



GOVERNMENT GAZETTE

OF THE

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Government Notice

MINISTRY OF FINANCE

No. 191 1997

TENDER BOARD OF NAMIBIA CODE OF PROCEDURE

The Tender Board of Namibia has in terms of regulation 2(9) of the Tender Board Regulations, 1996, made under section 20 of the Tender Board of Namibia Act, 1996 (Act 16 of 1996), adopted the Code of Procedure set out in the Schedule.

SCHEDULE

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Definitions

1. In this Code of Procedure any word or expression to which a meaning has been assigned in the Act (including the Regulations) shall have the meaning so assigned to it and, unless the context otherwise indicates -

“closing date and hour” means the closing date and hour specified in a title of tender for the receipt of tenders;

“general agreement” means an agreement, as defined in section 1 of the Act, entered into for the furnishing of goods or services, or the disposal of Government property over a period specified in that agreement;

“sample” means a sample of goods to be procured or which are offered for procurement;

“the Act” means the Tender Board of Namibia Act, 1996 (Act 16 of 1996), and includes the Regulations;

“the Regulations” means the Tender Board Regulations, 1996.

Invitation of tenders and applications for prequalification

2. (1) The Board shall in accordance with section 11 of the Act invite tenders or applications for prequalification only within Namibia, except that the Board may in such manner as it may determine circulate an invitation for tenders or for applications for prequalification outside Namibia where circumstances so require.

(2) The Board shall publish an invitation for tenders or for applications for prequalification once in the *Gazette* and at least once in each newspaper contracted by the Government, and in addition thereto on the notice board of the Tender Board Secretariat.

Tender documents to be made available by Board

3. The Board shall at the request of a tenderer, and on payment of a minimum fee of N\$20,00 per tender document, make the appropriate tender documents available to the tenderer.

Reference to certain specifications

4. A title of tender shall not make reference to any trade mark or trade name or to a specific product, except when used in conjunction or association with the words “similar to” or “equal to” to indicate the style, type or quality of the goods to be procured or services to be rendered.

Determination of closing date of tenders

5. (1) If the Board is of the opinion that -

- (a) goods will be supplied from stocks readily available in Namibia or will be manufactured from materials or components grown, produced or manufactured in Namibia, the Board shall fix the closing date for the submission of tenders at a date not exceeding 30 days, but not less than 21 days, from the date of the only or last publication of the invitation for tenders;

- (b) goods will not be supplied from stocks readily available in Namibia or will not be manufactured from materials or components grown, produced or manufactured in Namibia, the Board shall fix the closing date for the submission of tenders at a date not exceeding 60 days, but not less than 30 days, from the date of the only or last publication of the invitation for tenders.

(2) Notwithstanding subparagraph (1), the Board may before the expiry of the closing date and hour -

- (a) of its own accord; or
- (b) at the written request of a tenderer,

extend that date for a period not exceeding 30 days if the Board is satisfied that -

- (i) such an extension will not be prejudicial to the interests of tenderers; and
- (ii) it is just and equitable to do so in any particular case.

Tender prices and delivery periods

6. (1) Tender prices shall -

- (a) be expressed in the currency of Namibia unless otherwise specified in a title of tender; and
- (b) be the total net value of the goods to be furnished or services to be rendered.

(2) The Board may give priority to tenderers who tender firm prices for the duration of an agreement and for delivery within a specified period.

(3) A tenderer shall not in a tender use words such as "soonest" or "earliest".

(4) Where a tenderer does not tender a firm price, the tenderer shall indicate whether -

- (a) the adjustment in the tender price will be in the same ratio as the adjustment in the cost price; or
- (b) the adjustment in the tender price will be equal to the amount of the adjustment in the cost price.

(5) Subparagraph (4)(b) shall apply in all cases where a tenderer does not specify any conditions.

(6) A tenderer shall, within 60 days after the coming into operation of any tender price increase or decrease, inform the Board by written notice of any such increase or decrease.

(7) In calculating tender price adjustments, the cost prices which were applicable seven days prior to the closing date and hour of a tender, shall be taken into account.

(8) The Board may request from a tenderer as proof of a tender price increase or decrease, a supporting certificate or voucher.

General agreements

7. (1) Where the Board considers it desirable, the Board may enter into a general agreement for -

- (a) a specified quantity of goods which may not be varied without the mutual consent of the parties to such an agreement;
- (b) an estimated quantity of goods subject to an increase or a decrease of 10 per cent;
- (c) a maximum quantity of goods where the minimum quantity ordered cannot be guaranteed, but where the maximum quantity may not be exceeded without the mutual consent of the parties to such an agreement; or
- (d) an unspecified quantity or unguaranteed estimated quantity of goods.

(2) The Board shall indicate in a title of tender the terms and conditions of a general agreement.

Samples

8. (1) Where the Board furnishes a potential tenderer with a sample, the Board may do so at a fee to be determined by the Board.

(2) Where the Board requires a tenderer to furnish a sample for inspection and examination in support of a tender, the tenderer shall mark the sample with -

- (a) the tender number;
- (b) the item number of the sample; and
- (c) the tenderer's name and address.

