



Republic of Namibia
Annotated Statutes

Public Procurement Amendment Bill, 2025

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 Public Procurement Regulatory Authority, 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 establish a Public Procurement Court to adjudicate matters relating to public procurement; 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 **or the head of the executive management** 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;

"assets" means movable and immovable property, tangible and intangible, including immovable property, stores, equipment, land, buildings, animals, inventory, stock, natural resources like wildlife, intellectual rights vested in the state or proprietary rights;

“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);

- (c) parties to a relationship as a result of a power of attorney entered into
- (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;

“authority” means the Public Procurement Regulatory Authority established in section 8A;

“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 a public prequalification procurement process;

“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;

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

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

“bid validity period” means the period in which bids submitted in a public procurement process, remain valid for comparison, evaluation, approval and subsequently for procurement contract award;

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

“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;

“commercial public entity” means a commercial public enterprise as defined within the Public Enterprise Governance Act, 2019;

“commercial activity” means the operations undertaken by a public entity that are primarily aimed at generating revenue and profits through the sale of goods or services in a competitive market;

“community based procurement” means a procurement method that a public entity may use to achieve the section 2(2) objectives, in empowering the local community within which it operates;

“contract management” means the administration and oversight of a procurement contract and or contracts in respect of the letting and hiring and or acquisition and or granting of rights or disposal of assets from the effective date to contract close out date, to ensure compliance with its terms and conditions and the provisions of this Act. ;

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

“debarment” means an administrative action taken by the Review Committee that excludes a supplier or bidder from participating in procurement processes for a specified period;

“days” means a day other than Saturday, Sunday or public holiday as defined in the Public Holidays Act;

"disposal" means the divestiture of state assets, including intellectual and proprietary rights and goodwill and other rights of a procuring entity by any means including sale, rental, lease, franchise, auction or any combination however classified;

e-procurement" means the process of procurement using electronic medium such as the internet or other information and communication technologies;

“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 bidders 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;

‘good cause” means factual and evidentiary documentation that substantiate the application of exemption;

“government asset” means any asset belonging to or owned by the Government at the central level even if such an asset is held by, used by or in the custody of any public entity;

“governance structure” means the board, governing councils, councils, or governing bodies of public entities including equivalent organs;

“granting of rights” means when a public entity confers the right to use, control, or manage states assets to a vendor;

“guidelines” means guidelines issued in terms of section ;

“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 ; 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 ;

“lowest evaluated substantially responsive bid” means a bid that takes into considering the life cycle costing as contemplated in section 56 of this Act.

“lowest substantially responsive bid” means a bid that meets the specifications in the bidding documents without any material deviations and, offers value for money;

“material deviation” means any deviation or omission that affects in a substantial way the scope, quality or performance of the goods, works and services specified in the bidding document; or limits in a substantial way, inconsistent with the bidding document, the purchasers right or the bidder obligations under the contract; or if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids;

“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);

“National Key Point” means a national key point institution as defined in the National Key Points Act of 1980;

“non-commercial public enterprise” means a non-commercial public enterprise as defined by the Public Enterprises Governance Act

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

“notice of selection of award” means a notice issued by a public entity to a bidder on the selection of award a public entity as determined per the provisions of section;

“Policy Unit” means the policy unit established in terms of section;

“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 for the use by a public entity;

“procurement award” means the award for a procurement contract and or any contract in respect of the letting and hiring and or acquisition and or granting of rights or disposal of assets a public entity issues to a successful bidder as per the provisions of section;

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

“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 ;

“procurement contract” means a contract entered between a public entity and a vendor resulting from the outcome of a procurement process;

“Procurement Court” means the Public Procurement Court established by section;

“procurement planning” means a process undertaken by the procurement management unit to identify and consolidate requirements, establish timelines and methods for procurement, in alignment with the approved budgets and objectives of the public entity, to ensure value for money and enhance transparency in the procurement process;

“prominent influential person” means a person in a prominent public position or function, whether in Namibia or in a foreign country, including, but is not limited to -

- (a) a person who previously occupied a prominent public position or function but has vacated such position or function; and
- (b) a person who is or has been entrusted with a prominent position by an international organisation and includes amongst others a member of parliament, national council, a board member of a company incorporated in terms of the companies Act or any entity and accounting officer, a shareholder or a beneficial owner in a trust, company, close corporation, or partnership;

“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 declared per the provisions of 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
- (f) a subsidiary of a public enterprise referred to in paragraph (c);

“regional” means of the purposes of this Act, regions in Namibia in terms of the Regional Act 22 of 1992, a SADC region in terms of SADC agreement or African region in terms of the African Free Trade agreement;

“regional supplier” means potential bidders, bidders and or vendors operating from the region where the goods, works or services are to be procured from;

“responsive”, in relation to a bid, means the bidder’s bid is responsive to the basic requirements of a bid issued by the public entity, in respect of its ability to perform and complete the bid on time;

“Review Committee” means a Review Committee constituted in terms of section ;

“services” means any objects of procurement or disposal other than works and goods and includes professional, consultancy services, technical services, non-professional and commercial types of

services as well as goods and works which are incidental to but not exceeding the value of those services,

“standstill period” means the period within which an unsuccessful or aggrieved bidder:

- (a) after the notice of selection of award issued, may apply for reconsideration of the decision by the public entity as per the provisions of section;
- (b) after receiving a written response from a public entity in relation to the reconsideration application and or an compliant risen, may apply to the Review Committee for review of a decision or action taken by the public entity;

“state asset” for the purposes of this Act means property as defined in schedule 5 of the Namibian Constitution;

“suspension” means formal, temporary exclusion of a bidder or vendor by the Review Committee, from participating in procurement processes, pending the outcome of debarment proceedings;

“sustainable procurement” means the process of procuring goods, works and services in a manner that considers not only price and quality but also environmental, social and economic impacts through the procurement lifecycle;

supply chain management" means the design, planning, execution control and monitoring of supply chain activities within the procurement process, which includes procurement, purchasing, logistics, transportation, warehousing, storage, stock control, contract management and distribution, with an objective of creating value to meet the objectives of the public entity;

“Treasury” means Treasury as defined in terms of the State Finance Act 31 of 1991;

vendor” means a party who has entered into a procurement contract with a public entity, supplying goods works or services to the public entity;

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

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

“unsolicited proposal for innovative solutions” means any proposal or concept received by the Board or public entity outside its normal procurement process that is innovative, unique and provided by a single supplier;

“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 -

- (1) to regulate the procurement of goods, works or services and or the disposal of assets and or letting and hiring and or the acquisition and or granting of rights by public entities;
- (2) to promote the principles of integrity, accountability, transparency, sustainability, competitive supply, fair-dealing, value for money, responsiveness, informed decision-making, consistency, legality, effectiveness and efficiency in the procurement of goods, works or services and or the disposal of assets and or letting and hiring and or the acquisition and or granting of rights by public entities;
- (3) to facilitate and strengthen measures to implement the empowerment and industrialisation policies of the Government including, among others -
 - (a) to create employment opportunities for Namibian citizens;
 - (b) to empower Namibian registered small and medium business enterprises, previously disadvantaged groups and the youth by creating economic opportunities for them and enhancing their participation in the mainstream economy;
 - (c) sourcing goods manufactured, mined, extracted or grown in Namibia;
 - (d) promote entrepreneurial, innovation and technological development amongst the youth in Namibia
 - (e) provide opportunities for 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,

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

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 by public entities.
- (b) all disposal of state assets;
- (c) the letting and hiring of anything or the acquisition or granting of any right; and
- (d) contract management of procurement contracts, disposal of assets contracts and or the contracts regulating the acquisition of and or the granting of rights by 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.

(3) The procurement of prescribed goods, works and services are excluded from the application of this Act.

Declaration as public entity

4. (1) The Minister, by notice in the *Gazette*, may declare any entity referred to in paragraph (e) of the definition of “a public 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.

Exemptions

5. (1) The Minister may for security reasons exempt the following public entities from the application of certain provisions of the Act, that are not practical or appropriate for the procurement of security related goods, works or services and or the letting and hiring or acquisition and or granting of rights and or the disposal of state assets:

- (a) Namibian Defence Force;
- (b) Namibian Police Force;
- (c) Namibia Correctional Services; and
- (d) Namibia Central Intelligence Service.
- (e) any other public entity declared as security concern or a national key point institution.

(2) An exemption granted under subsection one may be for a specific or unspecified period and with conditions attached to it.

(3) The Minister may, on receipt of a written application by a public entity and on good cause shown exempt a public entity with or without condition, from the application of certain provisions of this Act that are not practical or appropriate for the procurement of goods, works or services and or the letting and hiring or acquisition and or granting of rights and or the disposal of state assets.

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

(5) A person who discloses information, documents or record relating to the procurement and or letting and hiring and or acquiring and or granting of rights and or disposal of security related goods, works, services, rights or property contemplated in 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.

Determination of procurement policy

6.(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, sustainable public procurement 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.
- (c) the harmonisation of procurement policies, systems and practices that apply to public entities;
- (d) the objects of the Act;
- (e) the establishment and review of the public procurement system in Namibia;
- (f) the professionalisation of public procurement within Namibia;

(2) There is established within the Ministry of Finance a specialised Policy Unit, responsible for advising the Minister on any policy matters related to the administration of this Act.

(3) The Policy Unit is responsible to research and advise the Minister in respect of the following:

- (a) the national procurement, letting and hiring, acquisition and or granting of rights and or disposal of assets policy;
- (b) the review and updating of existing policies on procurement, letting and hiring, acquisition and or granting of rights and or disposal of assets;
- (c) the establishment and review of the procurement system of Namibia;
- (d) the professionalisation of public procurement;
- (e) the declaration of public entities;
- (f) exemption from provisions of the Act.

PART 2

PUBLIC PROCUREMENT REGULATORY AUTHORITY

Establishment of the Public Procurement Regulatory Authority

7. (1) There is established a juristic person to be known as the Public Procurement Regulatory Authority, herein after referred to as the Authority, responsible for the implementation and enforcement of this Act.

(2) In pursuing the object of the Act and in the exercise and performance of its powers functions under this Act, the Authority must be independent and must act without improper or undue influence and without fear, favour, prejudice or direction from any person or authority.

Functions and Powers of the Authority

8. (1) The functions of the Authority are to -

- (a) monitor and enforce compliance with this Act, directives, standards, code of procedures and guidelines issued under this Act;
- (b) provide technical and administrative support to the Board and Review Committee operations;
- (c) provide oversight to ensure compliance and conduct of Review Panel and the Board members to attend to any aspect of general application relating to the conduct in terms of this Act;
- (d) prepare, update and issue directives, instructions, guidelines, guidance notes and manuals, including any other incidental documents for mandatory use by public entities;
- (e) 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 and asset disposal;
- (f) monitor, report on the performance of the public procurement system 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;
- (g) develop and implement a procurement performance assessment system;
- (h) facilitate the use of information and communications technology in procurement;
- (i) provide guidance on operational matters in procurement activities;
- (j) monitor classified procurement information, including that of specific items of security organs and make recommendations to the Minister ;
- (k) monitor the implementation of the preference and reservation schemes by procuring entities and submit report to the Minister;
- (l) provide advice and technical support to public entities;
- (m) investigate and act on complaints received and to attend to all aspects of general application on the conduct of any person involved in the procurement process at all times that is not subject to administrative review.

