position between 4-6 years and 7-10 years respectively. Two of the respondents served up to three years, and five of them served for more than eleven years.

**4.2.2. Knowledge of the Tender Board Act**

All 25 respondents who were interviewed indicated that they have knowledge of the Tender Board Act.

**Figure 3: Source of knowledge of the Act**

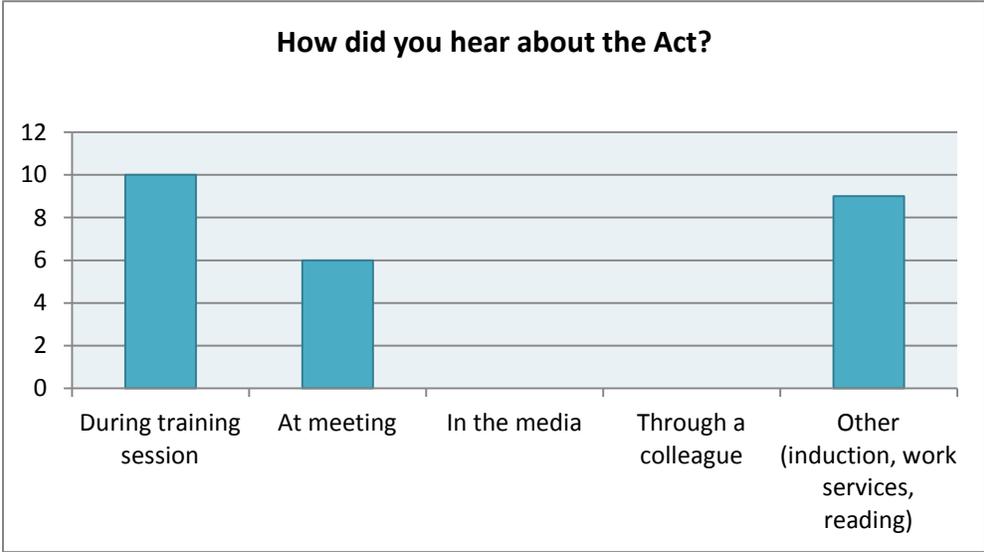
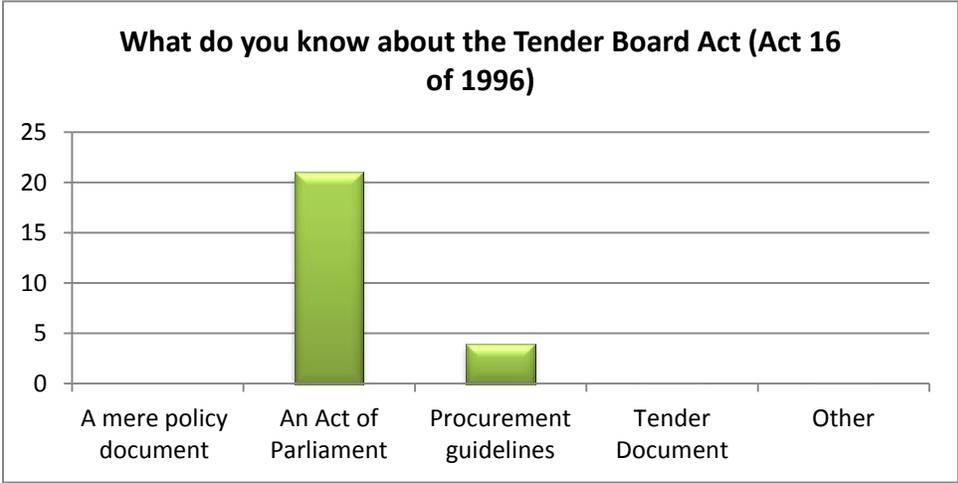


Figure 3 shows how the respondents came to know about the Tender Board Act. Ten of the respondents indicated that they came to learn of the Act during training sessions conducted during their tenure as public servants. Nine of them learnt about the Act via other means such during induction for their role as chair persons of ministerial tender committee or during regular work services and also through reading. Six of the respondents came to know about the Act in one or other meeting.

**Figure 4: The Tender Board Act (Act 16 of 1996)**



Respondents were asked their opinion of the Tender Board Act, (Act 16 of 1996). Twenty one indicated that it is an Act of parliament while four indicate that it is a procurement guideline.

To the question whether the respondents have seen or have any copy of the Act, All 25 respondents indicated that they have seen or have a copy of the Act. Of all of them but one respondent stated that the Act was not referred to, or read it for references for procurement directions.

**Figure 5: Rationale of the Act**

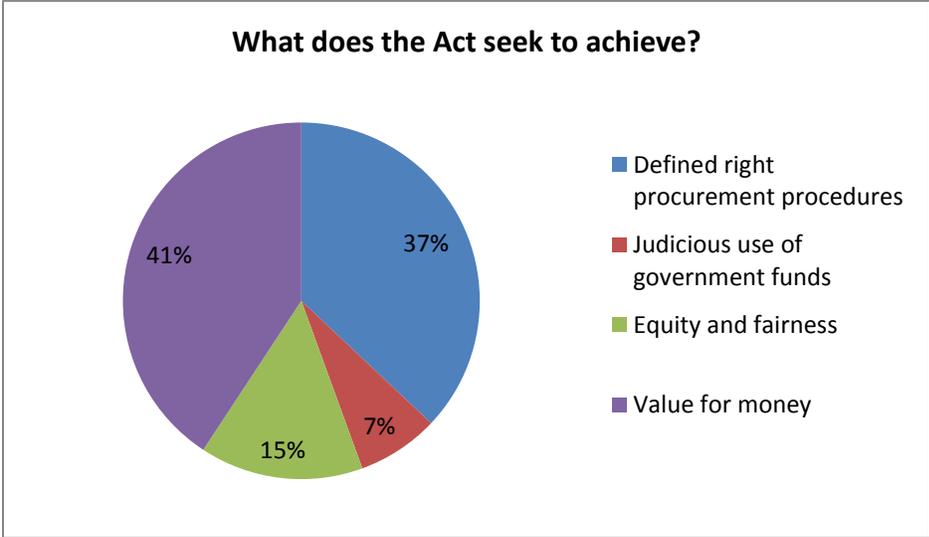


Figure 5 displays respondents understanding of the underlying principles of the Act. Forty one percent of the respondents expressed that it seeks value for money, 37% indicated that it seeks to define right procurement procedures, while 15% and 7% stated that it seeks equity and fairness and judicious use of government funds respectively.

