



MINISTRY OF FINANCE

Procurement Policy Unit

(Established in terms of 6 of the Public Procurement Act, 2015)

PUBLIC PROCUREMENT GUIDELINES

(Issued in terms of section 7(1)(h) of the Public Procurement Act, 2015)

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CHAPTER ONE

1. PROCUREMENT PLANNING

1.1. IDENTIFICATION OF NEEDS

- 1.1.1.** Before initiating a procurement, it is essential to determine whether a need exists, following which a decision is made about the goods, works or services which are required to satisfy a public entities need. It is then decided whether the need can best be fulfilled through entering into a procurement contract. If the decision to enter into a contract is made, then the need for procurement has been identified.
- 1.1.2.** At this stage, although key decisions are made by those who have the need for the procurement, the user department, the procurement professional can help them by providing advice on such matters as availability of sources, market prices and conditions, production, delivery and performance lead times, and the best time to enter the market.

1.2. PROCUREMENT PLANNING

- 1.2.1.** This activity is best performed by a Committee of Needs set up by the Public Entity and comprising inter alia a representative/s of (i) the Procurement Management Unit and (ii) the user-department. The Committee should take into account the following factors and steps as appropriate:
- (i)** identification and assessment of the need for the procurement;
 - (ii)** conducting market research in order to identify various technical solutions, in particular in the commercial market, to identify the range of available suppliers, and to determine the most favourable contractual and guarantee terms available in the commercial market that would be suitable for the procurement;
 - (iii)** identification of the amount and sources of financing;
 - (iv)** studying acquisition history for similar goods, works or services;
 - (v)** defining and describing the requirement;
 - (vi)** estimation of the cost of a proposed procurement;
 - (vii)** possible aggregation of procurement requirements, taking into account factors such as achieving economies of scale in purchasing, optimizing use of procurement and contract administration resources;
 - (viii)** possible slicing of the procurement into lots, provided that this is not done to avoid thresholds beyond which more competitive procurement methods must be utilized, and if such a division is indicated by factors such as whether such an approach would provide

the best overall value for the Public Entity, possibility of technical compatibility questions regarding items purchased in separate lots, the possibility of allowing bidders to bid for individual lots or for the entire package, and measures to promote participation by small enterprises;

- (ix) the availability of any procedures for procurement of common-use items;
- (x) selection of contracting approach and structure, including verification of possible availability of framework or indefinite quantity contract arrangements for the item in question;
- (xi) selection of appropriate procurement method in accordance with the provisions of Part 5 of the Act, and reasons for use of a procurement method other than open advertised bidding; and possible combinations and packages of tasks and contracts; and
- (xii) determination and identification of required contract administration resources and responsibility.

1.2.2. The Committee shall, in respect of common-use items that may be standardized, carry out a standardization exercise and determine the applicable period.

1.2.3. Where it is found that the standardization exercise for any item may result or has resulted in a situation of monopoly, quasi-monopoly or single source or quasi single source supply, that particular standardization expertise shall be discontinued.

1.3. ESTIMATING THE COST

1.3.1. There must be a realistic assessment of the procurement needs/s of a Public Entity and the availability of funds. Budgets must be carefully formulated and based on the most reliable cost data available. This should include the final cost data from completed procurements. This information should be carefully maintained to build a reliable database to formulate realistic budgets for future procurements.

1.4. IDENTIFYING SOURCE OF FUNDS

1.4.1. Before beginning the procurement procedure, it is important that the funds be available and committed for the procurement. In the case of major public projects, the Public Entity must have funds available for the full value of the works and their supervision. When the schedule of building requires the continuation of construction beyond the current fiscal year, the budget of future years should include the continuing costs of the project.

1.5. ANNUAL PROCUREMENT PLAN

1.5.1. Each Public Entity should file its annual procurement plan with the Procurement Policy Unit (Policy Unit). Throughout the year, the Public Entity should give the Policy Unit notice of changes in the annual procurement plan. Further, quarterly reports detailing the progress of implementing the procurement plan should be filed. These reports are due to the Policy Unit by the end of the month following the end of the quarter. The Public Entity should post its procurement plan on its website.

1.6. PROCUREMENT TEAM

1.6.1. A well constituted procurement team is essential to ensure a successful procurement. Ideally, the following functions should be represented in such a team to bring together the skills and authority needed to manage and conduct the procurement: procurement, program/operations, budget, legal and technical.

1.6.2. The functions of the procurement team are to ensure that:

- i)** proper procurement procedure is used;
- ii)** a record of the procurement is maintained;
- iii)** all time periods and deadlines are observed;
- iv)** all procurement documents and forms are completed and issued properly;
- v)** all communication with candidates is proper; and
- vi)** the process is protected through focus on maintaining the fundamental honesty, fairness and transparency of the procurement proceeding.

1.6.3. The responsibilities of the main functions of the team are as follows:

- i) Procurement function:** The person responsible for this function is in charge of the procurement activity and should be fully trained and qualified in all aspects of procurement before taking on the responsibilities of this function.
- ii) Program or operations function:** The person responsible for this function should understand the specific objectives of the procurement and ensure that these objectives remain in focus throughout all stages of the procurement activity. For the procurement of items to be used by a particular department, the person responsible should be from that department, whereas for construction projects it might be performed by the project manager.
- iii) Budget function:** The person responsible for this function must ensure that the procurement remains within the limits of the approved budget and that the funds have actually been designated and put aside for this purpose.

