



Republic of Namibia
Annotated Statutes

Public Procurement Act 15 of 2015

(GG 5922)

brought into force with effect from 1 April 2017

by GN 46/2017 (GG 6255)

as amended by

Public Procurement Amendment Act 3 of 2022 (GG 7874)

brought into force on 7 October 2022 by GN 318/2022 (GG 7923),

with the exception of the definitions of “chief executive officer”, “framework agreement” and “pooled procurement” in section 1, sections 5, 6, 9, 10, 12, 15(b) and 18

ACT

To regulate the procurement of goods, works and services, the letting or hiring of anything or the acquisition or granting of rights for or on behalf of, and the disposal of assets of, public entities; to establish the Procurement Policy Unit and the Central Procurement Board of Namibia and provide for their powers and functions; to provide for the procurement committees and procurement management units and their powers and functions; to provide for the appointment of bid evaluation committees and their functions; to provide for procurement methods; to provide for bidding process, bidding challenge and review; to provide for preferences to categories of persons, goods manufactured, mined, extracted, produced or grown in Namibia, to Namibian registered small and medium enterprises, joint venture businesses, local suppliers, contractors and service providers; and to provide for incidental matters.

(Signed by the President on 18 December 2015)

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BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

PART 1
INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates -

“accounting officer” means -

- (a) the accounting officer of a public entity; or
- (b) if the accounting officer is absent or is for any other reason unable to perform his or her functions -
- (i) a person acting as accounting officer with the written authority of the accounting officer or a person appointed as acting accounting officer in terms of section 21(1)(a) of the Public Service Act, 1995 (Act No. 13 of 1995); and
- (ii) in the case of a public entity governed by a board, local authority council, regional council or a similar governing body the person acting as accounting officer with the written authority of the board, local authority council, regional council or governing body;

[The definition of “accounting officer” is substituted with amendment markings by Act 3 of 2022.]

“associate” in relation to the disclosure of interest, includes -

- (a) a co-shareholder of a company incorporated under Chapter 4 of the Companies Act, 2004 (Act No. 28 of 2004) or an entity established by an Act of Parliament including subsidiaries of such an entity;
- (b) a co-member of a close corporation contemplated in section 2 of the Close Corporations Act, 1988 (Act No. 26 of 1988);

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- (c) a person to whom one has granted or from whom one has received a general power of attorney;
- (d) a trustee or beneficiary of a trust contemplated in section 1 of the Trust Monies Protection Act, 1934 (Act No. 36 of 1934);
- (e) co-members of a co-operative registered under the Co-operatives Act, 1996 (Act No. 23 of 1996); or
- (f) partners in a partnership or joint venture or similar arrangement;

[The definition of “associate” is inserted by Act 3 of 2022.]

“close relative” means a spouse, child, grandchild, parent or sibling, cousin, nephew, niece, aunt, uncle, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law and sister-in-law;

[The definition of “close relative” is inserted by Act 3 of 2022.]

“bid” means an offer or proposal submitted in response to a request to supply goods, works or services, or any combination thereof, and, where applicable, includes any pre-qualification process;

“bidder” means a participant in procurement or prequalification process, and includes a contractor;

[The word “a” appears to have been omitted before the phrase “procurement or prequalification process”. Alternatively, the phrase may have been intended to be “procurement or prequalification processes”.]

“bidding document” -

- (a) means any document issued by a public entity on the basis of which bidders prepare bids; and
- (b) includes any document which contains instructions to bidders, specification, maps, designs, terms of reference, work schedules, evaluation criteria, bills of quantities, conditions of contract or other similar items;

[The word “specification” may have been intended to be “specifications” (plural) to accord with the other terms in the list.]

“bid evaluation committee” means an ad hoc bid evaluation committee established in terms of section 26;

“bid security” means the security instrument required to ensure that a bid remains valid during the period stated in the bidding document;

“Board” means the Central Procurement Board of Namibia established by section 8;

“consultancy services” means services of an intellectual or advisory nature, not incidental to the provision of goods or services or the execution of works;

“contractor” means a person who has entered into a procurement contract with a public entity;

“days” means a day other than Saturday, Sunday or public holiday;

[The definition of “days” is inserted by Act 3 of 2022.]

“electronic reversed auction” means an online real-time purchasing technique used by the procuring public entity to select the successful submission which involves the presentation by suppliers or contractors of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;

“goods” means objects of every kind and description, including commodities, raw materials, manufactured products and equipment, industrial plant, objects in solid, liquid or gaseous form, electricity, as well as services incidental to the supply of the goods such as freight and insurance;

“guidelines” means guidelines issued in terms of section 7;

“local authority” means a local authority as defined by section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“local supplier” means a supplier -

- (a) who complies with the criteria stated in section 71(3); and
- (b) whose goods, works or services complies with the minimum local content as may be determined by the Minister in the codes of good practice issued in terms of section 70;

[The definition of “local supplier” is inserted by Act 3 of 2022.]

“Minister” means the Minister responsible for finance;

“Namibian citizen” means a citizen of Namibia by virtue of Article 4 of the Namibian Constitution and the Namibian Citizenship Act, 1990 (Act No. 14 of 1990);

[The definition of “Namibian citizen” is inserted by Act 3 of 2022.]

“non-consultancy services” means any services other than consultancy services and services incidental to the supply of goods or the execution of works;

“Policy Unit” means the Procurement Policy Unit established in terms of section 6;

“prescribed” means prescribed by regulation;

“procurement” means the acquisition of goods, works, consultancy services or non-consultancy services by any means, including purchase, rental, lease or hire-purchase;

“procurement committee” means the procurement committee of a public entity constituted in terms of section 25;

“procurement management unit” means the division or department in a public entity that is responsible for the execution of procurement functions constituted in terms of section 25;

“procurement contract” means a contract between a public entity and a supplier resulting from a procurement process;

“public entity” means any office, ministry or agency of the Government, and includes -

- (a) a local authority council;
- (b) a regional council;
- (c) a public enterprise as referred to in the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019);
- (d) an entity or trust that is owned or controlled by the Government, when engaged in any procurement individually or in consortium;
- (e) an entity declared as public entity in terms of section 5; and

[The word “a” appears to have been omitted before the phrase “public entity”.]

- (f) a subsidiary of a public enterprise referred to in paragraph (c);

[The definition of “public entity” is substituted with amendment markings by Act 3 of 2022; the amendment markings are incomplete.]

“responsive”, in relation to a bid, means responsive to the basic requirements of a bid regarding ability to perform and complete on time;

“Review Panel” means a Review Panel constituted in terms of section 58;

“services” means any object of procurement, a contract or framework agreement for consultancy and non-consultancy services;

“standstill period” means the period of seven days -

- (a) referred to in section 55(4A) within which other bidders, other than the successful bidder referred to in section 55(4)(a), may apply to the Board or public entity to reconsider the selection of the bid for the award; or
- (b) referred to in section 59(1) within which a bidder or supplier may apply to the Review Panel for review of a decision or action taken by the Board or public entity;

[The definition of “standstill period” is inserted by Act 3 of 2022.]

“supplier” means a person delivering goods, works, consultancy services, non-consultancy services or other services;

[The definition of “supplier” is substituted with amendment markings by Act 3 of 2022.]

“this Act”, includes the regulations made under section 79;

“threshold” means a threshold amount prescribed for the procurement of goods, works and consultancy services or non-consultancy services, including disposal of assets for the mandatory application of prescribed procedures;

“works” means any work associated with the construction, reconstruction, demolition, repair or renovation, site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services.

Objects of Act

2. The objects of this Act are -

- (a) to promote integrity, accountability, transparency, competitive supply, effectiveness, efficiency, fair-dealing, value for money, responsiveness, informed decision-making, consistency, legality and integration in the procurement, the letting and hiring of anything, the acquisition or granting of rights and the disposal of assets including, among others, to -

[The introductory portion of paragraph (a) is substituted with amendment markings by Act 3 of 2022; Act 3 of 2022 says that it is substituting paragraph (a) in its entirety, but the intention was clearly to substitute only the introductory portion of the paragraph.]

- (i) harmonise procurement policies, systems and practices that apply to public entities and maximise economy and efficiency in public procurement to obtain best value for public expenditures;
- (ii) set and review standards and practices for the public procurement system in Namibia;
- (iii) monitor compliance by public entities; and
- (iv) build procurement capacity in Namibia;
- (b) to promote, facilitate and strengthen measures to implement the empowerment and industrialisation policies of the Government including, among others -
- (i) the job creation for Namibian citizens;
- (ii) the empowerment of Namibian registered small and medium enterprises, women and youth by creating economic opportunity for them and enhancing their participation in the mainstream economy;
- (iii) sourcing of goods manufactured, mined, extracted or grown in Namibia and local services and labour, including local entrepreneurial development; and
- (iv) preferential treatment in the allocation of procurement contracts to -
- (aa) Namibian registered small and medium enterprises;
- (bb) Namibian registered joint venture business;
- (cc) categories of Namibian manufacturers, suppliers, contractors and service providers;
- (dd) Namibian registered entities that promote the protection of the environment, maintain ecosystems and sustainable use of natural resources; or
- (ee) Namibian natural persons or categories of persons, including persons who have been, economically or educationally disadvantaged by past racial discriminatory laws or practices,

[The comma after the phrase "who have been" is superfluous. The word "racial" should be "racially".]

as the Minister may prescribe for a specified or unspecified period and either

unconditionally or subject to such conditions as the Minister may determine, having regard to the policies of the Government; and

- (c) to regulate the letting and hiring of anything or the acquisition or granting of any right and the disposal of assets.

Application of Act

3. (1) Subject to any other law to the contrary, and except where provided otherwise in this section, this Act applies to -

- (a) all procurement of goods, works and services and disposal of assets undertaken by the Board or a public entity;
- (b) the letting and hiring of anything or the acquisition or granting of any right; and
- (c) contract management of goods, works and services procured or disposed of by the Board or a public entity,

but the Board or a public entity may not dispose of any State assets or cause anything of the State to be let or hired without the prior written authorisation of the Treasury made in terms of the State Finance Act, 1991 (Act No. 31 of 1991).

(2) The extent to which this Act or directives made under it conflict with any other law, regulations, rules or directives on matters relating to public procurement of goods, works or services, or disposal of assets by a public entity, the provisions of this Act or directives prevail.

Exemptions

4. (1) The Minister may for a specified or unspecified period issue a general or specific exemption from the application of certain provisions that are not practical or appropriate for the procurement, letting, hiring or disposal of security related goods, works, services and property by the -

- (a) Namibian Defence Force;
- (b) Namibian Police Force;
- (c) Namibia Correctional Services; and
- (d) Namibia Central Intelligence Service.

(2) The Minister may, with or without condition, as the Minister may determine, grant a general or specific exemption by way of a directive for specific types of procurement or disposal from the application of certain provisions of this Act that are not practical or appropriate for the purpose for which such goods are let, hired or disposed of, including goods, works and services being procured.

(3) Any information, document or record relating to the procurement or disposal of security related goods, works, services or property contemplated in subsection (1) are strictly confidential and secret.

[The term “security-related” should be written with a hyphen throughout this section.]