- (n) inspect or cause to be inspected any conduct procurement activity that is not subject to administrative review;
- (o) research on the public procurement and asset disposal system and any developments arising from the same;
- (p) advise the Minister on the setting of standards including international public procurement and asset disposal standards;
- (q) develop and manage the electronic system on procurement and asset disposal and ensure that it is available and easily accessible;
- (r) create a database that includes –
 - i. complaints made on procuring entities;
 - ii. a record of those prohibited from participating in bids or those debarred;
 - iii. market prices of goods, services and works;
 - iv. public entities that are non-compliant with procurement laws;
 - v. statistics related to public procurement and asset disposal; and
 - vi. any information related to procurement and disposal that may be necessary for the public;
- (s) liaise and exchange information, knowledge and expertise with authorities of other countries entrusted with functions similar to those of the Authority;
- (t) 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;
- (u) No person may work as a procurement practitioner if they do not meet the minimum or equivalent (standards as set by the Authority) qualification in procurement from a university or a comparable educational institution situated outside Namibia which has been prescribed by the Minister under subsection (s) above for the purposes of this paragraph, and has been issued with a certificate by the Authority stating (Benchmark with Legal Practitioners Act)
- (v) 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;
- (w) set a list of services and supplies in common use by public entities for centralised procurement using among others procurement contracts, standing offers and supply arrangements;
- (x) design and maintain a register of suppliers of goods, works and services, including their profiles for the implementation policies referred to in this Act;
- (y) 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;
- (z) issue a quarterly market price index as reference guide to assist public to make informed price decisions; and
- (aa) perform such other functions and duties to achieve the objects of the Act as provided for under this Act and any other relevant law.

(2) In the performance of its functions the Authority 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) For the purposes of any investigations by the Authority in connection with the performance of its function, the Commissions Act, 1947 (Act No. 8 of 1947), applies to the Authority and witnesses and their evidence, as if the Authority were a Commission to which the Act applies and the Executive Director were the secretary of the Commission.

(4) If, in the discharge of its functions, the Authority 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) issue fines as prescribed;

(b) refer the matter with recommendations to the appointing authority of the staff member for appropriate action; or

(c) refer any matter of non-compliance to the Namibian Police, Anti-Corruption Commission or any other competent authority for investigation, as appropriate, and must inform the public entity concerned.

(3) An appointing authority referred to in subsection (4)(b) 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 Authority within 30 days of receipt.

(5) If in the course of monitoring the Authority is of the opinion that disciplinary, civil or criminal proceedings ought to be preferred against a public entity, the Authority must refer the matter to the relevant authorities.

(6) The Authority may issue penalties as prescribed.

(7) A person to whom a request is made under subsection (4) 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 Commissions Act applies.

Administration of the Authority

9. (1) The Minister must appoint a suitably qualified person to be the Executive Director of the Authority on such terms and conditions as the Minister may determine, following an open, fair and transparent prescribed process of invitation, interview and recommendation by a recruitment committee.

(2) The Minister may not appoint a person as Executive Director, if that person does not comply with the provisions of section , which provisions apply with changes required in the context, to a person to be appointed as Executive Director .

(3) Section applies to the Executive Director mutatis mutandi.

(4) The Executive Director of the Authority is responsible for the -

- (a) management and operations of the Authority;
- (b) management of the funds, property and business of the Authority;
- (c) administration, organization and control of the officers and staff of the Authority; and
- (d) promoting, training and disciplining of the officers and staff of the Authority in accordance with their terms and conditions of appointment.

(5) The staff members of the Authority are appointed by the Executive Director on such terms and conditions as the Executive Director may determine.

(6) The Authority may engage persons to give advice to, and perform services for, the Authority on such terms and conditions of engagement as the Authority may determine.

(7) The term of office of the executives of the Authority is five years and can be subject to re-appointment for another term but a person may not be appointed as executive for more than two consecutive terms;

Tenure and vacation of office of the Executive Director

10. (1) A person appointed as Executive Director holds office for a period of five years.

(2) The Executive Director may, at any time, resign from office by submitting a written resignation to the Minister at least three calendar months before the intended date of resignation.

(3) The Minister after giving the Executive Director a reasonable opportunity to be heard, may at any time remove the Director General from office on the grounds of misconduct, incapacity, incompetence or failure to comply with the terms and conditions of his or her appointment.

(4) If the office of the Executive Director is vacant or if he or she is for any reason unable to perform his or her functions, the Minister must appoint a senior staff member of the Authority or another suitable individual to act as Executive Director for the period determined by the Minister.

(5) At the expiry of the term of office of the Executive Director, the Minister, may re-appoint the Executive Director for another term but a person may not be appointed as Executive Director for more than two consecutive terms.

(6) The office of the Executive Director becomes vacant -

(a) if the Executive Director -

(i) dies;

(ii) resigns from office;

(iii) is removed from office under subsection (8); or

(iv) becomes subject to a disqualification referred to in section 14; or

(b) on expiry of his or her term of appointment.

Funds of the Authority

11. (1) The funds of the Authority consist of -

- (a) money appropriated by Parliament for the purposes of the operations by the Authority;
- (b) any other money that may accrue to the Authority from any other source, including interests on investment;

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

Financial year and budget of Authority

12. (1) The financial year of the Authority ends on 31 March each year.

(2) The Authority may not incur expenditure except in accordance with a budget drawn up in terms of subsection (3).

(3) Every financial year, the Authority 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 Authority.

Auditing of accounts of Authority

13. (1) The Authority, 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 Minister.

(2) The auditor referred to in subsection (1) audits the accounting records and financial statements of the Authority 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 Authority 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 Minister.

Annual report of Authority

14. (1) Not later than six months after the end of each financial year the Authority 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 Authority during the financial year under review;
- (b) audited financial statements of the Authority and a report contemplated in section including a statement of income and expenditure, a balance sheet and the report contemplated in section 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 3

CENTRAL PROCUREMENT BOARD OF NAMIBIA

Establishment of Central Procurement Board of Namibia

15. There is established 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 of goods, works or services, and or the letting and hiring and or acquisition and or granting of rights and or disposal of assets that exceed the threshold prescribed for public entities;
- (b) to enter into procurement contracts and or contracts in respect of the letting and hiring and or acquisition and or granting of rights or disposal of assets 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 the contracts awarded by the Board as contemplated in paragraph (b).

Powers and functions of Board

16. (1) The powers and functions of the Board in relation to procurement of goods, works or services, and or the letting and hiring and or acquisition and or granting of rights and 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 contracts and or contracts in respect of the the letting and hiring and or acquisition and or granting of rights or disposal of assets
- (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 of goods, works or services, and or the letting and hiring and or acquisition and or granting of rights and or disposal of assets 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 contracts and or contracts in respect of the the letting and hiring and or acquisition and or granting of rights or disposal of assets
- (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 Authority 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 Authority.

Constitution of Board

17. (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 to serve as Chairperson and Deputy Chairperson of the Board.

(3) The Minister may appoint alternate board members who may be assigned duties and functions not contrary to this Act as the Minister may determine.

(2A) Despite the provisions of subsection (1)(c), subsection (2) and section 12(1), the Minister may, at the expiry of the term of office of the Chairperson, Deputy Chairperson or other member of the Board -

- (a) extend the term of office of the Chairperson, the Deputy Chairperson or the member of the Board, until a Chairperson, Deputy Chairperson or a member of the Board is appointed; or
- (b) appoint a suitably qualified, fit and proper person having knowledge and experience relevant to the functions of the Board as a Chairperson, Deputy Chairperson or a member of the Board until a Chairperson, Deputy Chairperson or a member of the Board is appointed.

(2B) The extension granted in terms of subsection (2A)(a) or an appointment made in terms of subsection (2A)(b) must be for a period not exceeding six months but the Minister may at the expiry of the period of extension or the period of appointment, further extend the term of office or term of appointment for an additional period of not more than two months at a time until a Chairperson, Deputy Chairperson or a member of the Board is appointed but the total period of extension or appointment may not exceed twelve months.

(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

18. (1) A member of the Board appointed under subsection (1) and (2) of section 11 is appointed for a fixed term of three years, and is eligible for reappointment at the expiry of that term, but a person may not be appointed as a member of the Board 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

19. (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.

Meetings and decisions of Board

20. (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.

Committees of Board

21. (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

22. (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

23. (1) A member, alternate member of the Board or a member of a committee of the Board is paid such remuneration per month on such terms and conditions as the Minister may determine.

(2) The Minister may determine, the allowances, including travelling and subsistence allowances, payable to a member of the Board or a member of a committee of the Board.

Staff of Board

24. 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 Authority on such terms and conditions with the concurrence of the Minister.

Funds of Board

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

- (a) money appropriated by Parliament for the purposes of the Board;

PART 4

ACCOUNTING OFFICER, GOVERNANCE STRUCTURES AND BID EVALUATION COMMITTEES

Powers and functions of accounting officers

26. (1) An accounting officer has the following powers and must -

(a) in the prescribed manner, appoint the internal procurement structure of the public entity, 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;

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

(b) approve the annual procurement plan and or the amendment thereof;

(c) 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;

(d) issue the procurement award; which is a result of a finalised procurement process;

(e) sign the procurement contract and or any other contract in respect of the letting and hiring and or acquisition and or granting of rights or disposal of assets, which is a result of a procurement award;

(2) An accounting officer has the following functions and must -

(a) ensure that the public entity comply to the provisions of this Act.

(b) ensure that the public entity engage in procurement planning, planning each step of the procurement process and prepare the annual procurement plan;

(c) submit the annual procurement plan to the Authority at least three months before the commencement of each financial year;

(d) submit the amended annual procurement plan to the Authority within seven days of the approval of the amendment.

- (c) ensure that a procurement contract and or contracts in respect of the the letting and hiring and or acquisition and or granting of rights or disposal of assets has been legally scrutinized and advised upon.
 - (d) 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, for a period prescribed by the Archives Act, 1992 (Act No. 12 of 1992).
- (3) An accounting officer is accountable for the full compliance with this Act and may be held liable for non-compliance as per the provisions of part 5 of the Act.

Establishment and composition of procurement Committee

27. An Accounting Officer must cause to be established in a procuring entity, a procurement committee consisting of such number of employees, with the relevant qualifications and at the appropriate level, and as the Accounting Officer may determine.

Functions of procurement Committee

28. (1) A procurement committee must –

- (a) be the principal advisor to an Accounting Officer on any procurement matter falling within the scope of this Act;
- (b) ensure that any procurement activity by a public entity is conducted in accordance with the provisions of this Act; and
- (c) be responsible for the pre-adjudication, adjudication and recommendation of an award, rejection, cancellation or any other appropriate recommendation related to a bid in a public entity.

(2) A procurement committee must, in the exercise of its functions, carry out such functions independently.

(3) The independence of a procurement committee referred to under subsection (2) relates to the segregation of duties and must not be construed to mean that a procurement committee must not report to or be under the supervision or direction of an Accounting Officer.

Establishment and composition of procurement management units

29. An Accounting Officer must establish in a public entity, a permanent structure to be called a procurement management unit consisting of such number of employees, with the relevant qualifications in procurement and at the appropriate level, and as the Accounting Officer may determine.

