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Government Notices

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 34

2001

COMMENCEMENT OF DECENTRALISATION ENABLING ACT, 2000 (ACT NO. 33 OF 2000)

In terms of section 10 of the Decentralisation Enabling Act, 2000 (Act No. 33 of 2000),

I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

N. IYAMBO
MINISTER OF REGIONAL AND
LOCAL GOVERNMENT AND HOUSING

Windhoek, 26 February 2001

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 35

2001

COMMENCEMENT OF REGIONAL COUNCILS AMENDMENT ACT, 2000
(ACT NO. 30 OF 2000)

In terms of section 10 of the Regional Councils Amendment Act, 2000 (Act No. 30 of 2000), I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

N. IYAMBO
MINISTER OF REGIONAL AND
LOCAL GOVERNMENT AND HOUSING

Windhoek, 26 February 2001

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 36

2001

COMMENCEMENT OF NATIONAL HOUSING DEVELOPMENT ACT, 2000
(ACT NO. 28 OF 2000)

In terms of section 38 of the National Housing Development Act, 2000 (Act No. 28 of 2000), I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

N. IYAMBO
MINISTER OF REGIONAL AND
LOCAL GOVERNMENT AND HOUSING

Windhoek, 26 February 2001

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 37

2001

COMMENCEMENT OF NATIONAL HOUSING ENTERPRISE AMENDMENT
ACT, 2000 (ACT NO. 32 OF 2000)

In terms of section 15 of the National Housing Enterprise Amendment Act, 2000 (Act No. 32 of 2000), I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

N. IYAMBO
MINISTER OF REGIONAL AND
LOCAL GOVERNMENT AND HOUSING

Windhoek, 26 February 2001

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 38

2001

**COMMENCEMENT OF TRUST FUND FOR REGIONAL DEVELOPMENT AND
EQUITY PROVISIONS ACT, 2000 (ACT NO. 22 OF 2000)**

In terms of section 20 of the Trust Fund for Regional Development and Equity Provisions Act, 2000 (Act No. 22 of 2000), I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

**N. IYAMBO
MINISTER OF REGIONAL AND
LOCAL GOVERNMENT AND HOUSING**

Windhoek, 26 February 2001

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 39

2001

**LOCAL AUTHORITIES ACT, 1992:
COMMERCIALISATION REGULATIONS**

The Minister responsible for Local Government has under section 94A of the Local Authorities Act, 1992 (Act No. 23 of 1992), made the regulations set out in the Schedule.

SCHEDULE**Definitions**

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has a corresponding meaning, and -

“commercialise” means the commercialising of any service, function or duty in accordance with regulation 3;

“commercialised business” means any service, function or duty commercialised in accordance with regulation 3;

“pool” means the input, subject to the conditions imposed by the Minister under regulation 2, at any time by a local authority council into a company conducting a commercialised business by way of the providing of labour or other services, or the supply of materials or equipment, free of charge, or the making of a cash payment or a loan to, or the entering into a lease agreement with, the company, including the furnishing of a guarantee in terms of section 30(1)(x) of the Act; and

“the Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992).

Commercialisation by local authority council

2. (1) Subject to these regulations or to any other law, a local authority council may commercialise in whole or in part, with the prior written approval of the Minister and subject to such conditions as the Minister may impose in writing in the approval, any service rendered, or duty exercised or function carried out by the local authority council.

(2) The Minister may impose conditions under subregulation (1) which apply -

(a) to a local authority council specified in the approval granted under that subregulation; or

- (b) in general to all local authorities in respect of any commercialisation in accordance with these regulations; or
- (c) only to the commercialisation of a service, duty or function, and only to the local authority council, specified in the approval granted under that subregulation.

Form and manner of Commercialisation

3. A local authority council may commercialise, subject to the conditions imposed by the Minister under regulation 2, any service rendered, function exercised or duty carried out by the local authority council, by means of -

- (a) the acquisition of all the shares in a company registered or to be registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), or the registering of a company in which the local authority council is the sole shareholder, for the purpose of the commercialisation of such service, duty or function by the local authority council; and
- (b) the transferring and making over in writing to the company referred to in paragraph (a), subject to the conditions imposed by the Minister under regulation 2, of the power and authority of the local authority council to render, exercise or carry out the service, duty or function, to enable such company to render, exercise or carry out the service, duty or function so transferred or made over, subject to such conditions.

Alienation or encumbrance of shares and assets, and pooling of resources, services and property

4. (1) A local authority council may -

- (a) not alienate, encumber or dispose of any shares owned by it in, or any of the assets of, or the local authority council's interest in, a company conducting a commercialised business, without the prior written approval of the Minister, subject to the conditions the Minister may impose in the approval, and which approval may be granted only after consultation with the Minister of Trade and Industry;
- (b) pool, subject to any conditions imposed by the Minister under regulation 2, any of its resources, services or property in a company conducting a commercialised business.

(2) No member or staff member of a local authority council or other person referred to in section 94A(1)(c)(iv) of the Act may obtain any shares or interest in a company conducting a commercialised business without the prior written approval of the local authority council concerned, subject to such conditions as the local authority council may determine and which approval may only be granted after consultation with the Minister.

Amendment or alteration of statutes and articles of association, trust deed, shares or interest structure, or nature of operations, of company conducting a commercialised business

5. (1) The statutes and articles of association of a company referred to in regulation 3 conducting a commercialised business, must provide that, or must be amended to provide that, irrespective of the voting power of the local authority council on the board of directors of the company, the statutes or articles of association may not be amended or the share structure altered, including the transfer of ownership in shares, or the nature of operations of the company conducting the commercialised business, including the risks pertaining thereto, may not be changed without the prior written approval of the local authority council, which approval may only be granted in consultation with the Minister, and which approval must be entered into the minutes of the company concerned.

Audit of accounting records and financial statements of commercialised business

6. (1) The Auditor-General must audit, *mutatis mutandis* in accordance with section 85 of the Act, the accounting records and financial statements of a company referred to in regulation 3 conducting a commercialised business.

(2) The company referred to in subregulation (1) must submit to the Minister and to the local authority council concerned copies of the audited accounting records and financial statements referred to in that subregulation, together with a report by the Auditor - General relating to the audit conducted in accordance with that subregulation, within a period of 30 days after the completion of such audit.

Member or staff member of local authority council not to be employed by company

7. (1) A company referred to in regulation 3 conducting a commercialised business may not employ a member or staff member of the local authority council concerned.

(2) Nothing in subregulation (1) prevents a staff member of a local authority council from resigning from the services of such local authority council in order to take up employment with a company referred to in that subregulation.

General

8. Nothing in these regulations prevents a local authority council from acquiring or from registering a company in accordance with regulation 3 for the purpose of conducting a commercialised business, with objectives, powers, functions or purposes which are identical or similar to, or which are in competition or in conflict with, the objectives, powers, functions or purposes of any of the local authority council's own operations, if the conducting of the commercialised business by the company so acquired or registered by the local authority council, may serve to improve the efficiency or effectiveness of any of the own operations of the local authority council.

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 40

2001

**LOCAL AUTHORITIES ACT, 1992:
JOINT BUSINESS VENTURE REGULATIONS**

The Minister responsible for Local Government has under section 94A of the Local Authorities Act, 1992 (Act No. 23 of 1992), made the regulations set out in the Schedule.

SCHEDULE**Definitions**

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has a corresponding meaning, and -

“director” means a director of the board of directors of a company which has entered into a joint business venture in accordance with regulation 2, and a director representing a local authority council must be a member or staff member of the local authority council or an employee of the company who has been nominated by the local authority council to so act as director;

“Government” includes a Ministry, a regional council, a local authority council, a parastatal and a non governmental organisation;

“input” means the issue value of shares bought or the monetary or market value, as the case may be, of resources, services or property pooled by the local authority council concerned at the date when so pooled;

“joint business venture” means a joint business venture entered into in accordance with regulation 2;

“pool” means the input, subject to the conditions imposed by the Minister under regulation 2, at any time by a local authority council in a joint business venture by way of the providing of labour or other services, or the supply of materials or equipment, free of charge, or the making of a cash payment or a loan to, or the entering into of a lease agreement with, the joint business venture, including the furnishing of a guarantee in terms of section 30(1)(x) of the Act;

“shareholder’s involvement” includes the issue value of all shares taken up and paid for, shareholder’s loans to the company concerned, or an input by means of pooling; and

“the Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992).

Entering into joint business venture by local authority council

2. (1) A local authority council may enter, subject to subregulation (2), for the purposes of exercising, performing or carrying out its powers, functions or duties in terms of the Act, and further subject to -

- (a) these regulations; and
- (b) the prior written approval of the Minister on such conditions as the Minister may impose,

into joint business ventures with the Government or any company or any trust, or conjointly with the Government and any company or any trust, in order to promote economic development and employment creation within its area or in order to supplement its funds referred to in section 80(1) of the Act.

- (2) The Minister may impose conditions under subregulation (1) which apply -
 - (a) to a local authority council specified in the approval granted under that subregulation; or
 - (b) in general to all local authorities in respect of any joint business venture in accordance with these regulations; or
 - (c) only to the joint business venture and only to the local authority council specified in the approval granted under that subregulation.

(3) The Minister may grant, if foreign nationals will be involved in any joint business venture, his or her approval under subregulation (1) only after consultation with the Minister of Finance and the Minister of Trade and Industry.

(4) The written approval of the Minister under subregulation (1) is not required in the case of the municipal council of a municipality referred to in Part 1 of Schedule 1 to the Act.

Form of joint business venture

3. A local authority council, when entering into a joint business venture in accordance with regulation 2 may -

- (a) take up shares in an existing company registered, or in a company to be registered, in terms of the Companies Act, 1973 (Act No. 61 of 1973); or

- (b) accept the position of beneficiary of the trust established; or
- (c) enter into an agreement with the Government relating to the joint business venture,

for the purpose of establishing the joint business venture.

Alienation, encumbrance or disposal of shares and assets, and pooling of resources, services and property

- 4. A local authority council -
 - (a) excluding the municipal council of a municipality referred to in Part 1 of Schedule 1 to the Act, may not alienate or encumber any shares owned by it in a joint business venture, or otherwise encumber or dispose of its assets or other interest therein, without the prior written approval of the Minister, subject to the conditions the Minister may impose in the approval, granted after consultation with the Minister of Trade and Industry, which approval must specify the purchaser or the beneficiary, as the case may be, and the relevant shares or assets, as the case may be;
 - (b) may pool in a joint business venture, subject to the conditions imposed by the Minister under regulation 2, any of its resources, services or property.

Acquisition of shares or other interest in joint business venture by members or staff members of local authority council

5. No member or staff member of a local authority council or any person referred to in section 94A(1)(c)(iv) of the Act, may buy, accept, receive or otherwise acquire any shares or other interest in a joint business venture, excluding payments relating to director's fees or member's fees, or payment for services rendered with the written approval of the local authority council.

Representation of local authority council on board of directors or board of trustees

6. The representation of a local authority council concerned on the board of directors of a company or on the board of trustees of a trust, in relation to the total representation on the board concerned, must be commensurate to the ratio which the monetary value of the input by the local authority council in the joint business venture bears to the monetary value of the total shareholder's investment in the joint business venture.

Amendment or alteration of articles of association and statute, trust deed, share or interest structure or nature of operations of joint business venture

7. The statutes and articles of association of a company or the trust deed of a trust referred to in regulation 2(1) must provide that, irrespective of the voting power of the local authority council on the board of directors or at any meeting of the trustees, as the case may be, the statutes or articles of association or the trust deed may not be amended and the share or interest structure altered, including the transfer of ownership in shares, or the nature of operations of the joint business venture, including the risks pertaining thereto, may not be changed without the prior written approval of the local authority council, which approval may only be granted in consultation with the Minister, and which approval must be entered into the minutes of the joint business venture concerned.

Audit of accounting records and financial statements of joint business venture

8. (1) The Auditor-General must audit, *mutatis mutandis* in accordance with section 85 of the Act, the accounting records and financial statements of a joint business venture.