- iv) **Technical function:** The person responsible for this function should have technical expertise in the object of the procurement. He or she should have a major role in developing the technical specifications.
- v) **Bid evaluation committees:** Bid Evaluation Committees are appointed by the Public Entity, in case of major contracts. Their role is to assist in the selection of the right contractor, consultant or supplier. A Bid Evaluation Committee should include technical experts as required by the needs of the procurement and the Accounting Officer of a Public Entity should not be part of the committee. The Bid Evaluation Committee has to ensure value for money and fairness and should be allowed to perform without fear and favour and without any kind of direction or pressure from any person or institution. It should strictly evaluate according to the criteria specified in the bidding documents.

1.6.4. The composition of the team may vary depending on the size and complexity of the procurement and the availability of qualified staff to serve on the team. The procurement team may seek the assistance of a legal officer at any stage of the procurement process and execution of the contract, if so required.

1.6.5. The team approach also establishes a system of checks and balances that helps to keep the entire process transparent and honest. While it needs to be established for any major procurement, such a team may also be constituted for other procurements where it is considered essential to ensure the success of the procurement exercise. Such a committee does not replace, but assists the Procurement Committee of the Public Entity. Technical experts may have to assist the procurement team for complex procurements.

1.6.6. In constituting such teams, a Public Entity should look for potential conflict of interest situations and avoid appointing members who may have personal financial or professional interests in the outcome of the procurement.

1.7. CHOOSING A PROPER PROCUREMENT METHOD

1.7.1. Public Procurement Act, 2015 sets the procurement methods available to a Public Entity to make any procurement in a given circumstance. The Open Advertised Bidding (OAB) is the default procurement method, but may not be practical in all circumstances.

1.7.2. When using OAB a Public Entity must publish the invitation to bid/prequalify in a newspaper with wide circulation. The table below highlights the conditions for use of procurement methods other than the OAB.

Procurement Method	Conditions for Use
Restricted Bidding	<p>a) the goods, works or services are available only from a limited number of suppliers and all of them are directly solicited;</p> <p>b) the time and cost of considering a large number of bids is disproportionate to the value of the procurement, provided the estimated value of the contract does not exceed a threshold set out in the procurement regulations and at least 5 bidders are directly solicited; or</p> <p>c) when suppliers of specialized goods and services have been pre-approved</p> <p>d) total cost estimate should does not exceed NAD 3 000 000.00</p>
Two Stage Bidding	<p>In the case of large or complex contracts for goods or works, for which open or restricted bidding is not suitable because of the difficulty in defining precisely the goods or works</p>
Request for Proposals	<p>a) When the Public Entity seeks to obtain consulting services or other services for which OAB is not suitable because of the difficulty in defining precisely the services.</p> <p>b) A Public Entity may draw up a list of service providers that are known to the Public Entity to solicit proposals from directly. In the case where the total cost estimate is above NAD 5 000 0000.00, the Public Entity must publish an</p>

	expression of interest in a widely circulated newspaper.
Request for sealed Quotations	For the purchase of readily available goods, services and works, so long as the estimated value of the contract does not exceed NAD 2 000 000.00
Direct Procurement	<p>a) when in the absence of competition for technical reasons the goods, works or services can be supplied or provided only by one candidate, or when one supplier or contractor has the exclusive right for goods or services and there is no other replacement possibility;</p> <p>b) within limits defined in regulation 18, for additional deliveries by the original supplier which are intended either as replacement parts for existing supplies, services, or installations, or as the extension of existing supplies, services, or installations 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 services;</p> <p>c) within limits defined in regulations 18, when additional construction services, which were not included in the initial contract have, through unforeseeable circumstances, become necessary since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons;</p> <p>d) within limits defined in regulations 18, for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded on the basis of open or restricted bidding; and</p> <p>e) for continuation of consulting services, where the nature of the consultant services requires that a particular consultant be selected due to unique qualifications or where continuity of consultant services is essential to meet the objectives of the assignment.</p>

Emergency	In cases of extreme urgency, a Public Entity may purchase goods, other services or works from a single supplier without competition, provided the terms of the procurement are limited to the period of the emergency, so that appropriate competitive procurement methods may be utilized at the conclusion of the emergency period.
Small Value Procurements	A Public Entity may procure small quantities of goods, small works and services, which do not exceed NAD 15 000.00 without resorting to a formal competition.
Electronic Reverse Auction	<p>a) A Public Entity may use Electronic Reverse Auction where it is feasible to formulate a detailed and precise prescription of the subject matter of the procurement;</p> <p>(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</p> <p>(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.</p>

CHAPTER 2

2. INITIATING THE PROCUREMENT PROCESS

2.1. USE OF STANDARD BIDDING DOCUMENTS

2.1.1. The Standard Bidding Documents issued by the Policy Unit contain specific instructions for use. There are separate standard bidding documents to meet the requirements of Public Entities for:

- i)** Procurement of large and complex works
- ii)** Prequalification for procurement complex
- iii)** Procurement of smaller works
- iv)** Procurement of goods
- v)** Selection of consultants
- vi)** Procurement of non-consultancy services

2.1.2. Users should consult the instructions for use contained in each of these standard bidding documents. Simpler documents have been designed for procurements under Restricted Bidding, Request for Sealed Quotations, Request for Proposals for small assignments and Small Value Procurements.

