



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

No. 13

2023

NOTICE OF ISSUANCE OF CODE OF GOOD PRACTICE ON PREFERENCES REFERRED TO IN SECTION 71 AND 72 OF PUBLIC PROCUREMENT ACT, 2015

In terms of section 70(1) of the Public Procurement Act, 2015 (Act No. 15 of 2015), in order to promote the objects of Part 11 of that Act, I give notice of the issuance of the code of good practice on preferences referred to in sections 71 and 72 of that Act set out in the Schedule.

I. SHIMI
MINISTER OF FINANCE
AND PUBLIC ENTERPRISES

Windhoek, 9 January 2023

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PART 1
PRELIMINARY

Definitions

1. In this code of good practice, a word or an expression to which a meaning has been assigned in the Act bears that meaning and, unless the context otherwise indicates -

“abattoir” means abattoir as defined in the Abattoir Industry Act, 1976 (Act No. 54 of 1976);

“exclusive preference” means the preference given to local suppliers in the procurement, or evaluation of bids for the procurement of goods, works and services reserved in terms of section 72 of the Act;

“goods manufactured in Namibia” means goods which have a local content of at least 40% of the manufacturing costs of the goods calculated using the cost structure for value added calculation contemplated in Annexure 1, taking into account the materials produced, direct labour performed and the last process of manufacture of the goods is accomplished in Namibia, as long as -

- (a) the last process of manufacture is substantial and sufficient to change the nature of the product and give it new functional features or purpose;
- (b) the final product represents a completely new product or at least an important stage in the process of manufacture; and
- (c) each type of article qualifies separately in its own right, but does not, in relation to the process of manufacture, include -
 - (i) any packaging or bottling or placing in flasks, bags, cases or boxes, or fixing on cards or boards, of goods or any other simple packaging procedure;
 - (ii) any assembling of goods involving the contraction of an article by putting together finished components which may require slight modifications, such as painting or trimming, before assembling, but excluding gluing, screwing, nailing, sewing and minor welding and riveting procedures, with or without the addition of local parts or components of minor importance such as screws, nuts and bolts;
 - (iii) any simple mixing or blending procedure of imported ingredients which does not result in the manufacture of a different product; or
 - (iv) any procedure to ensure the preservation of goods in good condition during transportation or storage, such as ventilation, spreading out, drying, freezing or placing in brine, sulphur-dioxide or other aqueous solutions, the removal of damaged parts or any cleaning or similar procedure;

“local content” means the minimum local content specified in Annexure 9 in relation to the nature of procurement specified in that Annexure;

“manufacturer” means a person or a company that is involved in the physical or chemical transformation of materials or components into new products whether or not -

- (a) the transformation is through work -
 - (i) performed by a power-driven machine or by hand; or
 - (ii) done in a home or factory; or
- (b) the new products are sold on a wholesale or retail basis;

“margin of preference” means a percentage of price preference given to a bidder who meets the specified criteria as determined in paragraphs 9 and 10;

“micro, small and medium enterprise” means an enterprise that has a valid micro, small and medium enterprise certificate issued by the Ministry responsible for trade;

“national preference” means the margin of preference or advantage given to Namibian suppliers or to goods, works and services meeting the local content requirements specified in Annexure 9;

“preference” in relation to the procurement of goods, works and services, means the selection by the Board or a public entity, of a person or a local supplier as the ideal or favoured person or local supplier;

“previously disadvantaged persons” means persons contemplated in Article 23(2) of the Namibian Constitution and includes -

- (a) women; and
- (b) persons with any disability as defined in the National Disability Council Act, 2004 (Act No. 26 of 2004);

“price preferences” means a percentage by which offered bid prices for goods, works or services are reduced for purposes of bid evaluation as a margin of preference scored by a bidder from a specific category of local suppliers;

“reservations” means the setting aside of certain goods, works or services for procurement by public entities or the Board exclusively from local suppliers;

“the Act” means the Public Procurement Act, 2015 (Act No. 15 of 2015);

“the Regulations” means the Public Procurement Regulations published under Government Notice No. 47 of 1 March 2017;

“value for money” means the most advantageous combination of price and quality that makes a product or service fit for purpose and will achieve required outcomes of a buyer;

“veterinary cordon fence” means the veterinary cordon fence as defined in the Animal Identification Regulations published in Government Notice No. 307 of 23 November 2017; and

“youth” means youth as defined in section 1 of the National Youth Council Act, 2009 (Act No. 3 of 2009).

