

TENDER BOARD OF NAMIBIA ACT 16 OF 1996

[ASSENTED TO 26 JULY 1996] [DATE OF COMMENCEMENT: 1 OCTOBER 1996]

(Signed by the President)

ACT

To regulate the procurement of goods and services for, the letting or hiring of anything or the acquisition or granting of rights for or on behalf of, and the disposal of property of, the Government; to establish the Tender Board of Namibia and to define its functions; and to provide for incidental matters.

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1 Definitions

In this Act, unless the context otherwise indicates-

"administrative head" means the permanent secretary of any office, ministry or agency;

"agency" means an agency as defined in section 1(1) of the Public Service Act;

"agreement" means an agreement concluded under section 7(1) (a) ;

"Board" means the Tender Board of Namibia established by section 2(1);

"chairperson" means the chairperson of the Board;

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

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

"member" means a member of the Board or an alternate member acting as a member of the Board, as the case may be, appointed by or in terms of section 3(1) or section 3(2), respectively;

"Minister" means the Minister of Finance;

"ministry" means a ministry as defined in section 1(1) of the Public Service Act;

"office" means an office as defined in section 1(1) of the Public Service Act;

"Permanent Secretary" means the Permanent Secretary: Finance;

"procurement" means the acquisition by any means, including by purchase, rental, lease or hire-purchase, of goods or of services;

"Public Service Act" means the Public Service Act, 1995 (Act 13 of 1995);

"regional council" means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992);

"security related" , in relation to goods, services and property, means goods, services and property in respect of which complete and continuous secrecy is required in the national interest;

"services" includes any construction;

"staff member" means a staff member as defined in section 1(1) of the Public Service Act;

"this Act" includes the regulations.

2 Establishment of Board

(1) There is hereby established a board to be known as the Tender Board of Namibia.

(2) On the date of commencement of this Act the South West Africa Tender Board established under section 26A of the Finance and Audit Ordinance, 1926 (Ordinance 1 of 1926), shall cease to exist and as from that date a reference in any law or otherwise to such board shall be construed as a reference to the board established by subsection (1).

3 Composition of Board

(1) The Board shall consist of-

- (a) the Permanent Secretary, who shall be the chairperson;
- (b) one staff member from each office, ministry and agency nominated-
 - (i) in the case of the Office of the President, by the President;
 - (ii) in the case of the Office of the Prime Minister, by the Prime Minister; and
 - (iii) in the case of ministries and agencies, by the Minister concerned, and appointed by the Minister; and
- (c) any other two persons appointed by the Minister who shall-
 - (i) be Namibian citizens; and
 - (ii) not be staff members.

(2) The Minister shall, with due regard to paragraphs (b) and (c) of subsection (1), appoint for each member of the Board appointed by him or her in terms of those paragraphs, an alternate member, nominated in so far as applicable in accordance with the provisions of those paragraphs, and any alternate member so appointed may during the absence of the

member with respect to whom he or she is appointed or his or her inability to act as member, act as member in place of that member.

(3) The chairperson of the Board shall designate any other member as deputy chairperson, who shall act as chairperson of the Board when the chairperson is absent or is unable to perform his or her duties, and when both the chairperson and the deputy chairperson are absent from a meeting of the Board, the members present thereat may elect one of their number to preside at such meeting.

4 Tenure and vacation of office

(1) Subject to the provisions of subsection (3), a member who is in the employment of the Government shall hold office during the Minister's pleasure and any other member shall hold office for a period of three years.

(2) Any member whose period for which he or she was appointed has expired, shall be eligible for reappointment.

- (3) A member shall vacate his or her office if he or she-
- (a) ceases to be in the employment of the Government or, in the case of a member appointed in terms of section 3(1) (c) and who is not in the employment of the Government, that member resigns by written notice addressed to the chairperson;
 - (b) has, without sufficient reasons or the leave of the Board, been absent from three consecutive meetings of the Board; or
 - (c) is removed from office under subsection (4) by the Minister.

(4) The Minister may at any time remove a member appointed by him or her from office for reasons which in the opinion of the Minister render him or her unsuitable to serve on the Board.

5 Remuneration of members

The remuneration and allowances of a member not being in the full-time employment of the Government shall be determined from time to time by the Minister.

6 Disclosure of interest

(1) A member who has or intends to acquire a direct or indirect personal interest in a tender or an agreement, shall in writing declare the nature, extent and particulars of such interest to the Board.

(2) A member shall not take part in any consideration or discussion of, or exercise any vote on a matter in which he or she has an interest as contemplated in subsection (1).

(3) Any member who contravenes or fails to comply with a provision of subsection (2) shall be guilty of an offence and on conviction be 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.

(4) The provisions of this section shall apply *mutatis mutandis* to any official involved in the drafting of a submission to the Tender Board.

