



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS MADE IN TERMS OF

Regional Councils Act 22 of 1992
section 44A

Tender Board Regulations

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PART I
INTRODUCTORY

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has that meaning, and -

“agreement” means an agreement entered into under regulation 6(1)(a);

“*bona fide* Namibian dealer or merchant” means any person who, at the time of tendering -

- (a) is lawfully conducting business in Namibia as a general dealer;
- (b) is lawfully conducting business in Namibia as a wholesale dealer;
- (c) is a company incorporated in Namibia in terms of the Companies Act, 1973 (Act No. 61 of 1973); or

**[The Companies Act 61 of 1973 has been replaced by
the Companies Act 28 of 2004.]**

- (d) is a close corporation registered in Namibia in terms of the Close Corporations Act, 1988 (Act No. 26 of 1988);

“chairperson” means the chairperson of a regional tender board;

“closing date and time” means the closing date and time specified in a title of tender for the receipt of tenders;

“committee” means a committee appointed under regulation 11(1);

“company” means a company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), and includes any other body corporate;

**[The Companies Act 61 of 1973 has been replaced by
the Companies Act 28 of 2004.]**

“contractor” means any person from whom a tender has been accepted by a regional tender board and with whom an agreement, whether in writing or otherwise, has been entered into;

“construction” means all work associated with the construction, reconstruction, repair or renovation of a building, structure or works;

“costs of materials” means the cost of materials determined in accordance with regulation 24;

“general agreement” means an agreement entered into for the furnishing of goods or the rendering of services to, or the disposal of, property of a regional council over a period of time specified in that agreement;

“goods” includes raw materials, products, equipment and other physical objects in any state or form, and electricity;

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“goods produced or manufactured in Namibia” means goods which have a local content of not less than ten per cent of the manufacturing costs of the goods, as represented by materials produced, direct labour performed and the last process of manufacture of the goods accomplished, in Namibia, provided -

- (a) the last process of manufacture is substantial and sufficient to change the nature of the product and give it new characteristics;
- (b) the final product represents a completely new product or at least an important state 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 construction 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 new or different product; and
 - (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”, in relation to goods produced or manufactured in Namibia, means such percentage of the manufacturing costs of such goods in their final state of manufacture as represented by the costs of -

- (a) any materials grown, produced or manufactured in Namibia and which were used in the manufacture of the goods; and
- (b) any direct labour involved in the manufacture of the goods;

“manufacturing costs” means the manufacturing costs of goods determined in accordance with regulation 25;

“member of a regional tender board” includes an alternate member acting as such a member, as the case may be, appointed by or in terms of regulation 2(4);

“procure” means to acquire goods or services by any means, including by purchase, rental, lease or hire-purchase, and “procurement” has a corresponding meaning;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

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“regional tender board” means the tender board of a regional council, established in terms of regulation 2(1), and “board” has a corresponding meaning;

“sample” means a sample of goods to be procured or which are offered for procurement;

“secretary” means the secretary of a regional tender board;

“section” means a section of the Act;

“services” includes any construction, and “tender services” has a corresponding meaning;

“the Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992); and

“title of tender” includes the contents of an invitation to tender.

PART II
 GENERAL

Establishment and composition of regional tender boards

2. (1) There is hereby established a tender board for each regional council to be known as a regional tender board which shall provide tender services to the regional council for which it is established.

- (2) A regional tender board shall consist, subject to subregulation (3), of -
 - (a) the regional officer of the regional council concerned, who shall be the chairperson;
 - (b) four staff members of the regional council, nominated by the regional officer and appointed in writing by the regional council concerned; and
 - (c) any two persons other than staff members of the regional council concerned, resident in the area of the regional council concerned, appointed in writing by the regional council, and who shall be Namibian citizens;
- (3) Not less than two members of a regional tender board shall be women.
- (4) A regional council shall -
 - (a) appoint, with due regard to subregulation (2)(a)(ii) and (iii) and (b)(ii) and (iii), as the case may be, for each member of a regional tender board appointed by it in terms thereof, an alternate member, nominated in so far as applicable in accordance with that subregulation, and an alternate member so appointed may during the absence of the member of the regional tender board with respect to whom he or she is appointed, or in the case of such member’s inability to act as member, act as member in place of that member; and
 - (b) designate any one of the members of a regional tender board as vice- chairperson thereof.

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(5) The chairperson shall designate as secretary of the regional tender board concerned, any staff member of the regional council in respect of which the regional tender board is established.

(6) The chairperson shall preside at every meeting of a regional tender board, and if the chairperson is absent, the vice-chairperson shall preside at such meeting, and if both the chairperson and the vice-chairperson are absent from such meeting, the members of the regional tender board present thereat may elect under the chairpersonship of the secretary one of their number to preside at such meeting.

Period of and vacation of office of members of regional tender boards

3. (1) A member of a regional tender board who is a staff member of the regional council shall hold office at the discretion of the regional council, and any other member of a regional tender board shall hold office for a period of three years.

(2) A member of a regional tender board, whose period of office has expired, shall be eligible for reappointment.

(3) A member of a regional tender board shall vacate his or her office if he or she -

- (a) ceases to be a staff member of the regional council concerned, or in the case of a member of a regional tender board appointed in terms of regulation 2(2)(a)(iii) or (b)(iii), as the case may be, resigns by written notice addressed to the chairperson;
- (b) has without sufficient reasons or the leave of the regional tender board concerned, been absent from three consecutive meetings of that board; or
- (c) is removed from office under subregulation (4).

(4) A regional council may remove at any time and after the member concerned has been afforded an opportunity to be heard by the council, a member of a regional tender board appointed by it from office for reasons which in the opinion of the regional council concerned, render such member unsuitable to serve on the tender board concerned.

(5) A vacancy on a regional tender board shall be filled following the procedures relating to the initial appointment of the member of the regional tender board who has vacated his or her office.

Remuneration of members of regional tender board

4. The remuneration and allowances of a member of a regional tender board who is not a staff member of a regional council shall be determined from time to time, and be paid by, the regional council concerned.

Disclosure of interest

5. (1) A member of a regional tender board -

- (a) who has or intends to acquire a direct or indirect interest in a tender or an agreement shall in writing declare the nature, extent and particulars of such interest to the regional tender board concerned; and

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- (b) shall not take part in the considering or discussing of, or exercise any vote on, a matter in which he or she has an interest as contemplated in paragraph (a).

(2) Any member of a regional tender board who contravenes or fails to comply with a provision of subregulation (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) This regulation shall apply *mutatis mutandis* to any staff member who drafts, or who is involved in the drafting of, a submission to a regional tender board.