(2) The joint business venture referred to in subregulation (1) must submit to the Minister and to the local authority council concerned copies of the audited accounting records and financial statements referred to in that subregulation, together with a report by the Auditor General relating to the audit conducted in accordance with that subregulation, within a period of 30 days after the completion of such audit.

Members or staff members of local authority council not to be employed by joint business venture

9. (1) A joint business venture entered into in accordance with regulation 2 may not employ a member or staff member of a local authority council.

(2) Nothing in subregulation (1) prevents a staff member of a local authority council to resign from such local authority in order to take up employment with a joint business venture referred to in that subregulation.

General

10. Nothing in these regulations prevents a local authority council from entering into a joint business venture in accordance with regulation 2 for the purpose of conducting a joint business with objectives, powers, functions or purposes which are identical or similar to, or which are in competition or in conflict with, the objectives, powers, functions or purposes of any of the local authority council's own operations, if the joint business venture may serve to improve the efficiency or effectiveness of any of the own operations of the local authority council.

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 41

2001

**REGIONAL COUNCILS ACT, 2002:
COMMERCIALISATION REGULATIONS**

The Minister responsible for Regional Government has under section 44B of the Regional Councils Act, 1992 (Act No. 22 of 1992), made the regulations set out in the Schedule.

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has a corresponding meaning, and -

“commercialise” means the commercialising of any service, function or duty in accordance with regulation 3;

“commercialised business” means any service, function or duty in accordance with regulation 3;

“pool” means the input, subject to the conditions imposed by the Minister under regulation 2, at any time by a regional council into a company conducting a commercialised business by way of the providing of labour or other services, or the supply of materials or equipment, free of charge, or the making of a cash payment or a loan to, or the entering into a lease agreement with, the company, including the furnishing of a guarantee in terms of section 28(1)(k) of the Act; and

“the Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992).

Commercialisation by regional council

2. (1) Subject to these regulations or to any other law, a regional council may commercialise in whole or in part, with the prior written approval of the Minister and subject to such conditions as the Minister may impose in writing in the approval, any service rendered, or duty exercised or function carried out by the regional council.

- (2) The Minister may impose conditions under subregulation (1) which apply -
 - (a) to a regional council specified in the approval granted under that subregulation; or
 - (b) in general to all regional councils in respect of any commercialisation in accordance with these regulations; or
 - (c) only to the commercialisation of a service, duty or function, and only to the regional council, specified in the approval granted under that subregulation.

Form and manner of Commercialisation

3. A regional council may commercialise, subject to the conditions imposed by the Minister under regulation 2, any service rendered, function exercised or duty carried out by the regional council, by means of -

- (a) the acquisition of all the shares in a company registered or to be registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), or the registering of a company in which the regional council is the sole shareholder, for the purpose of the commercialisation of such service, duty or function by the regional council; and
- (b) the transferring and making over in writing to the company referred to in paragraph (a), subject to the conditions imposed by the Minister under regulation 2, of the power and authority of the regional council to render, exercise or carry out the service, duty or function, in order to enable such company to render, exercise or carry out the service, duty or function so transferred or made over, subject to such conditions.

Alienation or encumbrance of shares and assets, and pooling of resources, services and property

- 4. (1) A regional council may -
 - (a) not alienate, encumber or dispose of any shares owned by it in, or any of the assets of, or the regional council's interest in, a company conducting a commercialised business, without the prior written approval of the Minister, subject to the conditions the Minister may impose in the approval, and which approval may be granted only after consultation with the Minister of Trade and Industry;
 - (b) pool, subject to any conditions imposed by the Minister under regulation 2, any of its resources, services or property in a company conducting a commercialised business.

(2) No member or staff of a regional council or other person referred to in section 44B(1)(c)(iv) of the Act may obtain any shares or interest in a company conducting a commercialised business without the prior written approval of the regional council concerned, subject to such conditions as the regional council may determine and which approval may only be granted after consultation with the Minister.

Amendment or alteration of statutes and articles of association, trust deed, shares or interest structure, or nature of operations, of company conducting a commercialised business

5. The statutes and articles of association of a company referred to in regulation 3 conducting a commercialised business, must prove that, or must be amended to provide that, irrespective of the voting power of the regional council on the board of directors of the company, the statutes or articles of association may not be amended or the share structure altered, including the transfer of ownership in shares, or the nature of operations of the company conducting the commercialised business, including the risks pertaining thereto, may not be changed without the prior written approval of the regional council, which approval may only be granted in consultation with the Minister, and which approval must be entered into the minutes of the company concerned.

Audit of accounting records and financial statements of commercialised business

6. (1) The Auditor-General must audit, *mutatis mutandis* in accordance with section 38 of the Act, the accounting records and financial statements of a company referred to in regulation 3 conducting a commercialised business.

(2) The company referred to in subregulation (1) must submit to the Minister and to the regional council concerned copies of the audited accounting records and financial statements referred to in that subregulation, together with a report by the Auditor General relating to the audit conducted in accordance with that subregulation, within a period of 30 days after the completion of such audit.

Member or staff member of regional council not to be employed by company

7. (1) A company referred to in regulation 3 conducting a commercialised business may not employ a member or staff member of the regional council concerned.

(2) Nothing in subregulation (1) prevents a staff member of a regional council from resigning from the services of such regional council in order to take up employment with a company referred to in that subregulation.

General

8. Nothing in these regulations prevents a regional council from acquiring or from registering a company in accordance with regulation 3 for the purpose of conducting a commercialised business, with objectives, powers, functions or purposes which are identical or similar to, or which are in competition or in conflict with, the objectives, functions or purposes of any of the regional council's own operations, if the conducting of the commercialised business by the company so acquired or registered by the regional council, may serve to improve the efficiency or effectiveness of any of the own operations of the regional council.

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 42

2001

**REGIONAL COUNCILS ACT, 1992:
JOINT BUSINESS VENTURE REGULATIONS**

The Minister responsible for regional government has under section 44B of the Regional Councils Act, 1992 (Act No. 22 of 1992), made the regulations set out in the Schedule.

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has a corresponding meaning, and -

“director” means a director of the board of directors of a company which has entered into a joint business venture in accordance with regulation 2, and a director representing a regional council must be a member or staff member of the regional council or an employee of the company who has been nominated by the regional council to so act as director;

“Government” includes a Ministry, a local authority council, a regional council, a parastatal and a non governmental organisation;

“input” means the issue value of shares bought or the monetary or market value, as the case may be, of resources, services or property pooled by the regional council concerned at the date when so pooled;

“joint business venture” means a joint business venture entered into in accordance with regulation 2;

“pool” means the input, subject to the conditions imposed by the Minister under regulation 2, at any time by a regional council in a joint business venture by way of the providing of labour or other services, or the supply of materials or equipment, free of charge, or the making of a cash payment or a loan to, or the entering into of a lease agreement with, the joint business venture, including the furnishing of a guarantee in terms of section 28(1)(k) of the Act;

“shareholder’s investment” includes the issue value of all shares taken up and paid for, shareholder’s loans to the company concerned, or an input by means of pooling; and

“the Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992).

Entering into joint business venture by regional council

2. (1) A regional council may enter, subject to subregulation (2), for the purposes of exercising, performing or carrying out its powers, functions or duties in terms of the Act, and further subject to -

- (a) these regulations; and
- (b) the prior written approval of the Minister on such conditions as the Minister may impose,

into joint business ventures with the Government or any company or any trust, or conjointly with the Government and any company or any trust, in order to promote economic development and employment creation within its area in order to supplement its funds referred to in section 33(1) of the Act.

- (2) The Minister may impose conditions under subregulation (1) which apply -
 - (a) to a regional council specified in the approval granted under that subregulation; or
 - (b) in general to all regional councils in respect of any joint business venture in accordance with these regulations; or
 - (c) only to the joint business venture and only to the regional council specified in the approval granted under that subregulation.

(3) The Minister may grant, if foreign nationals will be involved in any joint business venture, his or her approval under subregulation (1) only after consultation with the Minister of Finance and the Minister of Trade and Industry.

Form of joint business venture

3. A regional council, when entering into a joint business venture in accordance with regulation 2, may -

- (a) take up shares in an existing company registered, or in a company to be registered, in terms of the Companies Act, 1973 (Act No. 61 of 1973);
- (b) accept the position of beneficiary of the trust established; or
- (c) enter into an agreement with the Government relating to the joint business venture,

for the purposes of establishing the joint business venture.

Alienation, encumbrance or disposal of shares and assets, and pooling of resources, services and property

4. A regional council may -

- (a) not alienate or encumber any shares owned by it in a joint business venture, or otherwise encumber or dispose of its assets or other interest therein, without the prior written approval of the Minister, subject to the conditions the Minister may impose in the approval, granted after consultation with the Minister of Trade and Industry, which approval must specify the purchaser or the beneficiary, as the case may be, and the relevant shares or assets, as the case may be;
- (b) pool in a joint business venture, subject to the conditions imposed by the Minister under regulation 2, any of its resources, services or property.

Acquisition of shares or other interest in joint business venture by members of staff members of regional council

5. No member or staff member of a regional council or any person referred to in section 16(1) or section 44B(c)(iv) of the Act, may buy, accept, receive or otherwise acquire any shares or other interest in a joint business venture, excluding payments relating to director's fees or member's fees, or payment for services rendered with the written approval of the regional council.

Representation of regional council on board of directors or board of trustees

6. The representation of a regional council concerned on the board of directors of a company or on the board of trustees of a trust, as the case may be, in relation to the total representation on the board concerned, must be commensurate to the ratio which the monetary value of the input by the regional council in the joint business venture bears to the monetary value of the total shareholder's investment in the joint business venture.

Amendment or alteration of articles of association and statute, trust deed, share or interest structure or nature of operations of joint business venture

7. The statutes and articles of association of a company or the trust deed of a trust referred to in regulation 2(1) must provide that, irrespective of the voting power of the regional council on the board of directors or at any meeting of the trustees, as the case may be, the statutes or articles of association or the trust deed may not be amended and the share or interest structure altered, including the transfer of ownership in shares, or the nature of operations of the joint business venture, including the risks pertaining thereto, may not be changed without the prior written approval of the regional council, which approval may only be granted in consultation with the Minister, and which approval must be entered into the minutes of the joint business venture concerned.

Audit of accounting records and financial statements of joint business venture

8. (1) The Auditor-General must audit, *mutatis mutandis* in accordance with section 38 of the Act, the accounting records and financial statements of a joint business venture.

(2) The joint business venture referred to in subregulation (1) must submit to the Minister and to the regional council concerned copies of the audited accounting records and financial statement referred to in that subregulation, together with a report by the Auditor General relating to the audit conducted in accordance with that subregulation, within a period of 30 days after the completion of such audit.

Members or staff members of regional council not to be employed by joint business venture

9. (1) A joint business venture entered into in accordance with regulation 2 may not employ a member or staff member of a regional council.

(2) Nothing in subregulation (1) prevents a staff member of a regional council to resign from such regional council in order to take up employment with a joint business venture referred to in that subregulation.

General

10. Nothing in these regulations prevents a regional council from entering into a joint business venture in accordance with regulation 2 for the purpose of conducting a joint business with objectives, powers, functions or purposes which are identical or similar to, or which are in competition or in conflict with, the objectives, powers, functions or purposes of any of the regional council's own operations, if the joint business venture may serve to improve the efficiency or effectiveness of any of the own operations of the regional council.

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 43

2001

**THE REGIONAL COUNCILS ACT, 1992 (ACT NO. 22 OF 1992) :
TENDER BOARD REGULATIONS**

The Minister of Regional and Local Government and Housing has under section 44A of the Regional Councils Act, 1992 (Act No. 22 of 1992), made the regulations set out in the Schedule.

SCHEDULE**ARRANGEMENT OF REGULATIONS**

Regulation No.