Aims of code

2. This code of good practice aims to -
 - (a) promote, facilitate and strengthen measures to implement the empowerment and industrialisation policies of the Government by providing a framework for the application of preferences and reservations under the Act without compromising standards of goods, works and services and value for money;
 - (b) grant exclusive preferences to categories of local suppliers through reservation of certain procurement of goods, works and services;
 - (c) to grant national preference to Namibian suppliers;
 - (d) specify the -
 - (i) categories and eligibility requirements for benefiting from the preferences and reservations under the Act;
 - (ii) percentage of margins of preferences under the Act, where applicable;
 - (iii) categories reserved for exclusive preferences under the Act;
 - (iv) means of measuring the effectiveness of this Code of Good Practice in achieving the aims set out in this paragraph; and
 - (e) specifically provide for the procurement of raw meat of cloven hoofed animals to be supplied north of the veterinary cordon fence.

Procurement of raw meat of cloven hoofed animals to be supplied north of veterinary cordon fence

3. (1) The Board or public entities must include provisions in their bidding documents specifying that -
 - (a) raw meat of cloven hoofed animals inclusive of beef, sheep, goat, pork or game to be supplied north of the veterinary cordon fence must be sourced from suppliers north of the veterinary cordon fence;
 - (b) it is not allowed to procure raw meat of cloven hoofed animals south of the veterinary cordon fence to be supplied north of that fence, unless the supply of such meat north of the veterinary cordon fence is insufficient to satisfy the demand there;
 - (c) specifications may not -
 - (i) include provisions that would negate the aims of this code of good practice; or
 - (ii) refer to a grade of meat that restricts the procurement of raw meat from areas south of the veterinary cordon fence or elsewhere; and

- (d) the only source for the procurement of meat for supply to the north must be abattoirs north of the veterinary cordon fence approved by the Meat Board of Namibia unless the supply from such abattoirs is insufficient for the demand of raw meat north of the veterinary cordon fence.

(2) Subject to subparagraph (1) where the Board or a public entity determines that there is no sufficient supply of raw meat north of the veterinary cordon fence or no responsiveness from the identified categories of local suppliers, the Board or public entity must note in its procurement records such non-sufficiency of supply or non-responsiveness.

(3) A successful bidder may not source cloven hoofed animals from south of the veterinary cordon fence for purposes of supplying raw meat north of the veterinary cordon fence under this code of good practice, unless cloven hoofed animals north of the veterinary cordon fence are insufficient to satisfy the demand for the supply of raw meat north of the veterinary cordon fence.

PART 2
CATEGORIES, NATURE OF PROCUREMENT AND AMOUNTS
FOR EXCLUSIVE PREFERENCE

Categories of local suppliers for exclusive preference

4. For purposes of achieving the objectives of the Government contemplated in section 2(b) and section 72(1) of the Act, the Board or public entities must give exclusive preference when procuring goods, works and services referred to in paragraph 6 and when evaluating bids within the amounts referred in paragraph 5 to all of the following categories of local suppliers:

- (a) manufacturers;
- (b) micro, small and medium enterprises;
- (c) previously disadvantaged persons;
- (d) women owned enterprise;
- (e) youth owned enterprises;
- (f) suppliers promoting the environmental protection; and
- (g) suppliers providing employment to Namibians.

Amounts for exclusive preferences

5. (1) The exclusive preferences for categories of local suppliers specified in paragraph 4 are applicable to the reserved procurements referred to in paragraph 6 and within the amounts specified in Annexure 7 to the Regulations.