Determination of procurement policy and declaration as public entity

5. (1) Despite anything to the contrary in any other law, but subject to Article 23 of the Namibian Constitution, the Minister may determine the policy on procurement, including procurement preferences, classification and categories of Namibian manufacturers, suppliers, contractors and service providers and the terms and conditions for classification or participation in the procurement process to realize -

- (a) the greatest socio-economic benefits;
- (b) the empowerment and advancement of small and medium enterprises and of persons or categories of persons who have been socially, racially, economically or educationally disadvantaged by past discriminatory laws or practices.

(2) The Minister, by notice in the *Gazette*, may declare any entity to be a public entity for the purposes of the whole or any part of this Act, if -

- (a) the Government provides funds exceeding the prescribed threshold to the entity in any form, including equity, loan or grant; or
- (b) the Government grants to the entity an exclusive license, monopoly for the sale of goods that the entity sells or the provision of services that it provides, including the building of infrastructure,

and upon publication of the notice, the provisions of this Act specified in the notice apply to the entity.

PART 2 PROCUREMENT POLICY UNIT

Procurement Policy Unit

6. (1) There is established within the Ministry of Finance a specialised Procurement Policy Unit, that is, subject to any general or specific policy directives issued by the Minister, responsible for advising the Minister on any procurement or disposal which includes -

- (a) the monitoring of compliance with this Act, directives, code of procedures and guidelines issued under this Act;
- (b) the reviewing of the procurement system and proposal of mechanism for improving the implementation of government policies by public entities;

[The word “mechanism” should be “mechanisms” (plural).]

- (c) the assessing of the impact of the procurement system on the socio economic policy objectives of the Government;

[The term “socio-economic” should be written with a hyphen.]

- (d) the promotion of the fundamental principles of procurement governing the administration of procurement; and
- (e) the reviewing of, monitoring and assessing methods of disposal of assets.

(2) The fundamental principles referred to in subsection (1)(d), include, but are not limited to, the principle of transparency, integrity, competitive supply, effectiveness, efficiency, fair-dealing, value for money, responsiveness, informed decision-making, consistency, legality, integration, and accountability.

**[Subsection (2) is substituted with amendment markings by Act 3 of 2022.
The word “principle” should be “principles” to fit the sentence structure.]**

(3) The Procurement Policy Unit is assisted in the performance of administrative work incidental to its functions by staff members of the Ministry administering matters relating to finance.

**[The term “Policy Unit” is substituted for the term “Procurement Policy Unit” by Act 3 of 2022.
The word “relating” is misspelt in the *Government Gazette*, as reproduced above.]**

Functions of Policy Unit

7. (1) In executing any general or specific policy directives issued by the Minister to achieve the objects of this Act, the functions of the Policy Unit, include among others -

- (a) to propose various thresholds to the Minister relating to public procurement or disposal to be applied by public entities and the Board;
- (b) to advise the Minister on policy for introducing e-procurement as a means of simplified and transparent procurement;
- (c) to prepare guidelines regarding procurement matters, including e-procurement, the letting or hiring of anything or the acquisition or granting of any right for or on behalf of public entities, and the disposal of assets;
- (d) to advise public entities on all public procurement policies, principles and practices;
- (e) to monitor, report on the performance of the public procurement systems in Namibia, including preparing an annual report to be tabled in the National Assembly within six months after the end of each financial year, and advise on desirable changes;

[The phrase “to monitor, report on...” should be “to monitor and report on...” to fit the sentence structure.]

- (f) to prepare and conduct training programmes and approve training curriculum on public procurement as proposed by training institutions for staff members, contractors and suppliers concerning procurement;
- (g) to set mandatory training standards, capacity building and competence levels, certification requirements and professional development paths for procurement practitioners in Namibia with the consent of the Minister;
- (h) to prepare, update and issue directives, instructions, guidelines, guidance notes and manuals, including any other incidental documents for mandatory use by public entities;

[Paragraph (h) is substituted with amendment markings by Act 5 of 2022.]

- (i) to issue authorised versions of the standardised bidding documents, standard forms of contracts, pre-qualification documents, procedural forms, requests for proposals

and other similar documents for mandatory use by every public entity implementing procurement;

- (j) to develop and implement procurement performance assessment system;

[The word “a” appears to have been omitted before the phrase “procurement performance assessment system”. Alternatively, that phrase may have been intended to be “procurement performance assessment systems” (plural).]

- (k) to facilitate the use of information and communications technology in procurement;
- (l) to inspect or cause to be inspected any procurement activity to ensure compliance with a procurement award by either the Board or a public entity;
- (m) to institute -
 - (i) contract audits in the course of the execution of an awarded contract; and
 - (ii) performance audit after the completion of the contract in respect of any procurement, when it is necessary;

[The word “a” appears to have been omitted before the phrase “performance audit”. Alternatively, that phrase may have been intended to be “performance audits” (plural).]

- (n) to set a list of services and supplies in common use by more than one public entity for centralised procurement using among others procurement contracts, standing offers and supply arrangements;
 - (o) to design and maintain a roll of suppliers of goods, works and services, including their profiles for the implementation policies referred to in this Act;
 - (p) to provide guidance on operational matters in procurement activities;
 - (q) to investigate at its own accord or as instructed by the Minister any matter relating to procurement to establish whether the provisions of this Act have been complied with; and
 - (r) to perform such other functions as may be directed by the Minister from time to time or by any other law.
- (2) In the performance of its functions the Policy Unit may -
- (a) require any information, documents, records and reports in respect of any aspect of the procurement process, including cases where a breach, wrongdoing, mismanagement or collusion has been alleged, reported or proven against any public entity or any provider of service under this Act;
 - (b) invite persons to present any information relating to matters referred to in paragraph (a); or
 - (c) commission or undertake investigations and institute performance audits.
- (3) The Policy Unit may invite and receive any suggestions relating to its objects from any person or body and may include such suggestions in any programme.

(4) If, in the discharge of its functions, the Policy Unit finds that there has been a non-compliance with any provision of this Act, directives, code of procedures or guidelines made under this Act, the Minister may -

- (a) refer the matter with recommendations to the appointing authority of the staff member for appropriate action; or
- (b) refer any matter of non-compliance to the Namibian Police, Anti-Corruption Commission or any other competent authority for investigation, when it thinks appropriate, and must inform the public entity concerned.

(5) An appointing authority referred to in subsection (4)(a) must -

- (a) within seven days of receipt, acknowledge receipt of the referral and the recommendations contemplated in that subsection; and
- (b) ensure that the recommendations are attended to promptly and report progress to the Policy Unit within 30 days of receipt.

(6) A person appointed by the Minister to execute the function of the Policy Unit may be paid such remuneration, allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, out of the funds availed for such purposes, as the Minister may determine.

(7) The Minister must report to the National Assembly the names of persons appointed to execute the functions of the Policy Unit.

(8) A person to whom a request is made under subsection (2) and who refuses or fails to comply with the request, or wilfully provides false or misleading information, commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

[The term “Policy Unit” is substituted for the term “Procurement Policy Unit” in subsections (1), (3), (4), (6) and (7) by Act 3 of 2022.]

PART 3 CENTRAL PROCUREMENT BOARD OF NAMIBIA

Establishment of Central Procurement Board of Namibia

8. There is established a juristic person to be known as the Central Procurement Board of Namibia with the principal objects -

- (a) to conduct the bidding process on behalf of public entities for the award of contracts for procurement or disposal of assets that exceed the threshold prescribed for public entities;
- (b) to enter into contracts for procurement or disposal of assets on its own behalf or on behalf of public entities awarded by the Board as contemplated in paragraph (a); and
- (c) to direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board.

Powers and functions of Board

9. (1) The powers and functions of the Board in relation to procurement or disposal of assets are to -

- (a) call for such relevant information and documents as it may require from any public entity;
- (b) examine such records or other documents and take copies or extracts from them;
- (c) commission any studies relevant to the determination of the award of procurement or disposal contracts;
- (d) request any professional or technical assistance from any appropriate person in Namibia or elsewhere;
- (e) establish appropriate internal procedures for the operations of the Board and ensure compliance with them;
- (f) approve bidding documents and notices submitted to it by public entities;
- (g) invite bids and initiate pre-qualification and post-qualification for procurements or disposal of assets;
- (h) receive and publicly open bids;
- (i) appoint persons to act as members of a bid evaluation committee of the Board, including representatives nominated by the relevant public entities;
- (j) oversee the examination and evaluation of bids;
- (k) approve procurement methods and to consider for approval the recommendations from the bid evaluation committee for award of procurement or disposal contracts;
- (l) review the recommendations of a bid evaluation committee, and -
 - (i) to approve or reject the recommendation of the bid evaluation committee to award a contract; or
 - (ii) to require the bid evaluation committee where applicable to make a new or further evaluation on specified grounds; or
 - (iii) to report to the Minister any decision of the Board not implemented by the public entity within the prescribed period; and
- (m) do such things, not inconsistent with this Act, as it may consider necessary or expedient to achieve the objects of this Act.

(2) The Board must strive to achieve high standards of transparency and accountability taking into account the objects of this Act and the need to obtain the best value for money.

(3) The Board exercises such powers and performs such functions as conferred or assigned to it by or under this Act or any other law.

(4) If, in the discharge of its functions, the Board establishes that there is a non-compliance with any provision of this Act, directives, code of procedures or guidelines made

under this Act, the Board must refer the matter to the Policy Unit for necessary action in terms of section 7(4).

Fiduciary duties of members of Board and improper conduct by members

- 10.** (1) A member of the Board must at all times -
- (a) act with fidelity, honesty, integrity and in the best interests of the Board and the procurement system;
 - (b) exercise a reasonable degree of care and diligence in the performance of his or her functions;
 - (c) strive to achieve the highest standard of transparency, accountability and the need to obtain best value for money; and
 - (d) attend to any aspect of general application relating to procurement of goods, works and services as directed by the Minister under section 73.

(2) A member of the Board may not -

- (a) make improper use of information acquired by virtue of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Board;
- (b) make use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or cause detriment to the Board; or
- (c) divulge confidential information entrusted to the member or obtained by the member during his or her exercise or performing of powers or functions under or in terms of this Act or any other law.

(3) Sections 75 and 76 apply with the necessary changes to members of the Board individually and, where applicable, collectively.

(4) If a member of the Board contravenes this section or fails to comply with any condition of the performance agreement entered into by him or her in terms of section 11(3), such contravention or failure by the member may constitute a ground for the removal of that member from office under section 13(2).

(5) A member who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Constitution of Board

- 11.** (1) The Board consists of nine members -
- (a) of whom not more than five may be of the same sex;
 - (b) who are suitably qualified fit and proper persons having knowledge and experience relevant to the functions of the Board; and

- (c) appointed by the Minister after an open, fair and transparent prescribed process of invitation, interview and recommendation by a recruitment committee.

(2) The Minister must appoint, from among the nine members of the Board appointed under subsection (1), two members of whom one must be a female on a five year full-time basis to serve as -

- (a) Chairperson and Deputy Chairperson; and
- (b) administrative head and deputy administrative head,

of the Board, respectively, and the Chairperson serves as the accounting officer of the Board.

(3) A person who is appointed under subsection (1) or (2) must enter into a performance agreement with the Minister within 30 days of the appointment.

- (4) The Minister must -
 - (a) report in the National Assembly; and
 - (b) announce by notice in the *Gazette*,

the name and the term of office of a person appointed under subsection (1) or (2) as member, Chairperson or Deputy Chairperson, of the Board.