Powers and functions of regional tender boards

6. (1) A regional tender board shall be responsible, unless otherwise provided in these regulations or in any other law, for the procurement of goods and services for a regional council, and, subject to any other law, for the arrangement of the hiring or leasing of anything or the acquisition or granting of any right for or on behalf of a regional council, or for the disposal of property of a regional council, and for that purpose but subject to subregulation (3), may -

- (a) on behalf of a regional council enter into an agreement with any person within or outside Namibia for the furnishing of goods or services to a regional council or for the leasing or hiring of anything or the acquisition or granting of any right for or on behalf of a regional council or for the disposal of property of a regional council;
- (b) with a view to enter into an agreement contemplated in paragraph (a), invite tenders and determine the manner in which and the conditions subject to which such tenders shall be submitted;
- (c) inspect and test or cause to be inspected and tested goods and services which are offered or which are or have been furnished in terms of an agreement entered into under this section, or which are offered for hire;
- (d) accept or reject any tender for the purpose of entering into of an agreement under paragraph (a);
- (e) take steps or cause steps to be taken to enforce any agreement entered into under paragraph (a);
- (f) on behalf of a regional council withdraw from or cancel any agreement entered into under paragraph (a) and, if appropriate, claim and recover damages;
- (g) subject to subregulation (2) and on such conditions as it may determine, exempt any person with whom an agreement has been entered into under paragraph (a) from compliance with such agreement, or to condone the failure of that person to comply with any provision of such agreement;
- (h) subject to subregulation (2), negotiate a settlement with any person referred to in subparagraph (g), or amend such agreement, with the approval of that person;
- (i) with a view to procure goods and services of a value not exceeding N\$10 000, authorise the chairperson to consider and to accept or reject on behalf of a regional tender board any tender or application for prequalification, as the case may be, submitted in respect thereof;

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- (j) exercise such other powers as may be conferred upon it by or under these regulations or any other law.

(2) The regional council concerned shall issue directives to the regional tender board relating to the procurement of goods and services for the regional council.

(3) No exemption, condonation, settlement or amendment which may be to the prejudice of a regional council shall be granted, negotiated or made under paragraph (g) or (h) of subregulation (1) without the prior approval of the regional council concerned.

Performance of powers and functions of regional tender boards

7. (1) A regional tender board may make recommendations to the regional council concerned in connection with the issue of directives relating to the procurement of goods and services, the letting or hiring of anything, the acquisition or granting of any right and the disposal of property of a regional council, as contemplated in regulation 6(2).

(2) A regional tender board may -

- (a) obtain, in performing its functions, such expert or technical advice as it may deem necessary;
- (b) request, if it suspects any irregularity with regard to the submission to that board by any person of tenders, that person to prove to the satisfaction of that board that the irregularity (if any), has been rectified.

(3) A regional tender board may -

(a) if it is satisfied that -

(i) a tenderer -

- (aa) has amended or withdrawn a tender after the closing date for receipt of tenders, but before he or she has been notified of its acceptance; or
- (bb) has failed to enter into an agreement or to furnish security in the circumstances contemplated in regulation 19(3);

(ii) a contractor -

- (aa) fails or has failed to comply with any of the terms and conditions of an agreement, or performs or has performed unsatisfactorily under, an agreement; or
- (bb) has promised, offered or given, in relation to the entering into of an agreement, any bribe, commission, gift, loan, benefit or any other compensation whatsoever or has acted in bad faith or in a fraudulent or in any other improper manner,

in addition to any other legal remedy it may have, decide not to consider during such period of time as that board may determine, any tender of the tenderer or contractor concerned, as the case may be;

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(b) vary or set aside, at any time, any restriction imposed by it under paragraph (a).

(4) A restriction imposed under subregulation (3)(a) on any tenderer or contractor, as the case may be, may in addition be imposed on any other person who a local tender board is satisfied -

(a) exercises or has exercised or may exercise, whether wholly or partly, control over the tenderer or contractor concerned; or

(b) is or was directly or indirectly associated with that tenderer or contractor.

(5) If a regional tender board -

(a) imposes a restriction on any tenderer or contractor under subregulation (3)(a) or any other person under subregulation (4); or

(b) varies or sets aside under subregulation (3)(b) any restriction so imposed,

that board shall in writing notify the regional council concerned of such restriction, variation or setting aside, as the case may be.

(6) If an agreement has been entered into with any contractor on the strength of information furnished by the contractor which information, after the entering into of such agreement, is proven incorrect information, a regional tender board may, in addition to any other legal remedy it may have -

(a) recover from the contractor any expenses, loss or damages incurred or suffered by the regional council concerned as a result of the entering into of the agreement on the strength of such incorrect information furnished; or

(b) by written notice sent to the contractor by prepaid registered post addressed to the contractor's last known address, impose on the contractor a penalty not exceeding five per cent of the monetary value of the agreement, which penalty shall constitute a debt due to the regional council concerned and may be recovered from any moneys (if any), owing to the contractor by that regional council; or

(c) recover the expenses, loss or damages incurred or suffered referred to in paragraph (a), and impose the penalty referred to in paragraph (b).

(7) If an agreement -

(a) provides for an increase in tender prices, a regional tender board may, on receipt of a written request from the contractor concerned made to that board within 60 days after the coming into operation of any such price increase, give effect to the increase of any tender price in accordance with the terms of the agreement, but subject to these regulations;

(b) does not provide for an increase of tender prices, a regional tender board may, if the contractor concerned satisfies that board that any such price increase is the direct result of unforeseen circumstances resulting in the performance of the agreement in a loss to the contractor, act in accordance with regulation 6(1)(h).

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(8) Any action for the recovery of any expenses, loss, damages or penalty referred to in subregulation (6) may be instituted in any competent court by the regional tender board on behalf of the regional council concerned.

(9) In this regulation -

“contractor”, in relation to a restriction, includes an employee or agent of a contractor; and

“tenderer”, in relation to a restriction, includes an employee or agent of a tenderer.

Meetings of regional tender boards

8. (1) Meetings of a regional tender board shall be held on such dates and at such times and venues as the chairperson may determine from time to time, and any meeting so convened may be adjourned or postponed by the chairperson.

(2) Four members of a regional tender board shall form a quorum for any meeting of the regional tender board concerned.

Procedures at meetings of regional tender boards

9. (1) Any member of a regional tender board present at a meeting of that board shall be obliged to cast, subject to these regulations, a vote in respect of any matter which is being put to the vote and in respect of which that member may legally cast a vote.

(2) (a) The chairperson at a meeting of a regional tender board shall have, in the event of an equality of votes, a casting vote in addition to his or her deliberative vote.

(b) The number of members of a regional tender board voting for and against any decision shall be entered in the minutes of the meeting, if so decided at the meeting.

(3) The chairperson at a meeting of a regional tender board may withdraw, with the approval of the regional tender board, any matter before it has been put to vote.

(4) All discussions at meetings of, and all matters considered and decisions arrived at by, a regional tender board shall be treated as confidential and shall not be disclosed by any member thereof, or by any staff member or by any other person invited to provide expert advice to a regional tender board, unless the prior approval of that board has been obtained and entered in the minutes of the meeting.

(5) Decisions of a regional tender board shall be conveyed in writing to the person concerned by staff members designated in terms of regulation 21(1) or by the member or members designated by a regional tender board, in such manner as the regional tender board may determine.

Decisions of regional tender boards

10. (1) No decision of a regional tender board or act performed by authority of a regional tender board shall be invalid by reason only -

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- (a) of a vacancy on the regional tender board; or
- (b) of the fact that a person who was not entitled to sit as a member of the regional tender board sat as such a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the required majority of the members who were present at the time and entitled to sit as members.

(2) Decisions of a regional tender board shall be taken at meetings thereof, and a regional tender board shall keep minutes or cause minutes to be kept of each such meeting.

(3) If, at the invitation of a regional tender board, tenders are submitted to it for the purposes of concluding an agreement as contemplated in regulation 6(1), a regional tender board -

- (a) shall not be obliged to accept the lowest tender or, in the case of the disposal of property of a regional council, the highest: tender or any other tender;
- (b) may accept, where a tender relates to more than one item, the part of such tender only in respect of any one or more specific items;
- (c) may accept any tender notwithstanding the fact that such tender was not made in response to any particular tender invitation;
- (d) shall not accept a tender if the tender price is quoted in relation to the price tendered or quoted in all other tenders, or in relation to any price tendered or quoted in any specific tender.