7 Powers and Functions of Board

(1) Unless otherwise provided in this Act or any other law, the Board shall be responsible for the procurement of goods and services for the Government, and, subject to the provisions of any other Act of Parliament, for the arrangement of the letting or hiring of anything or the

acquisition or granting of any right for or on behalf of the Government, and for the disposal of Government property, and may for that purpose-

- (a) on behalf of the Government conclude an agreement with any person within or outside Namibia for the furnishing of goods or services to the Government or for the letting or hiring of anything or the acquisition or granting of any right for or on behalf of the Government or for the disposal of Government property;
- (b) with a view to conclude an agreement contemplated in paragraph (a) , invite tenders and determine the manner in which and the conditions subject to which such tenders shall be submitted;
- (c) inspect and test or cause to be inspected and tested goods and services which are offered or which are or have been furnished in terms of an agreement concluded under this section, and anything offered for hire;
- (d) accept or reject any tender for the conclusion of an agreement contemplated in paragraph (a) ;
- (e) take steps or cause steps to be taken to enforce any agreement;
- (f) on behalf of the Government resile from any agreement and, in an appropriate case, claim damages;
- (g) subject to the provisions of subsection (2) on such conditions as it may determine, exempt any person with whom an agreement has been concluded from compliance with such agreement or condone the failure of that person to comply with such agreement;
- (h) subject to the provisions of subsection (2), negotiate a settlement with any person referred to in paragraph (g) or amend the agreement in question with the approval of that person;
- (i) with a view to procure goods and services of a value not exceeding N\$5 500, authorize the chairperson to consider and to accept or reject on behalf of the Board any tender or application for prequalification, as the case may be, submitted in respect thereof;
- (j) exercise such other powers as may be conferred upon it by or under this Act or any other law.

(2) No exemption, condonation, settlement or amendment which may be to the prejudice of the Government shall be granted, negotiated or made under paragraph (g) or (h) of subsection (1) without the prior approval of the Treasury.

8 Committees of Board and delegation of powers

(1) The Board may from time to time from among its members appoint a committee to deal with any specific case on behalf of the Board and designate a chairperson for that committee.

(2) The Board may, subject to such conditions as it may determine, from time to time delegate any of the powers conferred upon it by or under this Act to the committee appointed by it under subsection (1).

(3) A delegation under subsection (2) shall not divest the Board of any power so delegated, and the Board may at any time vary or set aside any decision made thereunder by the committee.

9 Meetings of Board

(1) Meetings of the Board shall be held at such times and places as the chairperson may determine from time to time, and any meeting so convened may be adjourned or postponed by the chairperson.

(2) Eight members shall constitute a quorum for any meeting of the Board.

10 Decisions of Board

No decision of the Board or act performed by authority of the Board shall be 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 authorized, if the decision was taken or the act was authorized by the requisite majority of the members who were present at the time and entitled to sit as members.

11 Invitation of tenders and applications for prequalification

An invitation-

- (a) for tenders; or
- (b) in the case where tenderers have to prequalify, for applications for prequalification,

shall be published by the Board once in the *Gazette* and at least once in each of the newspapers contracted by the Government.

12 Contents of applications for prequalification

An application for prequalification contemplated in section 11 (b) shall-

- (a) be made to the Board in such manner and form and within such period as may be determined by the Board; and
- (b) be accompanied by such documents and information as the Board may require in the particular case to enable it to select potential tenderers.

13 Final invitation of tenders

Where applications for prequalification contemplated in section 11 (b) have been invited, the Board shall restrict its final invitation to tender only to those potential tenderers selected in accordance with the provisions of section 12.

14 Contents of title of tender

A title of tender shall as far as practicable contain at least the following information:

- (a) instructions for preparing tenders;
- (b) technical and quality characteristics of the goods to be procured or services to be rendered or property to be disposed of or the nature of rights to be acquired or granted, including, where appropriate, technical specifications, plans and drawings;
- (c) currency in which the tender price is to be formulated and expressed;
- (d) the manner, place and closing date for submission of tenders;
- (e) the period during which tenders shall be in effect; and
- (f) tender security to be furnished and conditions for its refund.

15 Examination, evaluation, comparison and non-acceptance of tenders

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

(2) The Board shall not consider a tender unless-

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

(3) The Board shall, with due regard to subsection (2), not accept a tender-

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

(4) In examining a tender, the Board shall give consideration to the capacity, experience, integrity and financial status of the tenderer.

(5) In comparing tenders, the Board shall give effect to the price preference policy of the Government to redress social, economic and educational imbalances in a democratic society and to encourage industrial and commercial interests in Namibia.

(6) If the Board does not accept the lowest tender or tenders from among all the tenders submitted to it, the reasons for not accepting the lowest tender or tenders shall be kept on record by the Board.

(7) All tenders shall be opened in public.

16 Acceptance of tenders, and entry into force of agreements

- (1) The Board shall in every particular case-
- (a) notify the tenderers concerned in writing of the acceptance or rejection of their tenders, as the case may be, and the name of the tenderer whose tender has been accepted by the Board shall be made known to all the other tenderers;
 - (b) on the written request of a tenderer, give reasons for the acceptance or rejection of his or her tender.