Term of office of members of Board

- 12.** (1) A member of the Board appointed under -
- (a) subsection (1) of section 11 is appointed for a term of three years on a part-time basis; and
 - (b) subsection (1) and (2) of section 11 is appointed for a term of five years on a full-time basis as referred to in that subsection (2),

and is eligible for reappointment at the expiry of that term, but a member may not be appointed for more than two consecutive terms.

(2) If a member of the Board, including the Chairperson and Deputy Chairperson, dies or vacates office, the Minister must appoint another person for the unexpired portion of the term of office of the member in accordance with section 11.

Vacation of office

- 13.** (1) The office of a member of the Board becomes vacant if the member -
- (a) becomes subject to any of the disqualifications referred to in section 14;
 - (b) resigns from his or her office, after giving the Minister 30 days written notice of his or her intention to resign;
 - (c) has been absent from three consecutive meetings of the Board without leave of the chairperson of the Board; or
 - (d) is removed from office under subsection (2).

(2) The Minister, by notice in writing to a member, must remove a member from office before the expiry of his or her term, if the Minister is satisfied, after giving such member a reasonable opportunity to be heard, that the member -

- (a) is physically or mentally unfit or unable to effectively perform his or her functions as a member;
- (b) neglects his or her functions as a member;
- (c) divulge confidential information entrusted to the member or obtained by the member during his or her exercise or performing of powers or functions under or in terms of this Act or any other law; or
- (d) acts in a manner that prejudices or is in conflict with the functions of the Board.

Disqualifications for appointment as member of Board

14. A person does not qualify for appointment as member of the Board, if the person -

- (a) is a member of Parliament, a regional council or local authority council;
- (b) has, been convicted, whether in Namibia or elsewhere, of theft, fraud, forgery or perjury, an offence under any law on corruption or any other offence involving dishonesty during the period of 10 years before the date of appointment;

[The comma after the word "has" is superfluous.]

- (c) is an un-rehabilitated insolvent;
- (d) has under any law been declared to be of unsound mind; or
- (e) has been removed from an office of trust during the period of 10 years before the date of appointment.

Meetings and decisions of Board

15. (1) The Minister, as soon as practicable from the date of the appointment of the Board, must determine the date, time and place of the first meeting of the Board, and thereafter, subject to subsection (2), the Board meets as often as is necessary and at such time and place as the Board determines.

(2) The Chairperson of the Board -

- (a) presides at meetings of the Board;
- (b) in addition to ordinary meetings, may convene a special meeting of the Board at any time;
- (c) must convene a special meeting of the Board on the written request of at least five members of the Board.

(3) Subject to this section, the Board conducts its proceedings in such manner and according to such procedure as the Board determines.

(4) In the absence of the Chairperson at any meeting of the Board, the Deputy Chairperson presides.

(5) In the absence of both the Chairperson and the Deputy Chairperson, the members -

(a) may hold a meeting of the Board with the prior consent of the Chairperson or Deputy Chairperson, unless it is practically impossible to get such consent;

(b) present at a meeting, may elect a member from among their number to preside over the meeting.

(6) At any meeting of the Board -

(a) except where the Board meets for the purpose of opening the bids, a person, other than a member or co-opted member or staff members, may not attend or be present at the meeting;

(b) seven members of the Board constitute a quorum; and

(c) six or more members present and voting in favour of any matter at the meeting constitute the decision of the Board.

(7) The Board may invite a person who has special knowledge or skills in any relevant field or discipline to attend its meetings and advise the Board but such person has no right to vote.

(8) A decision of the Board or act performed on authority of the Board is not invalid by reason only -

(a) of a vacancy on the Board; or

(b) of the fact that a person who was not entitled to sit as a member of the Board sat as such a member at the time when the decision was taken or the act was authorised, if the decision taken or the act was authorised by the requisite majority who were present at the time and entitled to sit as members.

(9) Where a member does not attend a meeting of the Board, the Chairperson or Deputy Chairperson of the Board must as soon as practicable furnish the member with the minutes of the meeting for the member to keep up with any new development.

[Subsection (9) is substituted with amendment markings by Act 3 of 2022.]

Committees of Board

16. (1) The Board may appoint any committee as the Board thinks necessary to exercise such powers and perform such functions as the Board may under section 17 delegate or assign.

(2) A committee appointed under subsection (1) consists of such members of the Board, and may include such persons not being members of the Board and who are not disqualified in terms of section 14, as the Board may appoint to the committee.

(3) The Board must appoint a member of the Board to be the chairperson of a committee.

(4) The Chairperson of the Board may convene a meeting of a committee at any time and place.

- (5) The Board may dissolve or reconstitute a committee at any time.

Delegation and assignment of powers and functions by Board

17. (1) The Board may delegate or assign any power or function conferred or imposed upon the Board by or under this Act to a committee, member or staff member of the Board subject to such conditions as the Board may determine, except the power to approve the award of procurement contracts and to appoint or designate the staff members of the Board.

(2) The Board is not divested or relieved of a power or function delegated or assigned under subsection (1).

(3) The Board, at any time and without prejudice of a right, may vary or set aside any decision made by such committee, member or staff member of the Board in the exercise of the power delegated to such committee, member or staff member under subsection (1).

Remuneration and allowances of members of Board and committees

18. (1) A member of the Board or a member of a committee of the Board is paid such allowances, including travelling and subsistence allowances necessary for the exercise or performance of his or her powers or functions conferred or imposed by or under this Act, as the Minister may determine under subsection (2).

(2) The Minister may determine, after having due regard to the requirements of section 18 of the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019), the allowances, including travelling and subsistence allowances, payable to a member of the Board or a member of a committee of the Board.

[Section 18 is substituted with amendment markings by Act 3 of 2022.]

Staff of Board

19. (1) The Board is assisted in the performance of its administrative functions incidental to its powers and functions conferred or imposed by or under this Act by staff members appointed by the Board on such terms and conditions as the Board with the consent of the Minister may determine.

(2) One of the staff members appointed under subsection (1) is designated by the Board as Secretary to the Board.

Funds of Board

20. (1) The funds of the Board consist of -

- (a) money appropriated by Parliament for the purposes of the Board;
- (b) money given as donation to the Board with the approval of the Minister; and

[The word "donation" should be either "a donation" or "donations".]

- (c) any other money that may accrue to the Board from any other source, including interests on investment.

(2) The Board must manage its funds in accordance with sound principles of financial management and by observing the measures implemented to protect the liquidity of the Board.

(3) Subject to section 21(2), the funds of the Board are used -

- (a) to fund the costs of projects or other activities of the Board; and
- (b) to pay remunerations and allowances payable by the Board and such other expenses incurred by the Board in the exercise or performance of its powers or functions.

(4) Money or donations which are not in the form of money and received for the benefit of the Board may be administered on such conditions as may be agreed on between the donor and the Board, but before agreeing on the conditions for the donation the Board must obtain the Minister's approval of the conditions.

[Subsection (4) is substituted with amendment markings by Act 3 of 2022.]

(5) Any money standing to the credit of the Board at the end of the financial year and not required for immediate use or as a reasonable operating balance may be invested by the Board, subject to the consideration of the determination of the budget for the ensuing financial year.

(6) An unexpended balance at the end of a financial year of the Board is carried forward as a credit to the next financial year.

Bank accounts of Board

21. (1) The Board must open and maintain such bank accounts at one or more banking institutions in Namibia registered in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998) or saving banks as defined in section 1 of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992) as are necessary for the performance of the functions of the Board.

(2) The Secretary of the Board must ensure that -

- (a) all money received by or on behalf of the Board is deposited into its bank account as soon as practicable after being received;
- (b) a payment by or on behalf of the Board is made from its bank account; and
- (c) money is not withdrawn, paid or transferred from its bank account without the authority of the Board.

(3) Cheques drawn on the bank account of the Board, or any other form or document to be completed for the withdrawal, payment or transfer of money from any of the bank accounts of the Board, are signed on behalf of the Board by two persons authorised for that purpose by the Board.

(4) In furtherance of section 21(2), the Board must, whether by means of internal procedures or by its rules, determine prudent financial procedures, including internal control measures and mechanisms, to guard against fraud and the improper administration of its funds.

Financial year and budget of Board

22. (1) The financial year of the Board ends on 31 March each year.

(2) The Board may not incur an expense, except in accordance with a budget drawn up in terms of subsection (3).

(3) Every financial year, the Board must draw up a budget for the ensuing financial year and submit it to the Minister for approval.

(4) The budget drawn up in terms of subsection (3) must contain particulars regarding the expense of the Board as referred to in section 20(3).

Auditing of accounts of Board

23. (1) The Board, with the consent of the Auditor-General, must appoint a person registered as an auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), to annually audit its accounting records and financial statements and submit an audited report to the Board.

(2) The auditor referred to in subsection (1) audits the accounting records and financial statements of the Board subject to such directives as the Auditor-General may issue to such auditor.

(3) Not later than five months after the end of each financial year the Board must submit audited accounting records and financial statements together with a report referred to in subsection (1) to the Auditor-General who must make a report to the Board.

Annual report of Board

24. (1) Not later than six months after the end of each financial year the Board must prepare and submit to the Minister an annual report relating to such financial year.

(2) The annual report referred to in subsection (1) must contain -

- (a) particulars of all activities of the Board during the financial year under review;
- (b) audited financial statements of the Board and a report contemplated in section 23(3), including a statement of income and expenditure, a balance sheet and the report contemplated in section 23(1); and
- (c) such other matters as the Minister may require or as may be required under any other law.

(3) The Minister must table the annual report in the National Assembly within 30 days of receipt if the National Assembly is in session, or, if the National Assembly is not in session, within 14 days after the commencement of its next session.

PART 4 ACCOUNTING OFFICERS, INTERNAL STRUCTURE AND BID EVALUATION COMMITTEES

Powers and functions of accounting officers

25. (1) An accounting officer -

- (a) must, in the prescribed manner, set up an internal organisational structure which includes a procurement committee, a bid evaluation committee and a procurement

management unit for the conduct and management of procurement at the public entity; and

[Paragraph (a) is substituted with amendment markings by Act 3 of 2022; the amendment markings are incomplete.]

- (b) is accountable for the full compliance with this Act and directives and instructions made under this Act.

(2) The disqualifications referred to in section 14 apply with the necessary changes to persons generally eligible for appointment as members of procurement committees or as staff members of procurement management unit.

[The word “a” appears to have been omitted before the phrase “procurement management unit”.]

(3) The powers and functions of the internal structures of a public entity are exercised and performed in accordance with the prescribed procedure and processes.

- (4) An accounting officer must -

- (a) engage in procurement planning, plan each step of the procurement process and prepare annual procurement plan, and must submit the plan to the Policy Unit at least three months before the commencement of each financial year;

[The word “an” appears to have been omitted before the phrase “annual procurement plan”.]

- (b) certify the availability of funds before the commencement of each procurement process and ensure that the funds remain committed for the duration of the procurement contract; and

- (c) ensure that the proceedings of the internal structures of a public entity or the Board are properly recorded and kept in a safe and secure place in the prescribed manner.

[Subsection (4) is substituted with amendment markings by Act 3 of 2022.]

(4A) If the accounting officer considers it necessary, the accounting officer must amend the annual procurement plan referred to in subsection (4)(a) and submit the amended plan to the Policy Unit within 7 days of the amendments.