(4) A regional tender board shall keep, subject to regulation 18(6), in the minutes of the meeting record of the reasons for the acceptance or rejection of a tender.

(5) No decision of a regional tender board shall be invalid because it is merely based on an erroneous calculation or a *bona fide* incorrect application of these regulations.

Committees of regional tender boards and delegation of powers

11. (1) A regional tender board may -

- (a) appoint from time to time from among its members a committee to deal with any specific case on behalf of the regional tender board and shall designate a chairperson and a vice-chairperson for that committee; and
- (b) delegate to the committee appointed by it under paragraph (a), subject to such conditions as it may determine, from time to time any of the powers conferred upon it by or under these regulations.

(2) A delegation under subregulation (1)(b) shall not divest a regional tender board of any power so delegated, and a regional tender board may at any time vary or set aside any decision made thereunder by the committee.

Meetings of committees and procedures at meetings of committees

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12. (1) The majority of the members of a committee shall constitute a quorum for any meeting of such committee.

(2) In the event of an equality of votes at any meeting of a committee the matter under consideration shall be referred to the regional tender board concerned for decision.

(3) Any member of a committee present at a meeting thereof shall be obliged to cast, subject to these regulations, a vote in respect of any matter which is being put to the vote and in respect of which he or she may legally cast a vote.

(4) The number of members of a committee voting for or against any decision shall be entered in the minutes of the meeting if so decided at the meeting.

(5) The chairperson at a meeting of a committee may with the approval of the committee withdraw any matter before it has been put to the vote.

(6) All discussions at meetings of a committee and all matters considered and decisions arrived at by a committee shall be treated as confidential and shall not be disclosed by any member of the committee, any staff member or any other person invited to provide expert advice to the committee, unless the prior approval of the committee has been obtained and entered in the minutes of the meeting.

(7) Decisions of a committee shall be conveyed in writing to the person concerned by staff members designated in terms of regulation 21(1), or by the member or members of the committee designated by the committee concerned, in such manner as the committee may determine.

Invitation to tender and applications for prequalification

13. An invitation to tender, or in the case where tenderers have to prequalify, for applications for prequalification, shall be published by a regional tender board not less than once in each newspaper circulating in the local authority area concerned.

Invitation to, and submission of, tenders

14. (1) Unless exempted in terms of regulation 20 from compliance with the required tender procedures, all tenders for the procurement of goods and services, the letting or hiring of things, the acquisition or granting of rights, or the disposal of property, for or on behalf of a regional council, shall be invited by a regional tender board in accordance with regulation 13 or 16, as the case may be.

(2) If a regional tender board in any of the circumstances contemplated in paragraph (b) or (c) of regulation 20(1), elects not to adhere to the tender procedures prescribed by these regulations, it may invite tenders or cause tenders to be invited in any other manner it may deem appropriate.

(3) A tender shall, subject to regulation 17 -

(a) be submitted to a regional tender board in such manner and form and within such period of time, but not less than 21 days after the date of the only or last publication of the invitation to tender, as may be determined by a regional tender board; and

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- (b) be accompanied by such documents and information as a regional tender board may require in the particular case.
- (4) The estimated value of goods or services to be furnished shall -
 - (a) be the total value of such goods or services, as the case may be;
 - (b) not be subdivided in order to bring such value within the limits of regulation 20(1)(a).
- (5) (a) If in the opinion of a tenderer a tender specification is unfair or aimed at giving preference to a specific product, trade mark or trade name, the tenderer may, before the closing date for receipt of tenders, object thereto in writing to a regional tender board.
- (b) A regional tender board which sustains an objection made under paragraph (a) shall invite tenders afresh in respect of any amended specification.

Contents of applications for prequalification

- 15. An application for prequalification contemplated in regulation 13 shall -
 - (a) be made to a regional tender board in such a manner and form and within such period of time as may be determined by a regional tender board; and
 - (b) be accompanied by such documents and information as a regional tender board may require in the particular case to enable it to select potential tenderers.

Final invitation to tender

16. If applications for prequalification contemplated in regulation 13 have been invited, a regional tender board shall restrict its final invitation to tender to those potential tenderers selected in accordance with regulation 15.

Title of tender

- 17. A title of tender shall as far as practicable contain the following information:
 - (a) The instructions for preparing tenders;
 - (b) the 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, if appropriate, technical specifications, plans and drawings;
 - (c) the currency in which the tender price is to be formulated and quoted;
 - (d) the manner, place and closing date for submission of tenders;
 - (e) the period of time during which tenders shall be in effect;
 - (f) securities to be furnished in respect of tenders and conditions for refund or return of such securities; and

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- (g) a name and reference number by means of which the tender may be identified.

Examination, evaluation, comparison and non-acceptance of tenders

18. (1) A regional tender board may at any time request any tenderer to clarify, in such manner as may be determined by the regional tender board, his or her tender in order to assist the regional tender board in the examination, evaluation and comparison of tenders.

(2) A regional tender board shall not consider a tender unless -

- (a) the tender complies with all the characteristics, terms, conditions and other requirements set out in the invitation to tender as contemplated in regulation 17; or
- (b) if the tender does not so comply, the non-compliance consist in the opinion of the regional tender board of a minor deviation that does not materially alter or depart from such characteristics, terms, conditions or other requirements.

[The verb “consist” should be “consists” to be grammatically correct.]

(3) A regional tender board shall, with due regard to subregulation (2), not accept a tender -

- (a) if the tenderer who submitted the tender does not qualify as such in terms of the conditions of tender set out in the invitation to tender;
- (b) if the tenderer fails to comply with a request under subregulation (1); or
- (c) if in the opinion of the regional tender board, the tenderer has resorted to corrupt practices with a view to influence the regional tender board in the acceptance of the tender, in which case the reasons for rejection of the tender shall be kept on record by that board.

(4) A regional tender board shall -

- (a) in examining a tender give consideration to the capacity, experience, integrity and financial status of the tenderer; and
- (b) in comparing tenders give effect to the preference policy of the regional council concerned to redress social, economic and educational imbalances in a democratic society and to encourage industrial and commercial interests in Namibia.

(5) If a regional tender board does not accept the lowest tender or tenders from amongst the tenders submitted to it, the reasons for not accepting the lowest tender or tenders shall be kept on record by the regional tender board concerned.

(6) All tenders submitted to a regional tender board shall be opened by that board in public.

Acceptance of tenders, and entry into force of agreements

19. (1) A regional tender board, in every particular case, shall -

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- (a) notify the tenderers concerned in writing of the acceptance or rejection of their tenders, as the case may be, and the name of the tenderer whose tender has been accepted by a regional tender board shall be made known to all the other tenderers;
- (b) give, at the written request of a tenderer and within a period of 30 days after receipt of such written request, reasons for the acceptance or rejection of his or her tender.

(2) If, in terms of an invitation to tender -

- (a) a written agreement is required to be entered into after the acceptance of a tender, the regional tender board and the tenderer concerned shall enter into such an agreement within a period of 30 days after the date on which that tenderer received written notice of the acceptance of his or her tender in terms of subregulation (1)(a), or within such extended period of time as a regional tender board may determine;
- (b) a written agreement is not required to be entered into, an agreement shall come into force on the date on which the tenderer concerned is notified in terms of subregulation (1)(a) of the acceptance of his or her tender.

