



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

MINISTRY OF FINANCE

No. 235

2021

PUBLICATION OF DRAFT CODE OF GOOD PRACTICE AND NOTICE OF INTENTION TO ISSUE CODE OF GOOD PRACTICE ON PREFERENCES REFERRED TO IN SECTIONS 71 AND 72 OF PUBLIC PROCUREMENT ACT, 2015

In terms of section 70(4) of the Public Procurement Act, 2015 (Act No. 15 of 2015), I -

- (a) give notice of my intention to issue a code of good practice on preferences referred to in sections 71 and 72 of that Act; and
- (b) invite any interested person to comment or make representation in connection with the draft Code of Good Practice set out in the Schedule, to the Minister via -
 - (i) mail to Ministry of Finance, Private Bag 13295, Windhoek;
 - (ii) hand delivery to the Head Office, Moltke Street, Windhoek; or
 - (iii) email to Evelina.Nakanyala@mof.gov.na,

within a period of 30 days from the date of publication of this notice in the *Gazette*.

I. SHIIMI
MINISTER OF FINANCE

Windhoek, 14 October 2021

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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 -

“framework contract” means an agreement which the Board or a public entity may proffer if the need for the subject matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time for the period of the financial year of the Board or public entity;

“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 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 characteristics;
- (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, in relation to the process of manufacture, not 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 amount of value added in Namibia which is the total value of the item to be procured, excluding net domestic indirect taxes, minus the value of imported content in the item, including all customs duties as a proportion of the total value in percentage, inclusive of local labour;

“local preference” means the right or opportunity for a public entity to select a bidder from an identified category of local suppliers to support the objects under section 2(b) of the Act;

“local supplier” means a supplier or a service provider operating from anywhere in Namibia;

“manufacturer” means a person or a company that makes finished products from raw materials with an aim to make a profit from the sale of such finished products to retailers;

“preference” means the right or opportunity to select a person from an identified category which is in order of preference;

“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 exclusive preference to procure goods, works or services, letting and hiring of anything or the acquisition or granting of rights for or on behalf of, or the disposal of assets of, public entities set aside for local suppliers within a threshold specified in the Act;

“small and medium enterprise” means an enterprise whose -

- (a) full time employees do not exceed the numbers; and
- (b) annual turnover does not exceed the turnovers,

specified in the National Policy on Micro, Small and Medium Enterprises in Namibia 2016 - 2021;

“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;

“veterinary cordon fence” means the veterinary cordon fence as defined in the Animal Identification Regulations published in Government Notice No. 29 of 5 March 2009; 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;
 - (b) 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 this Code of Good Practice in achieving the aims set out in this paragraph; and
 - (c) specifically provide for the procurement of meat and fresh produce to be supplied north of the veterinary cordon fence and to that end the Board or public entities should include specific provisions in their bidding documents specifications that -
 - (i) meat produce, inclusive of beef, sheep, goat, pork, game, fish and poultry and fresh produce, inclusive of vegetables and fruit, grown north of the veterinary cordon fence are to be sourced from suppliers north of the veterinary cordon fence;
 - (ii) it is discouraged to procure meat and fresh produce south of the veterinary cordon fence, unless the supply north of the veterinary cordon fence is insufficient to satisfy the demand there;
 - (iii) specifications must not -
 - (aa) include provisions that would negate the instructions issued in terms of this Code of Good Practice; or

- (bb) refer to a grade of meat that requires meat from the south of the veterinary cordon fence or elsewhere;
- (iv) the only source for the procurement of meat must be abattoirs north of the veterinary cordon fence approved by the Meat Board until supply is insufficient for the demand north of the veterinary cordon fence; and
- (v) specifications must not refer to a grade or a brand of fresh produce that requires produce from the south of the veterinary cordon fence or elsewhere.

PART 2

WEIGHTS TO BE ATTACHED TO VARIOUS CATEGORIES

Categories of suppliers

3. For purposes of achieving the objectives of Government contemplated in the National Policy on Micro, Small and Medium Enterprises in Namibia 2016 - 2021, the Board or public entities must consider the following categories of suppliers for preference when procuring goods, works and services and when evaluating bids:

- (a) local suppliers;
- (b) manufacturers;
- (c) small and medium enterprises;
- (d) previously disadvantaged persons;
- (e) previously disadvantaged women; and
- (f) youth owned enterprises.

Categories of procurement

4. (1) The margins of preference and reservation for exclusive preferential procurement specified in this Code of Good Practice are applicable to categories of procurement within the following threshold:

- (a) works not exceeding N\$30 million;
- (b) goods not exceeding N\$50 million;
- (c) consultancy services not exceeding N\$10 million; and
- (d) non-consultancy services not exceeding N\$10 million.

(2) For the purpose of section 2(b) of the Act, the Board or a public entity, when procuring goods, works or services, must grant exclusive preferences to local suppliers except in cases where the Board or public entity has proof that no local capacity exists or in case of non-responsiveness from the identified categories.

