



Public Procurement Act 2015

ACF Presentation

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Purpose and objects of the Act

Purpose of the Act

- regulate the procurement of goods, works and services, the letting or hiring of anything or the acquisition or granting of rights for or on behalf of, and the disposal of assets of, public entities;
- to establish the Procurement Policy Unit and the Central Procurement Board of Namibia and provide for their powers and functions;
- to provide for the procurement committees and procurement management units and their powers and functions;
- to provide for the appointment of bid evaluation committees and their functions;
- to provide for procurement methods;
- to provide for bidding process, bidding challenge and review;
- to provide for preferences to categories of persons, goods manufactured, mined, extracted, produced or grown in Namibia, to Namibian registered small and medium enterprises, joint venture businesses, local suppliers, contractors and service providers (**not discussed in this presentation**); and
- to provide for incidental matters.

Objects of the Act

To promote integrity, accountability, transparency, competitive supply, effectiveness, efficiency, fair-dealing, responsiveness, informed decision-making, consistency, legality and integration in the procurement of assets, works and services to:

- **harmonise procurement policies, systems and practices**
- **set and review standards and practices**
- **monitor compliance by public entities**
- **build procurement capacity in Namibia**

To promote, facilitate and strengthen measures to implement the empowerment and industrialisation policies of the Government including:

- **job creation for Namibian citizens**
- **empowerment of Namibian registered SME's, women and youth**
- **sourcing of Namibian goods and local services**
- **preferential treatment of contracts to Namibian registered SME's, Namibian registered JV's, categories of Namibian suppliers, contactors and service providers, Namibian registered entities that promote protection of the environment, or Namibian natural persons who have been economically or educationally disadvantaged.**

To regulate the letting and hiring of anything or the acquisition or granting of any right and the disposal of assets.



Important definitions

Important definitions

Most definitions are self explanatory and used within the general meaning of the word.

- **‘Board’ – the Central Procurement Board of Namibia established by section 8**
- **‘contractor’ – a person who has entered into a procurement contract with a public entity**
- **‘Minister’ – the Minister responsible for finance**
- **‘Policy Unit’ – the Procurement Policy Unit established in terms of section 6**
- **‘procurement’ – the acquisition of goods, works, consultancy services or non-consultancy services by any means, including purchase, rental, lease or hire-purchase**
- **‘procurement committee’ – the procurement committee of a public entity constituted in terms of section 25**
- **‘procurement management unit’ – the division or department in a public entity that is responsible for the execution of procurement functions constituted in terms of section 25**
- **‘procurement contract’ – a contract between a public entity and a supplier resulting from a procurement process**

Important definitions (cont)

- **‘public entity’ – any office, ministry or agency of the Government, and includes, a local authority, a regional council, a public enterprise as referred to in the Public Enterprises Governance Act, a body or trust that is owned or controlled by the Government, when engaged in any procurement individually or in consortium; and an entity declared as public entity in terms of section 5 (refer slide 13)**
- **‘Review Panel’ – a Review Panel constituted in terms of section 58**
- **‘threshold’ – a threshold amount prescribed for the procurement of goods, works and consultancy services or non-consultancy services, including disposal of assets for the mandatory application of prescribed procedures**



Application of the Act

Application of the Act

The Act applies to

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

Proviso – the Board or public entity may not **dispose of any State asset or cause anything to be let or hired without the prior written authorisation of the Treasury made in terms of the State Finance Act, 1991.**

Provision of this Act prevail if contradictory to any other laws or regulations relating to public procurement.

Effective date is 1 April 2017.



Exemptions

Exemptions

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

- Namibian Defence Force;
- Namibian Police Force;
- Namibia Correctional Services; and
- Namibia Central Intelligence Service.

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



Declaration as public entity

Declaration as public entity

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

- (a) the Government provides funds exceeding the prescribed threshold (N\$5 million) 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.

Possible implications on entities to which infancy protection is afforded!!!