**PART I
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1. Definitions

**PART II
GENERAL**

2. Establishment and composition of regional tender boards

3. Period of and vacation of office of members of regional tender boards

4. Remuneration of members of regional tender boards
5. Disclosure of interest
6. • Powers and functions of regional tender boards
7. Performance of functions of regional tender boards
8. Meetings of regional tender boards
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12. Meetings of committees and procedures at meetings of committees
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18. Examination, evaluation, comparison and non-acceptance of tenders
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25. Manufacturing costs
26. Liabilities
27. Non-compliance with title of tender or agreement, or delay in performance of agreement
28. Incorrect preferences
29. Promise or offer of a bribe, commission, gift, loan, benefit or other compensation by tenderer or contractor
30. Death of contractor, sequestration of contractor's estate, placement under judicial management or winding-up of contractor
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PART III CODE OF PROCEDURE

32. Invitation to tender and applications for prequalification
33. Tender documents to be made available by regional tender board
34. Reference to certain specifications
35. Determination of closing date for submission of tenders
36. Tender prices and delivery periods
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39. Determination of validity period of tenders
40. Submission of tenders
41. Closing date and time of tenders
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ANNEXURE A : Price Preferences

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PART I
INTRODUCTORY

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has that meaning, and -

“agreement” means an agreement entered into under regulation 6(1)(a);

“*bona fide* Namibian dealer or merchant” means any person who, at the time of tendering -

- (a) is lawfully conducting business in Namibia as a general dealer;
- (b) is lawfully conducting business in Namibia as a wholesale dealer;
- (c) is a company incorporated in Namibia in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (d) is a close corporation registered in Namibia in terms of the Close Corporations Act, 1988 (Act No. 26 of 1988);

“chairperson” means the chairperson of a regional tender board;

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

“committee” means a committee appointed under regulation 11(1);

“company” means a company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), and includes any other body corporate;

“contractor” means any person from whom a tender has been accepted by a regional tender board and with whom an agreement, whether in writing or otherwise, has been entered into;

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

“costs of materials” means the cost of materials determined in accordance with regulation 24;

“general agreement” means an agreement entered into for the furnishing of goods or the rendering of services to, or the disposal of, property of a regional council over a period of time specified in that agreement;

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

“goods produced or manufactured in Namibia” means goods which have a local content of not less than ten per cent 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 not, in relation to the process of manufacture, 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 packaging 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 new or 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;

“local content”, in relation to goods produced or manufactured in Namibia, means such percentage of the manufacturing costs of such goods in their final state of manufacture as 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 regulation 25;

“member of a regional tender board” includes an alternate member acting as such a member, as the case may be, appointed by or in terms of regulation 2(4);

“procure” means to acquire goods or services by any means, including by purchase, rental, lease or hire-purchase, and “procurement” has a corresponding meaning;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regional tender board” means the tender board of a regional council, established in terms of regulation 2(1), and “board” has a corresponding meaning;

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

“secretary” means the secretary of a regional tender board;

“section” means a section of the Act;

“services” includes any construction, and “tender services” has a corresponding meaning;

“the Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992); and

“title of tender” includes the contents of an invitation to tender.

PART II
GENERAL

Establishment and composition of regional tender boards

2. (1) There is hereby established a tender board for each regional council to be known as a regional tender board which shall provide tender services to the regional council for which it is established.

- (2) A regional tender board shall consist, subject to subregulation (3), of -
- (a) the regional officer of the regional council concerned, who shall be the chairperson;
 - (b) four staff members of the regional council, nominated by the regional officer and appointed in writing by the regional council concerned; and
 - (c) any two persons other than staff members of the regional council concerned, resident in the area of the regional council concerned, appointed in writing by the regional council, and who shall be Namibian citizens;
- (3) Not less than two members of a regional tender board shall be women.
- (4) A regional council shall -
- (a) appoint, with due regard to subregulation (2)(a)(ii) and (iii) and (b)(ii) and (iii), as the case may be, for each member of a regional tender board appointed by it in terms thereof, an alternate member, nominated in so far as applicable in accordance with that subregulation, and an alternate member so appointed may during the absence of the member of the regional tender board with respect to whom he or she is appointed, or in the case of such member's inability to act as member, act as member in place of that member; and
 - (b) designate any one of the members of a regional tender board as vice-chairperson thereof.

(5) The chairperson shall designate as secretary of the regional tender board concerned, any staff member of the regional council in respect of which the regional tender board is established.

(6) The chairperson shall preside at every meeting of a regional tender board, and if the chairperson is absent, the vice-chairperson shall preside at such meeting, and if both the chairperson and the vice-chairperson are absent from such meeting, the members of the regional tender board present thereat may elect under the chairpersonship of the secretary one of their number to preside at such meeting.

Period of and vacation of office of members of regional tender boards

3. (1) A member of a regional tender board who is a staff member of the regional council shall hold office at the discretion of the regional council, and any other member of a regional tender board shall hold office for a period of three years.

(2) A member of a regional tender board whose period of office has expired, shall be eligible for reappointment.

- (3) A member of a regional tender board shall vacate his or her office if he or she -
- (a) ceases to be a staff member of the regional council concerned, or in the case of a member of a regional tender board appointed in terms of regulation 2(2)(a)(iii) or (b)(iii), as the case may be, resigns by written notice addressed to the chairperson;

- (b) has without sufficient reasons or the leave of the regional tender board concerned, been absent from three consecutive meetings of that board; or
- (c) is removed from office under subregulation (4).

(4) A regional council may remove at any time and after the member concerned has been afforded an opportunity to be heard by the council, a member of a regional tender board appointed by it from office for reasons which in the opinion of the regional council concerned, render such member unsuitable to serve on the tender board concerned.

(5) A vacancy on a regional tender board shall be filled following the procedures relating to the initial appointment of the member of the regional tender board who has vacated his or her office.

Remuneration of members of regional tender board

4. The remuneration and allowances of a member of a regional tender board who is not a staff member of a regional council shall be determined from time to time, and be paid by, the regional council concerned.

Disclosure of interest

5. (1) A member of a regional tender board -

- (a) who has or intends to acquire a direct or indirect interest in a tender or an agreement shall in writing declare the nature, extent and particulars of such interest to the regional tender board concerned; and
- (b) shall not take part in the considering or discussing of, or exercise any vote on, a matter in which he or she has an interest as contemplated in paragraph (a).

(2) Any member of a regional tender board who contravenes or fails to comply with a provision of subregulation (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) This regulation shall apply *mutatis mutandis* to any staff member who drafts, or who is involved in the drafting of, a submission to a regional tender board.

Powers and functions of regional tender boards

6. (1) A regional tender board shall be responsible, unless otherwise provided in these regulations or in any other law, for the procurement of goods and services for a regional council, and, subject to any other law, for the arrangement of the hiring or leasing of anything or the acquisition or granting of any right for or on behalf of a regional council, or for the disposal of property of a regional council, and for that purpose but subject to subregulation (3), may -

- (a) on behalf of a regional council enter into an agreement with any person within or outside Namibia for the furnishing of goods or services to a regional council or for the leasing or hiring of anything or the acquisition or granting of any right for or on behalf of a regional council or for the disposal of property of a regional council;
- (b) with a view to enter into an agreement contemplated in paragraph (a), invite tenders and determine the manner in which and the conditions subject to which such tenders shall be submitted;
- (c) inspect and test or cause to be inspected and tested goods and services which are offered or which are or have been furnished in terms of an agreement entered into under this section, or which are offered for hire;

- (d) accept or reject any tender for the purpose of entering into of an agreement under paragraph (a);
- (e) take steps or cause steps to be taken to enforce any agreement entered into under paragraph (a);
- (f) on behalf of a regional council withdraw from or cancel any agreement entered into under paragraph (a) and, if appropriate, claim and recover damages;
- (g) subject to subregulation (2) and on such conditions as it may determine, exempt any person with whom an agreement has been entered into under paragraph (a) from compliance with such agreement, or to condone the failure of that person to comply with any provision of such agreement;
- (h) subject to subregulation (2), negotiate a settlement with any person referred to in subparagraph (g), or amend such agreement, with the approval of that person;
- (i) with a view to procure goods and services of a value not exceeding N\$10 000, authorise the chairperson to consider and to accept or reject on behalf of a regional tender board any tender or application for prequalification, as the case may be, submitted in respect thereof;
- (j) exercise such other powers as may be conferred upon it by or under these regulations or any other law.

(2) The regional council concerned shall issue directives to the regional tender board relating to the procurement of goods and services for the regional council.

(3) No exemption, condonation, settlement or amendment which may be to the prejudice of a regional council shall be granted, negotiated or made under paragraph (g) or (h) of subregulation (1) without the prior approval of the regional council concerned.

Performance of powers and functions of regional tender boards

7. (1) A regional tender board may make recommendations to the regional council concerned in connection with the issue 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 property of a regional council, as contemplated in regulation 6(2).

- (2) A regional tender board may -
 - (a) obtain, in performing its functions, such expert or technical advice as it may deem necessary;
 - (b) request, if it suspects any irregularity with regard to the submission to that board by any person of tenders, that person to prove to the satisfaction of that board that the irregularity (if any), has been rectified.
- (3) A regional tender 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 regulation 19(3);

(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 promised, offered or given, in relation to the entering into of an agreement, any bribe, commission, gift, loan, benefit or any other compensation whatsoever or has acted in bad faith or in a fraudulent or in any other improper manner,

in addition to any other legal remedy it may have, decide not to consider during such period of time as that board may determine, any tender of the tenderer or contractor concerned, as the case may be;

(b) vary or set aside, at any time, any restriction imposed by it under paragraph (a).

(4) A restriction imposed under subregulation (3)(a) on any tenderer or contractor, as the case may be, may in addition be imposed on any other person who a local tender board is satisfied -

(a) exercises or has exercised or may exercise, whether wholly or partly, control over the tenderer or contractor concerned; or

(b) is or was directly or indirectly associated with that tenderer or contractor.

(5) If a regional tender board -

(a) imposes a restriction on any tenderer or contractor under subregulation (3)(a) or any other person under subregulation (4); or

(b) varies or sets aside under subregulation (3)(b) any restriction so imposed,

that board shall in writing notify the regional council concerned of such restriction, variation or setting aside, as the case may be.

(6) If an agreement has been entered into with any contractor on the strength of information furnished by the contractor which information, after the entering into of such agreement, is proven incorrect information, a regional tender board may, in addition to any other legal remedy it may have -

(a) recover from the contractor any expenses, loss or damages incurred or suffered by the regional council concerned as a result of the entering into of the agreement on the strength of such incorrect information furnished; or

(b) by written notice sent to the contractor by prepaid 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 regional council concerned and may be recovered from any moneys (if any), owing to the contractor by that regional council; or

(c) recover the expenses, loss or damages incurred or suffered referred to in paragraph (a), and impose the penalty referred to in paragraph (b).

(7) If an agreement -

(a) provides for an increase in tender prices, a regional tender board may, on receipt of a written request from the contractor concerned made to that 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 agreement, but subject to these regulations;

- (b) does not provide for an increase of tender prices, a regional tender board may, if the contractor concerned satisfies that board that any such price increase is the direct result of unforeseen circumstances resulting in the performance of the agreement in a loss to the contractor, act in accordance with regulation 6(1)(h).

(8) Any action for the recovery of any expenses, loss, damages or penalty referred to in subregulation (6) may be instituted in any competent court by the regional tender board on behalf of the regional council concerned.

- (9) In this regulation -

“contractor”, in relation to a restriction, includes an employee or agent of a contractor; and

“tenderer”, in relation to a restriction, includes an employee or agent of a tenderer.

Meetings of regional tender boards

8. (1) Meetings of a regional tender board shall be held on such dates and at such times and venues as the chairperson may determine from time to time, and any meeting so convened may be adjourned or postponed by the chairperson.

(2) Four members of a regional tender board shall form a quorum for any meeting of the regional tender board concerned.