[Subsection (4A) is inserted by Act 3 of 2022.]

(4B) An accounting officer who fails to submit the annual procurement plan on time may be held liable for non-compliance in terms of section 7(4)(a).

[Subsection (4B) is inserted by Act 3 of 2022.]

(5) An accounting officer must keep and maintain proper record of minutes and other related documentation for a period prescribed by the Archives Act, 1992 (Act No. 12 of 1992).

[The word “a” appears to have been omitted before the phrase “proper record”. Alternatively, that phrase may have been intended to be “proper records” (plural).]

Bid evaluation committees

26. (1) For the purposes of evaluation of pre-qualifications or bids for procurements or disposal of assets, the Board or accounting officer -

Public Procurement Act 15 of 2015

- (a) must establish an *ad hoc* bid evaluation committee for the evaluation of bids required to be undertaken in accordance with this Act;
- (b) must appoint persons as members of the bid evaluation committee, and appoint one of them as chairperson; and
- (c) may co-opt persons from other public entities to assist the bid evaluation committee.

(2) The disqualifications referred to in section 14 apply with the necessary changes to persons generally eligible for appointment or co-option under subsection (1).

(3) A bid evaluation committee may include -

- (a) one or more members of the user department as appropriate;
- (b) the person involved in the preparation of the bidding document if considered beneficial depending on the type and complexity of the procurement.

(4) A bid evaluation committee established under subsection (1) is responsible for -

- (a) the evaluation of pre-qualifications, bids, proposals or quotations; and
- (b) the preparation of evaluation reports for submission to the procurement committee as provided under this Act.

(5) The secretary of a bid evaluation committee is an in-house staff member whose role is -

- (a) to liaise with members of bid evaluation committee when organising meetings as directed by the chairperson of the committee;

[The word “the” appears to have been omitted before the phrase “bid evaluation committee”.]

- (b) to keep and maintain attendance lists and minutes of all deliberations in arriving at the results of the evaluation;
- (c) to ensuring that bids are kept in a secured place; and

[The phrase “to ensuring” should be “to ensure”.]

- (d) to organise the necessary logistics such as meeting place and other office materials as required.

(6) The members of a bid evaluation committee must possess skills, knowledge and experience relevant to the procurement requirements which may include -

- (a) technical skills;
- (b) procurement and contracting skills;
- (c) knowledge in financial management and analytical skills; or
- (d) legal knowledge and expertise.

(7) The number and level of expertise of members of a bid evaluation committee depend on the value and complexity of the procurement requirement concerned, but in all cases the number of members is odd numbers with a view to enable majority decisions.

(8) For the sake of an independent evaluation process and avoidance of conflict of interest, a member of the Board may not form part of a bid evaluation committee of the Board, and -

- (a) a member of a procurement committee;
- (b) an accounting officer; or
- (c) a staff member of procurement management unit,

[The word “a” appears to have been omitted before the phrase “procurement management unit”.]

of the same public entity may not form part of a bid evaluation committee of the same public entity.

[Subsection (8) is substituted with amendment markings by Act 3 of 2022.]

- (9) Where -
- (a) a public entity is small;
 - (b) a level of expertise in the subject matter of the procurement at a public entity is limited; or
 - (c) the subject matter is so complex that in-house resources irrespective of their other involvement in the procurement proceedings have to be party to the evaluation process,

the public entity may appoint persons, or co-opt staff members from other public entity, to serve as members of the bid evaluation committee.

[The word “other” appears to have been intended to be “another”.]

- (10) The persons or staff members who are -
- (a) appointed or co-opted by the Board under subsection (1)(b) or (c); or
 - (b) appointed or co-opted under subsection (9),

may be paid such allowances, including travelling and subsistence expenses, as the Minister may determine.

PART 5 METHODS OF PROCUREMENT

Choice of procurement methods

27. (1) Subject to subsection (2), the choice of procurement methods available to the Board or a public entity is -

- (a) for the procurement of goods, works and non-consultancy services, by -

- (i) open advertised bidding in the form of either open national bidding or open international bidding;

[Subparagraph (i) is substituted with amendment markings by Act 3 of 2022.]

- (ii) restricted bidding;
 - (iii) request for sealed quotations;
 - (iv) direct procurement;
 - (v) execution by public entities;
 - (vi) emergency procurement;
 - (vii) small value procurement;
 - (viii) request for proposals; and
 - (ix) electronic reverse auction; or
- (b) for the procurement of consultancy services, by request for proposals on the basis of -
 - (i) quality and cost;
 - (ii) quality alone;
 - (iii) quality and fixed budget; or
 - (iv) least cost and acceptable quality.

(2) Procurement of goods or services may be made by means of open advertised bidding to which equal access is provided to all eligible and qualified bidders, except in the cases referred to in subsection (4).

- (3) Open advertised bidding proceedings may -
 - (a) include a pre-qualification stage, or post qualification procedures, before the selection of the winning bidder;

[The word “post-qualification” should be written with a hyphen.]

- (b) be carried out in a single stage or in two stages in the cases referred to in section 44.

(4) A method of procurement referred to in subsection (1)(a)(ii) to (ix) may be used if a public entity has reason to believe that open advertised bidding -

- (a) does not support empowerment and other policies of the Government contemplated in section 2;
- (b) is not efficient or practical for the procurement in question; or
- (c) is too costly to apply, given the value of the procurement.

- (5) Where the Board or a public entity uses -
- (a) a method of procurement other than open advertised bidding; or
 - (b) in the case of the procurement of consultancy services, a method other than one specified in subsection (1)(b),

the Board or public entity must note in the record of the procurement proceedings the ground for the choice of the procurement method.

Open advertised bidding

28. (1) Where the open advertised bidding method is used, the invitation to bid, or the invitation to pre-qualify, is published -

- (a) in a newspaper with wide circulation;
- (b) in the case of international bidding, in selected international media with wide circulation; and
- (c) in the public procurement portal accompanied by a prescribed disclaimer.

(2) Subject to this Act, a public entity may confer an advantage or preference to Namibian goods, services, suppliers or persons in the empowerment categories in the case of open advertised bidding process.

[There should be an article such as “an” before the term “open advertised bidding process”.
Alternatively, the closing phrase may have been intended to be “open advertised bidding”.]

Open national bidding

29. (1) A public entity may limit participation in open advertised bidding proceedings -

- (a) to Namibia citizens; or
- (b) to -
 - (i) an entity incorporated or registered in Namibia in terms of the company or close corporation laws of Namibia;
 - (ii) a co-operative registered under the laws regulating co-operatives in Namibia;
 - (iii) a trust registered under the laws regulating trusts in Namibia; or
 - (iv) a partnership or a joint venture or similar arrangement,
 in which Namibian citizens own 51 percent equity.

(2) The limitation referred to in subsection (1) must be stated in the invitation for pre-qualification or bidding and must be in accordance with the prescribed criteria.

[Section 29 is substituted with amendment markings by Act 3 of 2022.]

Open international bidding

- 30.** Open advertised international bidding is used if -
- (a) the estimated value of the procurement exceeds the prescribed threshold;
 - (b) the goods or services are not available under competitive price and other conditions from more than one supplier in Namibia; or
 - (c) there is no response to open national bidding and the goods or services are obtained from international bidders.

Restricted bidding

- 31.** (1) Restricted bidding may be used -
- (a) if a public entity has reason to believe that the goods or services are only available from a limited number of bidders;
 - (b) if the time and cost of considering a large number of bids is disproportionate to the value of the procurement and the estimated value of the procurement does not exceed the prescribed threshold; or
 - (c) by limiting the participation in a particular procurement to those suppliers included on pre-approved supplier eligibility lists drawn up and maintained by the public entity in the prescribed manner so as to ensure that suppliers of specialised goods and services have and maintain the necessary technical and financial capability to provide those goods or services.

(2) Where restricted bidding is used on the ground referred to in subsection (1)(a), the public entity must directly solicit bids from all known suppliers capable of supplying the goods or services.

(3) Where restricted bidding is used on the ground referred to in subsection (1)(b), the public entity must, as far as reasonably possible, directly solicit bids from a minimum of five suppliers.

Request for sealed quotations

- 32.** (1) The request for sealed quotations method may be used for the procurement of -
- (a) readily available commercially standard goods not specially manufactured to the particular specifications of the public entity;
 - (b) small services; or
 - (c) small works,

if the estimated value of the procurement does not exceed the prescribed threshold.

(2) A public entity must in writing request sealed quotations from three bidders, unless the item in question is not available from three suppliers.

(3) The request must contain a clear statement of the requirements of the public entity as to quality, quantity, terms and time of delivery and other special requirements, together with such other information as may be prescribed.

(4) A bidder must submit one sealed quotation which may not be altered or negotiated.

Emergency procurement

33. (1) A public entity may procure goods, works or services using the direct procurement method in cases of emergency.

(2) The scope of the emergency procurement is, as far as possible, limited to the period of the emergency, so that appropriate competitive procurement methods may be utilised after the conclusion of the emergency period.

(3) For the purposes of this section, “emergency”, includes a situation where -

[The comma after the term “emergency” is superfluous.]

- (a) the country is either seriously threatened by or actually confronted with a natural disaster, catastrophe, or war;
- (b) life or the quality of life or environment national interest or public interest may be seriously compromised; or

[Paragraph (b) is substituted with amendment markings by Act 3 of 2022]

- (c) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate, unless action is urgently and necessarily taken to maintain them in their actual value or usefulness.

(4) If a public entity procures goods, works or services under subsection (1), the accounting officer of such public entity, or in the case of the Board, the Chairperson of the Board must submit a report to the Policy Unit in the prescribed manner and form stating the reasons for, or the situation which necessitated, the emergency procurement.

[Subsection (4) is inserted by Act 3 of 2022.]

(5) If Policy Unit establishes that there was negligent conduct which necessitated the emergency procurement, the Minister may refer the matter with recommendations to the appointing authority as contemplated in section 7(4).

[Subsection (5) is inserted by Act 3 of 2022.]

Execution by public entities

34. Execution by a public entity may also be used in the case where one or more of the following conditions are present -

- (a) an activity is not likely to attract bidders, at least not at a reasonable price, in view of its size, nature, location or scattered location or financing or high mobilization costs for outside suppliers;
- (b) an activity is such that, if carried out by a supplier, it would impose an unacceptable risk on the supplier because the cost cannot be determined in advance;

- (c) the risk of unavoidable work interruptions is better borne by the public entity than by a supplier;
- (d) it has been demonstrated that execution by the public entity is the only practical method for the supply of services under special circumstances;
- (e) an activity for a pilot project of a particular nature for the development of a technology work method cannot be carried out by a supplier;
- (f) staff members of the public entity carry out the service without disrupting existing operations of the public entity because they are familiar with those operations;
- (g) a public entity has the capacity to do such work on behalf of the Government;
- (h) there is an emergency such as a natural disaster which calls for immediate action; or
- (i) any other condition as the Minister may from time to time determine by notice in the *Gazette*.

Request for proposals

35. (1) Where the request for proposals method is used for the procurement of consultancy services, the public entity must draw up a shortlist of suppliers from among those who have the capacity to perform the required consultancy services to ensure effective competition.