(2) The Board or a public entity when procuring goods, works or services, specified under paragraph 6 and within the amounts referred to in subparagraph (1); must grant exclusive preference to the categories of local suppliers except in cases where the Board or public entity has proof that no capacity exists or in case of non-responsiveness from the identified categories.

(3) Subject to subparagraph (2) where the Board or public entity determines that there is no capacity or no responsiveness from the identified categories, the Board or public entity must note in the record of the procurement proceedings the grounds for not granting exclusive preference.

Nature of procurements reserved for exclusive preference

6. The following procurements are reserved for exclusive preference:
- (a) the procurement of goods specified in Annexure 2;
 - (b) the procurement of works specified in Annexure 3; and
 - (c) the procurement of services specified in Annexure 4.

PART 3**QUALIFICATION CRITERIA FOR EXCLUSIVE AND NATIONAL PREFERENCES****Qualification criteria for exclusive preference to local suppliers**

7. The Board or public entity must give exclusive preference to a bidder who -
- (a) qualifies as a Namibian bidder in terms of section 71(3) of the Act;
 - (b) demonstrates that the bidder meets the local content; and
 - (c) meets any or more of the criteria specified in Annexure 5.

Qualification criteria for national preference

8. The Board or public entity must give national preference to a bidder who -
- (a) qualifies as a Namibian bidder in terms of section 71(3) of the Act;
 - (b) demonstrates that the bidder meets the local content; and
 - (c) complies with the Act.

Margins of preference applicable for exclusive preference to local suppliers

9. (1) The maximum cumulative allowable margin of preference applicable to exclusive preferences for price evaluation purposes is 10%.

(2) The Board or public entity, when evaluating bids for exclusive preference must apply the margins of preference specified in Column 2 of Annexure 6 to qualifying bidders per each qualifying category.

(3) A bidder must include a declaration in its bid, outlining the preferences the bidder qualifies for and the grounds for such qualifications.

(4) If a bidder qualifies for margins of preference on more than one basis, all such margins of preference must be granted to the bidder and, when considering the bid, the bid price must be reduced with the amount determined in accordance with the formula below:

$$A = \frac{MP \times BP}{100}$$

in which formula -

- (a) "A" represents the amount to be determined;

- (b) “MP” represents the total percentage of all margins of preference granted in respect of the bid; and
- (c) “BP” represents the bid price.

Margins of preference applicable for national preferences

10. (1) The maximum or cumulative allowable margins of preference applicable to national preferences for price evaluation purposes is 10%.

(2) The Board or a public entity when evaluating bids for all procurements, other than procurements reserved for exclusive preference, must apply the margins of preference to qualifying bidders according to the criteria set out in Annexure 7.

(3) A bidder must include a declaration in its bid, outlining the preferences the bidder qualifies for and the grounds for such qualifications.

(4) If a bidder qualifies for margins of preferences on more than one basis, all such preferences must be granted to the bidder but not more than 10% as indicated in paragraph 10.1 and, when considering the bid, the bid price must be reduced with the amount determined in accordance with the following formula:

$$A = \frac{MP \times BP}{100}$$

in which formula -

- (a) “A” represents the amount to be determined;
- (b) “MP” represents the total percentage of all margins of preferences granted in respect of the bid; and
- (c) “BP” represents the bid price.

(5) Annexure 8 to this code of good practice illustrates how the margins of preference must be applied to the different nature of procurements.

PART 4 GENERAL PRINCIPLES

General principles

11. (1) For the purpose of ensuring maximum participation of all categories of local suppliers for exclusive preference, the Board or public entity, when inviting bids for procurement of goods, works and services reserved for exclusive preference, must specify in bidding documents that the procurement is open to all categories of local suppliers and specify the applicable margins of preference.

(2) In accordance with regulation 56 of the Regulations, the Board or public entity may not require a bid security (bank guarantee) in procurement proceedings.

(3) Despite subparagraph (2), the categories of suppliers specified in paragraph 4 are required to complete and sign the Bid Securing Declaration Form set out in Annexure 4 of the Regulations.