Procedures at meetings of regional tender boards

9. (1) Any member of a regional tender board present at a meeting of that board shall be obliged to cast, subject to these regulations, a vote in respect of any matter which is being put to the vote and in respect of which that member may legally cast a vote.

- (2) (a) The chairperson at a meeting of a regional tender board shall have, in the event of an equality of votes, a casting vote in addition to his or her deliberative vote.

- (b) The number of members of a regional tender board voting for and against any decision shall be entered in the minutes of the meeting, if so decided at the meeting.

(3) The chairperson at a meeting of a regional tender board may withdraw, with the approval of the regional tender board, any matter before it has been put to vote.

(4) All discussions at meetings of, and all matters considered and decisions arrived at by, a regional tender board shall be treated as confidential and shall not be disclosed by any member thereof, or by any staff member or by any other person invited to provide expert advice to a regional tender board, unless the prior approval of that board has been obtained and entered in the minutes of the meeting.

(5) Decisions of a regional tender board shall be conveyed in writing to the person concerned by staff members designated in terms of regulation 21(1) or by the member or members designated by a regional tender board, in such manner as the regional tender board may determine.

Decisions of regional tender boards

10. (1) No decision of a regional tender board or act performed by authority of a regional tender board shall be invalid by reason only -

- (a) of a vacancy on the regional tender board; or
- (b) of the fact that a person who was not entitled to sit as a member of the regional tender board sat as such a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the required majority of the members who were present at the time and entitled to sit as members.

(2) Decisions of a regional tender board shall be taken at meetings thereof, and a regional tender board shall keep minutes or cause minutes to be kept of each such meeting.

(3) If, at the invitation of a regional tender board, tenders are submitted to it for the purposes of concluding an agreement as contemplated in regulation 6(1), a regional tender board -

- (a) shall not be obliged to accept the lowest tender or, in the case of the disposal of property of a regional council, the highest tender or any other tender;
- (b) may accept, where a tender relates to more than one item, the part of such tender only 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 the price tendered or quoted in all other tenders, or in relation to any price tendered or quoted in any specific tender.

(4) A regional tender board shall keep, subject to regulation 18(6), in the minutes of the meeting record of the reasons for the acceptance or rejection of a tender.

(5) No decision of a regional tender board shall be invalid because it is merely based on an erroneous calculation or a *bona fide* incorrect application of these regulations.

Committees of regional tender boards and delegation of powers

11. (1) A regional tender board may -

- (a) appoint from time to time from among its members a committee to deal with any specific case on behalf of the regional tender board and shall designate a chairperson and a vice-chairperson for that committee; and
- (b) delegate to the committee appointed by it under paragraph (a), subject to such conditions as it may determine, from time to time any of the powers conferred upon it by or under these regulations.

(2) A delegation under subregulation (1)(b) shall not divest a regional tender board of any power so delegated, and a regional tender board may at any time vary or set aside any decision made thereunder by the committee.

Meetings of committees and procedures at meetings of committees

12. (1) The majority of the members of a committee 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 the matter under consideration shall be referred to the regional tender board concerned for decision.

(3) Any member of a committee present at a meeting thereof shall be obliged to cast, subject to these regulations, a vote in respect of any matter which is being put to the vote and in respect of which he or she may legally cast a vote.

(4) The number of members of a committee voting for or against any decision shall be entered in the minutes of the meeting if so decided at the meeting.

(5) The chairperson at a meeting of a committee may with the approval of the committee withdraw any matter before it has been put to the vote.

(6) All discussions at meetings of a committee and all matters considered and decisions arrived at by a committee shall be treated as confidential and shall not be disclosed by any member of the committee, any staff member or any other person invited to provide expert advice to the committee, unless the prior approval of the committee has been obtained and entered in the minutes of the meeting.

(7) Decisions of a committee shall be conveyed in writing to the person concerned by staff members designated in terms of regulation 21(1), or by the member or members of the committee designated by the committee concerned, in such manner as the committee may determine.

Invitation to tender and applications for prequalification

13. An invitation to tender, or in the case where tenderers have to prequalify, for applications for prequalification, shall be published by a regional tender board not less than once in each newspaper circulating in the local authority area concerned.

Invitation to, and submission of, tenders

14. (1) Unless exempted in terms of regulation 20 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, or the disposal of property, for or on behalf of a regional council, shall be invited by a regional tender board in accordance with regulation 13 or 16, as the case may be.

(2) If a regional tender board in any of the circumstances contemplated in paragraph (b) or (c) of regulation 20(1), elects not to adhere to the tender procedures prescribed by these regulations, it may invite tenders or cause tenders to be invited in any other manner it may deem appropriate.

(3) A tender shall, subject to regulation 17 -

(a) be submitted to a regional tender board in such manner and form and within such period of time, but not less than 21 days after the date of the only or last publication of the invitation to tender, as may be determined by a regional tender board; and

(b) be accompanied by such documents and information as a regional tender 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 such goods or services, as the case may be;

(b) not be subdivided in order to bring such value within the limits of regulation 20(1)(a).

(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 a regional tender board.

(b) A regional tender board which sustains an objection made under paragraph (a) shall invite tenders afresh in respect of any amended specification.

Contents of applications for prequalification

15. An application for prequalification contemplated in regulation 13 shall -
- (a) be made to a regional tender board in such a manner and form and within such period of time as may be determined by a regional tender board; and
 - (b) be accompanied by such documents and information as a regional tender board may require in the particular case to enable it to select potential tenderers.

Final invitation to tender

16. If applications for prequalification contemplated in regulation 13 have been invited, a regional tender board shall restrict its final invitation to tender to those potential tenderers selected in accordance with regulation 15.

Title of tender

17. A title of tender shall as far as practicable contain the following information :
- (a) The instructions for preparing tenders;
 - (b) the technical and quality characteristics of the goods to be procured or services to be rendered or property to be disposed of or the nature of rights to be acquired or granted, including, if appropriate, technical specifications, plans and drawings;
 - (c) the currency in which the tender price is to be formulated and quoted;
 - (d) the manner, place and closing date for submission of tenders;
 - (e) the period of time during which tenders shall be in effect;
 - (f) securities to be furnished in respect of tenders and conditions for refund or return of such securities; and
 - (g) a name and reference number by means of which the tender may be identified.

Examination, evaluation, comparison and non-acceptance of tenders

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

- (2) A regional tender board shall not consider a tender unless -
 - (a) the tender complies with all the characteristics, terms, conditions and other requirements set out in the invitation to tender as contemplated in regulation 17; or
 - (b) if the tender does not so comply, the non-compliance consist in the opinion of the regional tender board of a minor deviation that does not materially alter or depart from such characteristics, terms, conditions or other requirements.
- (3) A regional tender board shall, with due regard to subregulation (2), not accept a tender -
 - (a) if the tenderer who submitted the tender does not qualify as such in terms of the conditions of tender set out in the invitation to tender;

- (b) if the tenderer fails to comply with a request under subregulation (1); or
 - (c) if in the opinion of the regional tender board, the tenderer has resorted to corrupt practices with a view to influence the regional tender board in the acceptance of the tender, in which case the reasons for rejection of the tender shall be kept on record by that board.
- (4) A regional tender board shall -
- (a) in examining a tender give consideration to the capacity, experience, integrity and financial status of the tenderer; and
 - (b) in comparing tenders give effect to the preference policy of the regional council concerned to redress social, economic and educational imbalances in a democratic society and to encourage industrial and commercial interests in Namibia.
- (5) If a regional tender board does not accept the lowest tender or tenders from amongst the tenders submitted to it, the reasons for not accepting the lowest tender or tenders shall be kept on record by the regional tender board concerned.
- (6) All tenders submitted to a regional tender board shall be opened by that board in public.

Acceptance of tenders, and entry into force of agreements

19. (1) A regional tender board, in every particular case, shall -
- (a) notify the tenderers concerned in writing of the acceptance or rejection of their tenders, as the case may be, and the name of the tenderer whose tender has been accepted by a regional tender board shall be made known to all the other tenderers;
 - (b) give, at the written request of a tenderer and within a period of 30 days after receipt of such written request, reasons for the acceptance or rejection of his or her tender.
- (2) If, in terms of an invitation to tender -
- (a) a written agreement is required to be entered into after the acceptance of a tender, the regional tender board and the tenderer concerned shall enter into such an agreement within a period of 30 days after the date on which that tenderer received written notice of the acceptance of his or her tender in terms of subregulation (1)(a), or within such extended period of time as a regional tender board may determine;
 - (b) a written agreement is not required to be entered into, an agreement shall come into force on the date on which the tenderer concerned is notified in terms of subregulation (1)(a) of the acceptance of his or her tender.
- (3) If, in the circumstances contemplated in subregulation (2)(a), the tenderer fails to enter into an agreement within the period of time determined by that subregulation, or if that period of time has been extended by the regional tender board, within the extended period of time, or if the tenderer, when required to do so, fails to furnish the required security for the performance of the agreement, the regional tender board may withdraw, in writing addressed and delivered to the tenderer, its acceptance of the tender concerned and may -
- (a) accept any other tender from among the tenders submitted to it; or
 - (b) invite tenders afresh.

Exemption from tender procedures

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

- (a) the estimated value thereof does not exceed N\$10 000;
- (b) the person with whom an agreement has to be entered into is -
 - (i) regional council, local authority council or other statutory body in Namibia; or
 - (ii) the government of, or any regional council, local authority council or other statutory body in a country other than Namibia,

approved by the regional council concerned; or

- (c) a regional tender board in any particular case for good cause deems it impracticable or inappropriate to invite tenders,

a regional tender board need not comply with regulation 13.

(2) A regional tender board shall in the application of subregulation (1)(c) keep on record the reasons for not inviting tenders.

Administrative work

21. (1) All administrative work in connection with the exercise of the powers and the performance of the functions of a regional tender board, including the payment and receipt of moneys, shall be performed by staff members of the regional council concerned designated by the chief executive officer concerned.

(2) The chairperson may execute any document on behalf of a regional tender board.

Expenditure

22. All expenditure in connection with the exercise of the powers and the performance of the functions of a regional tender board shall be defrayed, subject to these regulations or to an agreement entered into under these regulations, from moneys appropriated by the regional council concerned for that purpose.

Price preferences

23. (1) A regional tender board shall, in comparing tenders, give effect to the policy of the regional council concerned referred to in regulation 18(4)(b) 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 a regional tender 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

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

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) A tenderer shall in order to be considered for any price preference in terms of this regulation submit to a regional tender board the required information on a form similar to the form contained in Annexure B.

Costs of materials

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

- (a) the costs of local materials, including the costs of waste materials 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, subject thereto that -
 - (i) if the materials directly used in the manufacture of goods are not wholly produced in Namibia, the goods shall in the calculation be applied only 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 regarded as 100 per cent imported goods for the purpose of determining the local contents 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) if predetermined, incentive bonuses,

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 concerned as incurred over a period of not less than 90 days, and such costs of goods in their final form of manufacture based on actual costs, charges and expenses incurred in the manufacturing process, including the costs of putting the goods up in their retail packages and the costs of such packages, but, if in the opinion of a regional tender board or a committee, as the case may be, any costs, charge or expenses has not been incurred by the manufacturer at the normal open market price, a regional tender board may assess the amount of that costs, charge or expenses on the basis of price, in order to determine the manufacturing costs of the goods concerned.