Functions of procurement management unit

30. (1) A procurement management unit is to be responsible for the acquisition of goods, works and services for a public entity, provision of guidance, oversee the procurement function, and monitor the procurement activity to ensure compliance with the provisions of this Act.

(2) Notwithstanding subsection (1), a procurement management unit must –

- (a) manage a procurement activity of a public entity;
- (c) prepare a statement of requirements;
- (d) prepare a bidding document;
- (g) prepare a contract document;
- (h) issue an approved contract document;
- (i) administer and manage a contract once placed;
- (j) arrange for the payment of a contractor;
- (k) keep and maintain any record of procurement;
- (l) prepare a monthly report for an Accounting Officer;
- (m) coordinate a project and liaise with a user department on any other aspect of its procurement;
- (n) act as a procurement coordinator for the user Department of a public entity; and
- (o) undertake any other procurement function as may be delegated by an Accounting Officer.

Responsibilities of the user department

31. In the public entity, the user department has the following responsibilities:

- (a) to indicate the needs to be catered for in the public procurement plan of the procuring entity and conduct the market survey thereof;
- (b) to prepare technical specifications of goods or supplies, works and nonconsultancy services;
- (c) to prepare the terms of references of a bid for consultancy services;
- (d) to approve that the execution complies with the requirements of the procurement contract;
- (e) to participate in the procurement contract management and in the follow-up of its execution.

Role of governing body in procurement

32. (1) The governance structure of a public entity's role in the procurement process and or the awarding of a the procurement contract and or any other contract in respect of the the letting and

hiring and or acquisition and or granting of rights or disposal of assets, which is a result of a procurement award is limited to the-

- (a) approving of the annual budget of the public entity;
 - (b) ensuring that the accounting officer complies with the provisions of this Act;
 - (c) exercise strategic oversight and accountability functions as provided for by the provisions of the establishing law of the public entity and or any other law .
- (2) The governance structures of public entities must not:
- (a) participate in the drafting of specifications, evaluation of bids, or procurement award of the procurement contract and or any other contract in respect of the the letting and hiring and or acquisition and or granting of rights or disposal of assets
 - (b) influence or direct decisions in respect of the administrative processes relating to the procurement contract and or any other contract in respect of the the letting and hiring and or acquisition and or granting of rights or disposal of assets, which is contrary as provided for by this Act;
 - (c) engage in any activity that creates or may be perceived to create a conflict of interest in relation to the administration of this Act.
 - (d) access or disclose confidential procurement information without lawful authority to do so.
- (2) Any member of a governance structure who contravenes this provision must be subject to disciplinary action, including removal from office and referral to relevant oversight authorities.

Bid evaluation committees

33. (1) For the purposes of evaluation of pre-qualifications or bids for procurements, the the letting and hiring and or acquisition and or granting of rights or disposal of assets, the Board or accounting officer -

- (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.
- (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;
 - (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
 - (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,

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

(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.

(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.

(11) Any person external to the public service and or to the public entity to which he or she was appointed may be paid such remuneration and allowances determined by the Minister, provided the appointing authority is not the direct employer of such person.

PART 5

CODE OF CONDUCT BY PERSONS APPOINTED TO ADMINISTER THE ACT

Application of this part

34. (1) This part applies to all persons appointed to:

- (a) Policy Unit
- (b) The Authority
- (c) The Board
- (d) The Review Committee
- (e) The internal procurement structures of a public entity
- (f) Bid Evaluation Committees

(2) The appointment of the persons contemplated as per subsection (1) may be by virtue of appointment by the Minister, accounting officer and or an employment contract, whichever ever is applicable.

Disqualifications for appointment

35. A person does not qualify for appointment to the following institutions and or structures as contemplated in section 29, if such a 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;
- (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.

- (f) has failed to submit an income, asset, cash and interest declaration as prescribed

Declaration of income, assets, cash and interests

36. (1) A person appointed as per the provisions of 29 section must within a period of 10 days after such appointment within the prescribed form declare his or income, assets, cash and interests to the Minister.

- (2) If the person as contemplated in subsection (1)

- (a) knowingly submits a false declaration; or

- (b) conceals the existence of income, assets, cash or interests which the person is required to declare, under this section,

he or she commits an offence and is liable to a fine not exceeding N\$500 000 or imprisonment to a period not exceeding five years, or to both such fine and such imprisonment.

- (3) The regulations to prescribe must among others including:

- (a) must submit a declaration of assets and interests to the Minister, in relation to himself or herself or his or her spouse, minor children, grandchildren and subsection (2) children of age

- (b) The declaration must, in relation to children of age, specify any property sold, transferred or donated to each one of them in any form or manner whatsoever including income or benefits from any account, business, partnership or trust.

- (c) Each year the person appointed under subsection (1) must make a fresh declaration of income, assets, cash and interests in the form specified in that subsection.

- (d) Despite paragraph (c), where the Minister has reason to believe that a person appointed under subsection (1) has in good faith omitted to declare certain income, assets, cash or interests, the Minister may require the person to make a declaration of assets and interests as soon as possible after the omission is found.

Fiduciary duties and responsibilities

37. (1) A person appointed as per the provisions of section 29 must at all times –

- (a) act with fidelity, honesty, integrity and in the best interests of the State 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
- (e) attend to any aspect of general application relating to the administration of this Act.
- (f) comply to the provisions of this Act.

(2) A person is therefore prohibited to -

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

(3) If person 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

(4) person 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.

Disclosure of interest by staff members of public entities

38. (1) A person appointed as per the provisions of section 29 -

- (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.

Conduct of persons involved in the administration of the Act

39. (1) A person appointed as per the provisions of section 29 undertake -

- (a) to discharge his or her functions fairly and impartially and without fear, favour or prejudice to anyone so as to ensure the objects of the Act is met;
- (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 act on behalf and or favour a potential bidder, bidder or vendor, in the execution of his or powers and functions which may be contrary to his or her fiduciary responsibilities as contemplated in section 32 of this Act.

(3) If a person during the execution of his or her duties is conflicted in any manner as a result;

- (a) of his or her relation to a potential bidder, bidder or vendor;
- (b) and or involvement within the procurement process, procurement award or execution of the procurement contract and or any other contract in respect of the letting and hiring and or acquisition and or granting of rights or disposal of assets

must recuse himself or herself from any duties and or proceedings relating to such conflict of interest and may not participate as a bidder or vendor in relation to the subject matter of such conflict of interest.

(4) If a person during the execution of his or her duties;-

- (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 (3)

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.

(5) Public officials involved in transactions in which goods, services and works are procured at unreasonably inflated prices shall, in addition to any other sanctions prescribed in this Act or the Regulations made thereunder, be required to pay the procuring entity for the loss resulting from their actions

Prohibition to participate in a procurement process

40. (1) 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 vendor 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.

(2) 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) 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.

PART 6

PROCUREMENT PLANNING

Procurement planning

41. (1) Prior to finalizing the annual procurement plan, the public entity must conduct appropriate market research in consultation with the Authority to:

- (a) assess the availability, quality, and suitability of the goods, works, or services required;
- (b) identify potential suppliers, market competition conditions, and supply chain dynamics;
- (c) determine prevailing market prices, trends, and cost benchmarks;

- (d) evaluate procurement risks and opportunities, including delivery timelines, geopolitical factors, and supplier reliability;
- (e) justify the use of foreign currency in procurement, where applicable, based on:
 - (i) market conditions and supplier pricing structures;
 - (ii) currency stability and exchange rate risks;
- (5) availability of goods or services in the domestic market.

(2) Standard goods, services and works with known market prices must be procured at the prevailing market price.

(3) Throughout the procurement process a public entity must conduct supply chain management in ensuring the section principles are met.

Statement of procurement requirements

42. (1) The Board or public entity must prepare a statement of procurement requirements relating to the goods, works or services being procured that —

- (a) is clear;
- (b) gives a correct and complete description of what is to be procured;
- (c) allows for fair and open competition among bidders who may wish to participate in the procurement proceedings; and
- (d) ensures that the goods, works or services are fit for the purpose for which they are being procured and are of appropriate quality.

(2) The specific requirements must include the public entity's technical requirements with respect to the goods, works or services being procured.

(3) The technical requirements must, where appropriate—

- (a) include and conform to design, specification, functionality and performance;
- (b) be based on national or international standards whichever is superior;
- (c) factor in the life of the item;
- (d) factor in the socio-economic impact of the item;
- (e) be environmentally sustainable;
- (f) factor in the cost of servicing and maintaining the item; and

- (g) factor in the cost of disposing of the item. The technical requirements must not refer to a particular trademark, brand name, patent, design, type, producer or service provider or to a specific origin unless—
 - (h) there is no other way of describing the requirements; and
 - (j) the requirements allow equivalents to what is referred to.
- (5) A statement of procurement requirements must be—
- (a) included in the bidding document to inform bidders of the public entity's requirements;
 - (b) used in evaluation to determine whether a bidder meets the public entity's requirements, as specified in the bidding document, and where appropriate, to determine the quality of the bid; and
 - (c) included in the contract to define the goods, works or services being procurement.
- (6) A statement of procurement requirements must, to the extent possible, be based on the relevant, objective, technical and quality characteristics of the goods, works or services to be procured.

PART 7 METHODS OF PROCUREMENT

Choice of procurement methods

43. (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 or services, by -
 - (i) open national bidding
 - (ii) open international bidding;
 - (iii) restricted bidding;
 - (iv) request for sealed quotations;
 - (v) direct procurement;
 - (vi) execution by public entities;

- (vii) emergency procurement;
- (viii) **Informal Quotation;**
- (ix) **Community based Procurement;**
- (x) request for proposals
- (xi) **Manufacturers single source Procurement and exclusive distributor;**
- (xii) **procurement for innovative solutions;**
- (xiii) expression of interests; and
- (xiiii) electronic reverse auction.

(2) Procurement of goods, works or services must 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;
- (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)(iii) to (xvii) 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)(x),

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

44. (1) In cases of open national bidding in terms of section 38 or open international bidding in terms of section 39, where open advertised bidding method is to be 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;
- (c) online platforms and social media; and
- (d) in the e-procurement system accompanied by a prescribed disclaimer.

Open national bidding

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

- (a) to Namibian 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 a minimum of 51 percent equity.

(2) The Board or public entity may, subject to section 2(2), limit participation to open advertised bidding to -

- (a) an entity incorporated or registered in Namibia in terms of the company or close corporation laws of Namibia;
- (b) a co-operative registered under the laws regulating co-operatives in Namibia;
- (c) a trust registered under the laws regulating trusts in Namibia; or
- (d) a partnership or a joint venture or similar arrangement,

in which Namibian citizens own 100 percent equity.

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

(4) The majority equity owned by Namibian citizens in an entity, co-operative, trust, partnership, joint venture or similar arrangement as referred to in subsections (1) and (2) must be owned by Namibian citizens that have reached the age of majority in terms of Namibian laws.

(5) Open national bidding in terms of this section must be used where local capacity exists for more than one supplier of goods, works or services in Namibia.

(6) The Board or public entity may engage in a framework agreement procedure in accordance with the provisions of 38A.

(7) The Board or public entity may engage in a pooled procurement procedure in accordance with the provisions of 38B(1)(a).