**Figure 6: Application of the Act**

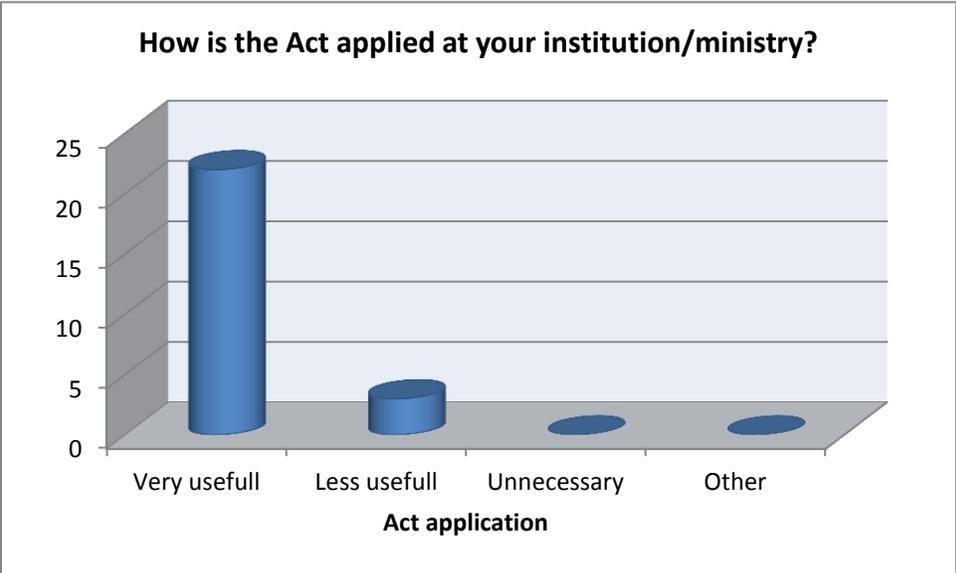
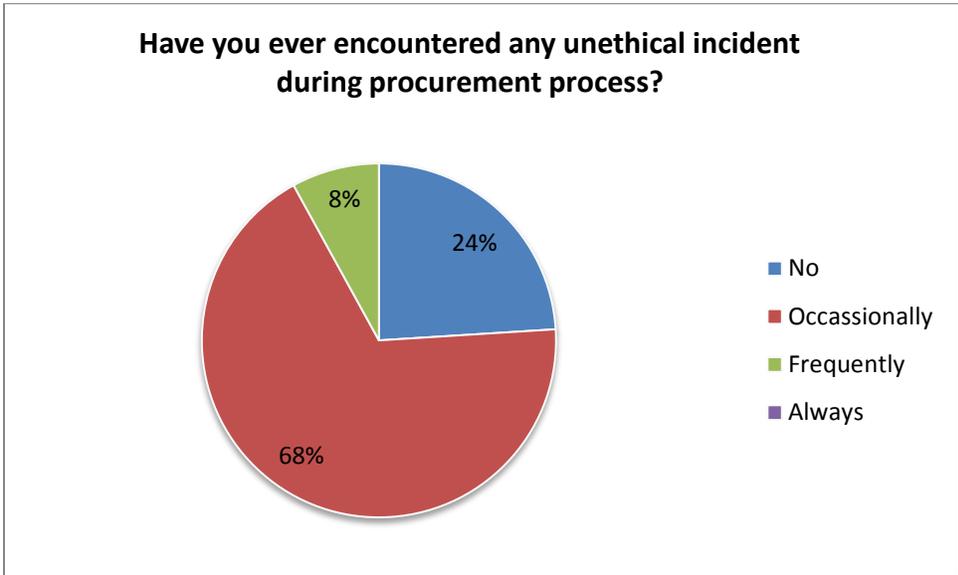


Figure 6 demonstrates respondents’ reaction to the question of how the Act is applied at their ministries. The majority of the respondents (88%) believe that the act is a very useful document at their ministries, while 12% of the respondents indicated that it is less useful.

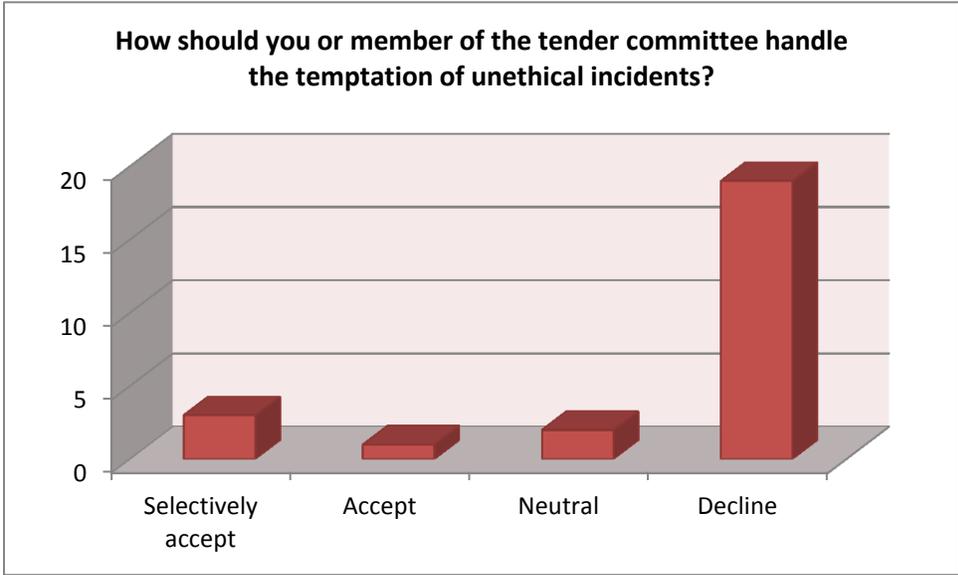
**4.2.3. Procurement Ethics**

**Figure 7: Unethical incidences during procurement process**



As per figure 7 demonstration, majority of the respondents (68%) acknowledged that they have encountered unethical cases during procurement process at occasional occurrences. Twenty four percent of respondents have never encountered unethical cases, while 8% admitted that occurrences of unethical cases happens frequently in their institutions.

**Figure 8: Handling temptations of unethical incidents**



According to figure 8, 95% of the interviewed respondents stated that they will or decline

temptations of unethical cases that occur at their ministries during procurement process. A small number of three, two and one respondents indicated that they would selectively accept, accept or remain neutral to the temptations.

**Figure 9: procurement ethical issues**

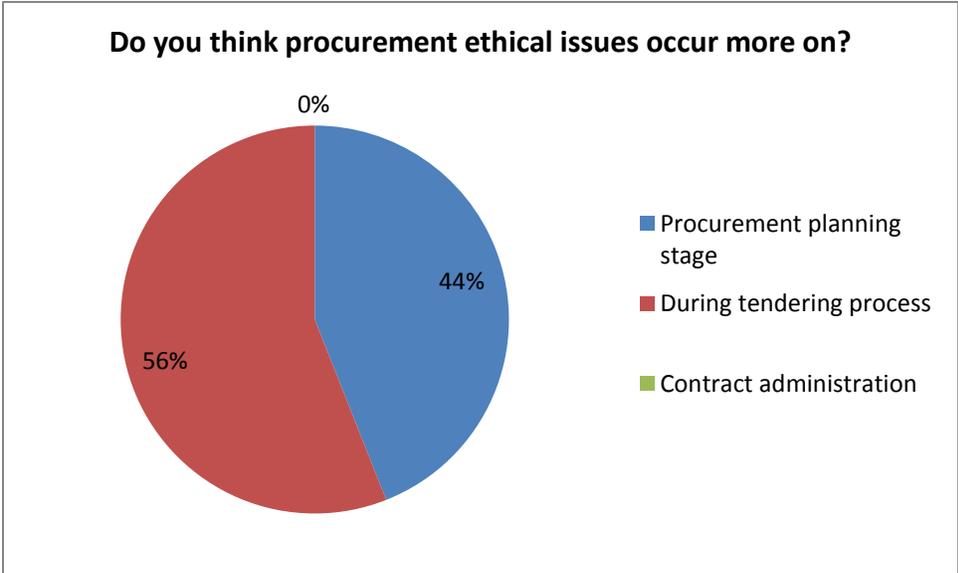
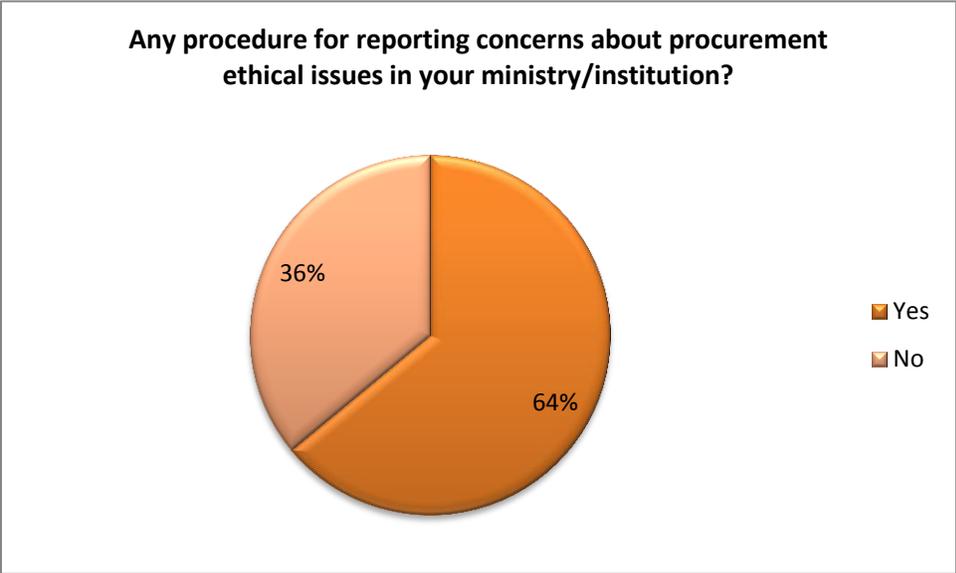