(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 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 a regional tender 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 regional tender 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 and in regulation 25 -

“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; and

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

Manufacturing costs

25. (1) The manufacturing costs of goods shall include, subject to subregulation (2) -

- (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, and the costs of imported materials, whether or not imported by the manufacturer, shall be the price as delivered at the factory;
- (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 price as delivered 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 manufacturing expenses relating directly to the goods as represented by -
 - (i) the operating costs of the machines used in the manufacturing of the goods;
 - (ii) the expenses incurred in the cleaning, drying, polishing, pressing or any other process, as may be necessary for the finishing - off of the goods; and
 - (iii) the costs of packaging the goods in retail packages and the costs of such retail packages, but excluding any additional costs relating to the packaging the goods for transportation or export, including the costs of any such additional packaging materials; and
- (e) the overhead manufacturing costs, as represented by -
 - (i) rental, rates and taxes and insurance charges connected directly 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) charges in respect of the supply of electricity and other power and water, and other service charges directly connected 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 buildings, 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 and insurance premiums paid, and contributions made 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) expenses relating to keeping or obtaining of statistics in respect of the manufacture of the goods; and
 - (iv) expenses relating to investigations, experiments and feasibility studies;
 - (b) marketing 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 manufactured goods; and
 - (iii) the costs of transporting the manufactured goods to their destinations; and
 - (d) charges not directly attributed to the manufacture of goods, including -
 - (i) any duty paid on imported raw materials;
 - (ii) any excise duty paid on raw materials produced in the country of manufacture of the goods; and
 - (iii) any royalties paid in respect of patents, special machinery or designs.

Liabilities

26. (1) All stamp duties, bank charges, bank interest and other similar 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 a regional council in the exercise of its rights under these regulations, under any other law or under the agreement concerned, or for any other valid reason, the contractor concerned shall be liable to pay to the regional council concerned all expenses, losses and damages incurred or suffered by that regional council as a result of such cancellation, and the regional council shall be entitled to recover any amount due and payable under the agreement or due and payable by law.

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

27. (1) Unless otherwise provided, but subject to this regulation -

(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 regulation 19(3),

shall be liable to pay to the regional council concerned all expenses incurred by that regional council by having to invite tenders afresh or to make other less favourable arrangements;

(b) in an agreement, a regional tender 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 of time stipulated in the agreement -

(aa) act in accordance with 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 expenses, loss or damages incurred or suffered by the regional council from that contractor in accordance with subregulation (2).

(2) If -

(a) an agreement is cancelled under subregulation (1)(b) (i) or (ii), the contractor concerned shall be liable to compensate the regional council concerned in accordance with regulation 26(2);

(b) arrangements contemplated in subregulation (1)(b) (ii) (bb) are made, the contractor concerned shall be liable to compensate the regional council concerned for any detrimental price differences or any other damages or loss suffered by that regional council, but if the contractor satisfies the regional tender board or the regional council 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 regional council.

(3) Any compensation payable to a regional council in terms of subregulation (2)(b) may be recovered from moneys (if any), owing to the contractor by the regional council concerned in respect of goods or services furnished or rendered or to be furnished or rendered under the agreement concerned, or from any other moneys owing to the contractor by the regional council, or by means of proceedings in any court of law having jurisdiction.

(4) If a delay referred to in subregulation (2)(b) is likely to occur, a contractor shall -

- (a) furnish in writing and without delay full particulars of the particular circumstances to the regional tender board or to the regional council concerned, as the case may be; and
- (b) notify the regional tender board or the regional council concerned, as the case may be, of the period of time of the delay anticipated.

Incorrect preferences

28. 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 proven to have been an incorrect preference based on incorrect information furnished by the tenderer, a regional tender board may, in addition to any other legal remedy it may have -

- (a) recover from the tenderer any expenses, loss or damages incurred or suffered by a regional council 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 prepaid 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 regional council and may be recovered from any moneys (if any) owing to the tenderer by the regional council; or
- (c) recover the expenses, loss or damages incurred or suffered referred to in paragraph (a), and impose the penalty referred to in paragraph (b).

Promise or offer of a bribe, commission, gift, loan, benefit or other compensation by tenderer or contractor

29. (1) If a regional tender board is convinced that -

- (a) a tenderer, in relation to the acceptance of a tender, or a contractor, in relation to the entering into 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 by any other person;
- (b) a tenderer or contractor has in relation to the acceptance of a tender or the entering into 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 by or on behalf of the tenderer; or
- (c) a tenderer or contractor has, in the performance of an agreement entered into with a regional council, failed to comply with any statutory requirement in connection with such agreement and has as a result thereof been convicted of an offence,

the regional tender board may, in addition to any other legal remedy it may have -

- (i) in the case of a tenderer, in writing addressed to the tenderer, at any time withdraw its acceptance of the tender;
- (ii) in the case of a contractor, in writing addressed to the contractor, at any time cancel the relevant agreement and recover, in accordance with regulation 26(2), any expenses, loss or damages incurred or suffered by the regional council.

(2) Regulation 28 shall apply *mutatis mutandis* in relation to the withdrawal by a regional tender board of its acceptance of a tender under subregulation (1).

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

30. A regional tender board may in the event of the death or insolvency or the placement under judicial management or winding-up of a contractor, subject to the Administration of Estates Act, 1965 (Act No. 66 of 1965), the Insolvency Act, 1936 (Act No. 24 of 1936) or the Companies Act, 1973 (Act No. 61 of 1973), respectively, or any other applicable law, cancel any agreement entered into with the contractor and, if appropriate, lodge a claim contemplated in regulation 26(2) in accordance with any such applicable Act or other law against the deceased estate or insolvent estate, as the case may be, of the contractor.

Fees payable

31. A regional tender board may determine the fees which shall be payable in respect of the furnishing by the board of prints, specifications or tender documents, or copies thereof, referred to in these regulations.

PART III CODE OF PROCEDURE

Invitation to tender and applications for prequalification

32. (1) A regional tender board shall in accordance with regulation 13 invite tenders or applications for prequalification only within Namibia, but a regional tender board may in such manner as it may determine, circulate an invitation to tender or for applications for prequalification outside Namibia, if circumstances so require.

(2) Subject to regulation 35, a regional tender board shall publish an invitation to tender or for applications for prequalification not less than once in each newspaper circulating in the local authority area concerned, and in addition thereto display, as from the date of publication thereof until the closing date of the tender, such notice on the notice board of the regional tender board concerned.

Tender documents to be made available by regional tender board

33. A regional tender board shall at the request of a tenderer, and against payment of the fee per tender document as determined under regulation 31, make the appropriate tender documents available to the tenderer.

Reference to certain specifications

34. 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", or any other words to indicate the style, type, characteristics or quality of the goods to be procured or services to be rendered by the tenderer.

Determination of closing date for submission of tenders

35. (1) If a regional tender board is of the opinion that -

- (a) goods will be supplied from stock readily available in Namibia or will be manufactured from materials or components grown, produced or manufactured in Namibia, that board shall determine the closing date for the submission of tenders to be a date not exceeding 30 days, but not less than 21 days, after the date of the only or last publication of the invitation to tender;
- (b) goods will not be supplied from stock readily available in Namibia or will not be manufactured from materials or components grown, produced or manufactured in Namibia, that board shall determine the closing date for the submission of tenders to be a date not exceeding 60 days, but not less than 30 days, after the date of the only or last publication of the invitation to tender,

in terms of regulation 32.

(2) A regional tender board may, notwithstanding subregulation (1), at any time before the closing date determined under paragraph (a) or (b), as the case may be, of subregulation (1) -

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

extend the closing date with a period of time not exceeding 30 days, if that 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

36. (1) Tender prices shall -

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

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

(3) A tenderer shall not in a tender use the words "soonest" or "earliest", or similar words, to indicate or refer to any material date.

(4) A tenderer who does not tender a firm price 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) Subregulation (4)(b) shall apply in all cases where a tenderer does not specify any conditions relating to tender price adjustments.

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

(7) In calculating tender price adjustments in relation to cost prices, the cost prices which were applicable seven days prior to the closing date and time of a tender shall be taken as basis for such calculations.

(8) A regional tender board may request from a tenderer a certificate, invoice or voucher issued by the supplier concerned as proof of a cost price increase or decrease.

General agreements

37. (1) A regional tender board may enter, if it considers it desirable and notwithstanding any provision of these regulations, into a general agreement with any person 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 decrease of ten per cent;
- (c) a maximum quantity of goods if the minimum quantity ordered cannot be guaranteed, but the maximum quantity may not be exceeded without the mutual consent of the parties to such an agreement; or
- (d) an unspecified quantity of goods or an estimated quantity of goods not guaranteed.

(2) A regional tender board shall indicate in an invitation to tender the terms and conditions of a general agreement to be entered into under subregulation (1).

Samples

38. (1) A regional tender board may, if it furnishes a potential tenderer at the request of the tenderer with a sample of any item to be supplied by the tenderer, do so at a fee to be determined by that board.

(2) A tenderer shall, if a regional tender board requires a tenderer to furnish a sample for inspection and examination in support of a tender -

- (a) mark the sample with -
 - (i) the tender number;
 - (ii) the item number of the sample; and
 - (iii) the tenderer's name and address; and
- (b) furnish samples in support of a tender at the tenderer's own expense and risk.

(3) A tenderer shall submit a tender and, if applicable, a sample referred to in subregulation (2), to the addressee specified in the invitation to tender so as to reach that address on or before the closing date and time relating to such tender.

(4) A regional tender board may -

- (a) purchase, at the tendered price, a sample submitted to it in terms of subregulation (3);
- (b) reject a tender which is not accompanied by the required sample or samples.

(5) If a regional tender board does not purchase a sample as contemplated in subregulation (4)(a), that board shall at its own expense return the sample to the tenderer at any address within Namibia furnished by the tenderer in the tender.

(6) The return of a sample in terms of subregulation (5) to a tenderer shall be at the tenderer's risk.

(7) If, in testing or examining a sample, a regional tender board finds that the sample is -

- (a) of no or of very little value;
- (b) destroyed; or
- (c) worthless or damaged extensively,

that board shall not be liable for the cost of the sample unless otherwise specified in the invitation to tender.

(8) A regional tender board shall not -

- (a) return to a tenderer a sample made from materials supplied by that board;
- (b) accept liability for the cost of making a sample,

unless otherwise specified in the invitation to tender.

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

Determination of period for acceptance of tenders

39. (1) A regional tender board shall specify in a title of tender the period of time during which the tenders may be accepted by the regional tender board.

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

Submission of tenders

40. (1) A tenderer shall submit a tender under sealed cover, with the tender number endorsed on the cover, not later than the closing date and time specified in the invitation to tender.

(2) A regional tender board shall not consider a tender if more than one tender number or an incorrect tender number is endorsed on the cover thereof.

Closing date and time of tenders

41. (1) A regional tender board shall specify in the invitation to tender the closing date and time for the submission of tenders.

(2) Subject to subregulation (3), all formal and quotation tenders shall close at 11h00 and all annual and store tenders shall close at 14h30 on the closing date for the submission of tenders.

(3) If the closing date for the submission of tenders falls on a Saturday, Sunday or public holiday, formal and quotation tenders shall be received until 11h00, and annual and store tenders until 14h30, of the working day following such closing date.

Telegraphic and late tenders

42. (1) A regional tender board may, subject to subregulation (2), consider a tender received by telegraph or fax on or before the closing date and time, provided the tender -

(a) bears or reflects the name of the tenderer, the tender number and the price and terms of delivery of goods or services in respect of each item tendered for; and

(b) is made on the prescribed tender documents or in a manner acceptable to that board.

(2) A tenderer who has submitted a tender by telegraph or fax shall, within a period of seven days after the closing date and time for submission of the tender, submit the original tender documents, duly completed, to the regional tender board concerned.

(3) A regional tender board shall not consider, unless no tenders have been received by a regional tender board on the closing date and time, but subject to subregulation (4), tenders received after such closing date and time.

(4) A regional tender board may, notwithstanding subregulation (3), accept a tender received after the closing date and time if that 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 time; or

(c) the tender was submitted after the closing date and time as the direct result of circumstances which the tenderer could not reasonably have foreseen or prevented.

(5) If a tenderer fails to comply with subregulation (2), his or her tender shall be disqualified from acceptance by the regional tender board concerned.

Tenders received by regional tender board

43. (1) A regional tender board shall, until the closing date and time, keep unopened and in safe custody all tenders received under sealed cover or sealed in terms of subregulation (2)(b).

