

Namibia

Public Procurement Act, 2015

Tender Board Regulations, 1996

Government Notice 237 of 1996

Legislation as at 15 November 2017

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Republic of Namibia
Annotated Statutes

Public Procurement Act, 2015

Tender Board Regulations, 1996

Government Notice 237 of 1996

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as amended by

[Government Notice 140 of 2013 \(GG 5212\)](#) came into force on date of publication: 31 May 2013. These regulations were originally made in terms of section 20 of the Tender Board of Namibia Act [16 of 1996](#) which was brought into force on 1 October 1996 by [GN 236/1996 \(GG 1403\)](#) and repealed by the Public Procurement Act [15 of 2015](#). The regulations survive pursuant to section 80(2) of the Public Procurement Act [15 of 2015](#) which states: "Subject to section 81 [on the treatment of tender contracts already concluded and tender advertisements already issued when the Act came into force], anything done under a provision of the law repealed by subsection (1) and which could have been done under a provision of this Act is deemed to have been done under the corresponding provision."

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it and, unless the context otherwise indicates-

"bona fide Namibian dealer or merchant" means any person who-

- (a) is the holder of a general dealer's licence;
- (b) is the holder of a wholesaler's licence;
- (c) is a company incorporated in Namibia in terms of the Companies Act, 1973 (Act [No. 61 of 1973](#)); or

[\[The Companies Act has been replaced by the Companies Act \[28 of 2004\]\(#\).\]](#)

(d) is a close corporation registered in Namibia in terms of the Close Corporations Act, 1988 (Act [No. 26 of 1988](#)),

and is a registered tax payer with the department of Inland Revenue;

[definition of "bona fide Namibian dealer or merchant" substituted by [GN 140/2013](#)]

"committee" means a committee appointed under section 8(1) of the Act;

"company" means an association or body corporate or unincorporated, or a close corporation, or partnership or trust, whether created or recognised under a law in Namibia or elsewhere, and whether created for profit or non-profit purposes;

[definition of "company" substituted by [GN 140/2013](#)]

"contractor" means any person from whom a tender has been accepted by the Board and with whom an agreement, whether in writing or otherwise, has been concluded;

"costs of materials" means the costs of materials determined in accordance with the provisions of regulation 8;

"goods produced or manufactured in Namibia" means goods which have a local content of at least 60 percent of the manufacturing costs of the goods, as represented by materials produced, direct labour performed, and the last process of manufacture of the goods accomplished, in Namibia, provided-

- (a) the last process of manufacture is substantial and sufficient to change the nature of the product and give it new characteristics;
- (b) the final product represents a completely new product or at least an important state in the process of manufacture; and
- (c) each type of article qualifies separately in its own right, but does, in relation to the process of manufacture, not include-
 - (i) any packaging or bottling, or placing in flasks, bags, cases or boxes, or fixing on cards or boards, of goods, or any other simple packing procedure;
 - (ii) any assembling of goods involving the construction of an article by putting together finished components which may require slight modifications, such as painting or trimming, before assembling, but excluding gluing, screwing, nailing, sewing and minor welding and riveting procedures, with or without the addition of local parts or components of minor importance such as screws, nuts and bolts;
 - (iii) any simple mixing or blending procedure of imported ingredients which does not result in the manufacture of a different product; and
 - (iv) any procedure to ensure the preservation of goods in good condition during transportation or storage, such as ventilation, spreading out, drying, freezing or placing in brine, sulphur-dioxide or other aqueous solutions, the removal of damaged parts or any cleaning or similar procedure;

[The definition of "goods produced or manufactured in Namibia" is substituted by [GN 140/2013](#). The word "percent" is spelt "per cent" in all other places in the *Gazette*.]