(2) Where the estimated value of the procurement is above the prescribed threshold, the public entity, in order to draw up a shortlist of consultants, must seek expressions of interest by publishing a notice in a newspaper of wide circulation, and include in the list those who have expressed interest in the procurement.

(3) Where the estimated value of the contract is within the prescribed threshold, the public entity -

- (a) may draw up a shortlist on the basis of its own knowledge and information; and
 - (b) must issue a request to the short-listed consultants, asking them to express their interest by submitting a proposal, which includes such information as may be prescribed that, enables them to participate in the procurement proceedings and that is responsive to the needs of the public entity.
- (4) The selection of the successful proposal is based on -
- (a) the technical quality of the proposal, the relevant experience of the supplier, the expertise of his or her key staff members, the proposed work methodology, as well as the price of the proposal;
 - (b) the quality of the technical proposal submitted within a predetermined fixed budget;
 - (c) the best financial proposal submitted by the applicants having obtained an acceptable technical score pre-disclosed in the request for proposals; or
 - (d) where the services are of an exceptionally complex nature or likely to have considerable impact on future projects or national economy or may lead to the

submission of proposals with prices which are not comparable, exclusively on the technical quality of the proposal.

[The word “the” appears to have been omitted before the term “national economy”.]

(5) A public entity must evaluate each technical proposal on the basis of criteria which includes -

- (a) the relevant experience of the supplier for the assignment;
- (b) the quality of the methodology proposed;
- (c) the qualifications of the key staff members proposed;
- (d) the transfer of knowledge, if required in the request for proposals; and
- (e) in the case of international competition, the extent of participation by nationals among key staff members in the performance of the assignment.

(6) After a public announcement of the results of the technical evaluation, the public entity must then consider and evaluate the financial proposals of bidders who have secured the minimum pass mark in the technical evaluation.

(7) Where the choice of services is made in accordance with section 27(1) (b)(i), (iii) or (iv), the financial proposals of all suppliers whose technical proposals attained the required minimum pass mark are read out to the bidders in accordance with the prescribed procedure.

(8) Where the choice of services is made in accordance with section 27 (1) (b)(ii) only the financial proposal of the supplier whose technical proposal achieved the highest ranking is evaluated.

(9) The contract may be negotiated with the winning supplier with regard to the terms of the request for proposals, the scope of the proposed services, deliverables, progress reports, facilities to be provided by Government or, subject to subsection (10), the financial proposal.

(10) Where the price has been a factor, the fee for services is not subject to negotiation and only the cost of reimbursable items may be negotiated in such manner as may be prescribed.

(11) Where the negotiation fails to result in an acceptable contract, the public entity must notify the bidder accordingly and proceed to the next ranked bidder, and so on.

(12) A public entity must select for award a supplier whose bid -

- (a) attains the highest score in accordance with the criteria and selection method set forth in the request for proposals; or
- (b) has the least cost in the case of the least cost method of selection,

subject to satisfactory conclusion of negotiations.

(13) A public entity must notify the successful supplier of its selection for award and must simultaneously notify all other short-listed suppliers of the decision.

(14) In the absence of an application for review by any other supplier within 7 days of a notice under subsection (13), the public entity must award the contract to the successful supplier.

Direct procurement

36. (1) A direct procurement method allows a public entity to procure goods or services from a single source without competition.

- (2) A direct procurement is permitted -
- (a) where only one supplier has the exclusive right to manufacture the goods or to supply the goods, works or services to be procured, and no suitable alternative is available;
 - (b) within the prescribed limits, for additional deliveries of goods by the original supplier which are intended either as partial replacement or extension for existing goods, services, or installations and where a change of supplier would compel the public entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or service;
 - (c) within the prescribed limits, where additional works which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works from the initial contract would be difficult for technical or economic reasons;
 - (d) where, subject to a prescribed due diligence, the nature of the consultancy services requires that a particular supplier be selected due to unique qualifications; or
 - (e) where, subject to a prescribed due diligence, continuity of the consultancy services is essential to meet the objects of the procurement of the consultancy service.

Electronic reverse auction

37. (1) The Board or public entity may engage in procurement by means of electronic reverse auction in accordance with prescribed procedure, if -

- (a) it is feasible for the public entity to formulate a detailed and precise prescription of the subject matter of the procurement;
- (b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction so that effective competition is ensured; and
- (c) the criteria to be used by the Board or public entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

(2) Where the conditions specified in subsection (1) are satisfied, the Board or a public entity in awarding procurement contract may use the electronic reverse auction as a phase in any other appropriate procurement method provided in this Act.

Small value procurement

38. (1) A public entity may procure small quantities of goods, small works and services, which do not exceed the threshold without resorting to a formal competition.

(2) The public entity must maintain record of quotations obtained for such procurements as prescribed.

[The word “a” should appear before the word “record”.
Alternatively the word “record” may have been intended to be “records” (plural).]

PART 6 BIDDING PROCESS

Application of this Part

39. This Part applies to bids for procurement contracts.

Invitation for bidding

40. The Board or public entity must prepare an invitation to bid inviting bidders to submit priced offers for the supply of goods, provision of non-consultancy services or for undertaking the works required as may be prescribed.

Authorisation to procure above threshold

41. The Minister, in emergency circumstances contemplated in section 33, may authorise a public entity to procure goods, works or services exceeding the threshold for the public entity.

Pre-qualification proceedings

42. (1) The Board or a public entity must conduct the pre-qualification proceedings for the procurement of large and complex procurement as prescribed.

(2) In other cases of particularly high value or complex procurement, such as industrial plant, the Board or a public entity may conduct pre-qualification proceedings, with a view to identifying bidders that are qualified, before the invitation to bid.

(3) Where pre-qualification proceedings are conducted, the Board or a public entity must provide pre-qualification documents to all bidders responding to the invitation for pre-qualification, so as to provide them with the information required to prepare and submit applications for pre-qualification.

(4) On the completion of pre-qualification proceedings, the Board or a public entity must promptly make available to each applicant a list of the applicants who have been successfully prequalified.

Bidding documents

43. (1) The Board or the public entity must use the appropriate standard bidding document in the form substantially corresponding to a form determined by the Policy Unit.

(2) A bidding document must contain -

- (a) clear instructions on the management of the procurement process and the applicable rules, including set dates to seek clarifications;
- (b) a clear description of the object of the procurement in the form of a statement of requirements;
- (c) the methodology and criteria to be used in the evaluation of bids and the determination of the best evaluated bids,

and the proposed form and conditions of a contract or a statement of the form and conditions of a contract which will apply.

Two-stage bidding

44. (1) The Board or a public entity may hold an open advertised bidding in two stages where -

- (a) it is not feasible to fully define the technical or contractual aspects of the procurement to elicit competitive bids; or
- (b) due to the complex nature of the goods or services to be procured, the public entity wishes to consider various technical or contractual solutions, and to discuss with bidders the relative merits of those variants before deciding on the final technical specifications and contractual conditions.

(2) The Board or a public entity, in the bidding documents, during the first stage, must -

- (a) outline -
 - (i) the purpose;
 - (ii) the expected performance;
 - (iii) the broad specifications of the equipment or service to be procured; and
 - (iv) the qualifications required to perform the contract; and
- (b) call upon bidders to submit technical bids without a bid price and their comments on the proposed contract conditions.

(3) The Board or a public entity may engage in discussions with any bidder with a view to understanding a technical bid or to indicating changes required to make it acceptable and seeking the willingness of the bidder to make such changes.

(4) At the end of the first stage, the Board or a public entity may -

- (a) reject those bids which do not, and cannot be changed to meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non responsive; or

[The word "non-responsive" should be written with a hyphen.]

- (b) modify the technical specifications, evaluation criteria, and contract conditions in order to maximise competition and articulate appropriate evaluation methodology in order to consider various options put forth by the bidders.

(5) In the second stage, the Board or a public entity must invite bidders whose bids have not been rejected to submit final bids with prices in the revised bidding documents.

Bid security or bid securing declaration

45. (1) Where applicable and in such manner as may be prescribed, the Board or a public entity must include in the bidding documents the requirements for bid security, or a prescribed declaration as an alternative form of bid security.

(2) A bidder may forfeit a bid security or in the case of a declaration contemplated in subsection (1) be suspended or disqualified in the event of -

- (a) a modification or withdrawal of a bid after the deadline for submission of bids during its period of validity;
- (b) refusal by a bidder to accept a correction of an error appearing on the face of the bid;
- (c) failure by a successful bidder to sign a procurement contract in accordance with the terms and conditions set forth in the bidding documents; or
- (d) failure by a successful bidder to provide security for the performance of the procurement contract if required to do so by the bidding documents.

Submission of bids

46. (1) Subject to this section, a bid is submitted in writing, duly signed and in a sealed envelope at the address specified in the bidding documents.

(2) Invitations for pre-qualification and bidding documents may contain provision that allows submission of applications for pre-qualification or bidding by hand or mail or by courier at the option of the bidder.

[The word “a” appears to have been omitted before the word “provision”.]

(3) The bidding documents may authorise other methods for the submission of bids if it is so prescribed.

Deadline for submission of bids

47. (1) The Board or a public entity must set a deadline for the submission of bids, applications for pre-qualification and expressions of interest so as to allow sufficient time for the preparation and submission, with a view to maximizing competition, which may not be less than the prescribed minimum period.

(2) The Board or a public entity that has received a bid in its sealed envelope after the deadline for submission of bids must return the unopened sealed envelope to the bidder.

Withdrawal and modification of bids

48. A bidder may modify, substitute, or withdraw its bid after submission, where the written notice of the modification, substitution or withdrawal is received by the public entity before the deadline for the submission of bids.

Bid validity period

49. (1) A bid remains valid for the period as indicated in the bidding documents which may not be more than 180 days.

(2) The validity period of a bid may be extended only with the agreement of the bidder concerned.

(3) A bidder who agrees to an extension of the validity period of his or her bid must furnish a corresponding extension of his or her bid security, if security was required for the original bid submission.

Prohibition of disqualified bidders and suppliers from participation

50. (1) The Board or a public entity must ensure that no disqualified bidder or supplier is permitted to receive a procurement contract or otherwise participate in procurement proceedings.

(2) In addition to other documents or information which may be required from a bidder or supplier, the bidder or supplier must submit the following documents at the time of submitting a bid to a public entity, failing which the bidder or supplier must be disqualified -

- (a) a valid certificate of good standing with the Receiver of Revenue;
- (b) a valid certificate of good standing with the Social Security Commission or, in the case where a company has no employees, confirmation letter from the Social Security Commission;
- (c) as required by the Affirmative Action (Employment) Act, 1998 (Act No. 29 of 1998) -
 - (i) a valid affirmative action compliance certificate issued under section 41 of that Act;
 - (ii) an exemption issued under section 42 of that Act; or
 - (iii) a proof from the Employment Equity Commissioner that the bidder or supplier is not a relevant employer as defined in that Act; or
- (d) a written undertaking as contemplated in section 138(2) of the Labour Act, 2007 (Act No. 11 of 2007);
- (e) a valid -
 - (i) certificate of business registration for an entity incorporated or registered under the company or close corporation laws of Namibia;
 - (ii) certificate of registration of a co-operative registered under the laws regulating co-operatives in Namibia;
 - (iii) document serving as evidence of registration as a trust and the trust deed for a trust registered under the laws regulating trusts in Namibia; or
 - (iv) partnership agreement in the case of a partnership, a valid joint venture agreement in the case of a joint venture or a valid agreement in case of other similar arrangements,

but a bidder or supplier who is a sole proprietor only needs to comply with the provisions of paragraph (a) to (d).