2.2. GENERAL OBSERVATIONS FOR COMPLETING STANDARD BIDDING DOCUMENTS FOR OPEN ADVERTISED, RESTRICTED AND TWO-STAGE BIDDING

2.2.1. Invitation to Bid

- i)** This document announces the procurement and is intended to provide contractors with sufficient information to determine their interest in the procurement. The form is essentially the same for each category of procurement: Goods, Works and Services.
- ii)** For Open Advertised Bidding this form is published as an open invitation to all interested candidates. In Restricted Bidding this form becomes a letter of invitation sent to selected candidates. In Two-Stage Bidding, this form again becomes a letter which in this procedure is sent to the candidates that pre-qualified in the Pre-Qualification proceeding.

2.2.2. Instructions to Bidders

- i)** This document informs bidders of the rules and procedures the Public Entity will follow in conducting the procurement. It defines the process in great detail, warns the bidder of illegal activity

that would require rejection of its bids and provides instructions for filing a complaint. Bidders should be encouraged to read this document carefully, and Public Entities should understand the document and be able to answer questions from bidders. Since these instructions focus on procedure, there are little differences among the documents for goods, works or services procurement. However, the instructions for Two-stage Bidding have several provisions describing the two-stage process which are not included in Open Advertised Bidding.

2.2.3. Bidding Data Sheet

- i) The Bidding Data Sheet complements the instructions to the bidders. On this form the Public Entity identifies itself and provides general information about the circumstances of the procurement. Here the Public Entity sets out specific requirements that the bidder must follow in preparing and submitting its bid. On this form the Public Entity informs bidders of the time, date and place of bid opening.
- ii) Normally the Bidding Data Sheet also informs bidders about where complaints may be filed.

2.2.4. Bid Evaluation Criteria

- i) The Bidding document should state the criteria and methodology that the Bid Evaluation Committee will apply to select the successful bid. The criteria must be described fully here and followed precisely during the selection process.
- ii) Each criterion should be an element that is critical to the selection of the best bid.
- iii) Each criterion should be an element that is capable of being compared so that the bid evaluation committee can compare and distinguish between and among competing bids.
- iv) Each criterion should be objective and expressed in monetary terms.
- v) It is best to use only a limited number of criteria so that the evaluation process can be completed efficiently.

2.2.5. Types of Evaluation Criteria

- i) Evaluation criteria can be divided into two categories: price (including price related factors) and non-price factors.

- **Price and price-related criteria**

Price and price related criteria represent factors that will affect the cost of the procurement. This includes not only the bid price but also costs of ownership. Examples of price criteria:

- a. Amount to be paid for the object of the procurement;
- b. Transportation cost;

- c. Cost of ownership;
- d. Operation;
- e. Maintenance;
- b. Security and,
- a. Disposal.

➤ **Non-price criteria**

If the bidder is merely to comply with the requirements of the specification and terms and conditions of the “Request for goods, works or services” then there should be no non-price evaluation factors. When a Public Entity uses non-price criteria, it is allowing participants to offer additions or alterations to the specifications; and it is saying that it is willing to pay a higher price for specific quality factors. It is important to realize that using non-price criteria significantly complicates the task of selecting the winning bid. It also increases the opportunity for discrimination and corruption in the procurement process. To reduce these problems, non-price criteria should be used only when the Public Entity cannot specify the precise requirements of the procurement and must be expressed in monetary terms. Examples of non-price criteria are:

1. **Enhancements in the technical requirements set out in the specifications:** The Public Entity sets a certain minimum level of performance and indicates by its evaluation criteria that it is willing to pay more for a greater level of performance. As far as possible, the Public Entity should indicate the range of enhancements it will consider. Such an approach is often used for the procurement for computers.
2. **Enhancements in the terms and conditions requested:** The Public Entity may request minimum terms and conditions and indicate by the evaluation criteria that it is willing to pay more for enhanced terms or conditions. One such example could be an extended warranty.
3. **Delivery or completion schedule:** By setting out delivery or completion as an evaluation criterion, the Public Entity indicates that it is willing to pay more for faster delivery or completion other than the minimum time that all bidders must comply with.
4. **Past performance:** When the Public Entity uses past performance as an evaluation criterion, the Public Entity indicates that it is willing to pay more to make a contract with a participant that has performed well on prior procurements. The evaluation should include past performance information regarding predecessor companies, key personnel and subcontractors. The difficulty with this factor is obtaining reliable, objective and fair data on past performance. If

a participant is rated poorly in past performance it should be given an opportunity to respond to the rating.

5. Experience: When the Public Entity uses experience as an evaluation criterion it indicates that it is willing to pay increasingly more for the procurement depending upon the bidder's experience. In past performance, the question is how well has the bidder done. In experience, the questions are what has the bidder done and for how long has the bidder done it.