Figure 9 depicts the percentage of the respondents’ opinion on where in the procurement stage ethical issues happen more. The majority of them (56%) believe that procurement ethical issues occur more during tendering process. Forty four percent indicated that ethical issues happen more during procurement planning stage.

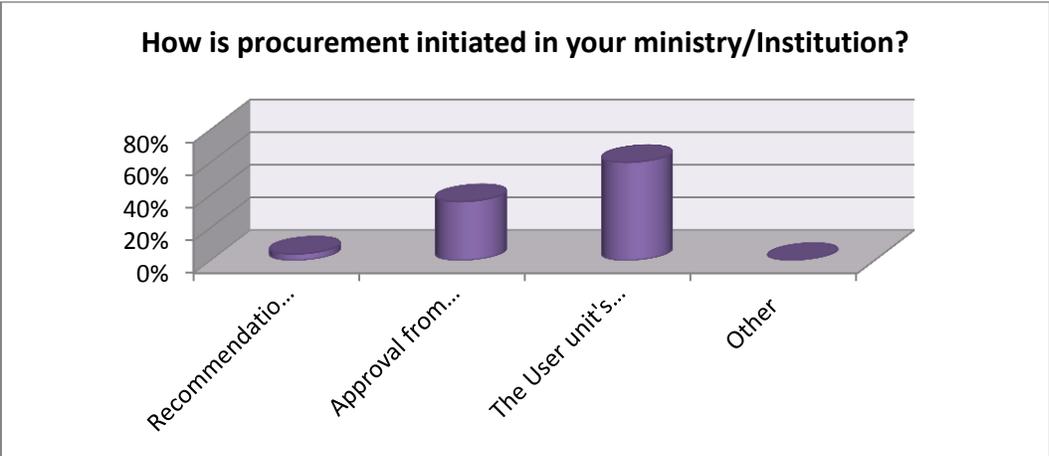
**Figure 10: Reporting concerns about procurement ethical issues**



Respondents were asked if there were procedures for reporting concerns about ethical issues that happen in their ministries. To this question, the majority of the respondents (64) replied that there was no procedure for reporting incidents of unethical procurement. Thirty six percent of the respondents stated that they had such procedures in their ministries.

**4.2.4. Alignment with the relevant applicable enabling legislations and Tender Board Act**

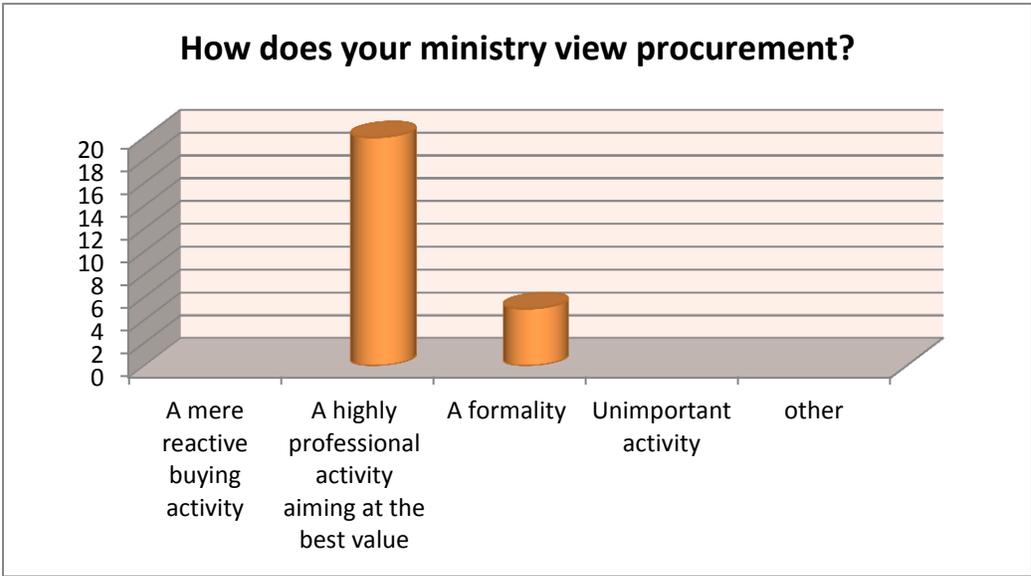
**Figure 11: Procurement imitation**



From figure 11, it can be said that procurement activities are initiated at the requesting unit level as supported by the 60% of the study respondents. There is also a fraction (36%) which indicated that the initiation of procurement starts with the approval from the head of the directorate while 4% stated that the initiation commences with recommendation from the ministerial tender committee.

Respondents were asked to state the sequence of the purchasing operations in their respective ministries. More than 60% of the respondents indicated that the sequences of operations in purchasing in their respective ministry/institution is: Identification of items required - Seeking approval of the Procurement Committee - Invitation of Suppliers to submit quotations - Evaluation of Quotations submitted - Awarding of contract and Contacting a Supplier for Purchasing.