(4) Despite subparagraph (2), the Board or public entity when procuring goods, works and services may require a performance security of 10% to 15% of the procurement contract price as provided for by regulation 38A of the Regulations.

(5) Procurement of goods, works or services under this code of good practice must be conducted on a competitive basis.

(6) The Board or public entity may make use of framework agreement with categories of local suppliers specified in paragraph 4 wherever appropriate to provide an efficient, cost effective and flexible means to procure goods, works or services that are required repeatedly or continuously over a set period of time.

(7) The Policy Unit must measure empowerment on the basis of the indicators outlined under section 2(b) of the Act.

PART 5 MONITORING OF COMPLIANCE

Monitoring and evaluation

12. (1) The Policy Unit must monitor the application of preferences and reservations by the Board and public entities.

(2) The Policy Unit must conduct an assessment between the annual procurement plan and the progress report to determine the value of awards to the categories of local suppliers.

(3) The monitoring under subparagraph (1) and the evaluation under subparagraph (2) must be conducted to assess the impact of this code of good practice on preferences on the socio-economic objectives of the Government in line with the Monitoring and Evaluation Framework Policy of the Policy Unit.

Integration of preferences and reservations

13. Public entities must integrate preferences in their procurement plans.

Procurement plan

14. (1) A public entity must submit to the Procurement Policy Unit the part in the procurement plan of that public entity demonstrating application of preferences and reservations in relation to the procurement budget at least three months before the commencement of the Public entity's financial year.

(2) The public entity must include in its market research a breakdown of cost estimates to ensure that value for money is achieved without compromising the quality and intended outcomes of the procurement.

Report to Policy Unit

15. All procurement awards by either the Board or a public entity, including where the Board or public entity applied preferences or reservations, must be reported by that Board or public entity to the Policy Unit on a quarterly basis.

Review of Code of Good Practice

16. (1) This code of good practice will be implemented for a period of five years from the date of issue.

(2) On expiry of the period of five years, this code of good practice may, subject to review by the Minister, be extended for a period determined by the Minister but the period of extension may not exceed five years.

(3) This code of good practice may be reviewed from time to time as the Minister considers necessary.

ANNEXURE 1

COST STRUCTURE FOR VALUE ADDED CALCULATION (Paragraph 1)

	Product 1	Product 2
	N\$	N\$
Raw Materials, Accessories and Components		
• Imported (CIF)		
• Local (Value Added Tax and Excise Duty Fee)		
• Local (Cost, Insurance, Freight)		
Labour Cost		
• Direct Labour		
• Clerical Wages		
• Salaries to Management		
Utilities		
• Electricity		
• Water		
• Telephone		
Depreciation		
Interest on Loans		
Rent		
Other (please specify)		
TOTAL COST		
COST OF IMPORTED INPUTS		
LOCAL VALUE ADDED		
% LOCAL VALUE ADDED		

$$\text{Local Value Added} = \frac{\text{Total Cost} - \text{Cost of imported inputs}}{\text{Total Cost}} \times 100$$

NB! The cost structure must be certified by an Accountant

ANNEXURE 2**GOODS**
(Paragraph 4(a))

Bottled Water
Vegetables
Fruits
Poultry
Cleaning Detergents, Cleaning materials
Toilet Paper
Dairy Products
Seafood
Fish
Meat and Meat Products
Salt
Furniture (incl. school, hospital, office, hostel)
Textiles (incl. clothing, linen, uniforms, caps, bags)
Arts and Crafts
Paint
Animal Feed
Fertilizers
Stationary
Toiletries
Sweets and Confectionaries
Food and Beverages
Leather Goods
Charcoal
Metal Fabrication
Jewellery
Cosmetics
Cement
Pharmaceuticals
Clinical supply
Building sand and stones
Stones
Bricks
Concrete Sleepers
Firewood
Wheat
Cooking oil
Processed meat
Juice
Jam
Paste
Distribution transformers