Open international bidding

46. (1) Open advertised international bidding is used if -

- (a) the goods, works or services are not available under competitive price and other conditions from more than one supplier in Namibia; or
- (b) there is no response to open national bidding and the goods, works or services are obtained from international bidders.

(2) The Board or public entity may engage in a framework agreement procedure in accordance with the provisions of 38A.

(3) The Board or public entity may engage in a pooled procurement procedure in accordance with the provisions of 38B(1)(a).

Restricted bidding

47. (1) Restricted bidding may be used -

- (a) if the Board or a public entity has established that the goods, works 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, works or services have and maintain the necessary technical and financial capability to provide those goods, works 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, works or services.

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

(4) The restricted bidding in paragraphs (a) and (c) of subsection 1 is subject to the threshold applicable to the public entity as referred to in section 15(a).

Request for sealed quotations

48. (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 may in writing request sealed quotations from as many suppliers or contractors as practicable but no less than three suppliers from the registered bidders list, 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.

(5) The procuring entity must not split its procurement requirements into separate contracts for the purpose of applying the provisions of this section.

Emergency procurement

49. (1) A public entity may, in cases of emergency, procure goods, works or services using the –

(a) direct procurement method;

(b) single source procurement;

(c) sole source procurement ; or

(d) multiple quotation procurement.

(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 -

- (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 or national interest or public interest may be seriously compromised; or
- (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 Authority in the prescribed manner and form stating the reasons for, or the situation which necessitated, the emergency procurement.

(5) If the Authority establishes that there was negligent or wilful conduct which necessitated the emergency procurement, the Authority must refer the matter with recommendations to the appointing authority as contemplated in section 7(4), including charges of misconduct in terms of the applicable laws.

Execution by public entities

50. (1) 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) a public entity has the capacity to provide such goods, works and services to another public entity;
 - (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*.
- (2) Section 8 is not applicable to the application of this section.

Request for proposals for Consultancy Services

51. (1) The Board or public entity may use a request for proposals for a procurement if the services to be procured are advisory or otherwise of a predominately intellectual nature.

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

(3) 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, online platforms and the e- procurement system and include in the list those who have expressed interest in the procurement.

(4) Where the estimated value of the procurement is above the prescribed threshold, the nature of the consultancy services is defined and there is a limited number of consultants in the market, the board or public entity may issue a request for proposal directly without running an expression of interest.

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

- (a) may draw up a shortlist based on evidence based market research conducted; 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.

- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

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

(17) The Board or public entity may use one of the following methods in order to select the successful proposal -

(a) quality- and cost-based selection;

(b) quality-based selection;

(c) selection under a fixed budget;

(d) least-cost selection;

(18) The Procuring Entity must select Quality and Cost Based Selection (QCBS) method as the default method to be used to evaluate proposals and must state the selection procedure in the Request for Proposals.

(19) For the purposes of subsection (18), "Quality and Cost Based Selection" method is a method that uses a competitive process that takes into account the quality of the proposal and the cost of the services in the selection of the consultant.

(20) Quality Based Selection (QBS), focuses on quality and selects the highest quality proposal. Quality Based Selection method must be appropriate for—

- (a) complex or highly specialized assignments for which it is difficult to define precise terms of reference and the required input from the consultants;
- (b) assignments that have a high downstream impact and in which the objective is to have the best experts;
- (c) assignments that can be carried out in substantially different ways;
- (d) assignments and professional services which are regulated by Acts of Parliament which stipulate fees and charges applicable for such assignments.

(21) Least Cost Selection (LCS), selects the lowest priced proposal, which meets the entity's technical requirements and is generally appropriate for selecting consultants for assignments of a standard or routine nature where well-established practices and standards exist.

(22) Fixed budget selection method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. Fixed Budget Selection as a request form for proposal must indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget.

(23) The method used as referred to in Paragraph One of this Article is notified to bidders in a request for proposals.

Direct procurement

52. (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 the goods, works or services are available only from a particular supplier or contractor, or only one supplier has the exclusive right to manufacture the goods to supply the goods, works or services to be procured, and no suitable alternative or substitute is available;
- (c) 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.
- (f) where due to an emergency, there is urgent need for the goods, works or non-consulting services making it impractical to use other methods of procurement because of the time involved in using those methods;
- (g) the procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies must be procured from that supplier or contractor for reasons of standardisation or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question;
- (h) for the acquiring of goods, works or services provided by a public entity provided that the acquisition price is fair and reasonable and compares well with known prices of goods, works or services in the market.

Manufacturers single source Procurement and exclusive distributor

53. (1) The Board or public entity must, for the purpose of efficiency and obtaining value for money in terms of price, quality and delivery, procure pharmaceuticals and clinical supplies directly from a manufacturer.

(2) The Board or public entity must, for the purpose of promoting industrialisation objectives, while still obtaining value for money in terms of price, quality and delivery, procure goods directly from a manufacturer or exclusive distributor in Namibia. Minister may make regulations prescribing the manner and procedures of procuring pharmaceuticals and clinical supplies directly from a manufacturer, and procuring directly from a manufacturer or exclusive distributor in Namibia.

Electronic reverse auction

54. (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.

Informal Quotation

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

(2) A public entity may use Informal Quotations procurement procedure if—

- (a) the public entity is procuring low value items which are not procured on a regular or frequent basis and are not covered under a contract or framework agreement; and

- (b) the estimated value of the goods, works or non-consultancy services being procured are less than or equal to the maximum value per financial year for that low-value procurement procedure as may be prescribed.
- (3) The public entity must maintain record of quotations obtained for such procurements as prescribed.
- (4) The procuring entity must not split its procurement requirements into separate contracts for the purpose of applying the provisions of this section.

Community Based Procurement

- 56.** (1) The public entity must, adapt procurement procedures, specifications and contract packaging for purposes of empowerment of local community to—
- (a) call for participation of local communities and nongovernmental organisations; increase the utilisation of local know how and materials; and
 - (b) employ labour intensive and other appropriate technologies.

The public entity may also use this method to procure certain goods, works or services as prescribed, from informal vendors.

Unsolicited proposal for innovative solutions

- 57.** (1) The Board or public entity is not obliged to consider an unsolicited proposal but may consider such a proposal only if it meets the following requirements:
- a. a comprehensive and relevant project feasibility study has established a clear business case; and the product or service involves an innovative design; or the product or service involves an innovative approach to project development and management; or
 - b. the product or service presents a new and cost-effective method of service delivery.
- i. The Board or public entity must reject the unsolicited proposal if the proposal-
- (a) to known institutional requirements that can, within reasonable and practicable limits, be acquired by conventional competitive bidding methods;

- (b) relates to products or services which are generally available;
- (c) does not fall within the Board or public entity powers and functions;
- (d) has not been submitted by a duly authorised representative of the proponent; or
- (e) contravenes the provisions of any law.

(3) If the Board or public entity decides to reject the unsolicited proposal, they must—

- (a) notify the authorised representative of the proponent, that the Board or public entity has rejected the unsolicited proposal;
- (b) ensure that the Board or public entity does not make use of any of the intellectual property or proprietary data in the unsolicited proposal; and
- (c) return to the proponent all documents received in the unsolicited proposal including any copies of these documents.

Expressions of interest

58. (1) The Board or public entity must prepare a notice inviting interested persons to submit expressions of interest as prescribed.

(2) The notice inviting expressions of interest must set out the following—

- (a) the name and address of the Board or public entity;
- (b) a brief description of the works or services being procured and, if applicable, the goods being procured;
- (c) eligibility and the qualifications necessary to be invited to submit a proposal; and
- (d) an explanation of where and when expressions of interest must be submitted.

(3) The Board or public entity must advertise the notice inviting expressions of interest in at least one daily newspaper of nation-wide circulation, the e-gp system, and on its own website, where applicable.

Procurement under framework agreement

59. The Board or public entity may in terms of a framework agreement procure goods, works or non-consultancy services -

- (a) if the Board or public entity determines that the need for the subject matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time within a public entity or across public entities;
- (b) where it is the most appropriate and most efficient and cost-effective means to procure goods, works or non-consultancy services; and
- (c) if the estimated value of the procurement does not exceed the prescribed thresholds for the required goods, works or non-consultancy services.

(2) A public entity wishing to procure under a framework agreement must use the open advertised bidding method of procurement.

(3) The Board or public entity must include a minimum of three alternative suppliers for each category identified for procurement in terms of a framework agreement.

(4) Notwithstanding, sub section (3), where, after conducting the procedures prescribed only less than the minimum three bidders submit lowest substantially responsive bids the Board or public entity may enter into a framework agreement with those bidders for a period not exceeding 2 years to allow the public entity to undertake and finalise the new procurement process.

(5) Where there is only one supplier, the Board or public entity may conclude a framework agreement with that one supplier.

(6) A procurement contract based on a framework agreement must be awarded in accordance with the prescribed procedure.

(7) The Board or public entity must record the reasons and circumstances on which it relied to justify the use of the framework agreement and the type of framework agreement used.

(8) The Minister must prescribe the types of framework agreements, the form and manner of framework agreements, the terms and conditions of framework agreements and other matters to be included in or to be complied with in respect of a framework agreement.

(9) The Board or public entity may not procure goods, works or non-consultancy services outside the existing framework agreement, except where the price under the framework agreement is not fair and reasonable, or an additional delivery of related goods, works or non-consultancy services falls outside the scope of that framework agreement, or for any other reason due to *force majeure*.

Pooled procurement

60. (1) In the circumstances referred to in subsection (3) -

- (a) public entities may use pooled procurement to jointly procure goods or works with other public entities in Namibia;
- (b) public entities may use pooled procurement to jointly procure goods or works with entities in another country, provided that such entity is authorised by the laws of that country to procure goods or works; or a foreign state, a regional or an international organisation; or
- (c) public entities may use pooled procurement to procure goods from a regional or an international organisation that combines several entities from different countries who intend to procure the same type of goods and the regional or international organisation procures the goods on behalf those entities.

(2) Where a public entity that is an office, ministry or agency of the government procures goods or works in accordance with subsection (1)(b), the accounting officer must enter into the pooled procurement agreement with the entity in another country, foreign state, a regional or an international organisation.

(3) Pooled procurement may be used for the procurement of goods or works under the following circumstances:

- (a) there must be a demonstrable price and non-price benefits for its use;
- (b) pooled procurement must be the most cost-effective and efficient means for procuring the goods or works in the circumstances;
- (c) there must be proof that the public entity or government can leverage from economies of scale; and
- (d) there must be an identified supplier who can supply the required quantity of the goods or works.

(6) Where a public entity makes use of pooled procurement as contemplated in subsection (1)(a), the Board must procure on behalf of the public entities irrespective of the prescribed threshold.

(7) In accordance with subsection (4), public entities that are O/M/As and RCs may use pooled procurement to jointly procure goods or works with other public entities in Namibia through the Board, if goods and works cannot be procured through Government Stores.

(8) Where a public entity makes use of pooled procurement as contemplated in subsection (1)(b) and -

(a) the value of the procurement does not exceed the prescribed threshold, the public entity must facilitate the procurement; or if the value of the procurement exceeds the prescribed threshold the Board must procure on behalf of the public entities.

(9) Where a public entity makes use of pooled procurement as contemplated in subsection (1)(c), the public entity must facilitate the procurement of the goods.