"local content", in relation to goods produced or manufactured in Namibia, means such percentage of the manufacturing costs of such goods in their finished conditions as is represented by the costs of-

- (a) any materials grown, produced or manufactured in Namibia and which were used in the manufacture of the goods; and
- (b) any direct labour involved in the manufacture of the goods;

"manufacturing costs" means the manufacturing costs of goods determined in accordance with the provisions of regulation 9;

“the Act” means the Tender Board of Namibia Act, 1996 (Act [16 of 1996](#)).

2. Powers of functions of Board

- (1) The Board may make recommendations to the Minister in connection with the issue to offices, ministries and agencies of directives relating to the procurement of goods and services, the letting or hiring of anything, the acquisition or granting of any right and the disposal of Government property.
- (2) In performing its functions, the Board may, subject to the provisions of section 18(2) of the Act, obtain such expert or technical advice as it may deem necessary.
- (3) The Board may, if it suspects any irregularity with regard to the mission to the Board by any office, ministry or agency of tenders, request that office, ministry or agency to prove to the satisfaction of the Board that the irregularity (if any) has been rectified.
- (4) The Board may-
 - (a) if it is satisfied that-
 - (i) a tenderer-
 - (aa) has amended or withdrawn a tender after the closing date for receipt of tenders but before he or she has been notified of its acceptance; or
 - (bb) has failed to enter into an agreement or to furnish security in the circumstances contemplated in section 16(3) of the Act; or
 - (ii) a contractor-
 - (aa) fails or has failed to comply with any of the terms and conditions of an agreement or performs or has performed unsatisfactorily under an agreement; or
 - (bb) has in relation to the conclusion of an agreement, promised, offered or given a bribe, commission, gift, loan, benefit or any other compensation whatsoever or has acted in a fraudulent manner or in bad faith or in any other improper manner,

in addition to any other legal remedy it may have, decided not to consider during such period as the Board may determine any tender of the tenderer or contractor concerned, as the case may be;
 - (b) at any time vary or set aside any restriction imposed by it under paragraph (a).
- (5) A restriction imposed under regulation (4)(a) on any tenderer or contractor, as the case may be, may also be imposed on any other person who the Board is satisfied-
 - (a) exercises or has exercised or may exercise, whether wholly or partly, control over the tenderer or contractor concerned; and
 - (b) is or was directly or indirectly associated with that tenderer or contractor.
- (6) Where the Board-
 - (a) imposes a restriction on-
 - (i) any tenderer or contractor under regulation (4) (a); or
 - (ii) any other person under regulation (5); or
 - (b) varies or sets aside under regulation (4) (b) any restriction so imposed,

the Board shall in writing notify-

- (aa) every office, ministry and agency; and
 - (bb) such representatives of Namibia abroad as it may deem necessary, of such restriction, variation or setting aside, as the case may be, and request such office, ministry, agency and representative to act accordingly.
- (7) If an agreement has been concluded with any contractor on the strength of information furnished by the contractor which, after the conclusion of such agreement, is shown to have been incorrect information, the Board may, in addition to any other legal remedy it may have-
- (a) recover from the contractor any expense, loss or damage incurred or suffered by the Government as a result of the conclusion of the agreement on the strength of such incorrect information; or
 - (b) by written notice sent to the contractor by registered post addressed to the contractor's last known address, impose on the contractor a penalty not exceeding five per cent of the monetary value of the agreement, which penalty shall constitute a debt due to the Government and may be recovered from any moneys (if any) owing to the contractor by the Government; or
 - (c) both recover such expense, loss or damage incurred or suffered, and impose such penalty.
- (8) If an agreement-
- (a) provides for an increase of tender prices, the Board may, on receipt of a written request from the contractor concerned made to the Board within 60 days after the coming into operation of any such price increase, give effect to the increase of any tender price in accordance with the terms of the agreements but subject to the provisions of the Act;
 - (b) does not provide for an increase of tender prices, the Board may, if the contractor concerned satisfies the Board that any such price increase (if any) is the direct result of unforeseen circumstances rendering the performance of the agreement in a loss to the contractor, act in accordance with the provisions of section 7 (1) (h) of the Act.
- (9) The Board shall-
- (a) adopt a code of procedure not inconsistent with the provisions of the Act and these regulations in relation to the invitation of tenders, the conclusion of agreements and the placing of orders for or on behalf of the Government; and
 - (b) publish such code in the *Gazette*.
- (10) In this regulation-
- “contractor”, in relation to a restriction, includes an employee or agent of a contractor;
- “tenderer”, in relation to a restriction, includes an employee or agent of a tenderer.