Tools
Chemicals
Batteries
Electrical cables
Water meters
Building materials
Lubricants
Personal Protective Equipment
Cement
Computer consumables
Poultry and poultry products
Livestock
Maize, sorghum
Packaging materials – cartons, both corrugated and Board, paper bags and labels
Signage products
Timber and related products
Coffins and caskets
Gemstones
Rice
Game and Game products

ANNEXURE 3

WORKS (Paragraph 4(b))

Construction, Earth Moving & Fencing
Maintenance, repairs & Alterations
Fire Cut Lines
Plumbing
Air-conditioning installations; servicing
Electrical- (general household and works on electrical lines up to 33kV), rural electrification up to 33KV, electrical lines
Welding
Boiler-making
Painting
Tiling
Carpentry
Flooring
Bricklaying
Scaffolding
Road maintenance and low volume seal road development works

ANNEXURE 4**SEVICES**
(Paragraph 6(c))

Security Services
Cleaning Services
Laundry Services
Maintenance Services
Catering Services
Photocopy Services
Printing Services
Travel Services
Graphic Designers
Audio Visual Services
Event Management
Web Hosting
Marketing, advertising and branding services
Transport, freight and logistics services
Research Services
Training Services
Tailoring Services
Agriculture Services
De-bushing Services
Environmental Rehabilitation Services
Waste Management
Landscaping and Gardening Services
Photography Services
Information, Communication and Technology Services
Professional Services (including quantity surveying, architecture, audit)
Translation services

ANNEXURE 5**CRITERIA FOR APPLYING MARGINS OF PREFERENCE TO QUALIFYING BIDDERS**
(EXCLUSIVE PREFERENCES)
(Paragraph 7(c))

Category of bidder	Criteria
Manufacturer	a bidder who is a manufacturer as defined in paragraph 1
MSME	a bidder who is a MSME as defined in paragraph 1 whose minimum equity is 51% owned by Namibians
Women owned enterprise	a bidder who is a woman or whose minimum equity is 51% owned by Namibian women
Youth owned enterprise	a bidder who is a youth or whose minimum equity is 51% owned by Namibian youths

PDP owned enterprise	a bidder who is a PDP or whose minimum equity is 51% owned by Namibian PDPs
Suppliers providing environment protection	A bidder that promotes the protection of the environment, maintain ecosystems and sustainable use of natural resources as specified by the public entity in the bidding document
Suppliers providing employment to Namibians	A bidder who employs 50% or more Namibian citizens

ANNEXURE 6

MARGINS OF PREFERENCES WHEN EVALUATING BIDS FOR EXCLUSIVE PREFERENCE (Paragraph 9(2))

Category	Margin of preference	Documentary evidence
Manufacturer	2 percent	-Certificate of registration from a registering authority -Declaration by the bidder that the manufactured goods meet the local content as determined in Annexure 6 as per the cost structure for Value Added Calculation in Annexure 1, and as certified by an Accountant
MSME	1 percent	-SME registration certificate -Declaration indicating the percentage of Namibian MSME ownership
Women owned enterprise	1 percent	- IDs of all shareholders -Founding statement/company registration indicating ownership structure/shareholder certificate - declaration indicating the percentage of Namibian female ownership
Youth owned enterprise	2 percent	- IDs of all shareholders - Founding statement/company registration indicating ownership structure/shareholder certificate - declaration indicating the percentage of Namibian youth ownership
PDP owned enterprise	2 percent	-IDs of all shareholders - Founding statement/company registration indicating ownership structure/shareholder certificates - declaration indicating the percentage of Namibian PDPs ownership
Supplier promoting Environmental protection	1 percent	-declaration and proof that the bidder meets the requirements set out in the bidding document
Service rendered by Namibian citizens	1 percent	-declaration that the bidder employs 50% or more Namibian citizens
TOTAL	10%	

ANNEXURE 7**CRITERIA FOR APPLYING MARGINS OF PREFERENCE TO QUALIFYING BIDDERS
(NATIONAL PREFERENCES)
(Paragraph 10(2))****(a) For procurement of goods****(i) Namibian shareholding:**

3% - if the bidder meets any of the qualification criteria under section 71(3) of the Act.