**[Subsection (2) is substituted with amendment markings by Act 3 of 2022.
The word "paragraph" in the closing phrase should be "paragraphs" (plural).]**

Opening of bids

51. (1) A bid envelop is opened at the time and place indicated in the bidding documents.

[The word “envelope” is misspelt in the *Government Gazette*, as reproduced above.]

(2) The time of bid opening coincides with the deadline for the submission of bids, or follows immediately thereafter, if this is necessary for logistic reasons.

(3) A bidder or his or her representative is authorised to attend the bid opening.

(4) At a bid opening session, the name of the bidder, the total amount of each bid, any discount or alternative offered, the presence or absence of any bid security if required, and the documents referred to in section 50(2), are read out and recorded, and a copy of the record is made available to any bidder on request.

[Subsection (4) is substituted with amendment markings by Act 3 of 2022.]

(5) The Board or a public entity may not take or announce a decision regarding the disqualification or rejection of a bid at a bid opening session.

Examination and evaluation of bids

52. (1) The Board or a public entity may seek clarification during the examination of bids from any bidder to facilitate evaluation, but it may neither ask nor permit any bidder to change the price or substance of its bid.

(2) The Board or a public entity in order to evaluate bids must, except where the request for sealed quotations method is used and where price is the determining factor, set up a bid evaluation committee.

(3) Following the opening of bids, the Board or a public entity must -

(a) examine the bids in order to determine whether they are complete and in accordance with the bidding document requirements; and

(b) ascertain whether -

(i) they are properly signed; and

(ii) the documents required to establish their legal validity and the required security have been furnished.

(4) Where a pre-qualification procedure is applicable, the Board or a public entity must reject a bid received from a bidder other than a prequalified bidder.

(5) Where a bid discloses an arithmetical error, the Board or public entity concerned must -

(a) notify the bidder about the error and its intention to correct the error; and

(b) after notifying the bidder in terms of paragraph (a) correct the error.

[Subsection (5) is substituted with amendment markings by Act 3 of 2022; the amendment markings are not entirely correct.]

(6) Where there is a discrepancy between figures and words, the amount in words prevails, and the Board or public entity must correct the mistake and notify the bidder.

(7) Where a bidder refuses to accept a correction made pursuant to subsection (5) or (6), his or her bid is rejected, and the bid security forfeited in accordance with section 45(2)(b).

(8) Where there is a minor deviation in any bid that does not warrant rejection of the bid at an earlier stage, such minor variation is quantified in monetary terms as far as possible.

(9) Every bid is evaluated according to the criteria and methodology set out in the bidding documents and is compared with other bids to determine the lowest evaluated substantially responsive bid which meets the qualification criteria.

[Subsection (9) is substituted with amendment markings by Act 3 of 2022.]

(10) Where bidding documents provide for a margin of preference to local suppliers or to categories of local suppliers, the applicable margin of preference is at the rate determined by the Minister.

(11) Where a pre-qualification procedure is applicable, the qualification of the lowest evaluated bidder is verified anew to take account of any change since the original pre-qualification.

(12) Where a substantial number of bids are tendered and it is not practical to evaluate all the bids, the Board or the public entity may select a sufficient number of lowest priced bids to evaluate after completing the preliminary examination.

(13) The bid evaluation committee must prepare an evaluation report detailing the examination and evaluation of bids and identifying the lowest evaluated bid that meets the qualification criteria.

(14) In the exercise of its function, a bid evaluation committee must act without fear, favour or prejudice, and is not, during the evaluation process, subject to the direction or control of any other person or Board, except as provided in this Act.

Post-qualification

53. (1) Where no pre-qualification procedure was applicable, the qualification of the lowest evaluated bidder is checked against the criteria specified in the bidding documents.

(2) Where the bid fails to conform to the criteria contemplated in subsection (1), the Board or public entity must reject the bid and apply the same check to the next ranked bid.

Cancellation of bidding process

54. (1) The Board or a public entity may, at any time prior to the acceptance of a bid, reject all bids or cancel the bidding process, if -

- (a) all the bids are non-responsive;
- (b) the lowest evaluated bid is substantially above the applicable cost estimate;

- (c) the goods or services are no longer required;
- (d) it has been established that there has been collusion among the bidders as contemplated in subsection (5);
- (e) an irregularity that warrants the cancellation of the bidding process occurred;

[The word “cancellation” is misspelt in the *Government Gazette*, as reproduced above.]

- (f) it is not economically viable to proceed with the bid; or
- (g) does not create or achieve the expected outcome.

(2) The Board or a public entity must give a written notice of the rejection of all bids or cancellation of the bidding process to all bidders that submitted bids.

(3) The Board or a public entity may not invite a re-bid for the procurement on the same specifications and contract conditions, if the rejection of all bids or cancellation of bidding process is made on a ground specified in subsection (1)(c), (f) or (g).

[The word “the” or “a” appears to have been omitted before the phrase “bidding process”.]

- (4) If the invitation for the procurement is to be repeated, the public entity must -
 - (a) examine the reason for the rejection of all bids or the cancellation of the bidding process; and
 - (b) suitably modify the technical specifications or contract conditions.

(5) “Collusion among bidders” means where two or more bidders enter into an agreement whereby a bidder -

- (a) agrees not to submit a bid in response to an invitation for bids; or
- (b) agrees upon the price, terms or conditions of a bid to be submitted in response to an invitation to bid under section 40 or request made under section 35.

[The word “a” appears to have been omitted before the term “request”.]

Award of procurement contracts

55. (1) The Board or a public entity must award a procurement contract to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the pre-qualification or bidding documents, but only after the Board or public entity has complied with the provisions of subsections (3), (4), (4A), (4B), (4C), (4D) and (5).

[Subsection (1) is substituted with amendment markings by Act 3 of 2022.]

(2) There is no negotiation between the Board or a public entity and a selected bidder, except in such special circumstances as the Minister may determine.

(3) The Board or public entity, where special circumstances contemplated in subsection (2) apply, must initiate and oversee the negotiation between the Board or a public entity and a selected bidder.

(4) An accounting officer or the Chairperson of the Board where the Board is procuring on behalf of a public entity must, in the prescribed manner and form, notify -

- (a) the successful bidder of the selection of its bid for award; and
- (b) the other bidders, specifying the name and address of the successful bidder and the price of the contract, accompanied by the executive summary of the bid evaluation report.

[Subsection (4) is substituted with amendment markings by Act 3 of 2022.]

(4A) A bidder referred to in subsection (4)(b) may, within seven days from the date of receipt of the notice referred to in subsection (4), apply to the Board or public entity to reconsider its selection of a bid for award and the Board or public entity must, within seven days from the date of receipt of the application, notify the bidder of its decision.

[Subsection (4A) is inserted by Act 3 of 2022.]

(4B) If the bidder referred to in subsection (4A) does not, in terms of that subsection, receive a response from or is not satisfied with a decision of the Board or public entity the unsuccessful bidder may within the seven days referred to in section 59 apply to the Review Panel for review of the decision or action as contemplated in section 59(1).

[Subsection (4B) is inserted by Act 3 of 2022.]

(4C) An accounting officer or the Chairperson of the Board where the Board is procuring on behalf of a public entity, may not award a contract or sign any agreement during the standstill period and any contract awarded or agreement signed during the standstill period is invalid *ab initio*.

[Subsection (4C) is inserted by Act 3 of 2022.]

(4D) A bidder who is aggrieved by a decision or action of the Board or public entity must exhaust remedies under this section before applying for review under section 59(1).

[Subsection (4D) is inserted by Act 3 of 2022.]

- (5) If -
- (a) no application for reconsideration is made by any bidder under subsection (4A); or
 - (b) after the Board or public entity has made a decision on an application under subsection (4A) and no application for review is made under section 59(1),

the accounting officer or the Chairperson of the Board where the Board is procuring on behalf of a public entity, must award the procurement contract to the successful bidder.

[Subsection (5) is substituted with amendment markings by Act 3 of 2022; the amendment markings are incomplete.]

(6) A successful bidder may be requested to submit a performance security and sign a contract within the period specified in the bidding documents.

- (7) Where the bidder whose bid has been accepted -
- (a) fails to sign a contract, or

- (b) fails to provide any required security for the performance of the contract,

within the prescribed period, the Board or public entity may select another bidder from amongst the remaining valid bids, and subsections (4) to (6) apply to the new selection.

(8) The Board or public entity must promptly in a prescribed manner publish a notice of every procurement or disposal award together with the executive summary of the bid evaluation report.

Variations and lowest bid exceeding the prescribed threshold

56. Where -

- (a) any variation in a contract price subsequent to the conclusion of a procurement contract causes the total contract amount to exceed the threshold of the public entity by more than 10 per cent;
- (b) any variation in a contract price subsequent to the conclusion of a procurement contract awarded by the Board causes the total contract amount to exceed by more than 10 per cent; or
- (c) the lowest bid submitted in response to an invitation made by a public entity exceeds the threshold of the public entity,

the matter together with all the bidding documents and the contract documents, if any, are dealt with by the Board.

Briefing of unsuccessful bidders

57. The accounting officer or the Chairperson of the Board, where the Board is procuring on behalf of a public entity, on request of an unsuccessful bidder, must promptly brief the bidder of the reasons for which its bid or its application for pre-qualification was unsuccessful, if the request for such information was submitted within the prescribed period of the publication of the notice referred to in section 55(8).

[Subsection (5) is substituted with amendment markings by Act 3 of 2022. The phrase “must promptly brief the bidder of the reasons” should be “must promptly brief the bidder on the reasons”.]

PART 7 REVIEW

Review Panel

58. (1) From the list of persons referred to in subsection (4), the Minister may appoint five persons -

- (a) having qualifications, wide knowledge and experience in legal, administrative, economic, financial, trade, engineering, scientific or technical matters; and
- (b) of whom not more than three are of the same sex,

to constitute a Review Panel to adjudicate on -

- (i) application for review;

- (ii) the suspension, debarment and disqualification of bidders and suppliers; or
- (iii) any other matter that the Minister may refer to the Review Panel for its consideration.

[Subsection (1) is substituted with amendment markings by Act 3 of 2022; the amendment markings are incomplete.]

(2) The Minister must appoint one of the members of the Review Panel as the Chairperson of the Panel.

(3) The Minister must constitute more than one Review Panel during the same period as the circumstances may require.

[Subsection (3) is substituted with amendment markings by Act 3 of 2022.]

(4) The Minister must compile a list of 15 persons with qualifications referred to in subsection (1)(a) after an invitation of expressions of interest and publish the list in the *Gazette*, and may update it annually, when necessary.

(5) A member of the Review Panel holds office for the duration of the existence of such matter or for such period as the Minister at the date of appointment of the member may determine, but a member must -

- (a) vacate the office, after giving the Minister 30 days written notice of his or her intention to resign; or
- (b) vacate the office if the Minister, having regard to subsection (6), so requests.