3. Committees of Board

- (1) The majority of the members of a committee of the Board appointed under section 8 (1) of the Act shall constitute a quorum for any meeting of such committee.
- (2) In the event of an equality of votes at any meeting of a committee of the Board, the matter under consideration shall be referred to the Board for decision.
- (3) The provisions of regulation 4(1), (2) (b), (3), (4) and (5) shall apply *mutatis mutandis* in respect of a committee of the Board.

4. Procedure at meetings of Board

- (1) Subject to the provisions of the Act and these regulations, any member present at a meeting of the Board shall be obliged to cast a vote in respect of any matter which is being put to the vote and in respect of which the member concerned may legally cast a vote.
- (2)
 - (a) In the event of an equality of votes of a meeting of the Board, the chairperson of the meeting shall have a casting vote as well as a deliberative vote.
 - (b) The number of members voting for or against any decision shall be entered in the minutes of the meeting if so decided at the meeting.
- (3) The chairperson of a meeting may with the approval of the Board withdraw any matter before it has been put to vote.
- (4) All discussions at meetings of the Board and all matters considered and decisions arrived at by the Board shall be treated as confidential and shall not be disclosed by any member or alternate member of the Board, or any staff member or any other person invited to provide the Board with expert advice, unless the prior approval of the Board has been obtained and entered in the minutes of the meeting.
- (5) Decisions of the Board shall be conveyed to the person concerned by staff members designated in terms of section 19(1) of the Act, or by the member or members of the Board designated by the Board.
- (6) The Board may, cancel in part or wholly such an award, if it is satisfied that an award given or about to be given compromises the interest of the State.

[subregulation (6) inserted by [GN 140/2013](#)]

- (7) In terms of subregulation (6) a cancelled a tender, or a part of it must be readvertised by the Board.

[subregulation (7) inserted by [GN 140/2013](#)]

5. Decisions of Board

- (1) Decisions of the Board shall be obtained by means of meetings, and the Board shall keep minutes of each such meeting.
- (2) When, at the invitation of the Board, tenders are submitted to it for the purposes of concluding an agreement contemplated in section 7(1)(a) of the Act, the Board-
 - (a) is not obliged to accept the lowest or, in the case of the disposal of Government property, the highest or any other tender;
 - (b) may, where a tender relates to more than one item, accept such tender in respect of any one or more specific items;
 - (c) may accept any tender notwithstanding the fact that such tender was not made in response to any particular tender invitation;
 - (d) shall not accept a tender if the tender price is quoted in relation to any or all other tender prices.
- (3) Subject to the provisions of section 15 (6) of the Act, the Board shall keep on record, in the minutes of the meeting, the reasons for the acceptance of a tender.
- (4) No decision of the Board shall be invalid because it is merely based on an erroneous calculation or a *bona fide* incorrect application of these regulations.