(10) For pooled procurement to be valid -

(a) there must be a pooled procurement agreement entered into between the contracting entities, and between the contracting entities and suppliers;

(b) the agreement referred to in paragraph (a) must determine the practical arrangement governing that procedure, and the decision-making process with regard to the choice of procurement method to be used, the evaluation of the bid and the award of the contract; and

(c) if the pooled procurement is used as contemplated in subsection (1)(b) or (c), the agreement referred to in paragraph (a) must be approved by the Attorney-General.

(9) Public entities making use of pooled procurement in terms of this section must ensure that pooled procurement does not constitute unfair discrimination, restriction of trade or distort competition.

(10) The Minister must prescribe other measures regarding the management of agreements contemplated in subsection (7).

(11) The public entities making use of pool procurement must record or ensure the recording of reasons and circumstances on which the entity relied to justify the use of pooled procurement.

PART 8 BIDDING PROCESS

Application of this Part

61. This Part applies to bids for procurement contracts.

Use of national e-government procurement system

62. (1) The Minister must establish a national e-government procurement system for any public procurement in accordance with this Act.

(2) A procuring entity must use the electronic government procurement system that the Minister has established under this Act.

(3) A document which has to be submitted in writing under this Act must include a document submitted electronically using the national e- procurement system referred to under sub-section (1).

(4) The procedure and process for the conduct of procurement through the national e-gp system must be as prescribed.

Conditions for the Procurement of Capital Projects

63. (1) For every identified need for a capital project, must be approved by the National Planning Commission.

(2) A public entity must consult the Department of Works –

(a) to conduct an assessment, feasibility study, and design of the project; or

(b) to recommend a consultant to be appointed by the public entity to conduct the assessment, feasibility study, and design of the project.

(3) A public entity shall, before procuring a capital project, obtain Treasury authorization to certify availability of funds.

(4) Where a consultant is appointed under subsection (2)(b), the public entity shall ensure that the work of the consultant is approved by the Department before any payment is made.

(5) The Department or the consultant appointed under subsection (2)(b) shall assist the public entity with the preparation of specifications and the evaluation of bids.

(6) The Department must act as the project manager for all capital projects and must:

(a) Monitor and conduct contract management;

(b) Approve all works before payment is effected;

(c) co-ordinate and supervise the construction of Government buildings and infrastructures for user Ministries, Offices and Agencies.

(d) Ensure that projects are implemented in a timely manner, within the approved budget, and meet expected outcomes;

- (e) Provide advice to public entities on project management and contract administration for approved projects;
- (f) Certify the successful completion of construction works and provide the contractor with a project completion certificate.
- (g) prepare a post-implementation report for every completed project and maintain a database of experienced and competent project managers.

Invitation for bidding

64. The Board or public entity must prepare an invitation to bid inviting bidders to submit priced offers for the supply of goods, works or services as may be prescribed.

Authorisation to procure above threshold

65. (1) 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.

(2) In respect of any other procurement method, a public entity may apply for exemption in terms of section 4(2) of this Act.

Pre-qualification proceedings

66. (1) Subject to provisions of subsection (2), the Board or public entity where applicable, may conduct a pre-qualification procedure as a basic procedure prior to adopting an alternative procurement method other than open bid for the purpose of identifying the best few qualified bidders for the subject procurement.

(2) The Board or a public entity must conduct the pre-qualification proceedings for purchases, projects or contracts that involve high value, high risk, technical and operational complexity or significant impact, such that not every supplier in the market would have the capacity, experience or financial stability to perform them successfully.

(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) The Board or a public entity must upon completion of pre-qualification proceedings, notify , all applicants in writing within seven (7) days, of the outcome clearly indicating those who have been successfully prequalified.

Bidding documents

67. (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

68. (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 specifications for the goods or works or services or contractual aspects of the procurement to elicit competitive bids, due to inadequate knowledge on the part of the Board or public entity or advancements in technology; and
- (b) due to the complex nature of the goods, works or services to be procured, the Board or 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 and specifications.

(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
- (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

69. (1) Where applicable and in such manner as may be prescribed, the Board or a public entity may 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

70. (1) Subject to this section, a bid must be 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.

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

Deadline for submission of bids

71. (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

72. 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

73. (1) The bid validity period must be as indicated in the bidding document.

(2) A bid validity period commences on the deadline for submission of bids and must remain valid for the period as indicated in the bidding documents which may not be more than 180 days.

(3) The Board or public entity may, with the consent of the bidders concerned and approval of the accounting officer, extend the bid validity period before the expiry date.

(4) The extension of the bid validity period must not go beyond sixty (60) additional days.

(5) Where the initial bid validity period set by the Board or public entity is less than 180 days, such period may be extended. The provisions of subsections (3) and (6) concerning the extension of bid validity periods and the prescription of the bidding process must apply mutatis mutandis to such an extension.

(6) 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.

(7) Any legal challenge or dispute concerning the bidding process must be filed and resolved within the prescribed bid validity period. If a contract award is not made and announced before the bid validity period, including any extensions, has lapsed, the bidding process must be deemed to have lapsed automatically. In such an event, the bidding process is considered void and must be re-started from the beginning.

Prohibition of disqualified bidders and vendors from participation

74. (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) The Board or public entity must, in a bidding process, disqualify a bidder –

- (a) whose performance in a previous public contract has been deficient; or
- (b) who has failed to deliver goods, works or services satisfactorily, and has caused prejudice to the Board or another public entity with regard to contractual requirements notwithstanding that the bidder is not disqualified; or
- (c) whose shareholder has financial interest in another bidder participating in the same process;
- (d) if two or more bidders participating in the same procurement proceedings are owned by individuals residing in the same household, regardless of whether they represent separate legal entities. For the purposes of this paragraph, 'same household' must mean individuals who share a residential address or are otherwise in a domestic relationship that may reasonably give rise to a conflict of interest or the potential for collusive behavior.

(3) 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;
- (d) a written undertaking as contemplated in section 138(2) of the Labour Act, 2007 (Act No. 11 of 2007); and
- (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).

(5) For procurement proceedings involving community based procurement or Informal Quotation of up to a certain value prescribed, a bidder or supplier may be exempted from the

requirement to submit the documents listed in paragraphs (a), (b), (c), (d) and (e) of subsection (2). In such cases, the bidder or supplier must submit a valid Namibian identification document as proof of identity.

(6) In the case of emergency procurement, as provided for under this Act, the Board or public entity may waive the requirement for a bidder or supplier to submit the documents listed in paragraphs (a) through (e) of subsection (2) to ensure a prompt and effective response to the emergency; provided that the bidder or supplier must provide a written undertaking in the prescribed format to submit all the required documents within 30 days of the contract being awarded. Failure to comply with this undertaking will result in the payment to the bidder being withheld until such time that the bidder has submitted all required documents.

Opening of bids

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

(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, in person or online when an electronic bidding is used.

(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.

(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.

(6) Where the Board or public entity receives a large number of bids, and are unable to open all the bids in one day, the Board or public entity must ensure that all bids are safely secured for bid opening continuation the following day.

(7) Bids submitted electronically must be opened in such manner as may be prescribed or set out in the bidding document.

Examination and evaluation of bids

76. (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, set up a bid evaluation committee, except where-

(a) the request for sealed quotations method is used and where price is the determining factor; or

(b) informal quotations is used; or

(c) community based procurement is used.

(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.

(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.

(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 substantially responsive 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.

Competitive negotiations

77. (1) The Board or public entity may undertake negotiations with a successful bidder in accordance with the prescribed conditions and procedures.

(2) The Board or public entity, where special circumstances contemplated in subsection (4) apply, must initiate and oversee the negotiation between the Board or a public entity and a selected bidder.

(3) Where there is need for negotiation the Board or procurement committee of the public entity must recommend to the accounting officer to appoint a negotiation team, which must consist of suitably knowledgeable staff members as determined by the accounting officer.

(4) Negotiations undertaken under this section may not relate to the price of the bid, except as provided under subsection (5) or where the price of the bid has not been taken into account in the evaluation methodology.

(5) The Board or public entity may conduct negotiations as prescribed where -

- (a) there is a tie in the lowest evaluated price by two or more bidders;
- (b) there is a tie in the highest combined score points;
- (c) the lowest evaluated price is in excess of the available budget;
- (d) where economies of scale can be achieved through negotiations; or
- (e) direct procurement is used as the procurement method.

(6) The revised prices relating to a negotiation may not compromise the quality specifications of the original bid.

Handling of abnormally low bids

78. (1) The Board or public entity must require bidders to clarify the price or costs proposed in the bids where bids appear to be abnormally low in relation to the goods, works, or services.

(2) The Board or public entity may reject a bid if the Board or public entity has determined that the price, in combination with other constituent elements of the bid is abnormally low in relation to the subject matter of the procurement and raises concerns with the Board or public entity as to the ability of the bidder that presented that bid to perform the procurement contract, provided that the Board or public entity has taken the following actions -

- (a) the Board or public entity has requested in writing from the bidder details of the submission that gives rise to concerns as to the ability of the bidder to perform the procurement contract; and

- (b) the Board or public entity has taken account of any information provided by the bidder following this request and the information included in the submission, but continues, on the basis of all such information, to hold concerns.

(3) Where, after having taken into account any information furnished by the bidder under subsection (2) and the information included in the bid, the Board or public entity still has concerns as to the ability of the bidder to perform the procurement contract, it may reject the bid.

(4) The decision of the Board or public entity to reject a submission in accordance with this section, the reasons for that decision, and all communications with the bidder under this section must be included in the record of the procurement proceedings.

Unbalanced or front-loaded bids or proposals

79. (1) If the bid or proposal that results in the lowest evaluated substantially responsive bid is, in the Board or public entity's opinion, seriously unbalanced or front-loaded, the Board or public entity may require the bidder to provide written clarifications, including detailed price analyses to demonstrate the consistency of the prices with the scope of works or services, proposed methodology, and schedule.

(2) After evaluating the detailed price analyses, the Board or public entity may as appropriate:

- (a) accept the bid or proposal;
- (b) require that the total amount of the performance security be increased, at the expense of the bidder to a level not exceeding twenty percent of the contract price; or
- (c) reject the bid or proposal.

Life cycle costing

80. Life-cycle costing must to the extent relevant, cover parts or all costs over the life cycle of a product, service or works borne by the Board or public entity, including but not limited to -

- (a) costs relating to acquisition;
- (b) suitability and satisfactory quality of the goods, works and services;
- (c) costs of use, such as consumption of energy and other resources;

- (d) transportation;
- (e) storage;
- (f) maintenance and repair costs;
- (g) end of life costs, such as collection and recycling costs;
- (h) time of delivery;
- (i) benefits of broader elements whether environmental, social or economic;
- (j) depreciation; and
- (k) terms of payment.

Post-qualification

81. (1) Where no pre-qualification procedure was applicable, the qualification of the lowest evaluated substantially responsive bidder 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.