(3) The tenderer shall send his or her tender and, if applicable, sample

to the addressee specified in the title of tender so as to reach that address on or before the closing date and hour.

(4) The Board may reject a tender which is not accompanied by the required sample or samples.

(5) A tenderer shall, where requested by the Board, furnish samples in support of a tender at the tenderer's expense and risk.

(6) The Board may purchase a sample of value at the tendered price.

(7) Where the Board does not purchase a sample as contemplated in subparagraph (6), the Board shall at its expense return the sample to the tenderer at any given address within Namibia.

(8) The return of a sample in terms of subparagraph (7) to a tenderer shall be at the tenderer's risk.

(9) If, in testing or examining a sample, the Board finds that the sample is -

(a) of small value;

(b) destroyed; or

(c) damaged,

the Board shall not be liable for the cost of that sample unless otherwise specified in the title of tender.

(10) The Board shall not -

(a) return to the tenderer a sample made from materials supplied by the Board;

(b) accept liability for the cost of making the sample,

unless otherwise specified in the title of tender.

(11) A tenderer shall not, without the prior written approval of the Board, furnish goods of which the characteristics differ from those of the sample submitted by that tenderer and agreed to by the Board.

Determination of validity period of tenders

9. (1) The Board shall specify in a title of tender the period during which tenders shall be in effect for acceptance.

(2) The period contemplated in subparagraph (1) shall be calculated from the day immediately following the closing date and hour of a tender, but shall not include Saturdays, Sundays and public holidays.

Submission tenders

10. (1) A tenderer shall submit his or her tender under sealed cover, with the tender number endorsed on the cover, not later than the closing date and hour specified in the title of tender.

(2) A tender shall be sent to the address specified in the title of tender.

(3) The Board shall not consider a tender if the cover thereof contains more than one tender number.

Closing date and hour of tenders

11. (1) The Board shall specify in a title of tender the closing date and hour for the receipt of tenders.

(2) Subject to subparagraph (3), all Formal and Quotation tenders shall close at 11:00 on the closing date for the receipt of tenders, and all Annual and Store tenders shall close at 14:30 on the closing date for the receipt of tenders.

(3) Where the closing date for receipt of tenders falls on a Saturday, Sunday or public holiday, tenders shall be received until 11:00 for Formal and Quotation tenders and 14:30 for Annual and Store tenders on the following working day.

Telegraphic and late tenders

12. (1) The Board may, subject to subparagraph (2), consider a tender received by telegraph or fax on or before the closing date and hour, provided -

- (a) the tender bears the name of the tenderer;
- (b) the tender bears the tender number;
- (c) the tender bears the price and terms of delivery of goods or services in respect of each item tendered; and
- (d) the tender is made on the prescribed tender documents or in a manner acceptable to the Board.

(2) If a tender is submitted by telegraph or fax, the tenderer shall, within seven days from the closing date and hour, submit the original tender documents to the Board.

(3) Unless no tenders have been received by the Board on the closing date and hour, the Board shall not consider tenders received after such closing date and hour.

(4) Notwithstanding subparagraph (3), the Board may accept a tender received after the closing date and hour if the Board is satisfied that -

- (a) the tender was delayed by the postal service;
- (b) in the case of a telegraphic tender, the telegraph was received by the addressee's Post Office on or before the closing date and hour; or
- (c) the lateness of the tender was the direct result of circumstances which the tenderer could not reasonably have foreseen or prevented.

Tenders received open or without endorsement

13. (1) The Board shall, until the closing date and hour, keep unopened in safe custody all tenders received under sealed cover or sealed in terms of subparagraph (2)(b).

(2) Where a tender is received open or without the required endorsement on the cover, the Secretary to the Board shall -

- (a) ascertain the tender number;
- (b) seal the tender; and
- (c) make a note on the cover of the tender indicating -
 - (i) the name and address of the tenderer;
 - (ii) the date and time of receipt of the tender;
 - (iii) the tender number and closing date; and
 - (iv) the condition in which the tender was received.

Opening of tenders

14. (1) The Board shall as soon as practicable after the closing date and hour, open all tenders in public.

(2) The Board shall, at the request of a tenderer or any other member of the public, read out in public the tender prices for building services and cognate works and for civil engineering services.

Tenders for portion of items or specified quantities

15. The Board may consider a tender by a tenderer who does not tender for all the items specified in a title of tender or who tenders for only a portion of the specified quantity.

Consideration of tenders

16. Subject to the provisions of the Act and of this Code of Procedure, the Board shall consider all tenders duly submitted to it.

Comparison of tenders

17. The Board shall, before applying any price preferences to tenders -

- (a) compare the tender prices of all tenders submitted to it; and
- (b) if applicable, adjust delivery and other charges.

Domestic value

18. (1) Where the goods offered originate from a country other than Namibia, the Board may require the tenderer, using the currency of Namibia, to furnish the domestic value of the goods offered.

(2) Where the domestic value furnished in terms of subparagraph (1) is higher than the tendered price, the tender shall be calculated using the domestic value.