Procurement policy unit

Procurement policy unit

Responsible for:

- **monitoring compliance with the Act**
- **reviewing procurement systems of government policies by public entities**
- **assessing the impact of the procurement system on the socio economic policy objectives of the Government**
- **promotion of fundamental principles of procurement**
- **reviewing of, monitoring and assessing methods of disposal of assets**

Functions:

- **propose thresholds**
- **advise on e-procurement**
- **prepare guidelines**
- **advise public entities on public procurement policies, principles and practices**
- **monitor and report performance of public procurement systems**
- **prepare and conduct training**
- **set mandatory training standards**
- **prepare and update directives**

Procurement policy unit (continued)

Functions (continued):

- **issue authorised versions of standard bidding documents, contracts, pre-qualification forms, RFP's and similar documents for use by public entities**
- **develop and implement a procurement performance assessment system**
- **facilitate the use of information communications technology in procurement**
- **inspect procurement activity to ensure compliance with the procurement award by the Board or public entity**
- **institute contract audits and performance audits**
- **set a list of services and supplies in common use by more than one public entity for centralised procurement**
- **design and maintain a roll of suppliers**
- **provide guidance on operational matters in procurement activities**
- **investigate any matter to ensure compliance with the Act**
- **perform such other functions as directed by the Minister**

In the performance of its functions the Policy Unit may require any information, documents, records; invite persons to present any information; or commission or undertake investigations and institute performance audits. Failure to comply - 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.



Central Procurement Board

Central Procurement Board

Principle objects:

- **conduct the bidding process on behalf of the public entity for procurement in excess of the thresholds prescribed (Category 1, 2 and 3 entities, as defined in the regulations)**
 - ❖ Category 1 – Goods > N\$25m; Works > N\$35m; Consultancy services > N\$20m; Non-consultancy services > N\$15m
 - ❖ Category 2 – Goods > N\$20m; Works > N\$30m; Consultancy services > N\$15m; Non-consultancy services > N\$10m
 - ❖ Category 3 – Goods > N\$15m; Works > N\$20m; Consultancy services > N\$10m; Non-consultancy services > N\$5m
- **enter into contracts for procurement**
- **direct and supervise accounting officers in managing the implementation of procurement contracts awarded by the Board**

Various powers, functions and fiduciary duties, including fines for contravention by members.

9 members, of which 2 are on a full-time basis (5 year term) – rest 3 year term. Are eligible for re-appointment, but may not serve more than 2 consecutive terms.



Central Procurement Board (continued)

Vacation of office if:

- **member becomes subject to disqualifications**
- **member resigns by providing 30 days notice**
- **member has been absent from 3 consecutive meetings of the Board without leave of the Chairperson**
- **removed by the Minister (physically or mentally unfit, neglects his/her duties, divulges confidential information or acts in a manner that prejudices or conflicts with the functions of the Board)**

Disqualifications, similar to Companies Act for Directors

Meetings and decisions

- **seven members constitutes a quorum**
- **six members or more present and voting constitutes a decision of the Board**
- **Board may invite persons with special skills / knowledge to meetings, but these have no voting rights**

Funded by money appropriated by Parliament.





Accounting officers and bid evaluation committees

Accounting officers and bid evaluation committees

Responsibilities of accounting officer:

- **set up internal organisational structure at the public entity**
- **accountable for compliance with the Act and directives**

Disqualification of Board members also apply to accounting officers

Accounting officer must:

- **plan the procurement process**
- **certify the availability of funds before commencement of the procurement process**
- **ensure that procedures of internal structures are properly recorded**

Board or accounting officer must appoint a bid evaluation committee, responsible for evaluation of pre-qualifications, bids, proposals or quotations; and the preparation of evaluation reports for submission to the procurement committee as provided under this Act.