(3) If, in the circumstances contemplated in subregulation (2)(a), the tenderer fails to enter into an agreement within the period of time determined by that subregulation, or if that period of time has been extended by the regional tender board, within the extended period of time, or if the tenderer, when required to do so, fails to furnish the required security for the performance of the agreement, the regional tender board may withdraw in writing addressed and delivered to the tenderer, its acceptance of the tender concerned and may -

- (a) accept any other tender from among the tenders submitted to it; or
- (b) invite tenders afresh.

Exemption from tender procedures

20. (1) If, in respect of the procurement of goods and services for, or the letting or hiring of anything or the acquisition or granting of any right for or on behalf of, or the disposal of property of, a regional council -

- (a) the estimated value thereof does not exceed N\$10 000;
- (b) the person with whom an agreement has to be entered into is -
 - (i) regional council, local authority council or other statutory body in Namibia; or

[The word “a” appears to have been omitted at the beginning of subparagraph (i).]

- (ii) the government of, or any regional council, local authority council or other statutory body in a country other than Namibia,

[There should be a comma after the word “in” subparagraph (ii).]

approved by the regional council concerned; or

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- (c) a regional tender board in any particular case for good cause deems it impracticable or inappropriate to invite tenders,

a regional tender board need not comply with regulation 13.

(2) A regional tender board shall in the application of subregulation (1)(c) keep on record the reasons for not inviting tenders.

Administrative work

21. (1) All administrative work in connection with the exercise of the powers and the performance of the functions of a regional tender board, including the payment and receipt of moneys, shall be performed by staff members of the regional council concerned designated by the chief executive officer concerned.

- (2) The chairperson may execute any document on behalf of a regional tender board.

Expenditure

22. All expenditure in connection with the exercise of the powers and the performance of the functions of a regional tender board shall be defrayed, subject to these regulations or to an agreement entered into under these regulations, from moneys appropriated by the regional council concerned for that purpose.

Price preferences

23. (1) A regional tender board shall, in comparing tenders, give effect to the policy of the regional council concerned referred to in regulation 18(4)(b) by applying, as the circumstances in each particular case may require, the price preferences specified in Annexure A in respect of all tenders which are considered by a regional tender board.

(2) If a tenderer qualifies for price preferences on more than one basis, all such preferences shall be granted to the tenderer and, when considering the tender, the tender price shall be reduced with an amount determined in accordance with the formula

$$A = \frac{PP}{100} \times TP,$$

In which formula -

- (a) "A" represents the amount to be determined;
- (b) "PP" represents the total percentage of all price preferences granted in respect of the tender; and
- (c) "TP" represents the tender price.

(3) A tenderer shall in order to be considered for any price preference in terms of this regulation submit to a regional tender board the required information on a form similar to the form contained in Annexure B.

Costs of materials

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24. (1) In calculating the costs of materials grown, produced or manufactured in Namibia, only the following costs shall be included, namely -

- (a) the costs of local materials, including the costs of waste materials lost in the process of the manufacture of goods, as represented by their delivered price at the factory and used directly in the manufacture of the goods, subject thereto that -
 - (i) if the materials directly used in the manufacture of goods are not wholly produced in Namibia, the goods shall in the calculation be applied only to the extent of their proportionate local content; and
 - (ii) locally manufactured materials or components which have been temporarily exported for further manufacture, shall on return to the country of final manufacture be regarded as 100 per cent imported goods for the purpose of determining the local contents of any goods; and
- (b) the costs of labour directly involved in the manufacture of goods, which direct labour costs shall, in addition to salaries and wages paid in respects of such labour, include -
 - (i) leave, except cash in lieu of leave;
 - (ii) salaries for foremen and supervisors related to the process of manufacture;
 - (iii) overtime payments at normal rates; and
 - (iv) if predetermined, incentive bonuses,

but shall not include cash in lieu of leave, overtime payments at above normal rates, any portion of salaries for foremen and supervisors not related to the process of manufacture, incentive bonuses not predetermined, pension contributions, maintenance costs, fringe benefits and business overheads.

(2) The manufacturing costs of goods shall be determined in accordance with the costs arising from normal business practices, operating procedures and level of production in the industry concerned as incurred over a period of not less than 90 days, and such costs of goods in their final form of manufacture based on actual costs, charges and expenses incurred in the manufacturing process, including the costs of putting the goods up in their retail packages and the costs of such packages, but, if in the opinion of a regional tender board or a committee, as the case may be, any costs, charge or expenses has not been incurred by the manufacturer at the normal open market price, a regional tender board may assess the amount of that costs, charge or expenses on the basis of price, in order to determine the manufacturing costs of the goods concerned.

(3) In determining the local content of any goods manufactured, whether wholly or partly from -

- (a) locally produced or manufactured materials or components, the local content of such locally produced or manufactured materials or components shall be determined and apportioned in accordance with these regulations;
- (b) imported materials, the origin of any charges incidental to the delivery of the imported materials shall be deemed to be that of the imported materials, and any

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information which a regional tender board or a committee, as the case may be, may require for the purposes of determining the local content of the manufacturing costs of any goods shall be furnished to the regional tender board or committee in such form and be certified in such manner as the parties concerned may deem necessary to ensure accuracy and clarity.

(4) In this regulation and in regulation 25 -

“direct labour” means any procedure which is applied to input materials from which a product is manufactured, from the time the materials have first come to hand of the work force actually manufacturing the product to the time the finished product is put up in retail package, but does not include any procedure of designing, pattern making or dye processing; and

“direct materials” does not include water (provided it is not part of the final product), electricity, other consumable items and items for staff benefits.

Manufacturing costs

25. (1) The manufacturing costs of goods shall include, subject to subregulation (2) -

- (a) the costs of imported materials, including the costs of waste materials lost in the process of manufacture, as represented by the landed costs of the materials at the factory, including any charges incidental to the delivery of such materials to the factory, but excluding any duty thereon paid by the manufacturer, and the costs of imported materials, whether or not imported by the manufacturer, shall be the price as delivered at the factory;
- (b) the costs of the local materials, including the costs of the waste materials and materials lost in the process of manufacture, as represented by price as delivered at the factory;
- (c) the costs of direct labour, as represented by the wages paid in respect of labour directly involved in the manufacture of the goods as contemplated in these regulations;
- (d) the costs of manufacturing expenses relating directly to the goods as represented by -
 - (i) the operating costs of the machines used in the manufacturing of the goods;
 - (ii) the expenses incurred in the cleaning, drying, polishing, pressing or any other process, as may be necessary for the finishing- off of the goods; and
 - (iii) the costs of packaging the goods in retail packages and the costs of such retail packages, but excluding any additional costs relating to the packaging the goods for transportation or export, including the costs of any such additional packaging materials; and
- (e) the overhead manufacturing costs, as represented by -
 - (i) rental, rates and taxes and insurance charges connected directly to the factory;