(3) In this paragraph "domestic value" means, in relation to goods imported or to be imported in Namibia, the market price at which such or similar goods are, at the time of tendering, freely offered for sale (in the usual wholesale quantities) in the ordinary course of trade to all purchasers in the principal markets of the country from which the goods are imported or are to be imported, including -

- (a) any royalty and the cost of packages ordinarily used in those markets;
- (b) extra cost of packing and packages for export carriages to the port of shipment or other place of final despatch in that country; and
- (c) all other expenses incidental to placing the goods on board ship or on any other vehicle at the port or place ready for export to Namibia,

but does not include -

- (i) excise duty or sales tax imposed; or
- (ii) drawbacks, refunds, rebates or remissions of customs duty granted,

by the Government of that country in terms of its laws on export of such goods.

Recommendation of offices, ministries and agencies

19. (1) The Board shall, after having opened and listed all tenders, submit the tenders to the relevant office, ministry or agency for its recommendation.

(2) The relevant office, ministry or agency shall make its recommendation on the tenders received in terms of subparagraph (1).

(3) The permanent secretary of the relevant office, ministry or agency shall sign the recommendation made in terms of subparagraph (2) and return the recommendation together with all the tenders to the Board.

(4) Where an office, ministry or agency does not recommend the lowest tender from among all the tenders submitted to it, the permanent secretary concerned shall certify that -

- (a) the recommendation is made in the best interest of the Government; and
- (b) the recommendation represents the best value to the Government.

(5) The permanent secretary concerned shall give reasons for not recommending the lowest tender.

(6) Where only one tender is received and that tender is recommended for acceptance, the permanent secretary concerned shall state whether the tender price is fair and reasonable.

Acceptance of equal tenders

20. (1) The Board, after having brought all tenders to a comparative level, shall, having due regard to section 15(4) and (5) of the Act, accept tenders in the following order of priority:

- (a) Tenders for goods manufactured entirely from raw materials or produced mainly within Namibia;
- (b) tenders for goods manufactured in Namibia entirely from nonfabricated raw materials or mainly imported materials;
- (c) tenders for goods assembled in Namibia from components entirely or mainly imported;
- (d) tenders for imported goods from local suppliers who are in a position to give expert advice or after sales service;
- (e) tenders for goods from imported stocks held in Namibia;
- (f) tenders from overseas suppliers, but preferably suppliers with branches and stocks in Namibia.

(2) The Board shall as far as practicable in respect of tenders for the furnishing of perishable goods, accept the tender of the tenderer who is at or closest to the place where such goods are required.

Acceptance of tenders for unspecified quantities

21. Where the Board accepts a tender for a quantity other than that specified in the title of tender, the tenderer may refuse to enter into an agreement if the quantity accepted is -

- (a) less than that for which the tenderer has tendered; or
- (b) more than that for which the tenderer has tendered, but in that case only to the extent of the excess.

Security

22. (1) The Board shall, subject to subparagraph (4), require a successful tenderer to furnish security for the performance of an agreement to be entered into, if -

- (a) any payment is to be made to the Government;
- (b) any Government property is to be handed to a contractor;
or
- (c) the Board in any particular case for good cause deems it necessary to require such tenderer to furnish security.

(2) The security to be furnished in terms of subparagraph (1) shall -

- (a) in the application of subparagraph (1)(a), be the estimated amount to be paid to the Government;
- (b) in the application of subparagraph (1)(b), be the value of the Government property which may be in the possession of the contractor at any time;
- (c) in the application of subparagraph (1)(c), be-
 - (i) 10 per cent of the monetary value of the tender; or
 - (ii) such number of sureties acceptable to the Board, but not less than two, as may be required by the Board,

whichever security the Board may think fit to require in any particular case.

(3) The security required in terms of subparagraph (1) shall be in the form of -

- (a) a guarantee from a banking institution, a building society or an insurance company registered or incorporated in Namibia;

- (b) a cash deposit, a negotiable Government bond or stocks;
- (c) in the case of a service contract, a surety bond furnished by the sureties referred to in subparagraph (2)(c)(ii); or
- (d) any other form of security approved by the Board.

(4) If any security is required to be furnished by a successful tenderer, the Board shall specify particulars thereof in the title of tender.

Cession of agreements

23. A tenderer or contractor shall not, without the prior written approval of the Board granted on the recommendation of the office, ministry or agency concerned -

- (a) surrender, transfer, cede, dispose of or sub-let the whole or part of his or her tender or agreement or any interest therein; or
- (b) cede any payment arising out of his or her agreement,

to any person.

Communication with Board

24. (1) All correspondence to the Board, unless specifically intended for the personal attention of the Chairperson of the Board, shall be addressed to -

The Secretary
Tender Board of Namibia
Ground Floor, Fiscus Building
10 John Meinert Street
P.O. BOX 3328
Windhoek
Namibia.

(2) All deliveries other than by mail shall be made to the Office of the Secretary to the Board.

Availability of information

25. Copies of the Tender Board of Namibia Act, 1996, the Tender Board Regulations, 1996, and the Tender Board of Namibia Code of Procedure, 1997, can be obtained at the address mentioned in paragraph 24(1).

Short title

26. This Code of Procedure shall be called the Tender Board of Namibia Code of Procedure, 1997.