(2) If a tender is received in any form or condition other than in a sealed cover, or is received without the required endorsements on the cover, the secretary 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

44. A regional tender board shall -

- (a) open all tenders in public, as soon as practicable after the closing date and time; and
- (b) read out in public, at the request of a tenderer or of any other member of the public, the tender prices for building services and cognate works, or for civil engineering services.

Tenders for portion of items or specified quantities

45. A regional tender board may consider a tender by a tenderer who does not tender for all the items specified in the invitation to tender, or who tenders for only a portion of the quantity so specified.

Consideration of tenders

46. A regional tender board shall consider, subject to these regulations, all tenders duly submitted to it in terms of these regulations.

Comparison of tenders

47. A regional tender board shall -
- (a) compare the tender prices of all tenders submitted to it; and
 - (b) if applicable, adjust delivery charges or any other charges,

before applying any price preferences to tenders.

Domestic value

48. (1) A regional tender board may, if the goods offered originate from a country other than Namibia, require the tenderer to furnish the domestic value of the goods offered in the currency of Namibia.

(2) If the domestic value furnished in terms of subregulation (1) is higher than the tendered price, a regional tender board shall calculate the tender by using the domestic value.

(3) In this regulation "domestic value" means, in relation to goods imported or to be imported into 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 and 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 costs of packaging and packages ordinarily used in those markets;
- (b) additional costs of packaging 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, export tax, sales tax or value added tax imposed; or
- (ii) drawbacks, refunds, rebates or remissions of customs duty granted,

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

Recommendation by department, division or section

49. (1) A regional tender board shall, after having opened and listed all tenders, submit the tenders to the relevant department, division or section of the local authority concerned which deals with the matter or issue to which the tender relates, for its recommendation, and that department, division or section concerned shall make, in writing and as soon as practicable, its recommendation on the tenders concerned.

(2) The head of the department, division or section referred to in subregulation (1) shall submit the recommendation made in terms of subregulation (1), together with all the tenders submitted to it in terms of that subregulation, to the regional tender board.

(3) If a department, division or section does not recommend the lowest tender from among all the tenders submitted to it, the head thereof referred to in subregulation (2) shall -

- (a) in writing certify that the recommendation is made in the best interest of, and represents the best value to, the regional council concerned; and
- (b) give reasons for not recommending the acceptance of the lowest tender.

(4) If only one tender is received and that tender is in terms of subregulation (1) recommended for acceptance, the head of the department, division or section concerned shall in the recommendation state whether the tender price is considered fair and reasonable.

Acceptance of tenders

50. (1) A regional tender board shall, after having brought all tenders to a comparative level and having due regard to regulation 18(4), 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 stock held in Namibia;
- (f) tenders from overseas suppliers, but preferably suppliers with branches and stock in Namibia.

(2) A regional tender 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 to be delivered.

Acceptance of tenders for unspecified quantities

51. If a regional tender board accepts a tender for a quantity other than the quantity specified in the invitation to 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 the tenderer may refuse only to the extent of the excess.

Security

52. (1) A regional tender board shall, subject to subregulation (4), require a successful tenderer to furnish security for the performance in terms of an agreement to be entered into, if -

- (a) any payment is to be made to the regional council concerned;
- (b) any property of the regional council is to be handed to a contractor; or
- (c) that 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 subregulation (1) shall be an amount equal to -

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

whichever security the board may deem appropriate to require in any particular case.

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

- (a) a guarantee issued by a banking institution, building society or an insurance company registered or incorporated in Namibia and approved by the regional tender board concerned;
- (b) a cash deposit, negotiable Government bonds or stock;
- (c) in the case of a service contract, a surety bond furnished by the sureties referred to in subregulation (2)(c)(ii); or
- (d) any other form of security approved by the regional tender board concerned.

(4) A regional tender board -

- (a) shall specify, if any security is required to be furnished by a successful tenderer, particulars thereof in the invitation to tender;
- (b) may reject any security furnished in terms of subregulation (3) for such reasons as it may deem appropriate.

Cession of agreements

53. Without the prior written approval of a regional tender board, granted on the recommendation of the department, division or section concerned which deals with the matter to which a tender relates, a tenderer or contractor shall not, -

- (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 any agreement,
to any person.

Communication with regional tender boards

54. (1) All correspondence to a regional tender board, unless specifically intended for the personal attention of the chairperson, shall be addressed to the secretary at the address of the regional council concerned.

(2) All deliveries other than by mail shall be made to the office of the secretary of the regional tender board concerned.

Availability of regulations

55. Copies of these regulations may be obtained at the address referred to in regulation 54(1).

ANNEXURE A

PRICE PREFERENCES (Regulation 23(1))

The price preferences set out below shall apply in respect of tenders, and a tender may qualify for one or more price preferences, as the case may be :

- (a) Goods produced or manufactured in Namibia :
- (i) Six per cent, if the goods produced or manufactured have a local content of ten per cent or more but less than 25 per cent of the manufacturing costs of the goods;
 - (ii) ten 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) Three per cent, if the goods assembled have a local content of ten per cent or more but less than 25 per cent of the total costs of production;
 - (ii) five 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) six 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) eight 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) ten 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) Five per cent, to persons domiciled or companies incorporated in Namibia in respect of services offered, when a comparison is made to companies incorporated in any country other than Namibia;
 - (ii) five per cent, to persons or companies granted a Certificate of Status Investment under section 7 of the Foreign Investment Act, 1990 (Act No. 27 of 1990), in respect of services offered, when a comparison is made to companies incorporated in any country other than Namibia.
- (d) After sales service:
- Three 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 :
- Three per cent in respect of goods conforming to any national or international standard specification.
- (f) *Bona fide* Namibian small scale industries :
- (i) Two per cent, if the labour employed by the industry numbers more than ten but less than 25 persons;
 - (ii) three per cent, if the labour employed by the industry numbers 25 or more persons, but less than 50;
 - (iii) five per cent, if the labour employed by the industry numbers 50 or more persons.
- (g) Tenderer located in communal areas or notified underdeveloped areas :
- (i) Two per cent, if the labour employed numbers more than ten but less than 25 persons;
 - (ii) three per cent, if the labour employed numbers 25 or more persons but less than 50 persons;
 - (iii) five per cent, if the labour employed numbers 50 persons or more.
- (h) *Bona fide* Namibian manufacturing companies :
- Two 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 a regional tender board, based on information furnished to that 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 two to three 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

**PARTICULARS OF TENDERER
(Regulation 23(3))**

1. Full names and postal and physical address of tenderer :

2. Origin/registration/trading licence number : _____

(a) Namibian company/contractor/supplier/trader :

Registration number and date: _____

Trade licence or certificate number and date, and name and address of person who issued the licence or certificate: _____

Financial interests held by a foreigner/foreign company (Furnish details) : _____

(b) Foreign company/contractor/supplier/trader :

Country of registration _____

Registration number and date _____

Financial interests held by a Namibian/Namibia company (Furnish details): _____

3. Capital structure :

Total equity capital _____ N\$

(Amount in words) : _____

which total equity capital is made up as follows :

	<u>Amount</u> <u>N\$</u>	<u>Percentage of</u> <u>total capital</u>
(a) Capital owned by Namibians/Namibian companies
(b) Capital owned by foreigners/foreign companies

4. Particulars of business :

(a) Nature of activities :

(b) Is the business, according to the Ministry of Trade and Industry, a small scale industry ? _____ (Yes/No)

If yes, give details and furnish documentary proof :

(c) Is the tenderer located in communal areas/underdeveloped areas notified by the Ministry of Trade and Industry ? (Yes/No)

If yes, give details and furnish documentary proof :

5. Organisational structure :
Employees :

Category	Total Number	Number of Namibians	Number of formerly disad- vantaged Namibians	Number of Foreigners
(a) Managing Director/ Directors				
(b) Managers				
(c) Office personnel/ staff				
(d) Skilled labour				
(e) Unskilled labour				
(f) Contract staff/labour				
Total				

No. of women
Included in above

No. of handi-
capped persons
included in above

6. Buildings and erven :

<u>Area used</u>	<u>Total area (in square metres)</u>
Area of erf
Area of buildings on erf
Area of buildings used for Manufacturing / assembling
Area of buildings used as office space
Area of buildings used for storage

7. Is a subcontractor/ sub vendor/ sub supplier involved in the performance of the agreement? (Yes/No)

If "yes", state in an annexure the percentage of the total tender amount being performed by means of subcontracting, etc., and furnish in that annexure full particulars of the subcontractor / sub vendor / sub supplier concerned, including physical address or addresses.

Signature _____

Date _____

Documents to be attached:

- (1) Copy of registration certificate/trade license.
- (2) Copy of certificate/document to substantiate any claim as being a small scale industry.

- (3) Copy of certificate/document to substantiate any claim regarding location in communal areas/underdeveloped areas.
- (4) Information regarding subcontractor/ subvendor/subsupplier.
- (5) Documentary proof regarding training programmes, apprenticeship courses, affirmative action programmes or activities, or other programmes or activities benefiting disadvantaged or handicapped Namibian citizens.

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 44

2001

THE NATIONAL HOUSING DEVELOPMENT ACT, 2000 : REGULATIONS

The Minister of Regional and Local Government and Housing has made, under section 32 of the National Housing Development Act, 2000, and on the recommendation of the National Housing Advisory Committee, the regulations set out in the Schedule.

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has that meaning, and -

“applicant” means any person who applies or has applied for a loan in terms of section 15 or for an additional loan in terms of section 24, as the case may be;

“member” means a member of the Advisory Committee;

“monthly income” includes all remittances made to or received by an applicant;

“secretary” means the secretary of the Advisory Committee designated in terms of section 6(7);

“section” means a section of the Act; and

“the Act” means the National Housing Development Act, 2000.

Application for loan or additional loan

2. The application form for a loan in terms of section 15 or for an additional loan in terms of section 24 shall -

- (a) be substantially in the form of Form DBTP Hous. 1 set out in “Annexure A”;
- (b) be duly completed and signed by the applicant;
- (c) be submitted -
 - (i) in the case of an application for a loan, the office bearer or member concerned referred to in section 15(2);
 - (ii) in the case of an application for an additional loan, the accounting officer concerned referred to in section 24(2); and
- (d) be accompanied by Form DBTP Hous. 2 and Form DBTP Hous. 3 set out in “Annexure A”, duly completed and signed.

Security other than registration of mortgage bond

3. The accounting officer concerned may require, under section 16(1)(b), the applicant to enter into a suspensive sales agreement with the regional council or local authority council concerned, as the case may be, as security for the loan granted, which agreement shall be valid until such time as a mortgage bond is registered in respect of the dwelling concerned.

Maximum income to qualify for loan

4. (1) Any person who has a monthly income of not more than N\$2000-00 shall qualify, subject to the Act and to these regulations, for a loan contemplated in section 9(a) or (c).

(2) Notwithstanding subregulation (1), any person -

(a) who has a monthly income of not more than N\$5000; and

(b) who resides in an unproclaimed area, or a proclaimed area where he or she does not have access to credit from banking institutions, building societies or other financial institutions for loans contemplated in section 9,

may apply for a loan.

Eligibility of applicant

5. A applicant shall -

(a) be a Namibian citizen of not less than 21 years of age;

(b) not be the owner of a house other than the house in respect of which the loan is applied for, or be the holder of any loan for the provision of low cost residential accommodation;

(c) have a monthly income not exceeding the amount referred to in regulation 4;

(d) reside or intend to reside in the house in respect of which the loan is applied for;

(e) apply, if over the age of 50 years, together with a co-applicant whose monthly income does not exceed the amount specified in regulation 4.

Repayment period for loan and interest rate payable on loan

6. (1) The maximum repayment period for a loan shall be 20 years and the interest rate payable on a loan shall be a minimum of 9 per centum and a maximum of 14 per centum per year, depending on the loan amount, as set out in "Annexure B".

(2) The monthly repayment in respect of a loan shall be payable in advance before the seventh day of each month.

Monthly repayment in respect of loan and maximum amount loan which may be granted

7. (1) The monthly repayment in respect of a loan shall, subject to subregulations (2) and (3), not exceed 25 per centum of the monthly income of the applicant concerned.