- (2) Where in terms of a title of tender-
- (a) a written agreement is required to be concluded after the acceptance of a tender, the Board and the tenderer concerned shall, within 30 days from the date on which that tenderer was notified accordingly in terms of subsection (1) (a) or within such extended period as the Board may determine, enter into such an agreement;
 - (b) a written agreement is not required to be so concluded, an agreement shall come into force on the date on which the tenderer concerned is notified in terms of subsection (1) (a) of the acceptance of his or her tender.

(3) If, in the circumstances contemplated in subsection (2) (a) , the tenderer fails to enter into an agreement within the period mentioned in that subsection or, if that period has been extended by the Board, within the extended period, or if the tenderer, when required to do so, fails to furnish the required security for the performance of the agreement, the Board may withdraw its acceptance of the tender in question and-

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

17 Exemption from tender procedures

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

- (a) the estimated value thereof does not exceed N\$ 10 000;
- (b) the opposite party to an agreement to be entered into is-
 - (i) a statutory body, local authority or regional council in Namibia approved by the Minister; or

- (ii) the government of, or any statutory body, local authority or regional council in, a country other than Namibia, which statutory body, local authority or regional council the Minister has likewise approved; or
- (c) the Board in any particular case for good cause deems it impracticable or inappropriate to invite tenders,

the Board need not comply with the provisions of section 11; and

(2) In the application of subsection (1) (c) , the reasons for not inviting tenders shall be kept on record by the Board.

18 Administrative work

(1) All administrative work, including the payment and receipt of moneys, in connection with the exercise of the powers and the performance of the functions of the Board, shall be performed by staff members designated by the Permanent Secretary from among the staff of the Ministry of Finance.

(2) Notwithstanding the provisions of subsection (1), the Board may require a staff member of any other ministry or of any office or agency to assist the Board with the evaluation of any tender or to make recommendations to the Board in connection with any tender.

(3) The chairperson or any administrative head designated by the Board shall be competent to execute any document on behalf of the Board.

19 Expenditure

Subject to the provisions of this Act or an agreement concluded under this Act, all expenditure in connection with the exercise of the powers and the performance of the functions of the Board shall be defrayed from moneys appropriated by Parliament for that purpose.

20 Regulations

The Minister may make regulations not inconsistent with the provisions of this Act in relation to-

- (a) the invitation of tenders;
- (b) the conclusion or cancellation of agreements;
- (c) the procurement of goods and services for the Government;
- (d) the letting or hiring of anything on behalf of the Government;
- (e) the acquisition or granting of rights for or on behalf of the Government;
- (f) the disposal of Government property;
- (g) the procedure and quorum at meetings of the Board and any committee thereof, including the manner of voting and the number of votes required for a decision of the Board;
- (h) decisions of the Board;
- (i) the granting by the Board of price preferences when comparing tenders, including the basis on which such preferences may be granted;
- (j) the imposition by the Board of a monetary penalty, calculated on such basis as may be prescribed therein, on any person with whom the Board has concluded an agreement on behalf of the Government on the strength of information furnished by that person which, after the conclusion of such agreement, is shown to have been incorrect information, including the manner in which any such penalty may be recovered;
- (k) the recovery of expenses, losses or damages incurred or suffered by the Government;
- (l) a code of procedure;
- (m) any matter which in terms of this Act is required or permitted to be prescribed; and

- (n) generally, all matters in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.

21 Application of Act

The provisions of this Act shall apply in respect of the procurement of all goods and services, the letting or hiring of all things, the acquisition or granting of all rights and the disposal of all property by offices, ministries and agencies for or on behalf of the Government, except in respect of-

- (a) the procurement, letting, hiring or disposal by-
- (i) the Namibian Defence Force; and
 - (ii) the Namibia Security Intelligence Agency,
- of security related goods, services and property; and
- (b) such category of procurement, letting, hiring, rights or disposal as may, on the recommendation of the Board, be prescribed by regulation for the purposes of being exempted from the provisions of this Act.

22 Repeal of laws, and savings

(1) Subject to the provisions of subsections (2) and (3), the laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column thereof.

(2) Anything done under a provision of any law repealed by subsection (1), and which could have been done under a provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.

(3) All persons who immediately before the commencement of this Act were members or alternate members of the South West Africa Tender Board referred to in section 2(2), shall as from such commencement be deemed to have been appointed by or in terms of this Act as members or alternate members of the Board, as the case may be.

23 Short title and commencement

This Act shall be called the Tender Board of Namibia Act, 1996, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette* .

Schedule LAWS REPEALED

No. and year of law	Short title	Extent of repeal
Ordinance 1 of 1926	Finance and Audit Ordinance, 1926	Section 26A
Ordinance 20 of 1970	Finance and Audit Amendment Ordinance, 1970	The whole
Proclamation AG. 56 of 1980	Finance and Audit Amendment Proclamation, 1980	The whole