Rejection of bids or cancellation of bidding process

82. (1) The Board or a public entity may, at any time prior to the notification of a contract award, reject all bids or cancel the bidding process, without entering into a contract, if -

- (a) all the bids are non-responsive;
- (b) all submitted or evaluated bids are unreasonably above the applicable cost estimate;
- (c) the subject procurement is overtaken by -
 - (i) operation of law; or
 - (ii) substantial technological change;

- (d) the operational procurement need has ceased to exist or changed significantly;
- (e) the goods, works or services are no longer required;
- (f) it has been established that there is a reasonable belief that there has been collusion among the bidders as contemplated in subsection (5);
- (g) an irregularity that warrants the cancelation of the bidding process occurred;
- (h) it is not financially sustainable to proceed with the bid;
- (i) it does not create or achieve the expected outcome; or
- (j) upon expiry of the bid validity period.

(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 within three days of such rejection or cancellation as contemplated in subsection (1) providing reasons for such rejection or cancellation and indication of the finality of the rejection or cancellation.

(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).

- (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
 - (c) 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.

Award of procurement contracts

83. (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).

(2) 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.

(4A) A bidder referred to in subsection (4)(b) may, within five 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 no less than 10 days from the date of the lapsing of the standstill period, notify the bidder of its decision.

(4B) The Board or public entity must assess an application for reconsideration made by a bidder under subregulation (4A), and the Board or public entity may -

- (a) refer the matter to the bid evaluation committee, if the Board or public entity is of the view that the application for reconsideration warrants a re-evaluation of the bids;
- (b) reaffirm the earlier decision or recommend selection of a new bidder for award; or
- (c) cancel the bidding process.

(4C) Where the Board or public entity arrived at a different decision than the earlier decision, the Board or public entity must issue a revised executive summary and notify all bidders that any bidder aggrieved by such revised decision, may apply to the Review Panel within the timeframe specified in section 59(1).

(4D) If the bidder referred to in subsection (4A) does not, in terms of that subsection, receive a response from the Board or public entity within the 10 days referred to in subsection (4A), the aggrieved bidder may within five days following the last day of the 10 days referred to in that subsection apply to the Review Panel for review of the decision or action as contemplated in section 59(1).

(4E) If the bidder referred to in subsection (4A), receives an unsatisfactory response from the Board or public entity the aggrieved bidder may within five days of receipt of the decision of the Board or public entity regarding the reconsideration, apply to the Review Panel for review of the decision or action as contemplated in section 59(1).

(4F) 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 null and void from inception.

(4G) An aggrieved bidder must exhaust remedies under this section before applying for review under section 59(1).

(4H) The Board or public entity may not consider an application for reconsideration from a bidder received after the five days referred to in subsection (4A).

(4I) Subsection (4A) does not apply to a bidder which is unsatisfied with a decision following reconsideration made in terms of this section by the Board or public entity and such aggrieved bidder may only apply for review in accordance with section 59(1).

(4J) Where the Board or the public entity has made a different decision other than the previous decision, any other bidder who is aggrieved by such decision may launch an application for review with the Review Panel.

(4K) An application for reconsideration may only be lodged once with the Board or public entity, thereafter any application for review must be lodged with the Review Panel.

(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.

(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, including with regards to reconsideration of a bid.

(3) Where a procurement process is divided into separate lots or multiple contracts, and a review is initiated concerning one or more of these lots or contracts, the Board or public entity must not be precluded from proceeding with the award of any other lot or contract that is not the subject of such a challenge.

(4) Where the Board or public entity determines that there is overcommitment by the contractor, supplier or service provider, the Board or public entity may limit the number of award to such a contractor, supplier or service provider.

(5) For purposes of promoting the equitable distribution of procurement opportunities and to foster supplier development and empowerment, a bidder shall be awarded no more than one (1) procurement contract within a single financial year.

(6) The limitation specified in Subsection (5) shall apply solely in respect of goods, services, and works for which there is sufficient competition in the market.

(7) For the purposes of this Section, "sufficient competition" shall be defined as the presence of at least three (3) qualified and responsive bidders for a particular procurement opportunity.

(8) The limitation in Subsection (5) may be waived by the relevant public entity, subject to the written approval of the Authority, in any of the following exceptional circumstances:

(a) The procurement is for an emergency situation.

(b) The procurement is a single-source procurement where only one bidder can provide the required goods, services, or works.

(c) The procurement is of a highly specialized nature and the number of qualified bidders in the market is limited.

Variations and lowest bid exceeding the prescribed threshold

84. (1) Where 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, the public entity must obtain authorisation from the Minister to proceed with the evaluation.

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

(3) Where the lowest bid submitted in response to an invitation made by a public entity exceeds the threshold of the public entity, the public entity must obtain authorisation from the Minister to proceed with the evaluation.

Briefing of unsuccessful bidders

85. The Board or public entity, on request of an unsuccessful bidder, must **within 10 days** 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).

Registration of suppliers

86. (1) The Authority must maintain and continuously update lists of vendors in various specific categories of goods, works or services according to procurement needs.

(2) An application to be registered and included in the list of the Authority must be made at anytime on the e-gp system, at no cost and must contain proof of the following -

- (a) eligibility criteria as prescribed in this Act; and
- (b) capability criteria that defines necessary qualifications, experience, resources, equipment and facilities to provide what is being procured.

(3) The Board or public entity may seek clarification from an applicant contemplated in subsection (2) on eligibility but not on capability.

(4) The lists must be applied for all procurement methods referred to in section 27 and must-

- (a) be generated through the e-gp system ;
- (b) allow for continuous applications and updating;
- (c) be evaluated leading to registration every six months;
- (d) be generated through market knowledge and survey; and
- (e) provide for any other considerations as may be prescribed.

PART 9 PROCUREMENT CONTRACTS

Requirements related to procurement contracts

87. (1) The procurement management unit in consultation with the user department must prepare the procurement contract in line with the award decision.

(2) A procurement contract must only be entered into by a public entity and a successful bidder once the requirements of performance security if required, has been met.

(3) The requirements as contained within the bidding document are the basis of all procurement contracts and the procurement contract must include the following contents:

- (a) returnable bidding document by the bidder;
- (b) contract form;
- (c) bid form;
- (d) price schedule or bills of quantities submitted by the bidder;
- (e) schedule of requirements;
- (f) technical specifications / terms of reference;
- (g) any clarifications that emanate from the procurement proceedings;
- (h) general conditions of contract;
- (i) special conditions of contract;
- (j) notification of award;
- (k) performance security;
- (l) any other relevant contents as prescribed.

(4) The procurement contract to be used by the public entity must be in the prescribed form.

(5) A procurement contract to be entered into by a public entity, within a certain threshold as prescribed, must be legally scrutinized and cleared prior to the signing thereof. (An accounting officer of a public entity must ensure that all contracts of a value as prescribed are legally scrutinized and cleared before it is signed)

(6) A procurement contract must be in writing and is effective upon the date as prescribed by the contract.

(7) Failure by the successful bidder to sign the procurement contract and provide performance security where required, within the prescribed period is a ground for the cancellation of the procurement award.

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

(9) A vendor is allowed to cede its right of payment in terms of the procurement contract to a commercial bank or financial institution within Namibia

(10) 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.

(11) A vendor must as part of its contractual obligation conduct a transfer of skill where applicable in terms of the procurement contract.

(12) An accounting officer of a public entity must not sign any other binding documents as presented by the vendor with an offer that entails other terms and conditions which alters and or supersede the terms and conditions of the procurement contract.

Performance Security

88. (1) A public entity may request performance security to secure the vendor/s obligation to fulfil the procurement contract and must set out in the bidding documents and the procurement contract the requirements for such performance security.

(2) The value of required performance security must not be more than fifteen percent of the value of the procurement and may be expressed either as a fixed amount or as percentage for the value of procurement.

(3) The public entity must in determining the amount of performance security required, take into account :

- (a) the cost to the supplier of obtaining a performance security;
- (b) the value of the procurement contract;
- (c) the risk of a vendor failing to fulfil his or her contractual obligations;
- (d) the extent of protection offered to the public entity through alternative means, such as payment retentions; and
- (e) any other matter as may be prescribed.

(4) The value of a performance security may, where appropriate, be progressively reduced in line with the vendors progress and associated risk as prescribed, in delivering or completing the goods , works or services to which the security relates.

(5) The bidding documents and procurement contract must state that the performance security must be an unconditional guarantee -

- (a) issued in the prescribed form by a commercial bank or financial institution having its place of business in Namibia;
- (b) acceptable to a public entity or the board;
- (c) which has a validity period of 90 days beyond the procurement contract duration.

(6) Where performance security is issued by a foreign commercial bank and or financial institution, the bidder in whose favour such performance security is given must provide a public entity with an unconditional counter-guarantee in compliance with the requirement of subsection (5(b and c) from a commercial bank or financial institution from Namibia.

(7) A public entity may in writing, confirm the validity of the performance security with a proposed issuer or confirmer of the performance security.

(8) Despite accepting performance security from the bidder, a public entity may reject a performance security provided by a bidder if the issuer or confirmer has become insolvent or otherwise lacks creditworthiness and the bidder must then provide the public entity with an acceptable performance security in line with the requirement of the provisions for subsection (5).

(9) The performance security may not generate interest.

(10) The public entity or the board must authorize the release of the performance security promptly to the vendor upon —

- (a) completion of all the vendor's contractual obligations which are subject to the security; or
- (b) termination of the procurement contract for a reason that is not attributable to any fault of the vendor.

(11) In case the procurement contract is not fully or well executed, the performance security must be seized by the public entity or the board as compensation without prejudice to other penalties provided for by the Act.

Publication of procurement contract

89. (1) A public entity or the board must publish on the e-procurement system,, within five days after the signing of the procurement contract, particulars relating to the procurement contract as prescribed

- (2) Particulars relating to the procurement contract must include —
 - (a) the title and reference number of the bid;
 - (b) the name and address of the parties to the contract, including beneficial ownership of the supplier or vendor;
 - (c) the procurement contract price;
 - (d) commencement date of the procurement contract;
 - (e) duration of the procurement contract.
- (3) This section does not apply to procurement contracts of security nature.

Amendments or variations to procurement contracts

90. (1) An amendment or a variation to a procurement contract resulting from a procurement proceeding is only effective if the parties agree in writing to such amendment or variation.

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

(3) An amendment or variation to the procurement contract for a reason as specified in section 36(2)(b) or (c) that increases the contract value by more than twenty five percent requires fresh procurement proceedings.

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

Contract Price Adjustments

91. (1A) public entity may not adjust the price stated in the procurement contract unless the procurement contract -

- (a) permits the price adjustment;
- (b) states the circumstance for the adjustment of the contract price; and
- (c) provides for the formula or method for the determination of the adjustment of the contract price.

(2) The adjustment of the contract price may not exceed fifteen percent as contemplated in section subsection 3,

(3) A public entity, which requires prior authorisation from Treasury, in terms of the State Finance Act, , must not adjust the contract price without such prior authorisation, whereas a public entity that does not require authorisation from Treasury in terms of the State Finance Act, , must not adjust the contract price without prior authorisation from its governing body.

(4) Where provision is made in the bidding document or procurement contract for foreign currency fluctuations the upward risk adjustment of such fluctuation is with the vendor.

Interest on overdue amounts and liquidated damages

92. (1) In terms of overdue amounts as per the procurement contract, a public entity is deemed liable for any interest accrued thereto unless the contract provides otherwise.

(2) Where the performance of a procurement contract is delayed as a result of the vendors action such vendor is deemed to is be liable for liquidated damages.