6. Key personnel: By using this criterion, the Public Entity indicates that it is willing to pay more depending upon the qualifications and experience of the key personnel that will be used in the contract. When using this criterion, it is important to determine which personnel are essential to the success of the procurement. The major problem with using this evaluation criterion is that there can be no absolute guarantee that personnel proposed in the bid will be the personnel who will be used in the contract.

7. Facilities: The condition or location of the participant's facilities may be worth more or less to a Public Entity.

2.2.6. Schedule of Qualification Requirements

- i) This document informs the bidder about what it must satisfy to be qualified to participate in the procurement. As proof that it satisfies these requirements, a bidder must submit the specific documentary evidence required.
- ii) In the second section of this schedule, the Public Entity must identify the specific qualification requirements that the Public Entity has decided are necessary to demonstrate that a bidder is capable of performing this particular procurement. These requirements are normally subdivided into three categories: Legal, Financial and Technical.

2.2.7. Distinguishing between Qualification and Evaluation Criteria

i) The evaluation of bidders and evaluation of bids received from bidders should represent two distinct operations that the Public Entity undertakes in awarding public procurement contracts. Each procedure is governed by its own set of norms. Qualification requirements should be established and used to evaluate bidders, while evaluation criteria should be established and used to evaluate bids. Proper qualification requirements facilitate the assessment of the overall eligibility and capability of individual participants, while evaluation criteria provide the basis for selecting the successful bid. Application of qualification requirements should lead to a yes or no cut-off decision that separates the bidders into two groups: those who are qualified and those who are not. Those participants who make the cut should not be ranked during this procedure.

ii) Evaluation criteria, on the other hand, measure the relative value of the bids received from qualified bidders. This process involves the ranking of bids based on the evaluation criteria. Price may be the sole criterion, one of several weighted criteria, or may be a non-factor in certain procurements. If qualification requirements and evaluation criteria are applied in a single operation, the Public Entity may pay more for the same or less. This occurs because the Public Entity, in effect, pays for differences in the qualifications of bidders even when those differences do not represent added value to the Public Entity.

2.2.8. General Conditions of Contract

i) This document sets out the standard, uniform terms and conditions that define the procurement contract. However, the general conditions differ substantially depending upon the category of procurement: Goods, Works or Services. These conditions are not negotiable after bids are submitted or award made. If the Public Entity wants to take exception to any of the conditions, it must state this when it issues the Bid Documents in the document titled “Special Conditions of Contract. Similarly, if a bidder takes exception to the conditions of contract when it submits its bid, the Public Entity will generally need to reject the bid unless the exception is deemed immaterial.

2.2.9. Special Conditions of Contract

i) This document also has several variations between the forms for Goods, Works and Services.

ii) Special Conditions of Contract for Goods: In this document the Public Entity identifies the purchaser and the supplier, the terms for performance security, the date for beginning performance, and the conditions for delivery, acceptance, payment and warranty. Note that any Special Condition will modify the terms and conditions in the General Conditions.

2.2.10. INCOTERMS

i) The General Conditions of Contract normally provide that the obligations of the parties in a contract for the sale of goods may be defined in reference to “Incoterms,” which are internationally recognized trade terms. The Guide to the meaning of these terms is published by the International Chamber of Commerce. Basically, these terms tell the parties what to do with respect to the carriage of the goods from seller to buyer and the export and import clearances. They also explain the division of costs and risks between the parties.

2.2.11. Special Conditions of Contract for Works

i) The form for Special Conditions of Contract for Works requires the Public Entity to identify the parties to the contract and the site or sites where the work is to be performed, including the date the contractor is given access to the site. The form also addresses insurance, inspection, type of

contract, payment terms, and provision for price adjustment. Note again that any Special Condition supersedes the General Conditions.

2.2.12. Special Conditions of Contract for Services

- i) The form for Special Conditions of Contract for Services is similar to that for goods, except that it must describe where the services will be performed and any pre-conditions for the benefit of the contractor. Reporting requirements are often essential tasks in service contracts. It is important to note that any Special Condition supersedes the General Conditions.

2.2.13. Notification of Award

- i) The blank form is included in the Bid Documents to alert the bidders as to the form of notice. The form is then completed by the Public Entity and transmitted to the successful bidder after selection of the successful bidder.

2.2.14. Standard Bidding Documents for Goods

i) Technical Specifications:

The technical specifications define what the Public Entity wishes to buy and in turn what the supplier is expected to supply. Specifications must contain information to permit competition. While specifications should be drafted in a manner that is not unreasonably restrictive, they must still describe clearly and accurately all technical and other minimum needs of the Public Entity. Specifications may be generally divided in four categories:

- Design Specifications
- Performance Specifications
- Functional Specifications
- Brand Name or Equivalent Specifications.

a) Design specifications

The Public Entity should define in detail the materials to be used and the manner in which the work is to be performed. These specifications may provide drawings, measurements, tolerances, testing procedures and other specific details. Design specifications are used when the Public Entity wants to insure the quality and performance of a required item or needs standardization of products. Using a design specification, the Public Entity will get the goods exactly as it requests but also bears the risk of any problems or defects in the design.

b) Performance specifications

Performance specifications are normally less defined than design specifications. They describe the performance desired from what the Public Entity is buying without specifically directing how the contractor should design or make the item. For instance, the performance specification might state that the Public Entity desires a device that can produce a number of copies per minute. The supplier is then asked to find the best solution to achieve this result.