(ii) Goods manufactured, grown, mined or extracted in Namibia:

4% - if the goods are grown, mined or extracted within Namibia, or if manufactured goods have a local content of 40% or more of the manufacturing costs of the goods, as per the cost structure for Value Added Calculation in Annexure 1, and as certified by an Accountant, except for open international bidding where certification must have to be done by an Auditor registered in terms of the Public Accountant' and Auditors' Act 51 of 1951;

(iii) Namibian employees:

(aa) 1% - if between 50% - 60% of the employees of the entity inclusive of management are Namibian citizens;

OR

(bb) 3% - if more than 60% of the employees of the entity inclusive of management are Namibian citizens.

(b) For procurement of consultancy services**(i) Namibian shareholding:**

3% - if the bidder meets any of the qualification criteria under section 71(3) of the Act;

(ii) Services to be rendered by Namibian citizens:

(aa) 4% - If the Team leader is a Namibian citizen;

(bb) 1% - if between 50% - 60% of the employees to render the service are Namibian citizens;

OR

(cc) 3% - if more than 60% of the employees to render the service are Namibian citizens.

(c) For procurement of consultancy services (Individual):

5% - if an individual consultant is a Namibian citizen;

(d) For procurement of non-consultancy services:**(i) Namibian shareholding:**

3% - if the bidder meets any of the qualification criteria under section 71(3) of the Act;

(ii) Services to be rendered by Namibian citizens:

(aa) 1% - if between 50% - 60% of the key employees to render the service inclusive of management are Namibian citizens;

OR

(bb) 2% - if more than 60% of the key employees to render the service inclusive of management are Namibian citizens;

(cc) 3% - if 100% semi-skilled labour are Namibian citizens;

(iii) Materials:

2% - if the bidder has signed a declaration that 50% of the total value of goods or materials to be used for the services are manufactured, grown, mined or extracted in Namibia.

(e) For procurement of works**(i) Namibian shareholding:**

3% - if the bidder meets any of the qualification criteria under section 71(3) of the Act;

(ii) Labour:

(aa) 1% - if 50% - 60% of key personnel inclusive of management are Namibian citizens;

OR

(bb) 2% - if more than 60% of key personnel inclusive of management are Namibian citizens;

(cc) 3% - if 100% semi-skilled labourers are Namibian citizens;

(iii) Material:

2% - if the bidder has signed a declaration that 50% of the total value of goods or materials to be used for the works are manufactured, grown, mined or extracted in Namibia.

ANNEXURE 8

**HOW MARGINS OF PREFERENCE MUST BE APPLIED
TO DIFFERENT NATURE OF PROCUREMENTS
Paragraph 10(5)**

PROCUREMENT	Margin of Preference
GOODS	
Namibian Shareholding	3%
Goods (Manufactured, grown, mined, extracted)	4%
Namibian Employees	3%
Total	10%
CONSULTANCY SERVICES	
Namibian Shareholding	3%
Service rendered by Namibian team leader	4%
Service rendered by Namibian employees	3%
Total	10%
NON-CONSULTANCY SERVICES	
Namibian Shareholding	3%
Service rendered by Namibian (key employees)	2%
Service rendered by Namibian employees	3%
Materials	2%
Total	10%
CONSULTANCY SERVICES (INDIVIDUAL)	
Namibian	5%
WORKS	
Namibian Shareholding	3%
Materials 50 – 60%	2%
Services rendered by Namibian key personnel inclusive of Management	2%
Services rendered by Namibian semi-skilled employees	3%
Total	10%

ANNEXURE 9**LOCAL CONTENT**
(Paragraphs 1, 7(b) and 8(c))

Nature of procurement	Minimum local content
Goods	40% or more of the manufacturing costs of the goods, if the goods are manufactured in Namibia or if they are grown, mined or extracted in Namibia
Works	50% or more of the employees for the works must be Namibian citizens
Consultancy service	50% or more of the employees for rendering the service must be Namibian citizens
Non-consultancy service	50% or more of the employees for rendering the service must be Namibian citizens