(2) Any housing allowance which the applicant receives shall for the purposes of subregulation (1) be added to the 25 per centum of his or her income referred to in subregulation (1).

(3) If the applicant is married, the monthly income of the spouse of the applicant shall, for the purposes of subregulation (1), be added to the monthly income of the applicant in order to determine the maximum monthly repayment which may be made by an applicant in respect of a loan.

(4) The maximum loan amount which may be granted to an applicant shall be limited to the amount in respect of which the monthly repayments determined in terms of subregulation (1) shall apply.

Monthly rental payable in respect of lease of property of Housing Revolving Fund

8. The monthly rental payable in respect of the lease of property of a Housing Revolving Fund shall be calculated in accordance to the formula

$$\frac{V \times (9 \text{ to } 14 \text{ per centum})}{12}$$

in which formula :

“V” is equal to the value of the property to be leased; and

the “per centum - rate” is determined in accordance with “Annexure B” in relation to the value of the property to be leased.

Factors to be taken into consideration when determining the purchase price at which property of Housing Revolving Fund shall be sold

9. A regional council and local authority council shall take the economic and social circumstances of pensioners, destitute and disabled persons with regard to social housing into consideration when determining the purchase price at which any property of a Housing Revolving Fund shall be sold.

Notification of intention to attach or to lay claim to property

10. A notice in terms of section 22 shall be substantially in the form of Form DBTP Hous. 4 set out in “Annexure A”, which form shall be duly completed and be delivered to the office of the accounting officer concerned.

Offering of property for sale to Housing Revolving Fund and waiving of preferent right

11. (1) An offer in terms of section 23(3)(a) shall be substantially in the form of Form DBTP Hous. 5 set out in “Annexure A”, which form shall be duly completed and be delivered to the office of the accounting officer concerned.

(2) A waiver in terms of section 23(3)(b) shall be substantially in the form of Form DBTP Hous. 6 set out in “Annexure A”, which form shall be duly completed and be delivered or be sent by prepaid registered post to the owner concerned.

Evaluator

12. The following persons may perform the functions in terms of section 23(6)(b) and (7) :

- (a) Estate agents registered as such under the Estate Agents Act, 1976 (Act No. 112 of 1976);
- (b) quantity surveyors or architects, as the case may be, registered respectively as such under the Quantity Surveyors' and Architects' Act, 1979 (Act No. 13 of 1979);
- (c) any other person appointed by the Minister in writing for such purpose.

Procedures for repossession under section 25(3) of property sold by Housing Revolving Fund or constructed with money borrowed from Housing Revolving Fund

13. (1) The following steps shall be taken against a person who has bought property from a Housing Revolving Fund or who has constructed property with money borrowed from a Housing Revolving Fund, and who falls in arrear with any payments he or she is obliged to make to such Housing Revolving Fund, or is unable to fulfill his or her obligations in terms of an agreement relating to such property entered into between the Housing Revolving Fund concerned and such person :

- (a) If the person concerned falls in arrear with his or her payments in an amount equal to the amount payable in respect of not more than three monthly payments payable by such person, a written notice stipulating the payments in arrear and the date before which such arrear payments have to be brought up to date, shall be sent to that person.
- (b) If the person concerned falls in arrear with his or her payments in an amount equal to the amount payable in respect of four to six monthly payments, a second written notice stipulating the payments in arrear and the date before which such arrear payments have to be brought up to date, shall be sent to that person. Such written notice shall include a threat of court action and an invitation to call upon the official concerned at his or her office within a period of time specified in the notice. Should the person concerned call upon the official concerned, the possibility of debt rescheduling or voluntary surrender of the property concerned by that person shall be discussed with him or her, but no debt rescheduling shall be considered if that person is not permanently employed.
- (c) If the person concerned falls in arrear with his or her payments in an amount equal to the amount payable in respect of more than six monthly payments, proceedings in a competent court shall be instituted against that person for eviction of that person from the property and the recovery of the balance outstanding in respect of the loan concerned, including interest and costs.

(2) An additional repayment in the case of an acknowledgment of debt shall not exceed a period of two years.

(3) In the case of debt rescheduling in accordance with subregulation (1)(c) -

- (a) the balance owing by the person concerned, including interest, shall not exceed the value of the property concerned;
- (b) the increased monthly payment shall not exceed 25 per centum of the total monthly household income;
- (c) the rate of interest payable by the person concerned shall be determined in accordance with these regulations on the total amount outstanding, including interest, and the existing agreement, suspensive sales agreement or mortgage bond, as the case may be, shall be amended accordingly.

(3) No loan shall be rescheduled more than once.

Manner of review by Advisory Committee of decisions of regional councils or local authority councils on matters relating to housing

14. (1) The accounting officer of every regional council and local authority council shall within seven days after the end of each month submit to the Advisory Committee a written summary of all decisions which it has in the preceding month taken on any matter relating to housing.

(2) The summary referred to in subregulation (1) shall set out the matter concerned which has been discussed, the decision taken on such matter and action taken in respect of such decision taken.

Appeals

15. (1) An appeal in terms of section 31(1) shall substantially be in the form of Form DBTP Hous. 7 set out in "Annexure A" and be lodged in duplicate by prepaid registered post or by hand with the body of appeal concerned, as well as with the body whose decision or act was appealed against.

(2) An appeal which is lodged by registered post and which reaches the body of appeal concerned after the period referred to in section 31(2)(c) shall, if it appears that such appeal has been posted before the expiration of such period, be deemed to be an appeal which has been lodged before the expiration of such period.

Conveyance of decision of body of appeal

16. The body of appeal concerned shall substantially in the form of Form DBTP Hous. 8 set out in "Annexure A" convey its decision taken in terms of section 31(3)(b)(i) by prepaid registered post or by hand to the appellant as well as to the body whose decision or act was appealed against.

Insurance

17. (1) Any property serving as security in respect of loans granted by a Housing Revolving Fund for the purchase or construction of property shall be comprehensively insured at an insurance company designated by the accounting officer concerned against risk of loss or damage by fire or such other perils as the accounting officer may determine.

(2) Any premiums payable in respect of the insurance concerned shall be the responsibility of the debtor concerned, be included in the monthly repayments to be made by the debtor and be paid by the debtor to the accounting officer concerned, who shall transfer the premiums concerned to the insurer.

Inspection and maintenance of property serving as security in respect of loans granted by Housing Revolving Fund

18. (1) An accounting officer concerned or any staff member authorised by him or her may, after written notice of not less than three days to the owner of any property which serves as security in respect of loans granted by a Housing Revolving Fund, at any reasonable time inspect such property in order to determine the state of repair of the property.

(2) An accounting officer referred to in subregulation (1) may undertake, subject to regulation 19, any repairs or maintenance to property referred to in that subregulation, or may instruct any person to undertake such repairs or maintenance, on behalf of the Housing Revolving Fund concerned, should the owner of the property fail to have the repairs or maintenance effected within a period of 14 days after written notice to the owner of the property to have such repairs or maintenance effected.

Recovery of the cost of repairs and maintenance done by or on the instruction of Housing Revolving Fund

19. (1) Any cost relating to the repair or maintenance of property referred to in regulation 18(2) shall be for the account of the owner referred to in that regulation, and shall be paid to the accounting officer concerned upon demand.

(2) If the owner of the property concerned does not pay the costs referred to in subregulation (1) to the accounting officer concerned, the accounting officer may add, at his or her discretion, the cost to the loan of the owner or may institute legal proceedings in a competent court for the recovery of such costs.

Order of business at meetings of Advisory Committee

20. (1) The order of business at every ordinary meeting of the Advisory Committee shall be as follows :

- (a) Minutes of previous meeting to be read and adopted;
- (b) report on financial matters;
- (c) report on loan applications;
- (d) reports deferred from previous meetings;
- (e) notices of motion transferred from previous meetings;
- (f) new notices of motion; and
- (g) other business.

(2) A member may move at a particular meeting that any item appearing on the agenda for that particular meeting of the Advisory Committee be advanced in the agenda.

(3) A member submitting a report referred to in subregulation (1) shall move that : "The report be considered by the meeting".

(4) If the Committee agrees to consider a report referred to in subregulation (3) as a whole, the chairperson of the Advisory Committee shall put, through the secretary, the recommendations therein contained seriatim, unless for good cause he or she deems it appropriate to vary the order.

(5) The chairperson of the Advisory Committee may, if he or she deems it appropriate, preface the moving of a motion by a brief explanation of the essential facts leading to the introduction thereof, or may instruct some other member to do so.

(6) A member submitting a report shall be held to move each recommendation contained in the report, and such member shall, if all the recommendations in a report or their amendments have been agreed to, move that the report, as amended, be adopted.

(7) If the Advisory Committee agrees with a recommendation or its amendment, it shall forthwith become a resolution of the Committee.

(8) No member shall without the permission of the Advisory Committee address the Committee more than once on any recommendation or amendment.

(9) The mover of an original motion, but not the mover of an amendment to such motion, may reply, but he or she shall strictly confine himself or herself to answering previous speakers and shall not introduce any new matter into the debate.

(10) The chairperson of the Advisory Committee shall call the attention of the Committee to continued irrelevant, tedious repetition, unbecoming language or any breach of order on the part of a member, and shall direct such member to desist from speaking in the manner to which exception is taken, or, in the event of persistent disregard of the authority of the chair, to absent himself or herself for the remainder of the meeting.

(11) Any member, whether he or she has spoken on the matter under discussion or not, may request an explanation on any part of a speech, but such explanation shall be confined to a material part of a speech or statement which may have been misunderstood.

(12) A member requesting an explanation under subregulation (11) shall be entitled to be heard forthwith.

(13) All motions and amendments shall, unless otherwise permitted by the chairperson of the Advisory Committee, be committed to writing and signed by the mover and shall, before discussed by other members, be read from the chair or by the secretary under the authority of the chair, and seconded.

(14) An amendment shall be relevant to the motion it is intended to amend, and shall not alter the motion in such a way as to make it essentially a new motion.

(15) All formal amendments shall be -

(a) framed in order to be read as independent motions;

(b) so framed as to -

(i) add or insert certain words;

(ii) omit certain words; or

(iii) omit certain words and add or insert other words.

(16) No motion or amendment shall without the permission of the Advisory Committee be withdrawn after having been read by the chairperson of the Advisory Committee or by his or her authority.

(17) The seconder of a motion or of an amendment may reserve his or her speech for any stage of the debate.

(18) An amendment which has been proposed, may be followed by other amendments, and the last amendment shall be considered first.

(19) If no amendment is carried, the original motion shall be put to the vote.

(20) An amendment which has been carried, shall be regarded as a substantive motion and shall in all other respects be treated, subject to further amendments, as an original motion.

(21) If a motion is under debate only one of the following motions shall be submitted to the meeting :

(a) An amendment to the motion, namely "That the motion be amended as follows :";

(b) the postponement of the motion, namely "That the meeting do proceed to the next business.";

(c) the closure of the debate on the motion, namely "That the debate on the motion be closed and the question now be put to the vote.";

(d) the adjournment of the debate, namely "That the debate on the motion be adjourned."; or

(e) the adjournment of the meeting, namely "That the meeting now be adjourned.".

(22) If an amendment is under debate only one of the following motions shall be received :

(a) An amendment, namely "That the motion be amended as follows:";

(b) the closure, namely "That the motion be now put to the vote";

- (c) the adjournment of the debate, namely "That the debate on the motion be adjourned."; or
- (d) the adjournment of the meeting, namely "That the meeting now be adjourned."

(23) A motion for the postponement of the motion under discussion in terms of subregulation (21)(b), which motion may specify a date for the further consideration of the motion, shall be made and seconded without debate and may be moved at any time, even during debate on an amendment.

(24) If the motion in terms of subregulation (23) is carried, the question shall be deferred, but if the motion is not carried, the debate shall proceed.