(3) The interest and liquidated damages to be paid under subsection(1) and (2) must be in accordance with prevailing commercial lending rate as determined by Bank of Namibia;

Advance payment

93. No works, goods or services as procured under a procurement contract will be paid for before they are executed or delivered and accepted by the accounting officer of a public entity.

Sub-contracting

94. (1) Where a vendor wants to subcontract part of the procurement contract such subcontracting is only allowed where the bidding document and procurement contract has made provisions for it.

(2) In the event that bidding document and the procurement contract is silent on such provisions as contemplated in sub section (1) the vendor needs prior approval of the accounting officer of the public entity.

(3) A subcontractor may not have been suspended or debarred from procurement proceedings in accordance with this Act or have participated in the procurement of goods, works or services related to that contract.

(4) The vendor remains accountable for the part of the procurement contract that has been subcontracted and has a duty to ensure that the subcontractor performs the duties and obligations of that part of the procurement contract.

Contract management and administration

95. (1) The public entity must certify that the goods, work or services procured are as per the specifications of the procurement contract in term of quality, quantity and price.

(2) For every complex and specialized procurement contract, the accounting officer of a public entity may appoint a contract implementation team which may include staff members from the public entity and or external experts including a consultant where applicable.

(3) For the purpose of managing complex and specialized procurement contracts the contract implementation team shall be responsible for—

- (a) monitoring the performance of the contractor, to ensure that all delivery or performance obligations are met or appropriate action taken by the procuring entity in the event of obligations not being met;
- (b) ensure that the contractor submits all required documentation as specified in the tendering documents, the contract and as required by law;

- (c) ensure that the procuring entity meets all its payment and other obligations on time and in accordance with the contract.
- (d) ensure that there is right quality and within the time frame, where required;
- (e) review any contract variation requests and make recommendations to the respective tender awarding authority for considerations and such reviews for variation shall be clearly justified by the technical department in writing backed by supporting evidence and submitted to the head of the procurement function for processing;
- (f) manage handover or acceptance procedures as prescribed;
- (g) make recommendations for contract termination, where appropriate;
- (h) ensure that the contract is complete, prior to closing the contract file including all handover procedures, transfers of title if need be and that the final retention payment has been made;
- (i) ensure that all contract administration records are complete, up to date, filed and archived as required; and
- (j) ensure that the contractor acts in accordance with the provisions of the contract;
- (k) ensure discharge of performance guarantee where required.

(4) The procurement management unit through the procurement committee must prepare and submit reports on all procurement contracts performance to the accounting officer of the public entity.

(5) The head of the procurement / user department / contract manager function shall be responsible for assisting the accounting officer to confirm the right quality, quantity and price of goods, works and services have been delivered to the procuring entity and shall issue a certificate of acceptance to the accounting officer except where technical specifications are from another technical department or professionals engaged to work on behalf of the accounting officer.

(6) Where goods, works and services under sub-section (2), are of technical nature and the specifications were provided by a technical department or professionals engaged to work on behalf of the accounting officer, that technical department or professionals engaged to work on behalf of

the accounting officer must be responsible for confirming the right quality and quantity of goods, works or services have been delivered.

Termination of contract due to changed circumstances

96.(1) Despite anything to the contrary in any other law, the accounting officer for a public entity or the board 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 fifteen percent.

(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.

(3) contract document shall specify the grounds on which the contract may be terminated and specify the procedures applicable on termination.

Procurement Contract close out

97.(1)The procurement management unit in consultation with the user department must submit a report to the accounting officer of the public entity and or the board through the procurement committee confirming delivery and acceptance of goods, works and services.

(2)The accounting officer of a public entity must close out a procurement contract immediately after completion and issue an appropriate certificate of completion to the vendor.

(3) Any commercial bank account opened in the execution of the procurement contract must be closed as soon as practically possible and financial report is provided to the accounting officer of the public entity or the board.

(4) In an event where equipment were bought in the execution of the project the accounting officer of a public entity and or the board must ensure that such equipment is registered in the government asset register.

PART 10
DISPOSAL OF ASSETS

Asset Disposal committee

98. (1) An accounting officer must establish an asset disposal committee as and when prescribed for the purpose of disposal of unserviceable, obsolete, obsolescent, or surplus stores, equipment or assets.

(2) The asset disposal committee is responsible for verification and processing of all disposal recommendations in liaison with the head of procurement management unit as prescribed.

Conditions to Dispose Public Property

99.(1) Notwithstanding anything to the contrary in any other law contained, no movable and no immovable property of the State may be alienated, let, exchanged, donated or otherwise disposed of without the authorization of the Treasury.

(2) A public entity may only dispose of state assets where one of the following conditions is satisfied:

- (a) the asset is no longer needed for the objectives of the public entity;
- (b) the cost of retaining the asset is so high that disposing of the asset is economically a better option;
- (c) the asset does not function properly or becomes out of use for various reasons; or
- (d) it is established that the asset is surplus in view of the public entity's long, medium and short term work plans.

Conditions to Dispose Public Property

100.(1) Public entities may use the following methods of disposal based on the nature of the asset:

- (a) by selling the asset by bid or auction to the public using the electronic system in the condition in which it is or parts thereof;
- (b) by transferring the asset to another public entity or other party as prescribed by way of donation;
- (d) by trading in the asset for another type of asset as prescribed;
- (c) through waste management disposal methods as prescribed;

(d) through suppressing, neutralizing or diluting the property as prescribed;

(e) through the recycling of the asset as prescribed;

(2) In disposing of state assets using the afore-stated methods, public entities must as a determining factor consider the value to the State in disposing of such asset.

(3) A public entity must report to the Authority and Treasury state assets disposed of, the methods used to dispose of such assets and the proceeds from the sale of such assets, if any.

Precautions to be Taken in the Process of Asset Disposal

101. (1) A public entity must comply to the following precautionary measures when disposing of state assets:

(a) identify the legal owner of the asset to be disposed of; provided that, in default of documentary proof of ownership for the asset under its possession, the public entity may transfer the assets by warranting the buyer against possible dispossession by a third party;

(b) obtain the prior authorization of Treasury as per the provisions of the State Finance Act, to dispose of the state assets in question.

(c) consult with or seek the assistance of the appropriate entities in disposing of assets of special significance or that are harmful to the health or the environment such as expired chemical substances or products, drugs or discarded radiation emitting or electronic equipment or substances.

(d) any other measures as prescribed.

Proceeds from Asset Disposal

102. (1) The proceeds from the disposal of state assets must be dealt with in a manner as directed by Treasury per the provisions of the State Finance Act and or as otherwise prescribed.

Administrative Review

103.(1) A potential bidder, bidder or vendor aggrieved or who claims to have suffered, or are likely to suffer, loss by a decision and or action taken by a public entity or the board in the administrative processes and procedures relating to the award of a procurement contract and or any other contract in respect of the the letting and hiring and or acquisition and or granting of rights or disposal of assets, which is contrary as provided for by this Act; may apply by way of a review application to the Review Committee for a review of the decision and or action taken.

(2) An application for review may only be lodged after the following requirements has been met:

(a) The bidder who is aggrieved by a decision or action of the Board or public entity must exhaust remedies under section 77.

(b) the aggrieved potential bidder, bidder or vendor has made a written complaint in respect of the decision and or action taken by the public entity or board;

(c) the public entity or board is afforded a period of five days to answer to such a complaint.

(2) A secretary to a Review Committee shall notify the Accounting Officer of a public entity, of a pending review from a Review Committee.

(3) An application for review brought as a result of the notice of selection of award as per section must be lodged within the time limitations as specified in that section.

(4) Where the procurement and or administrative proceedings conducted are the subject matter of the review application, such proceedings are suspended until a decision has been made by the Review Committee.

(5) A Review Committee shall make a decision within fourteen days after receiving a application for review.

(6) An application for review made in terms of subsection (2) does not suspend the award of a procurement contract and or any other contract in respect of the the letting and hiring and or acquisition and or granting of rights or disposal of assets. unless an appropriate order to that effect is made by the Review Committee.

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

The application for review should be accompanied by an application fee as prescribed.

Administrative Review Committee

104. There is hereby established an independent administrative review committee to be known as the Review Committee, responsible to conduct administrative reviews on the decisions and or actions taken by the board or public entities in the administrative processes and procedures relating to the award of a procurement contract and or any other contract in respect of the the letting and hiring and or acquisition and or granting of rights or disposal of assets, which is contrary as provided for by this Act;.

Functions and powers of the Administrative Review Committee

105.(1)The Review Committee has the following functions:

(a) to review, and adjudicate an application for review lodged by an aggrieved bidder or vendor on any administrative action or decision taking by a public entity and or the board in relation to any provisions of this Act.

(b)to review and adjudicate any application for suspension and debarment brought by a public entity and or the board in relation to any provisions of this Act.

(c) monitor the implementation of its decisions and report non-compliance of the Act, including non-compliance to its orders to the appointing authorities of the public entities and the authority.

(d)to perform any other function as referred to the Review Committee by the Minister in relation to any provision of this Act.

(2) In performance of its functions under subsection (1) of this section, the Review Committee has the following powers:

(a)to request any information needed in the review and adjudication of the application lodged by the applicant.

(b)to summon any witness to provide written and oral evidence in relation to the application for review and or the application for suspension and debarment lodged.

(c)dismiss the application for review and or the application for suspension and debarment.

(d) direct the public entity or the board that has acted or proceeded in manner that is not in compliance with this Act to act or proceed in a manner that complies to this Act;

(e) set aside in whole or in part a decision or an action of the public entity or the board that is not in compliance with this Act, other than any decision or action bringing the procurement contract or the framework agreement into force, and refer the matter back to the public entity or the board for reconsideration with specific instructions;

(f) correct a decision or action by the public entity or the board that is not in compliance with this Act;

(g) confirm the decision of the public entity or the board;

(h) make an order that the procurement proceedings be terminated and start afresh.

(i) make appropriate orders to enforce its decisions, including cost orders.

(j) dismiss with costs an application, which is frivolous or vexatious in nature or which was made solely for the purpose of delaying the procurement proceedings or performance of a contract and the applicant shall forfeit the deposit paid and be debarred by the Authority.

(k) make rules and regulations on the process and procedure on the review and suspension and debarment applications and how proceeding related thereto must be conducted.

Constitution of the Review Committee

106.(1) The Review Committee consists of seven members with 8-10 years' experience in the required field appointed by the Minister.

(2) The following persons serve in representative capacities and are nominated as follows:

(a) one member of the Bar as nominated by the Society of Advocates in Namibia; or one member of the Judiciary as nominated by the Judicial Service Commission of Namibia;

(b) one legal practitioner as nominated by the Law Society of Namibia;

(c) one person nominated by the Public Accountants and Auditors Board of Namibia;

(d) one person nominated by the Quantity Surveyors Board of Namibia;

(e) one person nominated by the Engineering Council of Namibia;

(f) two persons appointed through an independent application process having a professional qualification in procurement and supply chain management.

(3) The Minister appoints the chairperson from amongst the members appointed as per sub section (2) of which such chairperson must have expertise in law and or alternative dispute resolution.

(4) The Minister appoints the deputy chairperson from amongst the members appointed as per sub section 2 of which such deputy chairperson must have expertise in procurement and supply chain management.