c) Functional specifications

i) Functional specifications are similar to performance specifications in that they place responsibility for the design on the supplier. But, rather than stating the needs in terms for performance standards, functional specifications focus on the purpose or use of the object. For example, the supplier is asked to provide a van that can carry 20 people safely across dirt roads in both sunny and rainy conditions. Generally, performance and functional specifications are preferred because the risk of performance is shifted to the supplier. If the supplier chooses a method of performance that does not produce the desired results, it must then try another method until the supplier accomplishes the contract requirements. The cost of all these approaches is borne by the supplier.

d) Brand Name

i) In exceptional circumstances, specifications may also describe the item to be furnished by a brand name. In such cases the specification should state that an “equivalent” is also acceptable. In addition, the specifications should set out the significant physical, functional and other characteristics of the product which are essential to the Public Entity.

ii) In describing the technical specifications, the Public Entity should take care not to overstate its needs as they usually add costs which are not necessary and thus waste public funds. In addition, overstating needs may limit competition unnecessarily. This can lead to higher costs and also unfair discrimination.

2.2.15. Schedule of Delivery

The Public Entity must describe the details for delivery of the goods.

2.2.16. Standard Bidding Documents for Works: Implementation Designs and Technical Specifications

i) The Public Entity should state the needs to be satisfied by the procurement. The same concepts for defining the technical specifications for goods apply also to the design and specifications for works.

ii) In the case of a unit price contract, the Public Entity will provide a bill of quantities and the bidder will provide unit prices for the items listed based upon the estimated quantities. If the contract is a lump sum, the Public Entity will provide a list of activities involved in performance of the contract.

iii) The Public Entity should provide the key milestones and critical path for performing the works. This schedule is used to monitor performance and also may be used to determine the milestones for making progress payments.

2.2.17. Standard Bidding Documents for Procurement of Services

i) **Terms of Reference:** The Public Entity states the needs to be satisfied by the procurement. The terms of reference define what the Public Entity wishes to buy and in turn what the contractor is expected to perform including results expected. The form suggests that performance be defined in terms of objectives, tasks, and defined deliverables.

ii) **Schedule for Performance:** The Public Entity should provide the key milestones for performing the Services. This schedule is used to monitor performance and also may be used to determine the milestones for making payments.

iii) **Key Personnel Requirements:** The Public Entity should describe and set standards for the type and level of skill mix it wishes to have dedicated to the tasks.

2.2.18. Requests for Proposals

i) Request for Proposals is a procurement method best suited for procuring professional and consultancy services.

ii) **Form for Request for Proposals:** This document announces the procurement and is intended to provide candidates with sufficient information to determine their interest in the procurement.

iii) **Instructions to Candidates:** This document informs candidates of the detailed rules and procedures the Public Entity will follow in conducting the procurement. Candidates should be encouraged to review this document carefully, and Public Entities should understand the document and be able to answer questions from candidates regarding the sections of the documents.

iv) Proposal Data Sheet: Proposal Data Sheet complements the instructions to the candidates. On this sheet the Public Entity identifies itself and provides general information about the circumstances of the procurement. The Public Entity sets out specific requirements that the candidate must follow in preparing and submitting its proposal. On this form the Public Entity informs candidates of the time, date and place of opening of proposals.

v) Evaluation of Proposals: The criteria that the bid evaluation committee will consider and the method it will use to apply the criteria must be described fully here and followed precisely during the selection process. Public Entities should consider the following:

- a. Each criterion should be an element that is critical to the selection of the best candidate.
- b. Each criterion should be an element that is capable of being compared so that the evaluation committee can compare and distinguish between and among competing candidates.
- c. It is best to use only a limited number of criteria so that the evaluation process can be completed efficiently.

vi) Methods of Evaluation and Selection

a) Quality and Cost-Based Selection Method (QCBS): Using this method, the Public Entity will evaluate and rank the technical proposal applying the weighted technical evaluation criteria set out in the Proposal Data Form. This might include such criteria as experience of the candidate, qualifications of key personnel, methodology of proposal. The Public Entity sets a minimum threshold giving notice in the Proposal Data Form that any technical proposal ranked below this threshold will be rejected and the financial proposal returned unopened. Following the evaluation and ranking of the technical proposals, the financial proposals are opened and ranked. Then a total score for each proposal is obtained based upon the proportional weighting of price and technical score as also previously set out in the Proposals Data Form

b) Quality Based Selection (QBS): Using this method, price is not an evaluation criterion. Rather, all technical proposals are evaluated and ranked according to the weighted, pre-disclosed criteria. Then only the financial proposal of the candidate that submitted the highest-ranked technical proposal is opened. At this point the Public Entity may conduct negotiations with the candidate. If even after negotiations the price is too high, then the Public Entity may reject this proposal and open the financial proposal of the candidate who submitted the second highest ranked technical proposal. The Public Entity may proceed in this manner until it can identify a successful candidate or may cancel the procurement at any point in the process. However, once it rejects the proposal of the higher ranked candidate, it cannot return to that proposal.

c) Least Cost Selection: Using this method, the Public Entity sets a threshold ranking for the technical proposals based upon the technical evaluation criteria set out in the Proposal Data Form. All proposals that fail to meet the threshold ranking are rejected. Then the price proposals of all at or above the threshold ranking are opened and the award is made to the candidate who submitted the lowest price.