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- (ii) indirect labour charges, including salaries paid to factory managers, wages paid to foremen, examiners and testers of the goods, and fees paid to efficiency advisers;
 - (iii) charges in respect of the supply of electricity and other power and water, and other service charges directly connected to the manufacturing costs of the goods;
 - (iv) consumable stores, including minor tools, grease, oil and other incidental items and materials used in the manufacture of the goods;
 - (v) depreciation and maintenance of factory buildings, plant, machinery, tools and other items used in the manufacture of the goods; and
 - (vi) the costs of food supplied to factory workers, Workmen's Compensation and insurance premiums paid, and contributions made to manufacturers' associations.
- (2) The manufacturing costs of goods shall not include -
- (a) administration expenses, as represented by -
 - (i) office expenses, office rent and salaries paid to accountants, clerks, managers, and other executive personnel;
 - (ii) director's fees, other than salaries paid to directors who act in the capacity of factory managers;
 - (iii) expenses relating to keeping or obtaining of statistics in respect of the manufacture of the goods; and
 - (iv) expenses relating to investigations, experiments and feasibility studies;
 - (b) marketing expenses, as represented by -
 - (i) the costs of soliciting and securing orders, including advertising charges and commission or salaries paid to agents and salesmen; and
 - (ii) expenses incurred in the making or giving of designs, estimates and tenders;
 - (c) distribution expenses, other than those referred to in paragraphs (a) and (b), as represented by all the expenditure incurred after the goods have left the factory, including -
 - (i) the costs of any materials and payment of wages incurred in the packaging of the goods for export;
 - (ii) warehousing expenses incurred in the storage of manufactured goods; and
 - (iii) the costs of transporting the manufactured goods to their destinations; and
 - (d) charges not directly attributed to the manufacture of goods, including -

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- (i) any duty paid on imported raw materials;
- (ii) any excise duty paid on raw materials produced in the country of manufacture of the goods; and
- (iii) any royalties paid in respect of patents, special machinery or designs.

Liabilities

26. (1) All stamp duties, bank charges, bank interest and other similar charges payable in respect of an agreement shall be paid by the contractor concerned.

(2) In the event of an agreement being cancelled by or on behalf of a regional council in the exercise of its rights under these regulations, under any other law or under the agreement concerned, or for any other valid reason, the contractor concerned shall be liable to pay to the regional council concerned all expenses, losses and damages incurred or suffered by that regional council as a result of such cancellation, and the regional council shall be entitled to recover any amount due and payable under the agreement or due and payable by law.

Non-compliance with title of tender or agreement, or delay in performance of agreement

27. (1) Unless otherwise provided, but subject to this regulation -

(a) in a title of tender, a tenderer -

- (i) who amends or withdraws his or her tender after the closing date for receipt of tenders but before he or she has been notified of its acceptance; or
- (ii) who fails to enter into an agreement or to furnish security in the circumstances contemplated in regulation 19(3),

shall be liable to pay to the regional council concerned all expenses incurred by that regional council by having to invite tenders afresh or to make other less favourable arrangements;

(b) in an agreement, a regional tender board may -

- (i) if the contractor concerned fails or has failed to comply with any of the terms and conditions of the agreement or performs or has performed unsatisfactorily under the agreement, in addition to any other legal remedy it may have, cancel the agreement;
- (ii) if the contractor concerned fails to furnish any goods or services within the period of time stipulated in the agreement -
 - (aa) act in accordance with subparagraph (i); or
 - (bb) make arrangements for the furnishing of goods or services of similar quality and up to the same quantity in lieu of the goods or services not furnished or rendered under the agreement,

and recover any expenses, loss or damages incurred or suffered by the regional council from that contractor in accordance with subregulation (2).

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- (2) If -
- (a) an agreement is cancelled under subregulation (1)(b) (i) or (ii), the contractor concerned shall be liable to compensate the regional council concerned in accordance with regulation 26(2);
 - (b) arrangements contemplated in subregulation (1)(b) (ii) (bb) are made, the contractor concerned shall be liable to compensate the regional council concerned for any detrimental price differences or any other damages or loss suffered by that regional council, but if the contractor satisfies the regional tender board or the regional council concerned, as the case may be, in terms of subregulation (4) that the delay in the furnishing of goods or services is the direct result of strikes, lock-outs, riots, accidents in connection with machinery, natural disasters or storms or other circumstances which could not have been foreseen or prevented by the contractor, the contractor shall not be so liable to compensate the regional council.

(3) Any compensation payable to a regional council in terms of subregulation (2)(b) may be recovered from moneys (if any), owing to the contractor by the regional council concerned in respect of goods or services furnished or rendered or to be furnished or rendered under the agreement concerned, or from any other moneys owing to the contractor by the regional council, or by means of proceedings in any court of law having jurisdiction.

- (4) If a delay referred to in subregulation (2)(b) is likely to occur, a contractor shall -
- (a) furnish in writing and without delay full particulars of the particular circumstances to the regional tender board or to the regional council concerned, as the case may be; and
 - (b) notify the regional tender board or the regional council concerned, as the case may be, of the period of time of the delay anticipated.

Incorrect preferences

28. If a tender has been accepted on the strength of a preference granted in respect of the production, manufacture or assembly of goods which, after the acceptance of the tender is proven to have been an incorrect preference based on incorrect information furnished by the tenderer, a regional tender board may, in addition to any other legal remedy it may have -

- (a) recover from the tenderer any expenses, loss or damages incurred or suffered by a regional council as a result of the acceptance of the tender on the strength of such incorrect preference; or
- (b) by written notice sent to the tenderer by prepaid registered post addressed to the tenderer's last known address, impose on the tenderer a penalty not exceeding five per cent of the monetary value of the tender, which penalty shall constitute a debt due to the regional council and may be recovered from any moneys (if any) owing to the tenderer by the regional council; or
- (c) recover the expenses, loss or damages incurred or suffered referred to in paragraph (a), and impose the penalty referred to in paragraph (b).

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Promise or offer of a bribe, commission, gift, loan, benefit or other compensation by tenderer or contractor

29. (1) If a regional tender board is convinced that -
- (a) a tenderer, in relation to the acceptance of a tender, or a contractor, in relation to the entering into of an agreement, has promised, offered or given a bribe, commission, gift, loan, benefit or any other compensation whatsoever to a member or staff member or to any other person, or has caused or prompted such bribe, commission, gift, loan, benefit or compensation to be offered or given by any other person;
 - (b) a tenderer or contractor has in relation to the acceptance of a tender or the entering into of an agreement, as the case may be, acted in a fraudulent manner or in bad faith or in any other improper manner, including the furnishing of incorrect information by or on behalf of the tenderer; or
 - (c) a tenderer or contractor has, in the performance of an agreement entered into with a regional council, failed to comply with any statutory requirement in connection with such agreement and has as a result thereof been convicted of an offence,

the regional tender board may, in addition to any other legal remedy it may have -

- (i) in the case of a tenderer, in writing addressed to the tenderer, at any time withdraw its acceptance of the tender;
- (ii) in the case of a contractor, in writing addressed to the contractor, at any time cancel the relevant agreement and recover, in accordance with regulation 26(2), any expenses, loss or damages incurred or suffered by the regional council.

(2) Regulation 28 shall apply *mutatis mutandis* in relation to the withdrawal by a regional tender board of its acceptance of a tender under subregulation (1).

Death of contractor, sequestration of contractor's estate, placement under judicial management or winding-up of contractor

30. A regional tender board may in the event of the death or insolvency or the placement under judicial management or winding-up of a contractor, subject to the Administration of Estates Act, 1965 (Act No. 66 of 1965), the Insolvency Act, 1936 (Act No. 24 of 1936) or the Companies Act, 1973 (Act No. 61 of 1973), respectively, or any other applicable law, cancel any agreement entered into with the contractor and, if appropriate, lodge a claim contemplated in regulation 26(2) in accordance with any such applicable Act or other law against the deceased estate or insolvent estate, as the case may be, of the contractor.