(5) The Minister must ensure diversity in the appointment of the Review Committee appointed as per sub section 2.

Term and Vacation of Office of the Review Committee

107. (1) A member of the Review Committee is appointed for a term of three years and is eligible for re appointment, at the expiration of that term, for a period not exceeding one additional term.

(2) A member of the Review Committee vacates his or her office, if the member -

(a) becomes disqualified in terms of section 30;

(b) resigns his or her office by giving the Minister a written 30 days' notice of his or her intention to resign; or

(c) is removed from office by the Minister under subsection (2).

(3) The Minister, by notice in writing, may remove a member of the Administrative Review Committee or the secretariat from office if the Minister, after giving the member a reasonable opportunity to be heard, is satisfied that the member -

(a) has failed to comply with section (...);

(b) is guilty of neglect of duty, demonstrable incompetence, misconduct or breach of trust in the execution of its duties as a member of the Review Committee;

(c) is incapable of performing the functions of his or her office, by reason of physical or mental illness;

(d) discloses any confidential information to a person not lawfully entitled to receive such information; or

(e) improperly acts on or uses information obtained as a result of his or her membership on the Committee.

(4) If the office of a member of the Review Committee becomes vacant, the Minister must appoint a person as member of the Review Committee as per the provisions of section 83.

Remuneration and allowances of members of Review Committee

108. A member of the Review Committee 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.

Secretariat of the Review Committee

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

(2) The secretariat be headed by a staff member in management position with a law qualification and procurement as an advantage.

Debarment of a potential bidder, bidder or vendor

110. (1) The Review Committee may debar a potential bidder, bidder or vendor from participating in the procurement or administrative proceedings relating to the award of a procurement contract and or any other contract in respect of the letting and hiring and or acquisition and or granting of rights or disposal of assets, on the ground that the such potential bidder, bidder or vendor —

(a) has committed an offence under this Act;

(b) is guilty of 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;

(c) has been convicted of an offence relating to obtaining or attempting to obtain a procurement contract within five years prior to the bidding; or

(d) has been convicted of 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.

(e) is engaged in bid rigging or collusion with other potential bidders, bidders or vendors.

(f) has breached a procurement contract or any other contract in respect of the letting and hiring and or acquisition and or granting of rights or disposal of assets;

(g) has, in procurement proceedings or administrative proceedings relating to the award of a procurement contract and or any other contract in respect of the letting and hiring and or acquisition and or granting of rights or disposal of assets given false information about his or her qualifications and or particulars material to the award of such contract.;

(h) has refused to enter into a written contract as required under section of this Act;

(j) has breached a code of ethics issued by the Authority;

(k) is guilty of a serious violation of fair employment laws and practices; or

(l) has engaged as is determined by the Review Committee to have filed a request that is frivolous or vexatious or was made solely for the purpose of delaying the procurement proceeding or a performance of a contract.

(2) Debarment of a potential bidder, bidder or vendor under subsection (1) may not be effected unless the Review Committee -

(a) consider the factual supporting documentation, as submitted by the public entity or the board in support of the application for debarment submitted.

(b) gives reasonable notice to the potential bidder, bidder or vendor to be debarred; and

(c) gives reasonable opportunity to the potential bidders, bidder or vendor to respond to the debarment application.

(3) The Review Committee may suspend a potential bidder, bidder or vendor from participating in any procurement proceedings and or asset disposal proceedings, depending the outcome of the debarment application.

(4) Order of debarment applicable on beneficial ownership of debarred bidder.

(5) An individual who is an owner, director or senior executive of a debarred company or business and any company which they form after debarment shall be considered debarred until the debarment is lifted.

(6) An award for debarment is for a specified period not exceeding five years

(7) A list of debarred contractors shall be published on the e-gp system.

Confidentiality in review proceedings

111. (All information in proceedings at the Review Committee are confidential, and a person who discloses such information to a third person without the authorisation of Review Committee 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.

PART 12 PROCUREMENT COURT

Right of appeal

112. A potential bidder, bidder or vendor aggrieved by the decision of the Review Committee may in the manner provided for in the rules made under section appeal against the decision of the Review Committee to the Procurement Court.

Establishment of Procurement Court

113.(1) There is established a Procurement Court to adjudicate matters relating to the award of a procurement contract and or any other contract in respect of the letting and hiring and or acquisition and or granting of rights or disposal of assets,

(2) The Procurement Court is a division of the High Court and a court of record.

(3) The Procurement Court has in the exercise of its powers and functions, all the powers of the High Court conferred by Articles 78(4) and 80 of the Namibian Constitution and the High Court Act, 1990 (Act No. 16 of 1990) or by any other law or as may be prescribed.

Jurisdiction of Procurement Court

114.(1)The Procurement Court has jurisdiction to hear and determine appeals against decisions of the Review Committee

(2) A potential bidder, bidder or vendor, who is aggrieved or claims to be aggrieved due to any non-compliance with this Act must exhaust all available remedies under this Act before referring a matter to the Procurement Court.

Constitution of Procurement Court

115.(1)The Procurement Court consists of such number of judges of the High Court as may be assigned by the Judge-President, but a single judge of the court constitutes a court.

(2) The Judge-President of the High Court of Namibia or in his absence, the Deputy Judge-President of the High Court of Namibia, must designate a judge assigned under subsection (1) as the presiding judge of the Procurement Court.

(3) The Judge-President, or in his or her absence, the Deputy Judge-President of the High Court of Namibia must determine whether the designation referred to in subsection (2) applies for a fixed period or for the hearing of a particular case.

(4)The Executive Director of the Office of the Judiciary must designate staff members of the Office of the Judiciary to provide administrative and secretarial services to the Procurement Court.

(5)The judge presiding over a matter before the Procurement Court may on his or her own accord or on request from one party or both parties to a matter, invite any person who has expert knowledge of or experience in a matter before the Procurement Court to attend a hearing and advise the Procurement Court on any matter to be adjudicated upon by the Procurement Court in the proceedings in question.

Procedure at Procurement Court

116.(1) The Judge-President, or in his or her absence, the Deputy Judge President of the High Court of Namibia may determine the place where the hearing of the Procurement Court will take place.

(2) The sittings of the Procurement Court are open to the public.

(3)If a potential bidder, bidder or vendor, the Board or a public entity is dissatisfied with a decision of the Review Committee, potential bidder, bidder or vendor, the Board or the public entity may within 14 days from the date that a decision is made by the Review Committee or from such further period as the presiding judge of the Procurement Court may allow, appeal against the decision to the

Procurement Court.

(4) Any appeal or any matter concerning any non-compliance with this Act brought before Procurement Court must be brought within the time frame provided in the rules made under section 112.

(5) The presiding judge of the Procurement Court must at a hearing of the Procurement Court conduct the proceedings in a manner provided for by the rules made under section

Time frame for delivery of decisions by Procurement Court

117.(1) The Procurement Court must at the conclusion of a hearing or within 30 days after the conclusion of the hearing, having due regard for the complexity of the matter, give a written decision and reasons for the decision.

(2) The Procurement Court must determine all essential related goods, works and or services procurement matters within 14 days after the appeal concerned has been filed.

(3) The Minister may by notice in the Gazette determine the other essential goods, works and services referred to in subsection (2).

(4) Any other procurement related matter may be determined by the Procurement Court within the time period determined in the rules.

Rules of Procurement Court

118.(1) The Judge-President may after consultation with the Minister, make rules to regulate the conduct of the proceedings of the Procurement Court, and may provide for –

- (a) time, the form and manner of appeal to the court;
- (b) conduct of proceedings before the Procurement Court by enabling the control of the litigation process by judges so as to speed up litigation in a fair, just and cost-effective manner;
- (c) enforcement of judgments of the Procurement Court;
- (d) the steps for instituting and defending proceedings in Procurement Court;

- (e) circumstances under which procurement disputes may be adjudicated without a trial or hearing;
- (f) circumstances under which the court may hear oral evidence;
- (g) the manner in which the parties' settlement agreement in respect of their dispute may be made an order of court and enforced; and
- (h) generally any matter which may be necessary or expedient to provide in order to ensure the proper dispatch and conduct of the business of the Procurement Court.

(2) To the extent that the rules contemplated in subsection (1) do not deal with a matter otherwise provided for in the rules made under section 39 of the High Court Act, 1990 (Act No.16 of 1990), those rules and the Act apply.

(3) Despite the provisions of this section, the rules of the High Court apply pending the issuance of the rules of the Procurement Court as contemplated in this section.

PART 13 PROCUREMENT INTEGRITY

Artificial division

119.(1) A public entity or the Board may not artificially divide the modalities for procurement in such a way as to avoid any monetary threshold and competitive procurement method laid down by or under this Act.

(2) The procurement referred to in subsection (1) should relate to the cumulative value of the procurement.

Conduct of bidders and suppliers

120.(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.

PART 14

PREFERENCES

Application of this Part

121. 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 through the code of good practice.

Codes of good practice

122. (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 -

- (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 affirmative action and the empowerment of previously disadvantaged groups and the youth a code of good practice must give priority to such groups.(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

(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

123. (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.

(1) 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 116 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 in subsection (3A)-

(a) for a company 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 Namibia citizens ; and
- (iii) 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.

(b) for joint ventures of local 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 citizens of Namibia;
- (iii) the joint venture itself is registered in Namibia;
- (iv) the joint venture agreement -

- (aa) contains the minimum terms and conditions prescribed by the Minister; and
- (bb) does not have an arrangement whereby any major share of the net profit or dividend accrues to or is to be paid to persons who are not citizens of Namibia or to entities which would not be eligible for national preferences under this section; and”.
- (c) for partners or individuals trading as suppliers and the majority of shares in partnership is held by the citizens of Namibia, or the individuals are Namibian citizens.
- (d) 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.
- (e) for individuals trading as suppliers, if the individuals are Namibian citizens;
- (f) 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
- (g) for a trust registered under the laws regulating trusts in Namibia if a majority of the benefits of the trust accrues to Namibian citizens.
- (3) 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

124. (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.

(4) 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.

(5) 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.

(6) 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 15

GENERAL PROVISIONS

Directives by Minister

125. The Minister may make directives on 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 state assets.

Delegation and assignment by accounting officer

126. (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.

(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.

(2) 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

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

Undue influence

128. (1) A person who directly or indirectly, in any manner, influences, or attempts to influence, a member of the-

- (a) Policy Unit;
- (b) Authority;
- (c) Board;
- (d) Review Committee;
- (e) Bid Evaluation Committee;
- (f) Internal procurement structures; or
- (g) any staff member of the Ministry, Authority, Board, Review Committee or of a public entity 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

129. A member of the Board, Review Committee, or a procurement committee or a bid evaluation committee, or a procurement management unit and or any staff member of the Ministry, Authority, Board, Review Committee or of a public entity 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

130. (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;
- (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) efficiency and transparency without affecting the sanctity, security and recording of such communication and the information contained therein; and

- (g) 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

131. (1) The Public Procurement Act, 2015 (Act No. 15 of 2015) as amended is repealed.

(2) Subject to section 126, 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

132. (1) A procurement 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 125, as if this Act has never been enacted.

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

Short title and commencement

133. (1) This Act is called the Public Procurement Act, 2025 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)