6. Invitation and submission of tenders

- (1) Unless exempted in terms of section 17 of the Act from compliance with the required tender procedures, all tenders for the procurement of goods and services, the letting or hiring of things, the acquisition or granting of rights, and the disposal of property, for or on behalf of the Government, shall be invited by the Board in accordance with the provisions of section 11 or 13 of the Act, as the case may be.
- (2) If the Board in any of the circumstances contemplated in paragraph (a), (b) or (c) of section 17 of the Act, elects not to adhere to the tender procedures required in terms of the Act, it may invite tenders or cause tenders to be invited in any other manner it may deem fit.
- (3) A tender shall, subject to the provisions of section 14 of the Act-
 - (a) be submitted to the Board in such manner and form and within such period, but not less than 21 days from the date of the only or last publication of the invitation for tenders, as may be determined by the Board; and
 - (b) be accompanied by such documents and information as the Board may require in the particular case.
- (4) The estimated value of goods or services to be furnished shall-
 - (a) be the total value of all such goods or services, as the case may be;
 - (b) not be subdivided in order to bring such value within the limits of paragraph (a) of section 17 of the Act.
- (5)
 - (a) If in the opinion of a tenderer a tender specification is unfair or aimed at giving preference to a specific product, trade mark or trade name, the tenderer may, before the closing date for receipt of tenders, object thereto in writing to the Board.
 - (b) If the Board sustains the objection, it shall invite tenders afresh in respect of any amended specification.
- (6) A tenderer and the client ministry may not enter into any correspondence between the period immediately after closing of a tender and the award of a tender by the Board, unless where the Board requests such information as it may determine in terms of section 15(1) of the Act.

[subregulation (6) inserted by [GN 140/2013](#)]
- (7) Tenders may be specific on particular brands of goods, if so warranted.

[subregulation (7) inserted by [GN 140/2013](#)]

7. Price preferences

- (1) In comparing tenders, the Board shall give effect to the policy of the Government referred to in section 15 (5) of the Act by applying, as the circumstances in each particular case may require, the price preferences specified in Annexure A in respect of all tenders which are considered by the Board.

- (2) If a tenderer qualifies for price preferences on more than one basis, all such preferences shall be granted to the tenderer and, when considering the tender, the tender price shall be reduced with an amount determined in accordance with the formula

$$A = \frac{PP \times TP}{100}$$

in which formula-

- (a) "A" represents the amount to be determined;
 - (b) "PP" represents the total percentage of all price preferences granted in respect of the tender; and
 - (c) "TP" represents the tender price.
- (3) To be considered for any price preference in terms of this regulation, a tenderer shall submit to the Board the required information on a form similar to the form contained in Annexure B.

8. Costs of materials

- (1) In calculating the costs of materials grown, produced or manufactured in Namibia, only the following costs shall be included, namely-

[There appear to be some words missing after the introductory phrase. Compare regulation 9(a) and (b).]

- (a) ... lost in the process of the manufacture of goods, as represented by their delivered price at the factory and used directly in the manufacture of the goods: Provided that-
 - (i) if the materials which are directly used in the manufacture of goods, are not wholly produced in Namibia, the goods shall count to the extent of their proportionate local content; and
 - (ii) locally manufactured materials or components which have been temporarily exported for further manufacture, shall on return to the country of final manufacture be taken as 100 per cent imported content for the purposes of determining the local content of any goods; and
 - (b) the costs of labour directly involved in the manufacture of goods, which direct labour costs shall, in addition to salaries and wages paid in respects of such labour, include-
 - (i) leave, except cash in lieu of leave;
 - (ii) salaries for foremen and supervisors related to the process of manufacture;
 - (iii) overtime payments at normal rates; and
 - (iv) incentive bonuses if predetermined,

but shall not include cash in lieu of leave, overtime payments at above normal rates, any portion of salaries for foremen and supervisors not related to the process of manufacture, incentive bonuses not predetermined, pension contributions, maintenance costs, fringe benefits and business overheads.
- (2) The manufacturing costs of goods shall be determined in accordance with the costs arising from normal business practices, operating procedures and level of production in the industry in question as incurred over a period of not less than 90 days, such costs of goods in their finished condition based on factual costs, charges and expenses incurred in their manufacture, including the costs of putting the goods up in their retail packages and the costs of such package: Provided that, if in the opinion of the Board or a committee, as the case may be, any cost, charge or expense has not been

incurred by the manufacturer at the normal open market price, the Board or committee may assess the amount of that cost, charge or expense on the basis of one normal open market price, and the manufacturing costs shall be determined in accordance with that assessment.