(6) The Minister may at any time remove -

- (a) the name of a person from a list referred to in subsection (4) who is guilty of -
 - (i) misconduct, default or breach of trust in the performance of his or her functions in any capacity; or
 - (ii) an offence of such nature that warrants the termination of the appointment of the member,

after having given the person a reasonable opportunity to be heard; or

- (b) a member of the Review Panel from office on any valid ground warranting the removal of the member from the Panel, including grounds referred to in paragraph (a), after having given the member a reasonable opportunity to be heard.

(7) Section 14 applies with the necessary changes to persons to be listed under subsection (4) or to be appointed under subsection (1).

(8) The Review Panel is assisted in the performance of its administrative work incidental to its powers and functions by staff members of the Ministry administering matters relating to finance.

Application for review

59. (1) A bidder or supplier may, as prescribed, apply to the Review Panel for review of a decision or an action taken -

- (a) by the Board; or
- (b) by a public entity,

within seven days after the bidder or supplier is notified of the decision or action.

[Subsection (1) is substituted with amendment markings by Act 3 of 2022.]

(2)

[Subsection (2) is deleted by Act 3 of 2022.]

(3) The Review Panel must strive to make a decision as contemplated in section 60 within seven days of receipt of the application for review or as soonest as practical possible, but not later than 14 days.

[The phrase “as soonest as practical possible” was probably intended to be “as soon as practically possible”.]

(4) A bidder or supplier who is aggrieved or claims to have suffered, or to be likely to suffer, loss under this Act must exhaust all available remedies under this Act before instituting any judicial action in the High Court.

Decisions of Review Panel

60. Upon receipt of the application for review referred to in section 59, the Review Panel may -

- (a) dismiss the application;
- (b) direct the Board or the public entity that has acted or proceeded in a manner that is not in compliance with this Act to act or proceed in a manner that is in compliance with this Act;
- (c) set aside in whole or in part a decision or an action of the Board or public entity that is not in compliance with this Act, and refer the matter back to the Board or public entity for reconsideration with specific instructions;

[Paragraph (c) is substituted with amendment markings by Act 3 of 2022.]

- (d) correct a decision or action by the Board or public entity that is not in compliance with this Act;
- (e) confirm the decision of the Board or public entity; or
- (f) order that the procurement proceedings be terminated and start afresh.

Confidentiality in review proceedings

61. (1) All information in proceedings at the Review Panel are confidential, and a person who discloses such information to a third person without the authorisation of Review Panel commits an offence and is liable to a fine not exceeding N\$100 000 or imprisonment not exceeding a period of 10 years, or to both such fine and such imprisonment.

[The verb “are” should be “is” to accord with the subject “information”.]

(2) No public hearing under section 60 may take place, if so doing, would -

[The comma between the phrase “if so doing” and the word “would” is superfluous.]

- (a) impair the protection of essential security interests of the State;
- (b) be contrary to law;
- (c) impede law enforcement;
- (d) prejudice the legitimate commercial interests of the bidder or supplier; or
- (e) impede fair competition.

PART 8 PROCUREMENT CONTRACTS

Contents of procurement contracts

62. (1) A procurement contract includes the prescribed terms and conditions.

(2) The parties must expressly agree in writing to any amendment to the contract, other than changes which do not alter the basic nature or scope of the contract.

(3) An amendment to the contract that increases the contract value by more than 15 per cent requires fresh procurement proceedings, except where the amendment is effected for a reason specified in section 36(2)(b) or (c).

(4) No formal amendment of the contract is required if the public entity wishes to make a variation or invokes a contract price adjustment which is expressly authorised in the contract.

(5) The parties must include in every procurement contract a clause to the effect that in the execution of the contract, the remuneration and other conditions of work are not contrary to this Act or any other law, or contrary to the applicable minimum wage agreement.

(6) A contractor may not transfer, cede or assign a procurement contract or its obligations under the contract to any other person.

(7) Every contractor must display a copy of the provisions of subsections (5) and (8) at the place at which the work required by the contract is performed.

(8) In this section, “work” has the same meaning assigned to it by the Labour Act, 2007 (Act No. 11 of 2007).

Termination of contract due to changed circumstances

63. (1) Despite anything to the contrary in any other law, a public entity may withdraw an award or terminate a procurement contract at any time for its convenience on the grounds of changed circumstances -

- (a) in that the continuation of the contract is not or will not be in the public interest; or
- (b) any variation in a contract price causes the total contract amount to exceed by more than 15 per cent.

(2) Upon termination under subsection (1), the contractor is entitled to reimbursement of expenses incurred in the performance of the contract, but is not entitled to recover anticipated profits on the completion of the contract.

PART 9 DISPOSAL OF ASSETS

Disposal of assets

64. (1) The Minister may, for a specified or unspecified period and either unconditionally or subject to such conditions as the Minister may determine, prescribe -

- (a) methods for the disposal of state property or granting of rights;
- (b) empowerment measures for the disposal of any category of assets or for the granting of rights.

(2) The methods referred to in subsection (1)(a) include amongst other -

[The word "other" should be "others" (plural).]

- (a) open advertised bidding;
 - (b) public or electronic auction;
 - (c) restricted bidding; and
 - (d) direct negotiation.
- (3) Section 55 applies with the necessary changes to the award of disposal contracts.

PART 10 PROCUREMENT INTEGRITY

Artificial division

65. A public entity may not artificially divide the modalities of procurement in such a way as to avoid any monetary threshold laid down by or under this Act.

Conduct of staff members of public entities

66. (1) A staff member of the Board or a public entity involved in planning or conducting procurement process or contract administration must undertake -

- (a) to discharge his or her functions fairly and impartially and without fear, favour or prejudice to anyone so as to ensure fair competitive access to procurement by suppliers;
- (b) to act in the public interest and in accordance with this Act;
- (c) to avoid any conflict of interest to arise in the carrying out of his or her functions and in conducting himself or herself;

- (d) to keep confidential any information that comes into his or her possession relating to procurement proceedings and bids, including proprietary information of bidders; and
 - (e) not to deal or negotiate on behalf of the contractor or supplier for a contract he or she had specifically dealt with while in the service of the Board or public entity.
- (2)

[Subsection (2) is deleted by Act 3 of 2022.]

(2A) If a staff member of the Board or a public entity involved in the bid preparation process, at any stage of a bid indicates that he or she wishes to recuse himself or herself because of conflict of interest, the staff member may not participate in the bidding process as a bidder or supplier.

[Subsection (2A) is inserted by Act 3 of 2022.]

(2B) The following persons may not participate, either personally or through an entity corporate or incorporate in which he or she has a financial, economic or personal interest, as a bidder or supplier in a procurement process conducted by the Board or public entity:

- (a) staff members of the public entity;
- (b) members of the Board or its staff members; or
- (c) members of a board, local authority council, regional council or similar governing body.

[Subsection (2B) is inserted by Act 3 of 2022.]

(2C) A -

- (a) staff member of a public entity;
- (b) member of the Board or its staff members; or
- (c) members of a board, local authority council, regional council or similar governing body.

who contravenes or fails to comply subsection (1), (2A) or (2B) commits an act of misconduct, and the Board or public entity or the relevant functionary may deal with the individual in accordance with the terms and conditions of appointment or may apply the applicable disciplinary procedures.

[Subsection (2C) is inserted by Act 3 of 2022. The word "with" appears to have been omitted before the word "subsection".]

- (3) A staff member referred to in subsection (1), and staff members of the Board who -
 - (a) acts or abets corruptly or fraudulently to gain favour or benefit, including soliciting or accepting improper inducement; or
 - (b) contravenes, or refuses or fails to comply with subsection (1), (2A) or (2B),

commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

[Subsection (3) is substituted with amendment markings by Act 3 of 2022. As a result of this change, the verb forms in the remainder of the subsection no longer accord with the subject "A staff member... and staff members...".]

Disclosure of interest by staff members of public entities

66A. (1) A staff member of the Board or public entity -

- (a) who is a member of the procurement committee, bid evaluation committee or procurement management unit of the public entity;
- (b) who is involved in planning or conducting procurement process or contract administration in relation to the public entity or Board; or
- (c) who has a close relative, associate or friend,

with a direct or indirect financial, economic or personal interest in the bidding entity or a matter that requires the decision of the Board, procurement committee, bid evaluation committee or procurement management unit, must disclose that interest in accordance with subsection (2).

(2) The staff member referred to in subsection (1), with an interest referred to in that subsection -

- (a) must immediately inform the relevant Minister, chairperson or the accounting officer of the interest; and
- (b) may not participate in the deliberations or take part in the decision-making process in relation to that matter, unless the relevant decision-making body directs otherwise after having considered the matter and having found that there is no conflict of interest.

(3) The public entity or Board must record the disclosure of interest made in terms of this section in the minutes of the meeting at which it is made.

(4) A staff member contemplated in subsection (1) who fails to comply with that subsection or subsection (2) commits an act of misconduct, and the Board or public entity may institute misconduct disciplinary proceedings in accordance with the disciplinary procedures of the Board or public entity.

(5) A person who contravenes or fails to comply with this subsection (1) or (2) commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

[Section 66A is inserted by Act 3 of 2022.]

Conduct of bidders and suppliers

67. (1) A bidder or supplier who -

- (a) engages in or abets any corrupt or fraudulent practice, including the offering or giving, directly or indirectly, of improper inducements, in order to influence a procurement process or the execution of a contract, including interference in the ability of competing bidders to participate in procurement proceedings; or

- (b) engages in any coercive practice threatening to harm, directly or indirectly, any person or the property of such person to positively influence the participation of the bidder or supplier in a procurement process, or to affect the execution of a contract,

commits an offence and is liable to a fine not exceeding N\$5 000 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

- (2) A bidder who engages in collusion, before or after a bid submission, designed to -
 - (a) allocate procurement contracts among bidders;
 - (b) establish bid prices at artificial non-competitive levels; or
 - (c) otherwise deprive the Board or a public entity of the benefit of free and open competition,

commits an offence and is liable to a fine not exceeding N\$5 000 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(3) The Board or a public entity must reject a bid if the bidder offers, gives or agrees to give an inducement referred to in subsection (1) and promptly notify the rejection to the bidder concerned and to the Anti-Corruption Commission.

(4) If a person who or an entity which is responsible for preparing the specifications or bidding documents for, or supervising the execution of a procurement contract, or a related company of such person or entity, participates in the bidding, such person or entity commits an offence and is liable to a fine not exceeding N\$5 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Suspension, debarment and disqualification of bidders and suppliers

68. (1) Subject to subsection (2), the Review Panel, under the prescribed conditions, may suspend or debar a potential bidder or supplier from participation in procurement proceedings on the following grounds -

- (a) supplying false information in the process of submitting a bid or pre-qualification application;
- (b) bid rigging or collusion between the bidders or a bidder and a supplier, agent, or staff member concerning the formulation of any part of the bidding documents;
- (c) interference by a supplier with the participation of competing bidders;
- (d) misconduct relating to the submission of bids, including corruption, bid rigging, price fixing, a pattern of under-pricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier;
- (e) conviction for an offence relating to obtaining or attempting to obtain a procurement contract within five years prior to the bidding; or
- (f) conviction for an offence related to dishonesty or fraud or corruption in his or her professional activity within 10 years prior to the bidding and was sentenced to imprisonment without the option of a fine.