[The Companies Act 61 of 1973 has been replaced by
the Companies Act 28 of 2004.]

Fees payable

31. A regional tender board may determine the fees which shall be payable in respect of the furnishing by the board of prints, specifications or tender documents, or copies thereof, referred to in these regulations.

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PART III
 CODE OF PROCEDURE

Invitation to tender and applications for prequalification

32. (1) A regional tender board shall in accordance with regulation 13 invite tenders or applications for prequalification only within Namibia, but a regional tender board may in such manner as it may determine, circulate an invitation to tender or for applications for prequalification outside Namibia, if circumstances so require.

(2) Subject to regulation 35, a regional tender board shall publish an invitation to tender or for applications for prequalification not less than once in each newspaper circulating in the local authority area concerned, and in addition thereto display, as from the date of publication thereof until the closing date of the tender, such notice on the notice board of the regional tender board concerned.

Tender documents to be made available by regional tender board

33. A regional tender board shall at the request of a tenderer, and against payment of the fee per tender document as determined under regulation 31, make the appropriate tender documents available to the tenderer.

Reference to certain specifications

34. A title of tender shall not make reference to any trade mark or trade name or to a specific product, except when used in conjunction or association with the words “similar to” or “equal to”, or any other words to indicate the style, type, characteristics or quality of the goods to be procured or services to be rendered by the tenderer.

Determination of closing date for submission of tenders

- 35.** (1) If a regional tender board is of the opinion that -
- (a) goods will be supplied from stock readily available in Namibia or will be manufactured from materials or components grown, produced or manufactured in Namibia, that board shall determine the closing date for the submission of tenders to be a date not exceeding 30 days, but not less than 21 days, after the date of the only or last publication of the invitation to tender;
 - (b) goods will not be supplied from stock readily available in Namibia or will not be manufactured from materials or components grown, produced or manufactured in Namibia, that board shall determine the closing date for the submission of tenders to be a date not exceeding 60 days, but not less than 30 days, after the date of the only or last publication of the invitation to tender,

in terms of regulation 32.

(2) A regional tender board may, notwithstanding subregulation (1), at any time before the closing date determined under paragraph (a) or (b), as the case may be, of subregulation (1) -

- (a) of its own accord; or
- (b) at the written request of a tenderer,

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extend the closing date with a period of time not exceeding 30 days, if that board is satisfied that -

- (i) such an extension will not be prejudicial to the interests of tenderers; and
- (ii) it is just and equitable to do so in any particular case.

Tender prices and delivery periods

36. (1) Tender prices shall -

- (a) be quoted in the currency of Namibia unless otherwise specified in the invitation to tender; and
- (b) be the total net value of the goods to be furnished or services to be rendered.

(2) A regional tender board may give priority to tenderers who tender firm prices for the duration of an agreement and for delivery within a specified period of time.

(3) A tenderer shall not in a tender use the words “soonest” or “earliest”, or similar words, to indicate or refer to any material date.

(4) A tenderer who does not tender a firm price shall indicate whether -

- (a) the adjustment in the tender price will be in the same ratio as the adjustment in the cost price; or
- (b) the adjustment in the tender price will be equal to the amount of the adjustment in the cost price.

(5) Subregulation (4)(b) shall apply in all cases where a tenderer does not specify any conditions relating to tender price adjustments.

(6) A tenderer shall, within 60 days after the coming into operation of any tender price increase or tender price decrease, inform the regional tender board by written notice of any such increase or decrease, as the case may be.

(7) In calculating tender price adjustments in relation to cost prices, the cost prices which were applicable seven days prior to the closing date and time of a tender shall be taken as basis for such calculations.

(8) A regional tender board may request from a tenderer a certificate, invoice or voucher issued by the supplier concerned as proof of a cost price increase or decrease.

General agreements

37. (1) A regional tender board may enter, if it considers it desirable and notwithstanding any provision of these regulations, into a general agreement with any person for -

- (a) a specified quantity of goods which may not be varied without the mutual consent of the parties to such an agreement;

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- (b) an estimated quantity of goods subject to an increase or decrease of ten per cent;
- (c) a maximum quantity of goods if the minimum quantity ordered cannot be guaranteed, but the maximum quantity may not be exceeded without the mutual consent of the parties to such an agreement; or
- (d) an unspecified quantity of goods or an estimated quantity of goods not guaranteed.

(2) A regional tender board shall indicate in an invitation to tender the terms and conditions of a general agreement to be entered into under subregulation (1).

Samples

38. (1) A regional tender board may, if it furnishes a potential tenderer at the request of the tenderer with a sample of any item to be supplied by the tenderer, do so at a fee to be determined by that board.

(2) A tenderer shall, if a regional tender board requires a tenderer to furnish a sample for inspection and examination in support of a tender -

- (a) mark the sample with -
 - (i) the tender number;
 - (ii) the item number of the sample; and
 - (iii) the tenderer's name and address; and
- (b) furnish samples in support of a tender at the tenderer's own expense and risk.

(3) A tenderer shall submit a tender and, if applicable, a sample referred to in subregulation (2), to the addressee specified in the invitation to tender so as to reach that address on or before the closing date and time relating to such tender.

- (4) A regional tender board may -
 - (a) purchase, at the tendered price, a sample submitted to it in terms of subregulation (3);
 - (b) reject a tender which is not accompanied by the required sample or samples.

(5) If a regional tender board does not purchase a sample as contemplated in subregulation (4)(a), that board shall at its own expense return the sample to the tenderer at any address within Namibia furnished by the tenderer in the tender.

(6) The return of a sample in terms of subregulation (5) to a tenderer shall be at the tenderer's risk.

- (7) If, in testing or examining a sample, a regional tender board finds that the sample is -
 - (a) of no or of very little value;

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- (b) destroyed; or
- (c) worthless or damaged extensively,

that board shall not be liable for the cost of the sample unless otherwise specified in the invitation to tender.

- (8) A regional tender board shall not -
 - (a) return to a tenderer a sample made from materials supplied by that board;
 - (b) accept liability for the cost of making a sample,

unless otherwise specified in the invitation to tender.

(9) A tenderer shall not, without the prior written approval of a regional tender board, furnish goods of which the characteristics differ from those of the sample submitted by that tenderer and agreed to by that board.

Determination of period for acceptance of tenders

39. (1) A regional tender board shall specify in a title of tender the period of time during which the tenders may be accepted by the regional tender board.

(2) The period of time contemplated in subregulation (1) shall be calculated from the day immediately following the closing date and time for submission of a tender, but shall not include Saturdays, Sundays or public holidays.

Submission of tenders

40. (1) A tenderer shall submit a tender under sealed cover, with the tender number endorsed on the cover, not later than the closing date and time specified in the invitation to tender.

(2) A regional tender board shall not consider a tender if more than one tender number or an incorrect tender number is endorsed on the cover thereof.

Closing date and time of tenders

41. (1) A regional tender board shall specify in the invitation to tender the closing date and time for the submission of tenders.

(2) Subject to subregulation (3), all formal and quotation tenders shall close at 11h00 and all annual and store tenders shall close at 14h30 on the closing date for the submission of tenders.

(3) If the closing date for the submission of tenders falls on a Saturday, Sunday or public holiday, formal and quotation tenders shall be received until 11h00, and annual and store tenders until 14h30, of the working day following such closing date.