Methods of procurement

Methods of procurement

Procurement of **goods, works and non-consultancy services**,

- open advertised bidding
- restricted bidding
- request for sealed quotations
- direct procurement;
- execution by public entities;
- emergency procurement;
- small value procurement;
- request for proposals; and
- electronic reverse auction

used if a public entity has reason to believe that open advertised bidding -

- does not support empowerment and other policies of the Government;
- is not efficient or practical for the procurement in question; or
- is too costly to apply, given the value of the procurement

If used – ground for procurement choice must be recorded.

Procurement of **consultancy services**, by request for proposals on the basis of quality and cost; quality alone; quality and fixed budget; or least cost and acceptable quality.

Methods of procurement (continued)

Open advertised bidding

- published in newspaper with wide circulation
- for international bidding, published in international media with wide circulation
- published in a public procurement portal

May confer an advantage or preference to Namibian goods, services, suppliers or persons in the empowerment categories.

Open national bidding

- may limit participation to citizens of Namibia or entities incorporated in Namibia with no less than 51 percent equity that is owned by Namibian citizens of which no less than 30 percent is owned by previously disadvantaged persons where such limitations are stated in the invitation.

Open international bidding

- used if the estimated value of the procurement exceeds the prescribed threshold (N\$25m for goods and N\$40m for works); the goods or services are not available under competitive price and other conditions from more than one supplier in Namibia; **or** there is no response to open national bidding and the goods or services are obtained from international bidders.

Methods of procurement (continued)

Restricted bidding

- **used if a public entity has reason to believe that the goods or services are only available from a limited number of bidders; 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 (N\$2/3m); or by limiting the participation in a particular procurement to those suppliers included on pre-approved supplier eligibility lists drawn up and maintained by the public entity in the prescribed manner so as to ensure that suppliers of specialised goods and services have and maintain the necessary technical and financial capability to provide those goods or services**
- **must directly solicit bids from all known suppliers capable of supplying the goods or services (for limited number of bidders)**
- **must, as far as reasonably possible, directly solicit bids from a minimum of five suppliers (for time and cost being disproportionate to the value).**

Request for sealed quotations

- **used for the procurement of readily available commercially standard goods not specially manufactured to the particular specifications of the public entity; small services; or small works,**
- **if the estimated value of the procurement does not exceed the prescribed threshold (N\$2m)**

Methods of procurement (continued)

Emergency procurement

- **used in case of an emergency**
- **“emergency”, includes a situation where the country is either seriously threatened by or actually confronted with a natural disaster, catastrophe, or war; life or the quality of life or environment may be seriously compromised; or 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**

Execution by public entities

- **used in the case where one or more of the following conditions are present -**
 - ❖ **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;**
 - ❖ **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;**
 - ❖ **the risk of unavoidable work interruptions is better borne by the public entity than by a supplier;**
 - ❖ **it has been demonstrated that execution by the public entity is the only practical method for the supply of services under special circumstances;**

Methods of procurement (continued)

Execution by public entities (continued)

- **used in the case where one or more of the following conditions are present -**
 - ❖ 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;
 - ❖ staff members of the public entity carry out the service without disrupting existing operations of the public entity because they are familiar with those operations;
 - ❖ a public entity has the capacity to do such work on behalf of the Government;
 - ❖ there is an emergency such as a natural disaster which calls for immediate action;
or
 - ❖ any other condition as the Minister may from time to time determine by notice in the Gazette.

Request for proposals

- **where used for consultancy services, the public entity must draw up a shortlist of suppliers from among those who have the capacity to perform the required consultancy services to ensure effective competition**
- **where the estimated value of the procurement is above the prescribed threshold (N\$5m), the public entity, in order to draw up a shortlist of consultants, must seek expressions of interest by publishing a notice in a newspaper of wide circulation, and include in the list those who have expressed interest in the procurement**

Methods of procurement (continued)

Request for proposals (continued)

- **where the estimated value of the procurement is within the prescribed threshold (N\$5m), the public entity, may draw up a shortlist on the basis of its own knowledge and information; and 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**
- **the selection of the successful proposal is based on 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; the quality of the technical proposal submitted within a predetermined fixed budget; the best financial proposal submitted by the applicants having obtained an acceptable technical score pre-disclosed in the request for proposals; or 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**