Categories within which reservations apply

5. (1) The Board or a public entity must use the categories of suppliers specified in paragraph 3 and the qualification criteria set out in Part 3, unless the Board or public entity receives no acceptable offer from a qualified local supplier.

(2) The Board or public entities must reserve the following procurement of goods, works and services for local suppliers:

- (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 PREFERENTIAL TREATMENT

Qualification criteria

6. (1) A bidder qualifies to benefit from preferential treatment if the bidder meets the requirements specified in subparagraph (2).

- (2) The Board or public entities must give national preference if a bidder -
- (a) is eligible in terms of section 71(3) of the Act;
 - (b) demonstrates that at least 60% of his, her or its -
 - (i) management employees; and
 - (ii) workforce,are Namibian citizens;
 - (c) is a joint-venture contemplated in paragraphs (b) and (c) of subsection (3), and in subsection (4), of section 71 of the Act and its majority ownership of 51% shares are owned by Namibian citizens of which no less than 30% are owned by previously disadvantaged persons;
 - (d) has a minimum ownership of 51% shares owned by Namibian citizens of which no less than 30% are owned by previously disadvantaged persons;
 - (e) is a company and its majority ownership of 51% shares are owned by Namibian citizens of which no less than 30% are owned by previously disadvantaged persons;
 - (f) has a majority paid up share capital owned by the Government or Namibian citizens and the major part of the net profits or other tangible benefits of the bidder accrues to the Government or Namibian citizens with no other arrangements by the bidder to the contrary, where applicable; and
 - (g) complies with the Act.

Percentage of margin of preferences applicable

7. The price preference to be used for all bids by all the categories of suppliers specified in paragraph 3 is 10%.

PART 4
GENERAL PRINCIPLES

Preferences

8. (1) A candidate is entitled to bid for only one preference or reservation at a time in a procurement proceeding.

(2) Where a candidate is entitled to more than one preference, the scheme with the highest advantage to the bidder must be applied.

(3) For the purpose of ensuring maximum participation of previously disadvantaged groups and small and medium enterprises, in public procurement, the Board or public entity may package its procurement of goods, works or services in practicable quantities.

(4) If the Board or public entity packages its procurement of goods, works or services in accordance with subparagraph (3), the public entity must require that the procurement proceedings relating to such goods, works or services apply only to previously disadvantaged persons, youths and small and medium enterprises.

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

(6) Despite subparagraph (5), the categories of suppliers specified in paragraph 3 must be required to complete and sign the Bid Securing Declaration Form set out in Annexure 4 of the Regulations.

(7) For purposes of section 2(b) of the Act, 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.

(8) An advertisement relating to an open bid to which this Code of Good Practice applies must state that the bid is open to youth, small and medium enterprises and previously disadvantaged persons.

(9) Procurement of goods, works or services under this Code of Good Practice must be conducted on competitive procedure among the qualified target groups.

(10) The Board or public entities must make use of framework contracts with the youth, small and medium enterprises and previously disadvantaged groups 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.

(11) The Board or public entities 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

9. The Procurement Policy Unit must monitor the application of preferences and reservations by public entities.

Integration of preferences and reservations

10. Public entities must integrate preferences and reservations in their procurement plans.

Procurement plan

11. 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 within 60 days after commencement of the financial year.

Report to Procurement Policy Unit

12. 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 Procurement Policy Unit on a quarterly basis.

ANNEXURE 1

COST STRUCTURE FOR VALUE ADDED CALCULATION (Paragraph 1)

COST STRUCTURE FOR VALUE ADDED CALCULATION PER PRODUCT		
	N\$	N\$
Raw Materials, Accessories and Components		
• Imported (CIF)		
• Local (VAT and Excise Duty Fee)		
Labour Cost		
• Direct Labour		
• Clerical Wages		
• Salaries to Management		
Utilities		
• Electricity		
• Water		
• Telephone		
Depreciation		
Interest on Loans		
Rent		
Other (please specify)		
TOTAL COST		

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

NB! The cost structure should be certified by an Accountant

ANNEXURE 2**GOODS**
(Paragraph 5(2)(a))

Bottled Water
Vegetables
Fruits
Poultry
Cleaning Detergents
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
Jewelry
Cosmetics
Cement
Pharmaceuticals
Clinical supply
Building sand and stones
Stones
Bricks
Concrete Sleepers

ANNEXURE 3**WORKS**
(Paragraph 5(2)(b))

Construction, Earth Moving & Fencing
Maintenance, repairs & Alterations
Fire Cut Lines
Plumbing
Air-conditioning installations; servicing
Electrical
Welding
Boiler-making
Painting
Tiling
Carpentry
Flooring
Bricklaying

ANNEXURE 4**SERVICES**
(Paragraph 5(2)(c))

Security Services
Cleaning Services
Laundry Services
Maintenance Services
Catering Services
Photocopy Services
Printing Services
Travel Services
Graphic Designers
Audio Visual Services
Event Management Services
Web Hosting Services
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 Services
Landscaping and Gardening Services
Photography Services
Information, Communication and Technology Services
Professional Services (including quantity surveying, architecture, audit)