(25) A motion for closure under subregulations (21)(c) or (22)(b), as the case may be, shall be made and seconded without debate and shall be put forthwith, and if the motion is carried, the motion or amendment under debate shall at once be voted on by the Advisory Committee.

(26) If a motion for the adjournment of the debate as contemplated in subregulations 21(d) or (22)(c), as the case may be, is carried, the meeting shall proceed to the next item on the agenda, and the debate shall be resumed at the next ordinary meeting of the Advisory Committee.

(27) The mover of the adjournment referred to in subregulation (26) shall, on the resumption of the debate, be entitled to speak first.

(28) If a motion for the adjournment of a meeting as contemplated in subregulations (21)(e) or (22)(d), as the case may be, is proposed and seconded, the chairperson may, before putting the question, take the opinion of the Advisory Committee as to whether it shall, before rising, proceed to the transaction of unopposed business.

(29) Except as provided in these regulations, the chairperson of the Advisory Committee, having first ascertained the number of members present shall, if a question is put to the vote, ask for a show of hands for or against the motion or amendment and shall then declare that the vote appears to him or her to be in the affirmative or the negative, as the case may be.

(30) Any member may require that the numbers or the names, or both the numbers and the names, of the members voting for or against the motion or amendment be entered in the minutes.

(31) A member may request for a vote by ballot, and such request shall be granted if supported by two or more other members present at the meeting.

(32) A motion to rescind a resolution passed at a previous meeting shall be considered only if written notice thereof has been given to all members not less than ten days prior to the meeting concerned, and such motion shall be passed if a majority of the votes recorded is in favour thereof.

(33) A motion to rescind a resolution passed during a meeting of the Advisory Committee may, notwithstanding subregulation (32), be considered during the same meeting, provided that written notice be given to all the members present at the meeting that the matter be considered during that meeting.

(34) A motion referred to in subregulation (33) shall be passed only if two-thirds of the votes recorded are in favour of the motion.

(35) The secretary shall record in the minutes any rulings by the chairperson of the Advisory Committee as to the interpretation of these regulations, if so requested by a member at the time of the ruling.

(36) Notices of motion may be given to review any ruling of the chairperson of the Advisory Committee, and if given, shall constitute an instruction to a subcommittee, to be constituted by the meeting, to consider and report to the Advisory Committee concerned on such ruling, and shall be placed on the agenda for the following meeting.

(37) Any member who dissents from the opinion of the majority and who wishes to have his or her dissent recorded, shall state so forthwith, and such dissent shall then be entered in the minutes.

(38) Any rule or order of the Advisory Committee may be suspended if a motion to that effect is carried by a majority of votes.

(39) The proceedings at meetings of the Advisory Committee shall be preserved in the form of typewritten minutes authenticated, after adoption, at the next meeting by the signature of the chairperson thereof, and the minutes of each meeting of the Advisory Committee shall, save as otherwise provided in these regulations, contain a resumé of the subjects dealt with and of such motions and amendments as have been proposed and adopted, or proposed and not adopted, with the names of the proposer and seconder, but without any comment or observations by the members.

(40) The secretary shall forward a copy of the minutes of each meeting to all members concerned as soon as reasonably practicable after the meeting concerned, and such minutes may at a meeting be taken as read, but any member may move that certain minutes be read with a view to such correction therein or addition thereto as may be found necessary.

Office Hours

21. The offices of a regional council, local authority council and a Decentralised Build Together Committee shall for purposes of housing be open to the public on such days and at such times as the regional council, the local authority council or the Decentralised Build Together Committee may from time to time determine, except between 25 December of one year and 1 January of the following year, when they shall be closed.

ANNEXURE A

FORM DBTP HOUS. 1

NATIONAL HOUSING DEVELOPMENT ACT, 2000 APPLICATION FOR HOUSING LOAN OPTION AND ADDITIONAL LOAN (Regulation 2)

Please note:

1. A false statement will disqualify the applicant.
2. Please print. (Mark with an X where applicable).
3. This application shall be accompanied by:
 - (a) A building plan and erf layout on lined paper.
 - (b) A technical report (obtainable from the application office).
 - (c) Income certificate (Form DBTP Hous. 2).
 - (d) Loan Guarantee Form (Form DBTP Hous. 3).
4. Staff members who receive applications shall verify marriage and birth certificates and identity documents.

Application for:

PERSONAL PARTICULARS

APPLICANT

CO-APPLICANT

1. Surname

2. First names

3. Namibian ID no.

4. Postal address

5. Residential address

6. Date and place of birth

ATTACH BIRTH CERTIFICATE

7. Citizenship

ATTACH PROOF OF CITIZENSHIP

8. Period of residence

9. Occupation

10. Monthly income N\$ _____ N\$ _____

11. (a) Do you own/rent* a house in the region/area of the local authority* where you apply for a loan? Yes/No*

(b) If you rent a house, mark with an X where applicable:
 Government _____ Municipal _____ Private house _____
 Shack in back yard _____ Shack _____ Other _____

12. Where is the house you wish to purchase situated ? Furnish full address, name of town, street name and number, and erf number, if applicable.

13. (a) Do you have any savings? Yes/No*

(b) If the answer is yes, state amount and institution where savings are kept.

FURNISH PROOF: _____

14. (a) Do you live alone? Yes/No*

(b) Do you live with your family? Yes/No*

(c) Do you live with friends? Yes/No*

Furnish particulars : _____

15. (a) Do you own a house elsewhere in Namibia? Yes/No*

(b) If the answer is yes, furnish address of the house :

16. Marital status:

17. Number of dependents : Senior citizens (Over the age of 60 years):

Unemployed: _____

Scholars: _____

Pre-school: _____

18. (a) Does your spouse or any person residing with you earn a monthly income? Yes/No*

(b) If the answer is yes, state the amount: N\$ _____

19. Total monthly income for the household: N\$ _____

20. State how do you intend to build the house or how do you intend to upgrade your present house :

- By yourself with family assistance _____
- By building contractor and family assistance _____
- By building contractor _____

21. Loan amount applied for N\$ _____

DECLARATION:

I/We* _____

- (a) undertake to pay N\$ _____ in weekly/monthly/ seasonal* installments in respect of the loan applied for; and
- (b) hereby declare that the information furnished in this application is true and correct to the best of my/our* knowledge.

Applicant

Date

Co-applicant

Date

* Delete whichever is not applicable.

(¹) State here the purpose concerned as set out in section 9 of the Act.

FORM DBTP HOUS. 2

INCOME CERTIFICATE*
(Regulation 2)

Surname of applicant _____

First names _____

Place and date of birth _____

ID number _____ Marital status _____

Occupation _____

Name and address of employer _____

If self-employed, give full particulars _____

Monthly salary N\$ _____ #

Other income, e.g. rental or interest received, income from business, etc. (specify) :

Signature and stamp of employer

Date

If applicant is self-employed, he or she shall sign this certificate before a Commissioner of Oaths.

Applicant

Signed and sworn to / affirmed before me, after the Applicant has confirmed that he / she is aware of the contents of this document, that it is the truth and that the oath is binding on his / her conscience.

Signature and stamp of Commissioner of Oaths

Date

FOR OFFICIAL USE ONLY

AFFORDABILITY OF REPAYMENT: _____

Signature of staff member

Date

- * To be completed by the employer of the applicant. If the applicant is self-employed, the certificate shall be signed by the Applicant before a Commissioner of Oaths.
Attach a copy of the pay slip if applicant is in formal employment.

FORM DBTP HOUS. 3

LOAN GUARANTEE FORM
(Regulation 2)

Surname of applicant _____

First names _____

Place and date of birth _____

ID number _____ Marital status _____

Loan amount N\$ _____ Interest rate _____

Period of loan repayment _____ Monthly repayments N\$ _____

Type of guarantee (tick correct one):

Personal guarantee _____ Community guarantee _____

TO BE COMPLETED BY GUARANTOR

Describe the guarantee in detail:

DETAILS OF GUARANTOR:

Surname _____

First names _____

Physical and postal addresses _____

Telephone number and code _____

GUARANTOR SHALL ATTACH A CERTIFICATE OF HIS OR HER INCOME, ASSETS AND LIABILITIES.

DECLARATION BY GUARANTOR:

I/We* _____
 hereby declare that I/We* guarantee the repayment of the above loan in the amount of N\$ _____, plus interest and costs, and confirm that a certificate issued and signed by the accounting officer concerned shall be *prima facie* proof of the amount owing and payable in respect of the above loan. I/We further confirm that payments to be made by myself/ourselves in terms of this guarantee shall be made on demand, and I/we consent to the jurisdiction of the Magistrate's Court of the district in which the house in respect of which the loan was granted is situated, irrespective of the amount payable by myself / ourselves.

Signature _____

Date _____

APPROVED/NOT APPROVED

Signature _____

Date _____

* Delete whichever is not applicable.

Signature

Date

FORM DBTP HOUS.5

**OFFERING OF PROPERTY FOR SALE IN RESPECT OF WHICH HOUSING
REVOLVING FUND HAS A PREFERENT RIGHT
(Regulation 11(1))**

To: The accounting officer

I, _____
(full names and surname)

of

(physical and postal address)

hereby offer the following property

in respect of which the Housing Revolving Fund has a preferent right, to the Housing Revolving Fund for sale.

I propose the following purchase price : N\$ _____

Signature

Date

FORM DBTP HOUS. 6

WAIVING OF PREFERENT RIGHT
(Regulation 11(2))

To : _____

1. I acknowledge receipt of your offer of the following property

for sale to the Housing Revolving Fund, which offer was dated _____

2. The Housing Revolving Fund hereby waives its preferent right to purchase the property concerned, and you are free to sell the property to another purchaser, subject to any rights the Housing Revolving Fund may have in or in relation to the property.

Signature of accounting officer

Date

FORM DBTP HOUS. 7

APPEAL IN TERMS OF SECTION 31(1)
(Regulation 15(1))

To: The Chairperson/Minister*

I, _____

(full names and address of appellant)

hereby appeal against _____

(describe the decision or act appealed against)

of or made by _____

(specify the Decentralised Build Together Committee, regional council or local authority council concerned, or the Advisory Committee, as the case may be, whose decision or act is appealed against)

taken or performed on _____

(state, if available, the date on which the decision or act concerned was taken or performed)

on the following grounds : _____

(state clearly and specifically the grounds on which the appeal is based)

Signature of appellant _____

_____ Date

* Delete whichever is not applicable.
 (1) Specify the body to which the appeal is directed.

FORM DBTP HOUS. 8

**DECISION OF BODY OF APPEAL TO APPELLANT AND BODY WHOSE
DECISION OR ACT WAS APPEALED AGAINST**
(Regulation 16)

To: _____⁽¹⁾

1. The appeal against _____

(describe the decision or act concerned against which is being appealed)

by _____

(state the body whose decision or act was appealed against)

lodged on _____

by _____

(state full names and surname of appellant)

has reference.

2. The following decision has been taken in respect of the appeal concerned :

Signature of Minister / Chairperson of
body of appeal

Date

⁽¹⁾ Insert the full names and address of the appellant, and in the case of the body whose decision or act was appealed against, the chairperson and the body concerned.

ANNEXURE B

RATE OF INTEREST PAYABLE : LOANS

<u>AMOUNT OF LOAN</u>	<u>RATE OF INTEREST</u>
Up to N\$ 16 000	9 per centum
N\$ 16 001 to N\$ 17 000	9,5 per centum
N\$ 17 001 to N\$ 18 000	10 per centum
N\$ 18 001 to N\$ 19 000	10,5 per centum
N\$ 19 001 to N\$ 20 000	11 per centum
N\$ 20 001 to N\$ 21 000	11,5 per centum
N\$ 21 001 to N\$ 22 000	12 per centum
N\$ 22 001 to N\$ 23 000	12,5 per centum
N\$ 23 001 to N\$ 24 000	13 per centum
N\$ 24 001 to N\$ 25 000	13,5 per centum
N\$ 25 001 to N\$ 26 000	14 per centum.