Methods of procurement (continued)

Request for proposals (continued)

- **a public entity must evaluate each technical proposal on the basis of criteria which includes the relevant experience of the supplier for the assignment; the quality of the methodology proposed; the qualifications of the key staff members proposed; the transfer of knowledge, if required in the request for proposals; and in the case of international competition, the extent of participation by nationals among key staff members in the performance of the assignment.**
- **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.**
- **in the absence of an application for review by any other supplier within 7 days of the notice, the public entity must award the contract to the successful supplier.**

Methods of procurement (continued)

Direct procurement

- **permitted where**

- ❖ only one supplier has the exclusive right to manufacture the goods or to supply the goods, works or services to be procured, and no suitable alternative is available;
- ❖ within the prescribed limits (15% variation of original contract price), 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;
- ❖ within the prescribed limits (15% variation of original contract price), 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;
- ❖ 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 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.

Methods of procurement (continued)

Electronic reverse auction

- **the Board or public entity may engage in procurement by means of electronic reverse auction in accordance with prescribed procedure, if it is feasible for the public entity to formulate a detailed and precise prescription of the subject matter of the procurement; 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 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.**
- **the Board or a public entity in awarding procurement contract may use the electronic reverse auction as a phase in any other appropriate procurement method provided in this Act**

Small value procurement

- **a public entity may procure small quantities of goods, small works and services, which do not exceed the threshold (N\$15 000) without resorting to a formal competition.**
- **the public entity must maintain record of quotations obtained for such procurements as prescribed.**



Bidding process

Bidding process

- **the Board or public entity must prepare an invitation to bid**
- **the Minister may, in emergency circumstances authorise a public entity to procure exceeding the threshold for a public entity**
- **the Board or a public entity must conduct the pre-qualification proceedings for the procurement of large and complex procurement as prescribed**
- **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**
- **two-stage bidding may be held where it is not feasible to define the technical or contractual aspects of the procurement or the public entity wishes to consider various technical or contractual solutions**
- **bid security may be required**
- **bid is submitted in writing, duly signed and in a sealed envelope at the address specified in the bidding documents. May allow bidding by hand or mail or courier at the option of the bidder. May also authorise other methods for the submission if so prescribed.**
- **the Board or a public entity must set a deadline – may not be less than 30 days as per the regulations**
- **bidder may withdraw, modify or substitute its bid, provided written notice is provided before the deadline for submission of the bid**

Bidding process (continued)

- **bid remains valid for period noted in bidding document, which may not exceed 180 days**
- **the Board or public entity must ensure that no procurement contract is entered into with a disqualified bidder –**
 - ❖ not in good standing with ROR
 - ❖ not in possession of valid good standing certificate from SSC, or confirmation from SSC that the entity has no employees
 - ❖ not in possession of valid affirmative action compliance certificate, or exemption issued under section 42 of that Act, or proof from the Employment Equity Commissioner that the bidder or supplier is not a relevant employer as defined in that Act
 - ❖ has not submitted a written undertaking as contemplated in section 138(2) of the Labour Act, 2007 (State may not enter into contract with an employer)
- **bid envelope is opened at the time and place indicated in the bidding documents, which should coincide with the deadline for the submission of the bid or immediately thereafter if necessary for logistic reasons. Bidder may attend the bid opening. At the bid opening session, the name of the bidder, the total amount of each bid, any discount or alternative offered, and the presence or absence of any bid security, if required, is read out and recorded, and a copy of the record is made available to any bidder on request.**

Bidding process (continued)