d) Fixed Budget Selection: In this method, the Public Entity has a fixed budget which is disclosed in the Proposal Data Form. Candidates are requested to provide the best they can at the price. The technical proposals are evaluated and ranked according to the weighted criteria set out in the Proposal Data Form and the award is made to the candidate with the highest ranked technical proposal as all proposals are submitted at the same price.

e) Consultant Qualifications Selection: Using this method, the “technical proposal” is in fact simply the Consultant’s qualifications. After these are evaluated and ranked, the highest ranked Consultant is requested to submit a technical and financial proposal which then may be subject to further negotiation. If a contract is not finalized with this consultant, the Public Entity may request proposals from the consultant whose qualifications ranked next.

vii) Schedule of Qualification Requirements: This document informs the candidate about what it must satisfy in order to be qualified to participate in this procurement. As proof that it satisfies these requirements, a candidate must submit the specific documentary evidence required. It is extremely important to draw clear distinctions between evaluation criteria and qualification requirements. In procuring services, the lines must be clearly drawn between the qualification requirements which when applied result in a yes or no determination about the bidder and the evaluation criteria which when applied are the bases to compare proposals and select the successful candidate.

viii) General Conditions of Contract This document sets out the standard, uniform terms and conditions that define the procurement contract. These conditions are not negotiable after proposals are submitted or award made. If the Public Entity wants to take exception to any of the conditions, it must state this when it issues the Proposal Documents in the document titled “Special Conditions of Contract”. Similarly, if a candidate takes exception to the conditions of contract when it submits its proposal, the Public Entity may reject the proposal.

ix) Special Conditions of Contract (for professional or consulting services): The form for Special Conditions of Contract for Services is similar to that for goods, except that it must describe where the services will be performed and any pre-conditions for the benefit of the contractor. Reporting requirements are often essential tasks in service contracts. Any Special Condition supersedes the General Conditions.

x) Invitation to Negotiate: This document is to be completed by the Public Entity after the proposals are submitted and transmitted to such candidates that it has selected for negotiation.

xi) Contract Form: The blank form is included in the Proposal Documents to inform the candidates of the document they will be asked to sign if they are successful in the procurement. The completed form is sent to the winning contractor with the notice for award.

xii) Terms of Reference: The terms of reference define what the Public Entity wishes to buy and in turn what the contractor is expected to perform including results expected.

xiii) Schedule for Performance: The Public Entity should provide the key milestones for performing the services. This schedule is also used for monitoring performance and making payments.

xiv) Key Personnel Requirements: The Public Entity should describe and set standards for the type and level of skill mix it wishes to have dedicated to the tasks.

xv) Schedule of Fee, Cost and Expense Items for Time Based Contracts: As noted, this schedule is for time-based contracts where the Public Entity will pay a time based fee plus certain expenses. Here the Public Entity should identify the expense items for which it expects to reimburse the costs. For example, this might include the cost of air travel to location for performing the services.

2.2.19. Request for Sealed Quotations

i) Request for Sealed quotations is the method recommended for the procurement of standard goods available off the shelves, up to the value of N\$ 2 000 000.00. The document is a simple one comprising the following sections:

- i) Section I: Request for Quotations:** this section contains the instructions to the bidder.
- ii) Section II:** Quotation Letter (to be completed by Bidders) and Bid Securing Declaration (Appendix to Quotation Letter)
- iii) Section III:** List of Goods and Price Schedule. One part of this document is to be filled by the Public Entity, describing its requirements. The other part is to be filled by the bidder.
- iv) Section IV:** Specifications and Performance Requirements. The Public Entity shall use this section to specify its Technical Requirements for the goods items, Inspection and examination, and the scope of Related Services, as applicable.
- v) Section V:** Specifications and Compliance Sheet. Bidders should complete columns C and D with the specification of the goods offered. Also state “comply” or “not comply” and give details of any non-compliance/deviation to the specification required. They are required to attach detailed technical literature if required. The specifications and compliance sheet should be signed by a person having the required authority in the company.
- vi) Section VI:** Contract Agreement and General Conditions of Contract
- vii) Section VII:** Special Conditions of Contract

2.2.20. Pre-qualification

- i) **General observations concerning standard documents for pre-qualification:** The Model Law authorizes the use of pre-qualification procedures in order to determine whether applicants are qualified before requesting the applicants to submit bids. Prequalification is used especially for procurements of large or complex works.
- ii) **Invitation to Pre-Qualify:** This document announces the procurement and is intended to provide applicants with sufficient information to determine their interest in the procurement for which the pre-qualification procedure is being conducted. The form is published in the same manner as the Invitation to Bid in Open Advertised Bidding.
- iii) **Instructions to Applicants:** This document informs applicants of the rules and procedures the Public Entity will follow in conducting the pre-qualification. Applicants should be encouraged to review this document carefully, and public bodies should understand the document and be able to answer questions from applicants regarding the sections of the documents.
- iv) **Summary of Procurement Data - Goods/Works or Services:** The appropriate form must be completed for each pre-qualification proceeding that is a preliminary to a procurement action. The information in each of these forms provides the applicant with essential facts about the planned procurement. The applicant needs this information in order to know if it is interested in participating and for assessing its own capability to perform.
- v) **Pre-qualification Data Sheet (PDS):** The information in the PDS complements and completes the instructions to the candidates. The PDS is in two sections. In Section A, the Public Entity identifies itself and provides general information about the circumstances of this proceeding. Here also the Public Entity names a particular person as the contact person for the Public Entity. This is the person that applicants should contact for any questions about the procurement. It is important to ensure fairness and confidentiality of the process that all communication between applicants and the Public Entity flow through this contact person. In Section B the Public Entity sets out specific requirements that the applicant must follow in preparing and submitting its application. To complete this section, the Public Entity fills in the language or languages to be used in the application, the place for submission and the precise date and time of the deadline for submitting applications.