- (3) In determining the local content of any goods manufactured, whether wholly or partly, from-
- (a) locally produced or manufactured materials or components, the local content of such locally produced or manufactured materials or components shall be determined and apportioned in accordance with the provisions of these regulations;
 - (b) imported materials, the origin of any charges incidental to the delivery of the imported materials shall be deemed to be that of the imported materials, and any information which the Board or a committee, as the case may be, may require for the purposes of determining the local content of the manufacturing costs of any goods shall be furnished to the Board or committee in such form and be certified in such manner as the parties concerned may deem necessary to ensure accuracy and clarity.

- (4) In this regulation-

“direct labour” means any procedure which is applied to input materials from which a product is manufactured, from the time the materials have first come to hand of the work force actually manufacturing the product to the time the finished product is put up in retail package, but does not include any procedure of designing, pattern making or dye processing;

“direct materials” does not include water (provided it is not part of the finished product), electricity, consumable items and items for staff benefits.

9. Manufacturing costs

- (1) Subject to the provisions of subregulation (2), the manufacturing costs of goods shall include-
- (a) The costs of imported materials, including the costs of waste materials lost in the process of manufacture, as represented by the landed costs of the materials at the factory, including any charges incidental to the delivery of such materials to the factory but excluding any duty thereon paid by the manufacturer: Provided that the costs of imported materials and that not imported by the manufacturer shall be the delivered price at the factory;

[The word “The” at the beginning of paragraph (a) should not be capitalised.]
 - (b) the costs of the local materials, including the costs of the waste materials and materials lost in the process of manufacture, as represented by their delivered price at the factory;
 - (c) the costs of direct labour, as represented by the wages paid in respect of labour directly involved in the manufacture of the goods as contemplated in these regulations;
 - (d) the costs of direct manufacturing expenses, as represented by-
 - (i) the operating costs of the machines used to manufacture the goods;
 - (ii) the expenses incurred in the cleaning, drying, polishing, pressing or any other process, as may be necessary for the finishing of the goods; and
 - (iii) the costs of cutting the goods up in their packages and the costs of such retail packages, but excluding any extra costs of packaging the goods for transportation or export and the costs of any extra package; and
 - (e) the manufacturing overhead costs, are represented by-
 - (i) rent, rates and insurance charges directly attributable to the factory;
 - (ii) indirect labour charges, including salaries paid to factory managers, wages paid to foremen, examiners and testers of the goods and fees paid to efficiency advisers;

- (iii) power, light, water and other service charges directly attributed to the manufacturing costs of the goods;
 - (iv) consumable stores, including minor tools, grease, oil and other incidental items and materials used in the manufacture of the goods;
 - (v) depreciation and maintenance of factory building, plant, machinery, tools and other items used in the manufacture of the goods; and
 - (vi) the costs of food supplied to factory workers, Workmen's Compensation, insurance and contributions to manufacturers' associations.
- (2) The manufacturing costs of goods shall not include-
- (a) administration expenses, as represented by-
 - (i) office expenses, office rent and salaries paid to accountants, clerks, managers, and other executive personnel;
 - (ii) director's fees, other than salaries paid to directors who act in the capacity of factory managers;
 - (iii) statistical and costing expenses in respect of the manufacture of the goods; and
 - (iv) investigation and experimental expenses;
 - (b) selling expenses, as represented by-
 - (i) the costs of soliciting and securing orders, including advertising charges and commission or salaries paid to agents and salesmen; and
 - (ii) expenses incurred in the making or giving of designs, estimates and tenders;
 - (c) distribution expenses, other than those referred to in paragraphs (a) and (b), as represented by all the expenditure incurred after the goods have left the factory, including-
 - (i) the costs of any materials and payment of wages incurred in the packaging of the goods for export;
 - (ii) warehousing expenses incurred in the storage of the finished goods; and
 - (iii) the costs of transporting the goods to their destinations; and
 - (d) charges not directly attributed to the manufacture of goods, including-
 - (i) any duty paid on the imported raw materials;
 - (ii) any excise duty paid on raw material produced in the country where the finished goods are manufactured; and
 - (iii) any royalties paid in respect of patents, special machinery or designs.