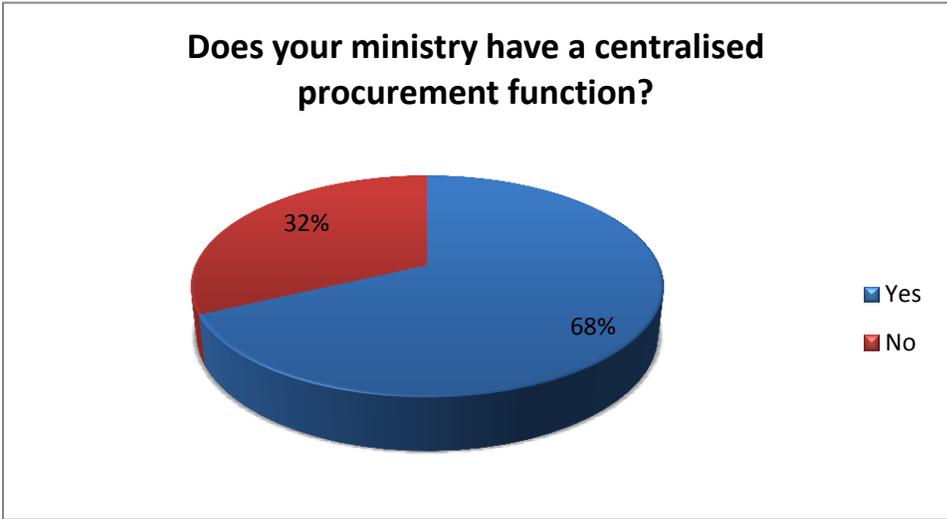
**Figure 12: Significance of procurement function in the ministry**



According to figure 12, 83% of the respondents view procurement function in their ministries as

a highly professional activity aiming at best value. The rest of the respondents indicated that it is a function that is practiced for formality.

**Figure 13: centralized procurement function**



As indicated in the figure 13, 68% acknowledged having a centralised procurement function in their ministries while 32% stated otherwise.

**Figure 14: Frequency of the committee meetings**

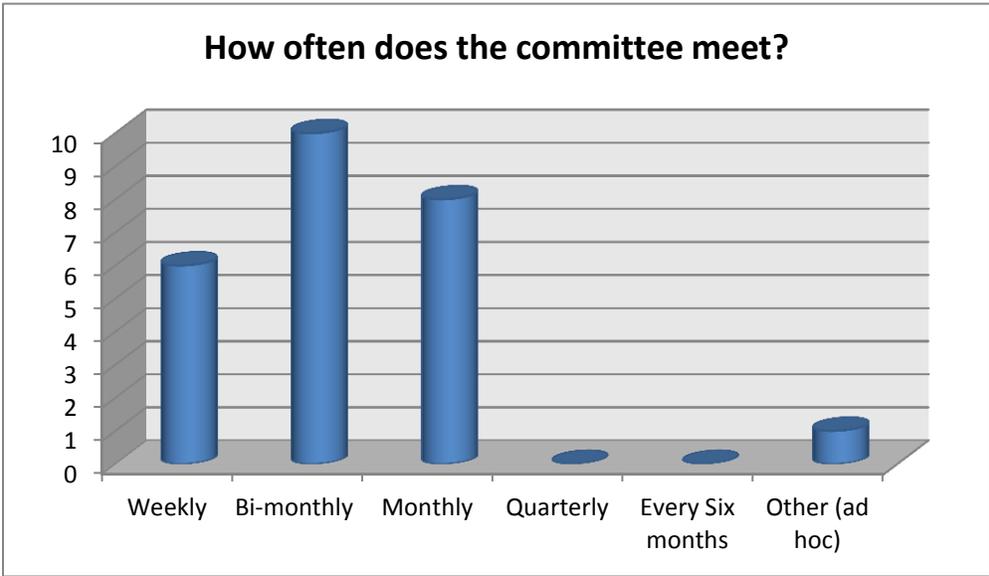


Figure 14 shows how various ministerial tender committees convene their meetings. The majority (40%) of the respondents indicated that they convene tender committee meetings twice a month while eight of the respondents stated that they convene it on a monthly basis, and six respondents convene the meeting on a weekly basis. One percent of the respondents indicated that there was no fixed schedule for convening the tender committee meetings, but it is rather done on an ad hoc basis.

**Figure 15: Does the ministry have a Procurement Officer?**

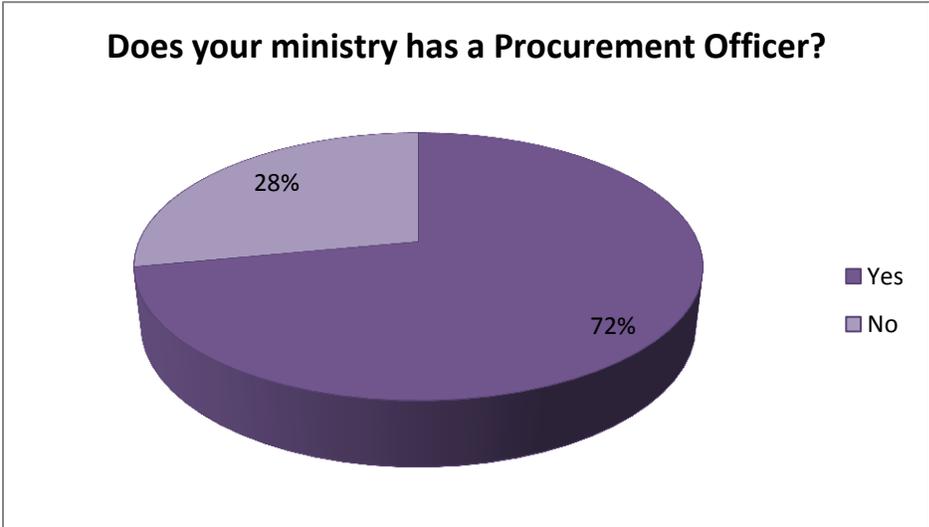
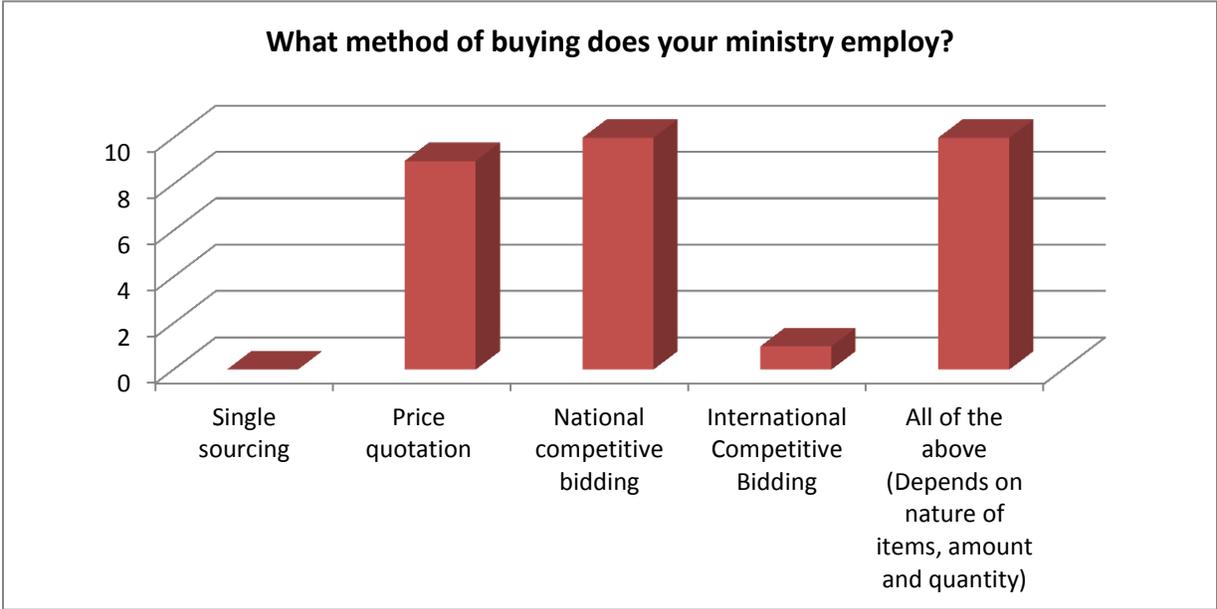


Figure 15 illustrates that 72% of ministries do have procurement officers dedicated for procurement activities, while 28% of the ministries do not have procurement officers.