vi) Schedule of Qualification Requirements: This document informs the applicant about what it, as an entity, must satisfy to be qualified to participate in this procurement. As proof that it satisfies these requirements, the applicant must submit the specific documentary evidence required. In the second section of this schedule, the Public Entity must identify the specific qualification requirements that the Public Entity has decided are necessary to demonstrate that an applicant is capable of performing this particular procurement.

vii) Application Form: This document is to be completed by the supplier or contractor when it submits its application.

viii) Informal Quotations: This form is intended for use when procuring goods or works under small value procurement. It is simple and has only three pages and is available in two versions, one for goods and the other for works.

CHAPTER 3

3. CONDUCTING THE PROCUREMENT PROCESS

3.1.1. Bidding process

i) Conducting the bidding process is a very important phase in a procurement process. On completion of the preparation of the Bidding Documents and obtaining necessary approvals, the Public Entity proceeds with the invitation for bids in strict compliance with the provisions of the Public Procurement Act and its accompanying regulations.

ii) This phase consists of very important stages, which may be summarised as follows:

- Invitation for bids
- Issue of bidding documents
- Dealing with requests for clarifications
- Receipt and custody of bids
- Opening of bids
- Examination and evaluation of bids
- Review of bid evaluation report
- Approval of award
- Notification to selected bidder and to unsuccessful bidders
- Attending to challenge and application for review, if any
- Award of contract
- Debriefing of unsuccessful bidders

iii) The management of the bidding processes, including pre-bid meetings, clarification and amendment of bidding documents, and the withdrawal, modification and substitution of bids are subject to rules and procedures as prescribed in Part 6 of the Act and Part 6 of the Regulations.

3.1.2. Invitation for bids

i) Where the open advertised bidding method is selected, the Public Entity is required to publicise the invitation in the press and in the public procurement portal. Where a prequalification exercise has been conducted, only prequalified bidders are eligible to participate and in no circumstances should bidding documents be issued to bidders who were not prequalified. Moreover, where bidding documents are issued to pre-qualified or short listed bidders, the Public Entity should issue them to all the bidders at the same time.

- ii) A Public Entity is required to keep a record of all bidders to whom a bidding documents are issued.
- iii) Where other methods are used, Public Entities should ensure that the conditions for use of such procurement methods are fully met and the selected bidders are eligible and are capable of delivering the items being procured.
- iv) In setting bidding deadlines, a Public Entity shall—
 - a) allow sufficient time for bidders to obtain bidding documents, prepare complete and responsive bids, and submit bids; and
 - b) comply with the minimum bidding periods as prescribed in regulation 35.
- v) Where applicable, a Public Entity may request bidders to submit a Bid Security or a Bid Securing Declaration as prescribed in regulation 37. The Public Entity may proceed with the forfeiture of the Bid Security or with a proposal for the disqualification of a bidder, in case of a Bid Securing Declaration, 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 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.

3.1.3. Method of Submission

- i) The bidding documents shall provide for the manner in which the bids shall be submitted. The Act provides for the Public Entity to require bidders to submit sealed and written bids, unless otherwise provided for in this Act.
- ii) The method for bid submission shall be as specified in regulations made under this Act and shall take into account the method of procurement, the complexity of the procurement and the evaluation methodology to be used.

3.1.4. Withdrawal and modification of bids

i) 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.

3.1.5. Bid validity period

i) The bidding document should state the bid validity period required. This is an important aspect and any deviation is considered as a major deviation. Bid validity period should be set in relation to the time required in completing the evaluation and approval process before making the award of the contract and consideration should also be taken of making allowance for the time that may be taken in attending to challenge and application for review from unsatisfied bidders. The Act provides that it should not exceed 180 days. However, the validity period of a bid may be extended only with the agreement of the bidder concerned, when it is found that the evaluation and approval process would take longer time, but this should be done before the expiry of the bid validity.

ii) A bidder who agrees to an extension of the validity period of his bid shall also furnish a corresponding extension of his bid security, if security was required for the original bid submission.

3.1.6. Receipt and custody of bids

i) A Public Entity shall ensure that -

- a) bid boxes, or other means of receiving bids, are made available to bidders;
- b) bids are kept confidential, and in the case of sealed bids, the bids remain unopened, until the time for opening of bids; and
- c) bids are closed at the precise date and time of the bid deadline, and no late bids are accepted.

ii) When online submission is allowed, bids shall be received into an electronic bid box and maintained to high standards of security for long term record-keeping. When an electronic system will become operational, appropriate regulations will be issued and Public Entities will need to fully comply.

iii) Late bids must be returned unopened to the bidder concerned.