Telegraphic and late tenders

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42. (1) A regional tender board may, subject to subregulation (2), consider a tender received by telegraph or fax on or before the closing date and time, provided the tender -

- (a) bears or reflects the name of the tenderer, the tender number and the price and terms of delivery of goods or services in respect of each item tendered for; and
- (b) is made on the prescribed tender documents or in a manner acceptable to that board.

(2) A tenderer who has submitted a tender by telegraph or fax shall, within a period of seven days after the closing date and time for submission of the tender, submit the original tender documents, duly completed, to the regional tender board concerned.

(3) A regional tender board shall not consider, unless no tenders have been received by a regional tender board on the closing date and time, but subject to subregulation (4), tenders received after such closing date and time.

(4) A regional tender board may, notwithstanding subregulation (3), accept a tender received after the closing date and time if that board is satisfied that -

- (a) the tender was delayed by the postal service;
- (b) in the case of a telegraphic tender, the telegraph was received by the addressee's Post Office on or before the closing date and time; or
- (c) the tender was submitted after the closing date and time as the direct result of circumstances which the tenderer could not reasonably have foreseen or prevented.

(5) If a tenderer fails to comply with subregulation (2), his or her tender shall be disqualified from acceptance by the regional tender board concerned.

Tenders received by regional tender board

43. (1) A regional tender board shall, until the closing date and time, keep unopened and in safe custody all tenders received under sealed cover or sealed in terms of subregulation (2)(b).

(2) If a tender is received in any form or condition other than in a sealed cover, or is received without the required endorsements on the cover, the secretary shall -

- (a) ascertain the tender number;
- (b) seal the tender; and
- (c) make a note on the cover of the tender indicating -
 - (i) the name and address of the tenderer;
 - (ii) the date and time of receipt of the tender;
 - (iii) the tender number and closing date; and
 - (iv) the condition in which the tender was received.

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Opening of tenders

44. A regional tender board shall -
- (a) open all tenders in public, as soon as practicable after the closing date and time; and
 - (b) read out in public, at the request of a tenderer or of any other member of the public, the tender prices for building services and cognate works, or for civil engineering services.

Tenders for portion of items or specified quantities

45. A regional tender board may consider a tender by a tenderer who does not tender for all the items specified in the invitation to tender, or who tenders for only a portion of the quantity so specified.

Consideration of tenders

46. A regional tender board shall consider, subject to these regulations, all tenders duly submitted to it in terms of these regulations.

Comparison of tenders

47. A regional tender board shall -
- (a) compare the tender prices of all tenders submitted to it; and
 - (b) if applicable, adjust delivery charges or any other charges,

before applying any price preferences to tenders.

Domestic value

48. (1) A regional tender board may, if the goods offered originate from a country other than Namibia, require the tenderer to furnish the domestic value of the goods offered in the currency of Namibia.

(2) If the domestic value furnished in terms of subregulation (1) is higher than the tendered price, a regional tender board shall calculate the tender by using the domestic value.

(3) In this regulation “domestic value” means, in relation to goods imported or to be imported into Namibia, the market price at which such or similar goods are, at the time of tendering, freely offered for sale in the usual wholesale quantities and in the ordinary course of trade to all purchasers in the principal markets of the country from which the goods are imported or are to be imported, including -

- (a) any royalty and the costs of packaging and packages ordinarily used in those markets;
- (b) additional costs of packaging and packages for export carriages to the port of shipment or other place of formal despatch in that country; and

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- (c) all other expenses incidental to placing the goods on board ship or on any other vehicle at the port or place ready for export to Namibia,

but does not include -

- (i) excise duty, export tax, sales tax or value added tax imposed; or
(ii) drawbacks, refunds, rebates or remissions of customs duty granted,

by the Government of that country in terms of its laws relating to the export of such goods.

Recommendation by department, division or section

49. (1) A regional tender board shall, after having opened and listed all tenders, submit the tenders to the relevant department, division or section of the local authority concerned which deals with the matter or issue to which the tender relates, for its recommendation, and that department, division or section concerned shall make, in writing and as soon as practicable, its recommendation on the tenders concerned.

(2) The head of the department, division or section referred to in subregulation (1) shall submit the recommendation made in terms of subregulation (1), together with all the tenders submitted to it in terms of that subregulation, to the regional tender board.

(3) If a department, division or section does not recommend the lowest tender from among all the tenders submitted to it, the head thereof referred to in subregulation (2) shall -

- (a) in writing certify that the recommendation is made in the best interest of, and represents the best value to, the regional council concerned; and
(b) give reasons for not recommending the acceptance of the lowest tender.

(4) If only one tender is received and that tender is in terms of subregulation (1) recommended for acceptance, the head of the department, division or section concerned shall in the recommendation state whether the tender price is considered fair and reasonable.

Acceptance of tenders

50. (1) A regional tender board shall, after having brought all tenders to a comparative level and having due regard to regulation 18(4), accept tenders in the following order of priority:

- (a) Tenders for goods manufactured entirely from raw materials or produced mainly within Namibia;
(b) tenders for goods manufactured in Namibia entirely from non-fabricated raw materials or mainly imported materials;
(c) tenders for goods assembled in Namibia from components entirely or mainly imported;
(d) tenders for imported goods from local suppliers who are in a position to give expert advice or after sales service;

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- (e) tenders for goods from imported stock held in Namibia;
- (f) tenders from overseas suppliers, but preferably suppliers with branches and stock in Namibia.

(2) A regional tender board shall as far as practicable in respect of tenders for the furnishing of perishable goods, accept the tender of the tenderer who is at, or closest to, the place where such goods are required to be delivered.

Acceptance of tenders for unspecified quantities

51. If a regional tender board accepts a tender for a quantity other than the quantity specified in the invitation to tender, the tenderer may refuse to enter into an agreement if the quantity accepted is -

- (a) less than that for which the tenderer has tendered; or
- (b) more than that for which the tenderer has tendered, but in that case the tenderer may refuse only to the extent of the excess.

Security

52. (1) A regional tender board shall, subject to subregulation (4), require a successful tenderer to furnish security for the performance in terms of an agreement to be entered into, if -

- (a) any payment is to be made to the regional council concerned;
- (b) any property of the regional council is to be handed to a contractor; or
- (c) that board in any particular case for good cause deems it necessary to require such tenderer to furnish security.

(2) The security to be furnished in terms of subregulation (1) shall be an amount equal to -

- (a) in the application of subregulation (1)(a), the estimated amount to be paid to the regional council;
- (b) in the application of subregulation (1)(b), be the maximum value of the property of the regional council which may be in the possession of the contractor at any time;
- (c) in the application of subregulation (1)(c) -
 - (i) ten per cent of the monetary value of the tender; or
 - (ii) such number of sureties acceptable to that board, but not less than two, as may be required by the board,

whichever security the board may deem appropriate to require in any particular case.

- (3) The security required in terms of subregulation (1) shall be in the form of -

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- (a) a guarantee issued by a banking institution, building society or an insurance company registered or incorporated in Namibia and approved by the regional tender board concerned;
 - (b) a cash deposit, negotiable Government bonds or stock;
 - (c) in the case of a service contract, a surety bond furnished by the sureties referred to in subregulation (2)(c)(ii); or
 - (d) any other form of security approved by the regional tender board concerned.
- (4) A regional tender board -
- (a) shall specify, if any security is required to be furnished by a successful tenderer, particulars thereof in the invitation to tender;
 - (b) may reject any security furnished in terms of subregulation (3) for such reasons as it may deem appropriate.