9A. Local labour and produce

- (1) A tenderer may not be allowed to import any labour, goods or services for supply in terms of a government tender except where-
- (a) in the case of a controlled commodity, proof has been provided by the respective controlling authority that local sources have been exhausted; or
 - (b) in the case of labour, other goods or services, the tenderer must provide proof to the satisfaction of the board that sourcing locally is not possible or could not be satisfied as requested.

- (2) The Board may, if it suspects that information submitted by the tenderer is not accurate, cause further verification or investigations to be conducted with the assistance of any other person or body as the Board may consider appropriate.

[regulation 9A inserted by [GN 140/2013](#)]

10. Liabilities

- (1) All stamp duties, bank charges, bank interest and other like charges payable in respect of an agreement shall be paid by the contractor concerned.
- (2) In the event of an agreement being cancelled by or on behalf of the Government in the exercise of its rights under the Act, including these regulations, or any other law or the contract, or for any other valid reason, the contractor concerned shall be liable to pay to the Government all expenses, losses and damages incurred or suffered by the Government as a result of such cancellation, and the Government shall be entitled to recover not only those sums which are due and payable under the agreement, but also all sums which are due and payable by law.

11. Non-compliance with title of tender or agreement, or delay in performance of agreement

- (1) Unless otherwise provided-
 - (a) in a title of tender, a tenderer-
 - (i) who amends or withdraws his or her tender after the closing date for receipt of tenders but before he or she has been notified of its acceptance; or
 - (ii) who fails to enter into an agreement or to furnish security in the circumstances contemplated in section 16(3) of the Act, shall be liable to pay to the Government all expenses incurred by the Government by having to invite tenders afresh or to make other less favourable arrangements;
 - (b) in an agreement, the Board may-
 - (i) if the contractor concerned fails or has failed to comply with any of the terms and conditions of the agreement or performs or has performed unsatisfactorily under the agreement, in addition to any other legal remedy it may have, cancel the agreement;
 - (ii) if the contractor concerned fails to furnish any goods or services within the period stipulated in the agreement-
 - (aa) act in accordance with the provisions of subparagraph (i); or
 - (bb) make arrangements for the furnishing of goods or services of similar quality and up to the same quantity in lieu of the goods or services not furnished or rendered under the agreement;

and recover any expense, loss or damage incurred or suffered by the Government from that contractor in accordance with the provisions of subregulation (2).

- (2) If-
 - (a) an agreement is cancelled under subregulation (1) (b) (i) or (ii) (aa), the contractor concerned shall be liable to compensate the Government in accordance with the provisions of regulation 10 (2);
 - (b) arrangements contemplated in subregulation (1) (b) (ii) (bb) are made, the contractor concerned shall be liable to compensate the Government for any detrimental price differences or any other damage or loss suffered by the Government: Provided that, if the contractor satisfies the Board or the office, ministry or agency concerned, as the case may be, in terms of subregulation (4) that the delay in the furnishing of goods or services is the direct

result of strikes, lock-outs, riots, accidents in connection with machinery, natural disasters or storms or other circumstances which could not have been foreseen or prevented by the contractor, the contractor shall not be so liable to compensate the Government.