All 28% of ministries that stated that they do not have procurement officers, indicated that the administrators in their ministries are the ones that are responsible for the work of the procurement.

**Figure 16: Method of procurement**



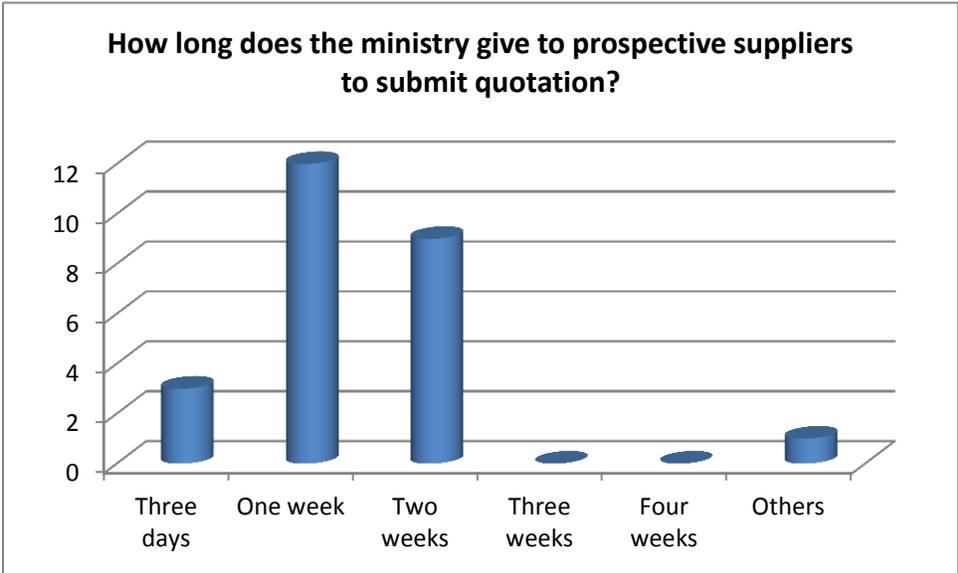
Most ministries indicated that they used all methods of procurement. An equal number of ministries stated that they mostly use national competitive bidding method. The most secondary method of procurement used is price quotation, while international competitive bidding is the method most do not use.

**Figure 17: Roster of suppliers**



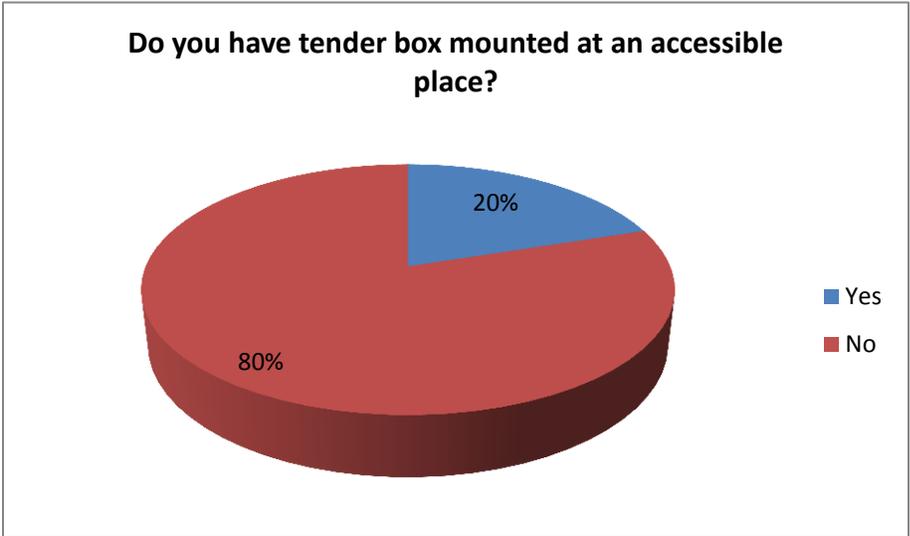
To the question whether respondents have available list of suppliers in their ministries, 56% indicated that they have the list of suppliers while 44% said they do not have a list in place.

**Figure 18: Required time period to submit quotations from suppliers**



Half of the respondents (50%) responded that, it normally required them one week to get quotations from potential suppliers. 33% of them indicated that they gave two weeks in order to receive quotations from suppliers while three respondents gave three days.

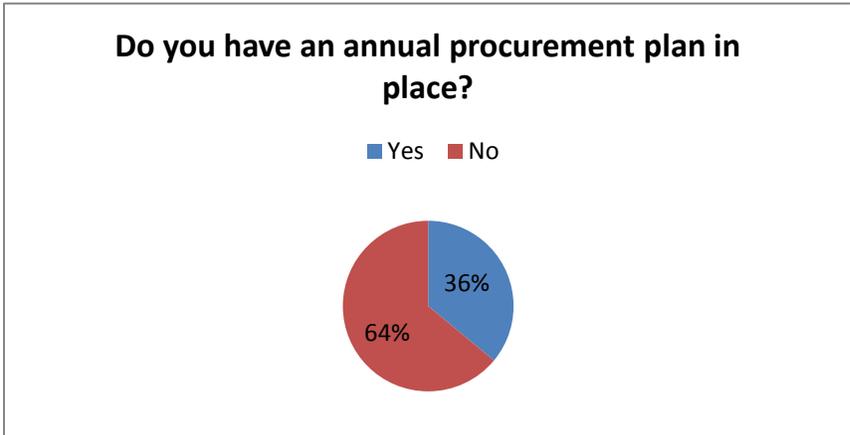
**Figure 19: Accessible tender box**



As shown in figure 19, 80% of the ministries do not have accessible mounted tender boxes. The figure tells that only 20% have indicated the availability of the tender boxes in the ministries.

Respondents were also asked to state whether they automatically sought lower quotations before thoroughly analysing and evaluating the rest of quotations. All twenty five respondents agreed to evaluating quotations before settling for lower priced quotations.

**Figure 20: Annual procurement plan**

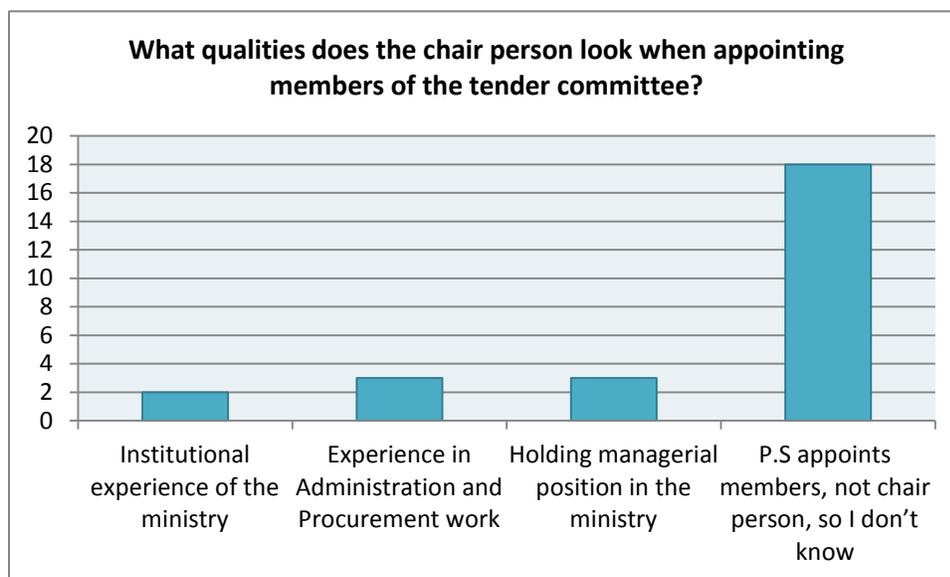


To the question if the ministries have and use an annual procurement plan, 64% of the respondents indicated that they did not have procurement plans in place. Only 36% agreed they had the procurement plans in their ministries.

