

Column Corruption – A social disease • Part 131

Public private partnerships, joint ventures and conflict of interest

One of the global trends is the creating of public private partnerships (PPPs) in order to contract out public services, to reduce the size of public services and to commercialise services for capacity building, improved performance and job creation.

Under PPP arrangements, companies can form joint ventures with parastatals, previously known as state-owned enterprises (SOEs) in Namibia, currently known as public enterprises (PE) based on the Public Enterprises Governance Amendment Act (Act No 8 of 2015). When such joint ventures bid for public contracts, a conflict of interest is created, even more so if such joint ventures bid for tenders in which they are recipients of such contracts to provide a service(s).

Such joint ventures do have insight into the operations of the PEs for which bids are made, as well as connections with current and former employees and management of PEs.

Even more alarming is a situation where a business activity of a PE is part of a joint venture that is both the bidder and recipient of a tender. PPPs create a governance dilemma, i.e.: when the tenderer (a PE such as TransNamib) enters into a PPP with a private company like Namibia Rail Construction (2016). Such a PPP can then be the tenderer as well as the service provider. Such a relationship creates a conflict of interest that is not allowed in terms of the Competition Act (Act No 2 of 2003).

A conflict of interest brought on by a PPP and/or a joint venture agreement, is certainly against the spirit of the Competition Act (Act No 2 of



Johan Coetzee

2003) as a practice or agreement aimed at lessening competition, and may well fall foul of the provisions against collusive tendering.

A LINE THAT SHOULD RATHER NOT BE CROSSED

Based on the discussion, the following questions can be posed: What is the purpose of a tender if the tenderer and the receiver of the tender is the same institution and/or linked in a PPP with a private company in a joint venture?

While the situation may not be corruption in the legal sense, it shows elements of questionable governance, namely conflict of interest, and this flies directly in the face of transparency and fairness.

Conflict of interest is difficult to prove in terms of the Anti-Corruption Act (Act No 8 of 2003) because manipulation and lobbying are not necessarily corruption. However, the outcome could be corruption. Even if conflict of interest cannot be proven legally, it remains unethical and immoral in terms of the Namibian society's expectations and values as well as governance principles in terms of the NamCode, a watered down version of King III (Namibian Stock Ex-

change, King IV).

From a governance perspective of transparency and fairness in preventing corruption, PPPs and joint ventures with PEs, are not viable for good governance and improved service delivery. Such arrangements breed conflict of interest and monopolies, which are serious forms of corruption.

PPPs should be governed with declaration of interests, in accordance with the Company's Act (Act No 28 of 2004, Chapter 8, Parts 5 and 6) and the NamCode.

One option is a transparent system of declaration of interests for all board members that is monitored by public oversight committees.

Such committees should consist of members of civil society with neither interests in such PEs nor connections with board members and/or those appointing board members. Such a system should have penalties for non-reporting of conflict of interests.

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