(2) A suspension or debarment of a bidder or supplier under subsection (1) may not be effected unless the Review Panel -

- (a) considers the factual record developed by the Board or public entity that proposes the action;
- (b) gives reasonable notice to the bidder or supplier involved of the basis for the proposed action; and
- (c) gives reasonable opportunity to the bidder or supplier to respond to the proposed action.

(3) A period of debarment under subsection (1) may not exceed five years.

(4) A decision to suspend pending the completion of the disqualification or debarment proceedings is at the discretion of the Review Panel on the proposal of the Board or public entity when it is in the public interest.

(5) The suspension is terminated with the decision to debar, disqualify the bidder or supplier or to set aside the proposal or on the expiry of the maximum time prescribed for the Review Panel to issue a decision.

PART 11 PREFERENCES

Application of this Part

69. Despite anything to the contrary in this Act or any other law, the Minister may grant preferential treatment in procurement in pursuance of the developmental and empowerment policies of the Government.

Codes of good practice

70. (1) In order to promote the objects of this Part, the Minister, by notice in the *Gazette*, must issue codes of good practice on preferences referred to in section 71 and 72 that may include -

[The word "section" should be "sections" (plural).]

- (a) the definitions of terms including further definitions of local preferences, price preferences, national preferences, the interpretation and definition of goods manufactured in Namibia;
- (b) qualification criteria for preferential treatment when persons participate in procurement activities, that may include equity, labour and produce;
- (c) indicators to measure empowerment through preferential treatment;
- (d) the weight to be attached to the indicators referred to in paragraph (c); and
- (e) any other matter, not inconsistent with the objects of this Act:

(2) A code of good practice issued in terms of subsection (1) may set -

- (a) targets consistent with the objects of this Part; and

(b) the period within which those targets must be achieved.

(3) In order to promote the empowerment of women, as provided for in Article 23(3) of the Namibian Constitution, and the youth -

(a) a code of good practice issued in terms of subsection (1); and

(b) any targets specified in a code of good practice in terms of subsection (2),

must give priority to such groups and primarily to women who were socially, economically or educationally disadvantaged by past discriminatory laws or practices over any other category of previously disadvantaged persons.

(4) The Minister, before issuing or amending a code of good practice in terms of subsection (1), must -

(a) not less than 30 days before issuing a code of good practice, publish the draft code of good practice or amendment, together with a notice of intention of the Minister to issue such a code, in the *Gazette*; and

(b) invite any interested person to comment or make representation in connection therewith within a specified period.

(5) Subsection (4) does not apply in respect of -

(a) a code which, after that subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by the Minister in pursuance of the notice published in terms of that subsection; or

[The verb “have” should be “has” to accord with the subject “subsection”.]

(b) any code in respect of which the Minister is of the opinion that it is in the public interest that it be issued without delay.

National preferences

71. (1) The Board or public entity has the right to limit participation in procurement proceedings on the basis of citizenship in accordance with this Part.

(2) The Board or public entity -

(a) when procuring goods, works or services; or

(b) when evaluating and comparing bids,

must give preference and the weights prescribed under section 70 to the benefit of bidders for -

(i) goods manufactured, mined, extracted or grown in Namibia; or

(ii) works and services provided by Namibian citizens,

but this must be clearly stated in the bidding documents subject to the prescribed requirements.

(3) Bidders are eligible to be granted a margin of preference as provided for in subsection (2)(b)(ii), if they meet the following criteria and the criteria referred to in subsection (3A) -

- (a) for a company or close corporation if -
 - (i) it is incorporated or registered in Namibia;
 - (ii) the majority of the members interest or paid up share capital of the company is owned either by the Government or by Namibian citizens; and

[The phrase “members interest” should be “members’ interest”.]

- (iii) a major part of the net profits or other tangible benefits of the company accrues to Namibian citizens and no other arrangements by the company to the contrary;

[There is a problem with the sentence structure here. It may have been intended to be “and there are no other arrangements by the company to the contrary” or “and no other arrangements by the company are to the contrary”.]

- (b) for joint ventures of companies if -
 - (i) individual member companies are incorporated or registered in Namibia;
 - (ii) the majority beneficial owner and majority shares in the joint venture company are held by Namibian citizens;
 - (iii) **[deleted]**
 - (iv) the joint venture agreement -
 - (aa) contains the minimum terms and conditions prescribed by the Minister;
 - (bb) does not have arrangement whereby any major share of the net profit or dividend accrues to or is to be paid to persons who are not Namibian citizens or to entities which would not be eligible for national preferences under this section; and

[There should be an article such as “an” or “any” before the word “arrangement”.]

- (cc) is signed by all parties to the agreement;
- (c) for partners trading as suppliers if the majority of shares or interests in the partnership is held by Namibian citizens;
- (d) for individuals trading as suppliers, if the individuals are Namibian citizens;
- (e) for a co-operative registered under the laws regulating cooperatives in Namibia if a majority of the benefits of the cooperative accrues to Namibian citizens; and
- (f) for a trust registered under the laws regulating trusts in Namibia if a majority of the benefits of the trust accrues to Namibian citizens.

[Subsection (3) is substituted with amendment markings by Act 3 of 2022; the amendment markings are incomplete.]

(4) For all procurement under international and national competitive bidding, prescribed incentives and conditions must be used to promote partnerships, joint venture arrangements and foreign entities to team up with Namibian bidders in the bidding process and for the period of the execution of procurement contracts.

Exclusive preference to local suppliers

72. (1) The Minister may prescribe any nature of procurement supporting Government programmes to be reserved exclusively for categories of local suppliers and which is to be complied with by the Board and every public entity in the procurement of goods or services that has a value not exceeding that amount.

(2) Where the Board or a public entity does not proceed with the local supplier as reserved in terms of subsection (1), and procures on unrestricted basis, the Board or public entity must include in the procurement file the reasons for the unrestricted procurement process.

(3) Where the Board or a public entity receives only one acceptable offer from a qualified local supplier in response to the reserved procurement, the Board or public entity must consider the offer and may make an award to such supplier subject to the price being considered as fair and reasonable.

(4) Where a public entity receives no acceptable offer from a qualified local supplier, the Board or public entity must withdraw the reserved procurement, and if the requirements are still valid, the Board or public entity must re-solicit new offers on unrestricted basis.

PART 12 GENERAL PROVISIONS

Directives by Minister

73. (1) The Minister, pursuant to a policy of the Government or when he or she thinks it necessary or expedient, may direct in writing the Policy Unit, Board or public entity to attend to any aspect or matter of general application relating to procurement of goods, works or services, or to the letting or hiring of anything or the acquisition or granting of any right for or on behalf of the public entities, and for the disposal of their property.

(2) After having considered the directive under subsection (1), the Policy Unit, Board or public entity must give effect to or cause the policy directive to be implemented.

(3) A policy directive issued under this section is issued and executed in terms of this Act.

Delegation and assignment by accounting officer

74. (1) An accounting officer may delegate or assign to a staff member any of the powers or functions conferred upon or imposed on the accounting officer by or under this Act, except the power to issue contract awards, sign agreements and appointing or recommending staff members for appointment to procurement committee, bid evaluation committee or procurement management unit.

[The phrase “appointing or recommending” should be “appoint or recommend”. There should be an article such as “a” before the phrase “procurement committee”.]

(2) A delegation or assignment under subsection (1) -

- (a) is made in writing; and
- (b) does not divest the accounting officer from the powers or functions so delegated or assigned.

(3) An accounting officer, at any time and without prejudice of a right, may vary or set aside any decision made by a staff member in the exercise of a power delegated under subsection (1).

Oath of office

75. A member of the Board or Review Panel must on assumption of duty take the oath of office or affirmation in the prescribed form and manner.

Disclosure of interest by members of Board and Review Panel

76. (1) A member of the Board or Review Panel who has, any direct or indirect financial interest in any matter brought before the Board or Review Panel, or who has a close relative, associate or friend with a direct or indirect financial, economic or personal interest in the matter brought before the Board or Review Panel -

- (a) must immediately inform the chairperson of the Board or Review Panel of the interest; and
- (b) may not participate in the deliberations or take part in the decision-making process in relation to that matter, unless the Board or the Review Panel directs otherwise after having considered the matter and having found that there is no conflict of interest.

(2) The Board or Review Panel must record the disclosure of interest made in terms of this section in the minutes of the meeting at which it is made.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

[Section 76 is substituted by Act 3 of 2022.]

Undue influence

77. A person who directly or indirectly, in any manner, influences, or attempts to influence, a member of -

- (a) the Board;
- (b) the Review Panel;
- (c) a procurement committee;
- (d) a bid evaluation committee; or
- (e) a procurement management unit,

or any staff member of the Board, Panel, such committee or such unit in the exercise of any powers or performance of any functions in terms of or under this Act, commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Indemnity

78. A member of the Board, Review Panel, a procurement committee or a bid evaluation committee, a procurement management unit and any staff member thereof is not liable for any loss or damages caused as a result of an act or omission committed in good faith under this Act, unless the loss or damages is attributed to the gross negligence or unlawful conduct of the member or staff member.

Regulations

- 79.** (1) The Minister may make regulations relating to -
- (a) any form of application and procedure for submission, and any form of certificate issued under this Act;
 - (b) detailed code of procedures regarding procurement process;

[Paragraph (b) should refer to “a detailed code of procedures” or “detailed codes of procedures”, and to “the procurement process” or “procurement processes”.]

- (c) operational thresholds regarding procurements;
- (d) further requirements, procedures and conditions that are to be complied with when using any of the procurement methods referred to in section 27;
- (e) time limits and other deadlines in the bidding process;
- (f) the letting or hiring of anything for or on behalf of public entities, or subject to other laws, the acquisition or granting of any right for or on behalf of public entities;
- (g) requirements and procedures regarding the disposal of property by public entities;
- (h) the qualification, suspension, debarment and disqualification concerning bidders and suppliers, and standards and procedures of bidding;
- (i) the procedure that must be followed by suppliers when submitting their profiles and information to be kept on the roll of suppliers;
- (j) the adoption of e-procurement for different stages and methods of procurement, and to the extent thereof, the procedures specified in this Act are deemed to be modified for substituting written communication by e-communication in the manner that improves competition, efficiency and transparency without affecting the sanctity, security and recording of such communication and the information contained therein; and
- (k) generally any matter that is required or permitted to be prescribed and any matter which the Minister thinks necessary or expedient to prescribe to achieve the objects of this Act.

(2) A regulation made under subsection (1) may provide for penalties for any contravention or failure to comply with any of the regulations of a fine not exceeding N\$50 000 and imprisonment for a term not exceeding two years, or both such fine and such imprisonment.

Repeal of laws and savings

80. (1) The Tender Board of Namibia Act, 1996 (Act No. 16 of 1996) is repealed.

(2) Subject to section 81, anything done under a provision of the law repealed by subsection (1) and which could have been done under a provision of this Act is deemed to have been done under the corresponding provision.

Transitional provisions

81. (1) A tender contract existing at the date of commencement of this Act continues to be administered in terms of and governed by the law repealed by section 80, as if this Act has never been enacted.

(2) A tender that has been advertised for bidding before the date of commencement of this Act, whether the tender advert has been closed or not, the bidding is dealt with in terms of this Act.

Short title and commencement

82. (1) This Act is called the Public Procurement Act, 2015 and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) for different provisions of this Act.

(3) A reference to the commencement of this Act means a reference to a date determined under subsection (1).