Thirty six percent of government ministries that have procurement plans in place, indicated that their procurement Officers were the ones responsible for preparing the procurement plan while the rest of the ministries were guided by the departmental budget to make their procurement.

#### 4.2.5. Composition of ministerial tender committee

Figure 21: Credentials of the tender committee members



According to figure 21, it is depicted that most of the ministerial tender committee chairpersons are delegated by the Accounting Officers (Permanent Secretaries) in their ministries. As such, most of the respondents (18) have indicated that they have no idea what credentials the appointing officer looks at as they are not the ones who appoint the members. The rest of the respondents indicated qualities such as institutional experience, administration and procurement experience and holding management position in the ministry as the qualities that warrant to being a member of the ministerial tender committee.

To the question whether tender committee members are qualified and experienced to handle procurement operations of their ministry, 98% believed that members of the ministerial tender committee were qualified and experienced to handle operations of the procurement.

**Figure 22: Committee members’ decision regarding procurement operation**

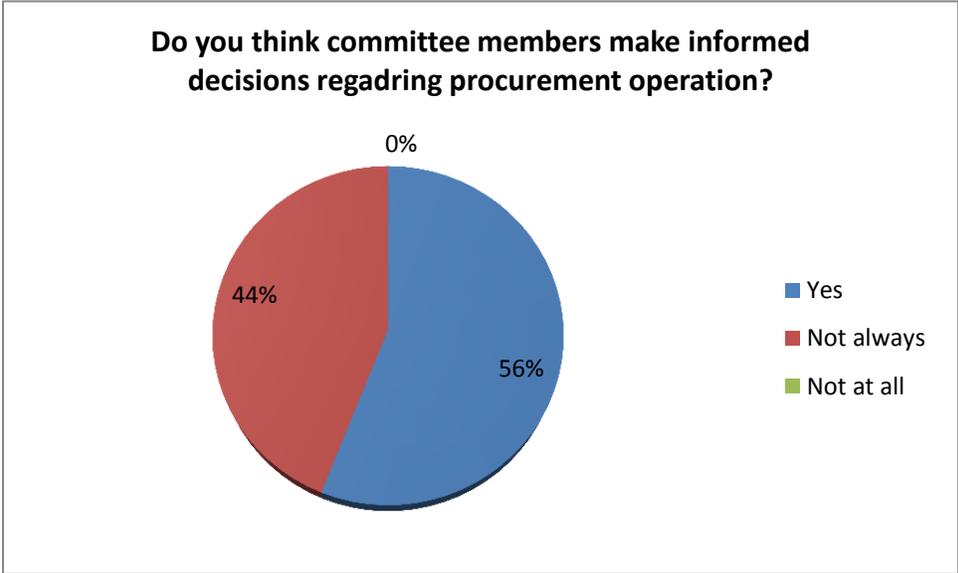
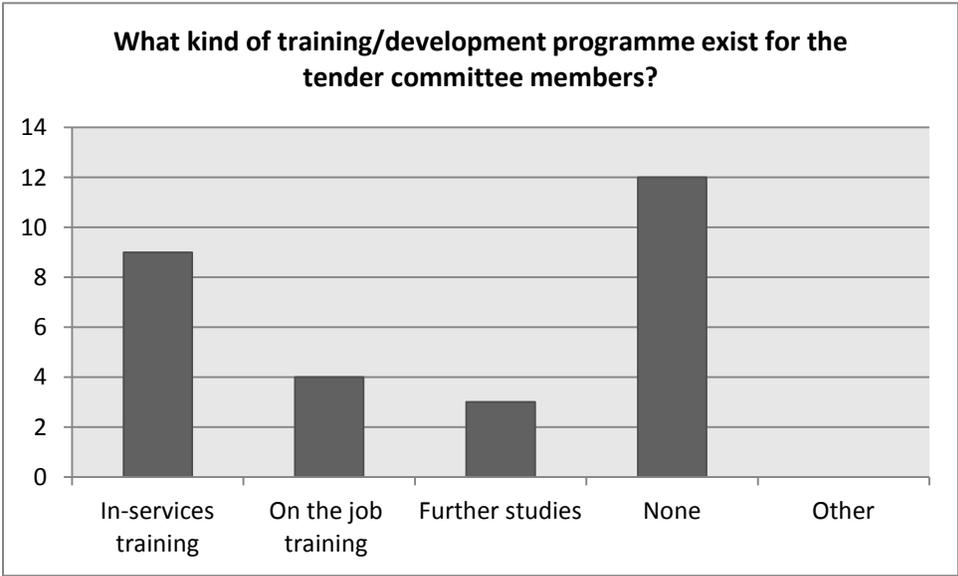


Figure 22 illustrates that 56% of the respondents believe that members of the tender committee’s decisions were well-informed and sound, while 44% of the respondents do not believe that decisions made by the committee members were well informed.

**Figure 23: Existing training/development programme for the tender committee members**



According to figure 23, most of the respondents (43%) stated that currently there was no training

or development programme for them. 32% of them indicated that there was in-service training currently available for the tender committee members, while four respondents said there was on the job training, and three respondents stated that further studies currently exist for the members.

### **4.3. Discussions**

#### **4.3.1. Knowledge of the Tender Board Act**

All respondents had heard of the enactment of the Tender Board Act, (Act 16 of 1996). This indicates that ministerial tender committee members knew that a regulatory policy had been put in place to direct the affairs of all procurement issues in the country. It was learnt that they heard about the Act through the training session, inductions, reading and at meetings.

Though they consider the Act as an important document, they have different opinions of its importance. Some think the Act is a document which defines the right of procurement procedures, while the other group believes that it is a document that seeks equity and fairness and also value for money. Some members also think the act means to stipulate the judicious use of government funds. Even though the majority believed the act is a very useful document, among the ministerial tender committee members there are still individuals who viewed it as one of the policies the government brought up but not taken very seriously and considered it as less useful to their work.

#### **4.3.2. Procurement ethics**

From the analysis, an unethical practice in the government procurement is a common occurrence as supported by many by acknowledging the occasional and to some extent frequent

encountering of the incidences. Even though the majority of the members said they would definitely refuse the temptation of unethical cases in procurement, there are stages in the process of procurement where some committee members have no control decisions made at various stages of procurement since they do not take part in overall process of tendering. Since they have highlighted that unethical incidences happen more during the tendering process, it is very difficult for the committee members to do away with irregular practices in the procurement process. Only few respondents acknowledged that there were existing reporting procedures in their institutions for encountered unethical procurement cases.