3.1.7. Opening of bids

i) Every bid should be opened at the time and place indicated in the bidding documents and the time of bid opening shall coincide with the deadline for the submission of bids, or follow immediately

thereafter, if this is necessary for logistic reasons. Every bidder or his representative shall be authorised to attend the bid opening.

ii) Public Entities should ensure that the provisions of the act and regulations are fully complied with during the opening. 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, should be read out and recorded, and a copy of the record should be made available to any bidder on request.

iii) No decision regarding the disqualification or rejection of a bid should be taken or announced at the bid opening session.

3.1.8. Examination and evaluation of bids

i) Bid Evaluation Committee

- a)** For the purposes of examination and evaluation of bids, the Board, in case of major contracts, or the Public Entity is required to constitute a Bid Evaluation Committee within 5 days of the opening of bids, from a list of potential evaluators maintained by the Public Entity.
- b)** The Bid Evaluation Committee must be composed of at least 3 members and no more than 7 members who are knowledgeable about the goods or services under procurement and the public procurement procedures.
- c)** It should be ensured that no person is appointed as a member of the Bid Evaluation Committee where his participation would constitute a conflict of interest.
- d)** Where necessary, following a request from a Bid Evaluation Committee, an adviser or a technical sub-committee may be appointed to assist it.
- e)** The functions of the Bid Evaluation Committee include the examination, evaluation and comparison of bids and recommendation for the award to the procurement committee
- f)** The secretary of the bid evaluation committee shall take minutes of meetings of the committee and keep record of all matters considered by the committee.

ii) Procedures

- a)** Following the opening , bids should be examined in order to determine whether they are complete and in accordance with the bidding documents and to ascertain whether -
 - they are properly signed; and
 - the documents required to establish their legal validity and the required security have been furnished.

b) Where a prequalification procedure is applicable, a bid received from an bidder other than a pre-qualified bidder should be rejected.

c) Where a bid discloses an arithmetical error, the error should be corrected and the bidder notified. Where there is a discrepancy between figures and words, the amount in words should prevail, and the mistake should be corrected and the bidder notified. Where a bidder refuses to accept a correction, his bid should be rejected and the Bid Security forfeited or a proposal made for his disqualification in case of a Bid Securing Declaration.

d) Clarifications may be sought by the Board or the Public Entity during the examination of bids from any bidder to facilitate evaluation, but it should neither ask nor permit any bidder to change the price or substance of his bid.

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

f) Every bid should be evaluated according to the criteria and methodology set out in the bidding documents and the evaluated cost of each bid should be compared with the evaluated cost of other bids to determine the lowest evaluated bid. No methodology or criterion, other than those stated in a bidding document, should be applied during evaluation.

g) Where a prequalification procedure is applicable, the qualifications of the lowest evaluated bidder should be verified anew to take account of any change since the original prequalification.

iii) Bid Evaluation Report

a) The Bid Evaluation Committee should prepare an evaluation report detailing the examination and evaluation of bids and identifying the lowest evaluated bid that meets the qualification criteria.

b) It should be ensured that members of the Bid Evaluation Committee are allowed to perform without fear or favour and shall not be subject to the direction or control of any other person or authority.

c) Wherever, the Board or the Procurement Committee does not agree with any aspect of the Bid Evaluation Report, it should request the Bid Evaluation Committee to review it by specifying the grounds.

d) For procurements above a prescribed threshold, an executive summary of the report should also be submitted, which the Public Entity must later publish on its website within seven days of the procurement award.

iv) Negotiation

Negotiations should only be undertaken by the Board or Public Entity in accordance with the conditions and procedures specified in Act and they should not relate to the price of a bid, except in the case of direct bidding, or where the price of the bid has not been taken into account in the evaluation methodology.

v) Award of procurement contracts

a) A procurement contract should be awarded to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents.

b) Where the value of the contract exceeds the prescribed threshold, the Public Entity should allow unsuccessful bidders seven days to submit their applications for review before an award is made.

c) Where it was mentioned in the bidding documents that a performance security would be required, the successful bidder should be asked to submit a performance security and sign a contract within 30 days of the procurement award. Where the bidder whose bid has been accepted fails to sign a contract, if required to do so, or fails to provide any required security for the performance of the contract within the 30 day period, the Public Entity should select another bidder from among the remaining valid bids, and repeat the process of informing the selected bidder and allowing time to unsuccessful bidders to challenge, in case the contract value is above the prescribed threshold for the stand still period.

d) The Public Entity is required to promptly publish a notice of every procurement award on its website and on any other media with wide circulation, within seven days of the procurement award.

vi) Debriefing of unsuccessful bidders

a) Unsuccessful bidders may request for a debriefing. They are required to do so within 30 days from the date of the publication of the notice of award and it has to be in writing.

b) A Public Entity should promptly, on receipt for a request for debriefing, inform that bidder of the reasons for which its bid, or its application for prequalification, was unsuccessful. The debriefing of an unsuccessful bidder should be limited to information relating to -

- the reasons for which his bid was unsuccessful;
- reasons for which the bid of the successful bidder was retained.

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