Cession of agreements

53. Without the prior written approval of a regional tender board, granted on the recommendation of the department, division or section concerned which deals with the matter to which a tender relates, a tenderer or contractor shall not, -

- (a) surrender, transfer, cede, dispose of or sub-let the whole or part of this or her tender or agreement or any interest therein; or
- (b) cede any payment arising out of any agreement,

to any person.

Communication with regional tender boards

54. (1) All correspondence to a regional tender board, unless specifically intended for the personal attention of the chairperson, shall be addressed to the secretary at the address of the regional council concerned.

(2) All deliveries other than by mail shall be made to the office of the secretary of the regional tender board concerned.

Availability of regulations

55. Copies of these regulations may be obtained at the address referred to in regulation 54(1).

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ANNEXURES

To view content without printing, scroll down.

To print at full scale (A4), double-click the icon below.



GN 43/2001
Annexures

ANNEXURE A

PRICE PREFERENCES
(Regulation 23(1))

The price preferences set out below shall apply in respect of tenders, and a tender may qualify for one or more price preferences, as the case may be :

- (a) Goods produced or manufactured in Namibia :
 - (i) Six per cent, if the goods produced or manufactured have a local content of ten per cent or more but less than 25 per cent of the manufacturing costs of the goods;
 - (ii) ten per cent, if the goods produced or manufactured have a local content of 25 per cent or more but less than 50 per cent of the manufacturing costs of the goods;
 - (iii) 12 per cent, if the goods produced or manufactured have a local content of 50 per cent or more but less than 60 per cent of the manufacturing costs of the goods;
 - (iv) 15 per cent, if the goods produced or manufactured have a local content of 60 per cent or more but less than 75 per cent of the manufacturing costs of the goods;
 - (v) 18 per cent, if the goods produced or manufactured have a local content of 75 per cent or more but less than 90 per cent of the manufacturing costs of the goods;
 - (vi) 20 per cent, if the goods produced or manufactured have a local content of 90 per cent or more of the manufacturing costs of goods.
- (b) Goods assembled in Namibia :
 - (i) Three per cent, if the goods assembled have a local content of ten per cent or more but less than 25 per cent of the total costs of production;
 - (ii) five per cent, if the goods assembled have a local content of 25 per cent or more but less than 50 per cent of the total costs of production;

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- (iii) six per cent, if the goods assembled have a local content of 50 per cent or more but less than 75 per cent of the total costs of production;
 - (iv) eight per cent, if the goods assembled have a local content of 75 per cent or more but less than 90 per cent of the total costs of production;
 - (v) ten per cent, if the goods assembled have a local content of 90 per cent or more of the total costs of production.
- (c) Services rendered by persons domiciled or companies incorporated in Namibia:
- (i) Five per cent, to persons domiciled or companies incorporated in Namibia in respect of services offered, when a comparison is made to companies incorporated in any country other than Namibia;
 - (ii) five per cent, to persons or companies granted a Certificate of Status Investment under section 7 of the Foreign Investment Act, 1990 (Act No. 27 of 1990), in respect of services offered, when a comparison is made to companies incorporated in any country other than Namibia.
- (d) After sales service:
- Three per cent, to *bona fide* Namibian dealers or merchants where an after sales service is required in respect of goods to be imported.
- (e) Goods conforming to any national or international standard specification :
- Three per cent in respect of goods conforming to any national or international standard specification.
- (f) *Bona fide* Namibian small scale industries :
- (i) Two per cent, if the labour employed by the industry numbers more than ten but less than 25 persons;
 - (ii) three per cent, if the labour employed by the industry numbers 25 or more persons, but less than 50;
 - (iii) five per cent, if the labour employed by the industry numbers 50 or more persons.
- (g) Tenderer located in communal areas or notified underdeveloped areas :
- (i) Two per cent, if the labour employed numbers more than ten but less than 25 persons;
 - (ii) three per cent, if the labour employed numbers 25 or more persons but less than 50 persons;
 - (iii) five per cent, if the labour employed numbers 50 persons or more.
- (h) *Bona fide* Namibian manufacturing companies :
- Two per cent, if a company is incorporated in Namibia with all its share capital beneficially owned by Namibian citizens and the company employs Namibian citizens only.
- (i) *Bona fide* Namibian tenderer implementing affirmative action policies :
- If in the opinion of a regional tender board, based on information furnished to that board by a Namibian tenderer, such tenderer is implementing

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affirmative action policies and programmes to redress social, economic or educational imbalances in a democratic society, the board may grant a price preference of two to three per cent on the merits of each particular case, based on factors such as structured training programmes, apprenticeship courses of approved standards for labour, technical staff and managerial cadre, substantial employment of women and handicapped persons, and other programmes or activities benefiting disadvantaged Namibian citizens.

ANNEXURE B

PARTICULARS OF TENDERER
(Regulation 23(3))

1. Full names and postal and physical address of tenderer :

2. Origin/registration/trading licence number : _____

- (a) Namibian company/contractor/supplier/trader :

Registration number and date: _____

Trade licence or certificate number and date, and name and address of person who issued the licence or certificate: _____

Financial interests held by a foreigner/foreign company (Furnish details) : _____

- (b) Foreign company/contractor/supplier/trader :

Country of registration _____

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Registration number and date _____

Financial interests held by a Namibian/Namibia company (Furnish details): _____

3. Capital structure :

Total equity capital _____ N\$ _____

(Amount in words) : _____

which total equity capital is made up as follows :

	<u>Amount</u> <u>N\$</u>	<u>Percentage of</u> <u>total capital</u>
(a) Capital owned by Namibians/Namibian companies
(b) Capital owned by foreigners/foreign companies

4. Particulars of business :

(a) Nature of activities :

(b) Is the business, according to the Ministry of Trade and Industry, a small scale industry ? _____ (Yes/No)

If yes, give details and furnish documentary proof :

(c) Is the tenderer located in communal areas/underdeveloped areas notified by the Ministry of Trade and Industry ? (Yes/No)

If yes, give details and furnish documentary proof :

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5. Organisational structure :
 Employees :

Category	Total Number	Number of Namibians	Number of formerly disadvantaged Namibians	Number of Foreigners
(a) Managing Director/ Directors				
(b) Managers				
(c) Office personnel/ staff				
(d) Skilled labour				
(e) Unskilled labour				
(f) Contract staff/labour				
Total				
No. of women included in above				
No. of handi-capped persons included in above				

6. Buildings and erven :

<u>Area used</u>	<u>Total area (in square metres)</u>
Area of erf
Area of buildings on erf
Area of buildings used for Manufacturing / assembling
Area of buildings used as office space
Area of buildings used for storage

7. Is a subcontractor/ sub vendor/ sub supplier involved in the performance of the agreement? (Yes/No)

If "yes", state in an annexure the percentage of the total tender amount being performed by means of subcontracting, etc., and furnish in that annexure full particulars of the subcontractor / sub vendor / sub supplier concerned, including physical address or addresses.

Signature _____

Date _____

Documents to be attached:

- (1) Copy of registration certificate/trade license.
- (2) Copy of certificate/document to substantiate any claim as being a small scale industry.

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- (3) Copy of certificate/document to substantiate any claim regarding location in communal areas/underdeveloped areas.
 - (4) Information regarding subcontractor/ subvendor/subsupplier.
 - (5) Documentary proof regarding training programmes, apprenticeship courses, affirmative action programmes or activities, or other programmes or activities benefiting disadvantaged or handicapped Namibian citizens.
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