### **4.3.3. Alignment with the relevant applicable enabling legislation and Tender**

#### **Board Act**

About 50% of the suppliers used by the government are those that are registered in the internal register of suppliers. When there is a need to acquire goods or services, the government mostly make use of the registry to appoint a supplier, avoiding the method of competition by not placing the announcement in public domain. The suppliers are in many cases given a period of a week to respond to the advert, which according to the required standard is very short for the suppliers to respond. In most of the government ministries, there are no presences of tender boxes.

On evaluation of quotations, even though majority answered yes, it was difficult to get a copy of the evaluation reports. It was again realized that price was the main yardstick used to evaluate quotations.

A procurement plan serves as a guide to managers who engaged in procurement practices. It is one of the requirements of the Tender Board Act which enjoins every entity especially those that rely on state funds to prepare procurement plans for every year and make submission of copies to

their various ministerial tender committees.

The fact that 64% of the ministries did not have annual procurement plans in place meant that they were not adhering to the provisions in the Tender Board Act (Act 16 of 1996). The Act states that every procurement entity should prepare a procurement plan to support its approved programme. The procurement Plan is to be submitted to its ministerial tender committee not later than one month before the end of the financial year.

The lack of using annual procurement plans in the ministries could be the reason ad-hoc procurement is an order of the in the government. In institutions where procurement plan was developed, it was hardly followed. Ministries would rather prefer to make use of the budget lines in order to monitor expenditures than using procurement plans.

Ad-hoc and emergency procurement should be done at minimal level, mostly when unforeseen circumstances that require procurement actions arise. For instance, if a rainstorm removed the roof of a hospital, immediate action would be required to address the problem, else operations in the facility could become chaotic. If this turns out to be the case then the existing annual procurement plans are not flexible to be adapted to changes.

#### **4.3.4. Composition of ministerial tender committee**

The findings revealed that close to 50% of respondents do not have confidence in the decision made by the committees. This implies that such decisions are sometimes poorly made causing selecting incompetent suppliers which results in spending more money unnecessarily. The findings also reveal majority of the tendering committee members did not attend any procurement training workshops/seminars. The training/capacity building programmes attended

by committee members do not meet the needs of the procurement procedures. The findings also revealed that inadequate training of tendering committee members on procurement procedures contributed to non-compliance of procurement regulations in government procurement.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMENDATIONS**

#### **6.1. Introduction**

This chapter provides the conclusions and recommendations on the study.

#### **6.2. Conclusions**

From the above findings, it was concluded that ethics, awareness and training influences the compliances of procurement regulations in government. The study acknowledges the importance of ethics, awareness and training in compliance to procurement procedures and regulations. However, a lot needs to be done to improve ethical conduct, knowledge of employees on procurement regulations and training because failure to comply with the regulations tendering committees and suppliers can lead to major losses for the government. The suppliers to the ministries also induce unethical practices like corrupting the ministerial tendering committee members, and, therefore, strong enforcements of laws should be implemented. The other factors discovered in the field included: improving the effects of compliance on quality of goods and services. The following new valuables were found in the course of collecting data: improving the challenges facing the enforcement of procurement regulations in government; enhancing transparency and accountability, and improving the challenges facing procurement in government.

## **Knowledge of Tender Board Act**

The study showed that the personnel in the ministerial tender committees did not have full knowledge about the law and as such its implementation could not be without problems. The members had heard that the promulgation of the Tender Board Act (Act 16 of 1996) was to serve as a policy guideline in the procurement procedures. Details of the document were, however, not known since no training programme had been organized to sensitize them. The little that the workers knew about the law was heard in the meetings, general trainings and reading by themselves. In view of this, it was only few officers in management position who were abreast with the law.

### **6.3. Recommendations**

This section seeks to address issues that came up from the study. They are suggestions being brought up as means to improve the situation, as far as proper procurement procedures were concerned as spelt out in the act.

As a result of these study findings, the researcher put forward the following recommendations:

- It is important to offer ethics education to tendering committee members in order to ensure they serve in ultimate objectivity, accountability, and non-discrimination. The organization code of ethics should be well put in place and adhered to; in order to guide the daily operations of tendering committee and to provide them with guiding principles. The ministries should train tendering committee, suppliers / bidders on the proper procurement procedures and practices so as to create consistency and to reduce cost.

- The government should organize both in-service and external training sessions for procurement staff and the members of the ministerial tender committee, especially those officers who were involved in procurement procedures. This is because the Act which guides the way and manner procurement matters should be carried out contains so many processes. Officers in procurement and members of the tender committee have to be given thorough training on the subject so that its implementation will not be a problem. With in-service training, short courses within weeks or more could be held to enable the managers have in-depth knowledge of the Act.
- As far as external training was concerned, government through, Tender Board, could liaise with the training institutions like the polytechnic and the university to hold training sessions for personnel in the service in the procedures in procurement area. This could even be included in the training curriculum of the training institutions to introduce and train personnel students to enhance their capacity in the procurement processes.
- Ministry of Finance as the custodian of tendering legislation should consolidate all the different tendering and issue a single national framework.
- Accounting officers as heads of the ministry in terms of administration should review the effectiveness of the system for monitoring compliance with laws and regulations.
- Accounting officers should, whilst setting standards and assigning responsibilities, promote the development of a tendering process management system that conforms to all regulations or directives as might be applicable.

#### **6.4. Areas for further research**

Further research should be undertaken on the following areas: effects of compliance on quality of goods and services procured by ministries; challenges facing the enforcement of government procurement regulations, and challenges facing procurement in each ministry.

## REFERENCES

Afonso, A. (2005). Public Sector Efficiency: An International Comparison, *Public Choice*, 123, 3-4, 321-47.

Aho, E. (2006). *Creating an Innovative Europe, (Aho Group Report)*. Helsinki, Finland: Finnish National Fund for Research and Development.

Ambe, I.M. and Badenhorst-Weiss, J.A. (2011). *An Examination of Supply Chain Management in the South African Public Sector*. 20th Annual IPSERA 2011 Conference, 10–14 April, Maastricht, The Netherlands.

Aschhoff, B. and Sofka, W. (2008). Innovation on Demand – Can Public Procurement Drive Market Success of Innovations?. *Research Policy*, 38 (3), 1235-47.

Bovaird, T. (2006). Developing New Forms of Partnership with the Market in the Procurement of Public services, *Public Administration*. England: University of the West of England.

Brulhart, M. (2004). Public Expenditure, International Specialisation and Agglomeration, *European Economic Review*, 48(4), 851-81.

Burke, K.J. (2007). *Project management*. London: Van Haren.

De-Boer, L. & Telgen, J. (1998). Purchasing practice in Dutch municipalities. *International Journal of Purchasing and Materials Management*, 34(2), 31-36.

Edler, J. and Georghiou, L. (2007). Public procurement and Innovation – Resurrecting the Demand side, *Research Policy*. Oxford, England: Oxford University Press.

Eriksson, P., Kovalainen, A. (2008). *Qualitative methods in business research*. London, SAGE Publications Ltd

Gelderman, J. C., Ghijsen, W. P. & Brugman, J. M. (2006). Public procurement and EU tendering directives- explaining non-compliance. *International Journal of Public Sector Management*, 19(7), 702-714.

Gildenhuis, J.S.H. (2002). *Public financial management*. Pretoria: Van Schaik.

IPPR. (2011). *Anti-Corruption Research Programme, Paper 3: The Tender Board Need Root and Branch Reform*. IPPR Namibia.

Mathee, C.A. (2006). *The potential of Internal Audit to Enhance Supply Chain Management Outcomes*. Master's dissertation. University of Stellenbosch, Stellenbosch.