- **bid is then evaluated and contract awarded – specifications for evaluation and award are set out**
- **cancellation of bid if:**
 - ❖ all the bids are non-responsive;
 - ❖ the lowest evaluated bid is substantially above the applicable cost estimate;
 - ❖ the goods or services are no longer required;
 - ❖ it has been established that there has been collusion among the bidders;
 - “Collusion among bidders” - means where two or more bidders enter into an agreement whereby a bidder agrees not to submit a bid in response to an invitation for bids; or agrees upon the price, terms or conditions of a bid to be submitted in response to an invitation to bid
 - ❖ an irregularity that warrants the cancelation of the bidding process occurred;
 - ❖ it is not economically viable to proceed with the bid; or
 - ❖ does not create or achieve the expected outcome.
- **accounting officer, on request of an unsuccessful bidder, must promptly brief the bidder of the reasons for which its bid or its application for prequalification was unsuccessful, if the request for such information was submitted within the prescribed period**



Review panel

Review panel

- **Minister may appoint a review panel (out of a list of 15 persons with appropriate qualifications – appointment similar to Board) for review; suspension, debarment and disqualification of bidders and suppliers; any other matter that the Minister may refer**
- **Minister **must** appoint a review panel if a bidder or supplier has applied for a review of a decision or action taken**
- **Review panel must strive to make a decision within 7 days of the application for the review, but not later than 14 days**
- **bidder or supplier **must** use remedies in this Act before instituting judicial action**
- **Review panel may**
 - ❖ dismiss the application;
 - ❖ direct the Board or the public entity that has acted or proceeded in a manner that is not in compliance with this Act to act or proceed in a manner that is in compliance with this Act;
 - ❖ set aside in whole or in part a decision or an action of the Board or public entity that is not in compliance with this Act, other than any decision or action bringing the procurement contract or the framework agreement into force, and refer the matter back to the Board or public entity for reconsideration with specific instructions;
 - ❖ correct a decision or action by the Board or public entity that is not in compliance with this Act;
 - ❖ confirm the decision of the Board or public entity; or
 - ❖ order that the procurement proceedings be terminated and start afresh
- **proceedings at Review panel are **confidential****



Procurement contracts

Procurement contracts

- **must include prescribed terms and conditions**
- **amendments must be in writing**
- **if contract value increases by more than 15% - new procurement proceedings, except in the case of direct procurement as provided by the Act**
- **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**



Procurement integrity

Procurement integrity

- **public entity may not divide the modalities of procurement so as to avoid the monetary threshold**
 - **staff members of Board or public entities:**
 - ❖ must discharge functions fairly and impartially; act in the public interest and in accordance with the Act; avoid conflicts of interest; keep information confidential
 - ❖ disclose their interest or the interest of a close relative (parent, sibling, spouse, child or grandchild, having substantial financial interest in the bidding entity)
 - ❖ withdraw from the procurement process if there is a potential conflict of interest
 - **contravention - 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**
 - **bidder who:**
 - ❖ 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
 - ❖ 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
 - ❖ engages in collusion, before or after a bid submission, designed to allocate procurement contracts among bidders; establish bid prices at artificial non-competitive levels; or 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**

Procurement integrity (continued)

- **Board or a public entity must reject a bid if the bidder offers, gives or agrees to give an inducement and promptly notify the rejection to the bidder concerned and to the Anti-Corruption Commission**
- **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.**
- **Review Panel may suspend or debar a potential bidder or supplier from participation in procurement proceedings on the following grounds -**
 - ❖ **supplying false information in the process of submitting a bid or prequalification application;**
 - ❖ **bid rigging or collusion between the bidders or a bidder and a supplier, agent, or staff member concerning the formulation of any part of the bidding documents;**
 - ❖ **interference by a supplier with the participation of competing bidders;**
 - ❖ **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;**
 - ❖ **conviction for an offence relating to obtaining or attempting to obtain a procurement contract within five years prior to the bidding; or**
 - ❖ **conviction for an offence related to dishonesty or fraud or corruption in his or her professional activity within 10 years prior to the bidding and was sentenced to imprisonment without the option of a fine.**

Procurement integrity (continued)

- **Review panel must consider factual records and give reasonable notice to the bidder and give reasonable opportunity to the bidder to respond to the action**
- **debarment may not exceed 5 years**



Thank you



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