- (3) Any compensation payable to the Government in terms of subregulation (2) (b) may be recovered from any moneys (if any) owing to the contractor by the Government in respect of goods or services furnished or rendered or to be furnished or rendered under the agreement in question, or from any other moneys owing to the contractor by the Government.
- (4) If a delay contemplated in the proviso to subregulation (2) (b) is likely to occur, a contractor shall-
 - (a) without delay furnish in writing full particulars of the particular circumstance to the Board or to the office, ministry or agency concerned, as the case may be; and
 - (b) notify the Board or the office, ministry or agency concerned, as the case may be, what the expected period of delay will be.

12. Incorrect preferences

If a tender has been accepted on the strength of a preference granted in respect of the production, manufacture or assembly of goods which, after the acceptance of the tender is shown to have been an incorrect preference based on incorrect information furnished by the tenderer, the Board may, in addition to any other legal remedy it may have-

- (a) recover from the tenderer any expense, loss or damage incurred or suffered by the Government as a result of the acceptance of the tender on the strength of such incorrect preference; or
- (b) by written notice sent to the tenderer by registered post addressed to the tenderer's last known address, impose on the tenderer a penalty not exceeding five per cent of the monetary value of the tender, which penalty shall constitute a debt due to the Government and may be recovered from any moneys (if any) owing to the tenderer by the Government; or
- (c) both recover such expense, loss or damage incurred or suffered, and impose such penalty.

13. Promise, offer or give of bribe, commission, gift, loan, benefit or other compensation by tenderer or contractor

- (1) If the Board is convinced that-
 - (a) a tenderer, in relation to the acceptance of a tender, or a contractor, in relation to the conclusion of an agreement, has promised, offered or given a bribe, commission, gift, loan, benefit or any other compensation whatsoever to a member or staff member or to any other person, or has caused or prompted such bribe, commission, gift, loan, benefit or compensation to be offered or given; or
 - (b) a tenderer or contractor has in relation to the acceptance of a tender or conclusion of an agreement, as the case may be, acted in a fraudulent manner or in bad faith or in any other improper manner (including the furnishing of incorrect information); or
 - (c) a tenderer or contractor has, in the performance of an agreement concluded with the Government, failed to comply with any statutory requirement in connection with such agreement and has as a result thereof been convicted of an offence,

the Board may, in addition to any other legal remedy it may have-

- (i) in the case of a tenderer, withdraw its acceptance of the tender;
- (ii) in the case of a contractor, cancel the agreement and recover in accordance with the provisions of regulation 10(2) any expense, loss or damage incurred or suffered by the Government.

- (2) The provisions of regulation 12 shall apply *mutatis mutandis* in relation to the withdrawal by the Board of its acceptance of a tender under subregulation (1).

14. Death of contractor, sequestration of contractor's estate, or placement under judicial management or winding-up of contractor

The Board may, in the event of-

- (a) the death of a contractor;
- (b) the insolvency of a contractor; or
- (c) the placement under judicial management or winding-up of a contractor,

subject to the provisions of-

- (i) the Administration of Estates Act, 1965 (Act [66 of 1965](#));
- (ii) the Insolvency Act, 1936 (Act [24 of 1936](#));
- (iii) the Companies Act, 1973 (Act [61 of 1973](#)),

respectively, or any other Act of Parliament, cancel any agreement concluded with the contractor and; where appropriate, lodge a claim contemplated in regulation 10 (2) in accordance with the provisions of any such applicable Act against the deceased estate or insolvent estate of the contractor, as the case may be.

15. Fees payable

Such fees as may be determined by the Board shall be payable in respect of prints, specifications and tender documents.

16. Repeal of regulations, and saving

- (1) Subject to the provisions of subregulation (2), the regulations published under Government Notices Nos. 132 of 1970 and 33 of 1971 are hereby repealed.
- (2) Anything done under a provision of the regulations repealed by subregulation (1), and which is not concluded at the commencement of these regulations, shall be continued and concluded as if it has been done under the corresponding provision of these regulations.

17. Short title

These regulations shall be called the Tender Board Regulations, 1996.