Moeti, K., Khalo, T., Mafunisa, J., Nsingo, S. & Makondo, T. (2007). *Public finance fundamentals*. Cape Town: Juta.

Prajogo, D.I. (2008). Impact of Value Chain Activities on Quality and Innovation, *International Journal of Operations & Production Management*, 28(7), 615-35.

Republic of Namibia. (2013). High Court of Namibia Main Division. *Judgement, Case No: A109/2013*. Windhoek, Namibia: High Court of Namibia

Republic of Namibia. (2010). *Tender Board Bill-June 2010-Final draft*. Windhoek, Namibia:  
Ministry of Finance.

Republic of Namibia. (1996). *Tender Board Act, 1996, Windhoek*. Windhoek, Namibia:  
Parliament of the Republic of Namibia.

Thai, K.V. (2001). Public Procurement Re-examined, *Journal of Public Procurement*, 1(1), 9-50.

Uyarra, E. (2010). Understanding the Innovation Impacts of Public Procurement, *European Planning Studies*, 1(1), 123-43.

Van Zyl, D.C. (2006). *Strategic Supply Chain Management by Matatiele Municipality*.  
(Master's Dissertation). Stellenbosch, South Africa: University of Stellenbosch.

Visser, C.B. & Erasmus, P.W. (2007). *The Management of Public Finance (A Practical Guide)*. Cape Town, South Africa: Oxford University.

Von Bock. (2005). *Supply chain management*. New York, NY: Thomson

Warwick, D.P. (1975). *The Sample Survey: Theory and Practice*. New York: McGraw-Hill.

Water, D. (2002). *Operations Management-producing Goods and Services*. Essex: Pearson Education Limited.

# APPENDIX I: INTERVIEW QUESTIONNAIRE

UNIVERSITY OF NAMIBIA

NAMIBIA BUSINESS SCHOOL

DEPARTMENT OF ECONOMICS AND MANAGEMENT SCIENCE

## AN ANALYSIS OF THE TENDER PROCESS IN THE GOVERNMENT OF NAMIBIA

**TARGET GROUP:** Chairperson of the Ministerial Tender Committee

Dear Respondent,

My name is Nellius Phillipus a final year Masters in Business Administration student at the University of Namibia. I am currently conducting research under the supervision of Dr. S.B Lwendo. The focus of my study is the analysis of the tender Process in the Government of Namibia.

I humbly request you to spare some few minutes of your time and answer these questions below.

The study is strictly for academic purposes and will be treated with utmost confidentiality.

Your cooperation is highly appreciated.

### Section A: General Information

1. Name of the ministry .....

2. Position or title of person completing the questionnaire

.....

3. How many years are you in this position?

0 - 3	
04 - 6	
07 - 10	
11 and above	

### **Section B: Knowledge of the Tender Board Act**

4. Have you heard about the Tender Board Act?

- i. Yes
- ii. No

5. If yes, how did you hear about it?

- i. During Training Session
- ii. At Meeting
- iii. In the Media
- iv. Through a colleague
- v. Other (Specify)

6. What do you know about the Tender Board Act, (Act 16 of 1996)?

- i. A mere policy document
- ii. An Act of Parliament
- iii. Procurement Guidelines
- iv. Tender Document
- v. Other (Specify)

7. Have you seen/got a copy of the Act?

- i. Yes

- ii. No
- 8. If yes, have you been reading /referring to it from time to time?

- i. Yes
- ii. No

9. What does the Act seek to achieve?

- i. Defined right of procurement procedures
- ii. Judicious use of government funds
- iii. Equity and fairness
- iv. Value for money
- v. Other (Specify)

10. How is it applied at your ministry?

- vi. Very useful
- vii. Less useful
- viii. Unnecessary
- ix. Other (Specify)

### **Section C: Procurement ethics**

11. Have you ever encountered any unethical incident during procurement process?

- i. No
- ii. Occasionally
- iii. Frequently
- iv. Always

12. With reference to procurement code of procedures, how should you or members of tender committee handle the temptation of unethical incidents?

- i. Selectively accept
- ii. Accept
- iii. Neutral

- iv. Decline
13. Do you think procurement ethical issues occur more on:
- i. Procurement planning stage
  - ii. During tendering process
  - iii. Contract administration
14. Is there any procedure for reporting concerns about procurement ethical issues in your ministry?

## **Section D: Alignment with the relevant applicable enabling legislations and Tender Board Act**

15. How is procurement initiated in your ministry?
- i. Recommendation from the Ministerial Tender Committee
  - ii. Approval from the head of directorate
  - iii. The user unit's request
  - iv. Other (Specify)
16. What are the sequences of operations in purchasing in your ministry?
- a) Identification of items required
  - b) Contacting a Supplier for Purchasing
  - c) Seeking approval of the Procurement Committee
  - d) Invitation of Suppliers to submit quotations
  - e) Evaluation of Quotations submitted
  - f) Awarding of contract
- i. a, b, c, d, e & f
  - ii. a, e, f, d, b, & c

- iii. a, c, d, e, f, & b
- iv. a, f, c, d, b & f
- v. Other (Specify)

17. How does your Ministry view procurement?

- i. A mere reactive buying activity
- ii. A highly professional activity aiming at the best value
- iii. A formality
- iv. Unimportant activity
- v. Other (Specify)

18. Does your ministry have a centralized procurement function?

- (i) Yes
- (ii) NO

19. Who are the members of the Procurement/Tender Committee (by position)? Please list them.

20. How often does the Committee Meet?

- i. Weekly
- ii. Bi-monthly
- iii. Monthly
- iv. Quarterly
- vi. Every six months
- vii. Others (Specify)

21. Does your ministry have a Procurement Officer?

- i. Yes
- ii. No

22. If NO, then who procures for your ministry?

- i. The Storekeeper

- ii. The Accountant
- iii. The Administrator
- iv. The directorate Director
- v. Other (Specify)

23. What method of buying does your ministry employ?

- i. Single sourcing
- ii. Price quotation
- iii. National Competitive Bidding
- iv. International Competitive Bidding
- v. Other (Specify)

24. Do you have registered suppliers in place?

- i. Yes
- ii. No

25. How long does the facility give to prospective suppliers to submit quotations?

- a) Three days
- b) One week
- c) Two weeks
- d) Three weeks
- e) Four weeks
- f) Others, specify

26. Do you have a tender box mounted at an accessible place?

- i. Yes
- ii. No

27. Do you evaluate quotations before the selection of the lowest evaluated bidder?

- i. Yes
- ii. NO

28. Do you have an annual Procurement Plan in place?

- i. Yes
- ii. NO

29. If yes, who prepares it?

- ii. The Accountant
- iii. The Procurement Officer
- iv. The Administrator
- v. Other (specify)

30. If No, what guides you in your purchases?

- i. Rough estimates
- ii. Work load
- iii. Based on previous rate
- iv. Other, specify

31. Do you follow the Procurement Plan in all purchases?

- i. Yes
- ii. No

## **Section E: Composition of ministerial tender committee**

32. What qualities does the chair person look when appoint members of the ministerial tender committee?
33. Tender committee members are qualified and experienced to handle procurement process?
34. Do you think committee members make informed decisions regarding procurement operation?
35. What kind of training and/or development programme exists for the tender committee members?
  - i. In-service training
  - iii. On-the job training
  - iv. Further studies
  - v. None
  - vi. Other (Specify)