



# BOTLHOLE LAW GROUP THINKTANK PUBLICATION

## AVOIDING COMMON PITFALLS IN PUBLIC PROCUREMENT COMPLIANCE: A CORPORATE GOVERNANCE PERSPECTIVE

Public procurement in Botswana is a structured and highly regulated process, governed by the Public Procurement Act, 2021. Businesses looking to secure government contracts must ensure strict compliance with the Act to avoid disqualification, penalties, or reputational damage. Strong corporate governance plays a crucial role in ensuring compliance, fostering transparency, accountability, and ethical decision-making in procurement processes. Below are some of the most common pitfalls in public procurement and how to avoid them through robust corporate governance practices.

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## 1. NON-COMPLIANCE WITH TENDER REQUIREMENTS

One of the biggest mistakes bidders make is failing to adhere to the precise requirements set out in tender documents. The Public Procurement Act, 2021 emphasizes transparency and fairness, making it critical for businesses to submit complete and accurate documentation.

### HOW TO ALIGN WITH CORPORATE GOVERNANCE:

- ▶ **Establish an internal compliance framework to oversee procurement activities (oversight).**
- ▶ **Engage legal or procurement experts to verify compliance before submission.**
- ▶ **Maintain an internal checklist for common procurement requirements such as tax clearance, company registration, and financial statements.**

## 2. CONFLICT OF INTEREST AND UNETHICAL AND ILLEGAL PRACTICES

The Act has strict provisions against conflicts of interest, bid rigging, and collusion. Engaging in unethical practices—whether knowingly or unknowingly—risk disqualification, contract termination, financial penalties, and blacklisting from future tenders.

For instance, the Public Procurement Act, 2021 empowers the Public Procurement Tribunal, to refer suspected cases of unethical and illegal procurement practices, such as corruption, to oversight bodies like the Directorate on Corruption and Economic Crime (DCEC) for investigation. This governance framework ensures that procurement-related misconduct is thoroughly examined and appropriately sanctioned, reinforcing corporate integrity and public accountability.

Additionally, the Act establishes a Code of Conduct for Contractors, which includes disqualification provisions for contractors convicted of corruption under the Corruption and Economic Crime Act. Bidders must also disclose any material changes in their financial or operational status that could impact their ability to fulfil government contracts. These provisions strengthen corporate governance by promoting transparency, risk disclosure, and ethical compliance in procurement.

These measures underscore Botswana's multi-agency approach to procurement oversight, ensuring that ethical breaches are properly investigated and addressed through institutions such as the Auditor General's Office, DCEC, Financial Intelligence Agency, Competition and Consumer Protection Authority and the office of the Ombudsman.

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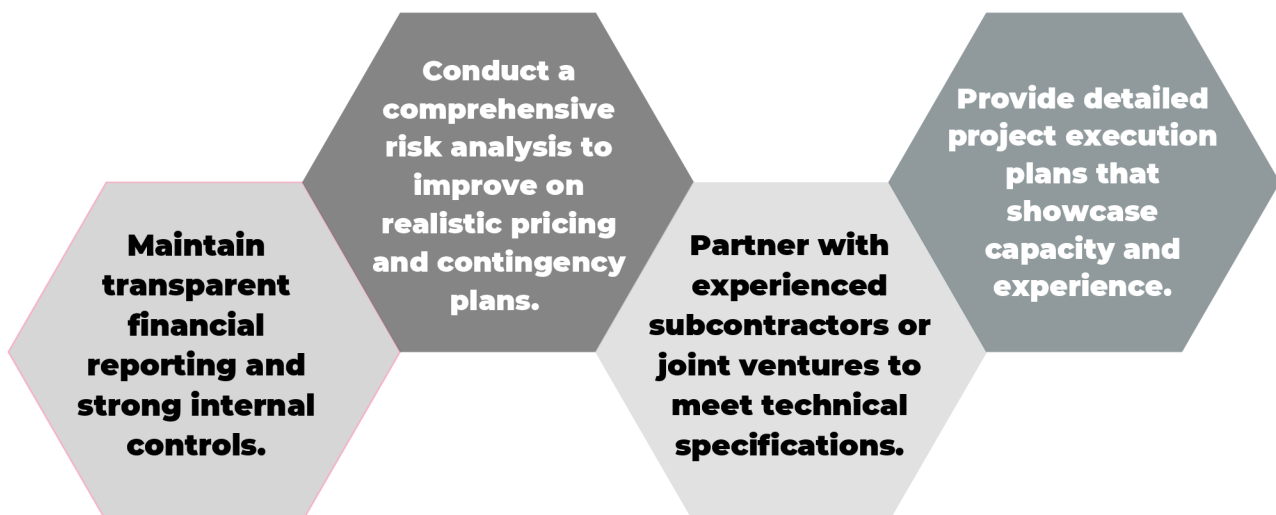
## HOW CORPORATE GOVERNANCE HELPS:

- ✓ Implement clear policies on ethics and conflicts of interest.
- ✓ Conduct regular internal audits to identify and mitigate risks.
- ✓ Risk management can be enhanced through proactive compliance assessments, supplier vetting, and legal due diligence to mitigate financial and reputational risks.
- ✓ Businesses should adopt contract monitoring frameworks, board oversight mechanisms, and transparent financial reporting to ensure accountability in post-contract execution and avoid penalties under the Public Procurement Act, 2021.
- ✓ Ensure procurement teams operate independently from suppliers.

## 3. FAILURE TO MEET FINANCIAL AND TECHNICAL REQUIREMENTS

Government tenders often require businesses to demonstrate financial stability and technical capacity to execute the project. Many businesses fail due to inadequate proof of these capabilities. Put differently, failing to properly assess risks associated with a tender can lead to under-pricing or overcommitment. This oversight may result in financial losses or inability to deliver on contractual obligations, which in turn can make it difficult to win future work due to reputation damage.

## CORPORATE GOVERNANCE STRATEGIES:



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## 4. LATE OR INCOMPLETE SUBMISSIONS

A common but avoidable mistake is missing submission deadlines or providing incomplete documentation. The procurement process follows strict timelines, and late submissions are not considered.

### CORPORATE GOVERNANCE SOLUTIONS:

**Establish internal procurement committees to oversee and streamline the submission process.**

**Use electronic procurement systems where available to improve efficiency.**

**Verify all required documents through an internal review process before submission.**

## 5. IGNORING POST-CONTRACT COMPLIANCE

Winning a tender is just the beginning. Many businesses fail to comply with contract terms, leading to termination or legal disputes.

### HOW CORPORATE GOVERNANCE ENSURES COMPLIANCE:

- Implement regular monitoring and evaluation processes to ensure adherence to contract terms.
- Foster open communication between executive management and procurement teams.
- Address potential challenges early to avoid contract breaches.

### FINAL THOUGHTS

Botswana's public procurement system offers significant opportunities, but businesses must **prioritize corporate governance and compliance to succeed**. Aligning procurement processes with governance principles such as transparency, accountability, and ethical conduct ensures a sustainable and reputable business presence.

### HOW WE CAN HELP

At Botlhole Law Group we provide expert guidance on public procurement compliance, risk assessment analysis, contract reviews, and dispute resolution. Contact us to ensure your business meets governance and regulatory standards to navigate Botswana's public procurement landscape with confidence.