ANNEXURE A (Regulation 7(1))

PRICE PREFERENCES

The price preferences set out below shall apply in respect of tenders:

- (a) Goods produced or manufactured in Namibia:
 - (i) 6 per cent - if the goods produced or manufactured have a local content of 10 per cent or more but less than 25 per cent of the manufacturing costs of the goods;
 - (ii) 10 per cent - if the goods produced or manufactured have a local content of 25 per cent or more but less than 50 per cent of the manufacturing costs of the goods;
 - (iii) 12 per cent - if the goods produced or manufactured have a local content of 50 per cent or more but less than 60 per cent of the manufacturing costs of the goods;

- (iv) 15 per cent - if the goods produced or manufactured have a local content of 60 per cent or more but less than 75 per cent of the manufacturing costs of the goods;
 - (v) 18 per cent - if the goods produced or manufactured have a local content of 75 per cent or more but less than 90 per cent of the manufacturing costs of the goods;
 - (vi) 20 per cent - if the goods produced or manufactured have a local content of 90 per cent or more of the manufacturing costs of goods.
- (b) Goods assembled in Namibia:
- (i) 3 per cent - if the goods assembled have a local content of 10 per cent or more but less than 25 per cent of the total costs of production;
 - (ii) 5 per cent - if the goods assembled have a local content of 25 per cent or more but less than 50 per cent of the total costs of production;
 - (iii) 6 per cent - if the goods assembled have a local content of 50 per cent or more but less than 75 per cent of the total costs of production;
 - (iv) 8 per cent - if the goods assembled have a local content of 75 per cent or more but less than 90 per cent of the total costs of production;
 - (v) 10 per cent - if the goods assembled have a local content of 90 per cent or more of the total costs of production.
- (c) Services rendered by persons domiciled or companies incorporated in Namibia:
- (i) 5 per cent - to persons domiciled or companies incorporated in Namibia in respect of services offered, when comparison is being made with companies incorporated in any country other than Namibia;
 - (ii) 5 per cent - to person or companies granted a Certificate of Status Investment under section 7 of the Foreign Investment Act, 1990 (Act 27 of 1990), in respect of services offered, when comparison is being made with companies incorporated in any country other than Namibia.
- (d) After sales service:
- 3 per cent - to *bona fide* Namibian dealers or merchants where an after sales service is required in respect of goods to be imported.
- (e) Goods conforming to any national or international standard specification:
- 3 per cent - to goods conforming to any national or international standard specification.
- (f) *Bona fide* Namibian small scale industries:
- (i) 2 per cent - if the labour employed by the industry is more than 10 but less than 25;
 - (ii) 3 per cent - if the labour employed by the industry is 25 or more but less than 50;
 - (iii) 5 per cent - if the labour employed by the industry is 50 or more.
- (g) Tenderer located in communal areas or notified underdeveloped areas:
- (i) 2 per cent - if the labour employed is more than 10 but less than 25;
 - (ii) 3 per cent - if the labour employed is 25 or more but less than 50;
 - (iii) 5 per cent - if the labour employed is 50 or more.
- (h) *Bona fide* Namibian manufacturing companies:
- 2 per cent - if a company is incorporated in Namibia with all its share capital beneficially owned by Namibian citizens and the company employs Namibian citizens only.

- (i) *Bona fide* Namibian tenderer implementing affirmative action policies:

If in the opinion of the Board, based on information furnished to the Board by a Namibian tenderer, such tenderer is implementing affirmative action policies and programmes to redress social, economic or educational imbalances in a democratic society, the Board may grant a price preference of 2 to 3 per cent on the merits of each particular case, based on factors such as structured training programmes, apprenticeship courses of approved standards for labour, technical staff and managerial cadre, substantial employment of women and handicapped persons, and other programmes or activities benefiting disadvantaged Namibian citizens.

ANNEXURE B (Regulation 7(3))

FORMS

[Editorial note: The forms have not been reproduced]