**FRAMEWORK AGREEMENTS AND POOLED PROCUREMENT REGULATIONS**

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PART 1

PRELIMINARY

**Definitions**

1. In these regulations a word or an expression to which a meaning has been assigned in the Act has that meaning unless the context otherwise indicates-

**“agent**” means a natural or juristic person procuring on behalf of a public entity or the Board when procuring with an entity from another country, a foreign state, regional or international organisation;

**“call-off”** means actual purchase by a public entity from a supplier in a complete framework agreement;

**“Code of Good Practice”** means the Code of Good Practice on preferences issued in terms of section 70 of the Act;

**“complete framework** **agreement”** means a framework agreement in terms of which suppliers are ranked or rotated and all the terms and conditions in the procuring of goods, works and services are established during stage one;

**“framework agreement duration”** means a period of the framework agreement within which the framework contracts may be awarded;

**“framework contract”** means a procurement contract awarded under a framework agreement;

**“incomplete framework agreement”** means a framework agreement in terms of which a mini competition will be conducted during the second stage amongst suppliers, and the terms and conditions in the procuring of goods, works and services are not fully established during the first stage;

**“Public Procurement Regulations”** means the Public Procurement Regulations published under Government Notice No. 47 of 1 March 2017;

**“the Act”** means the Public Procurement Act, 2015 (Act No. 15 of 2015) as amended; and

**“two-stage framework process”** means a process referring to both the first bidding process to establish a framework agreement and the second stage of entering into a framework contract with or without competition.

**Application of the Public Procurement Regulations and the Code of Good Practice**

 **2.** The Public Procurement Regulations and the Code of Good Practice apply to framework agreements and pooled procurements, except where specifically otherwise provided in these regulations.

PART 2

CONDITIONS FOR USE AND TYPES OF FRAMEWORK AGREEMENTS

**Conditions for use of framework agreements**

**3.** (1) In addition to section 38A(1), the Board or a public entity may enter into a framework agreement for the supply of goods, works or non-consultancy services where;

1. the quantities and delivery schedules are not definable or determinable at the beginning;
2. there are logistical and procurement reasons for having the requirement available on a call off basis;
3. the arrangement would reduce procurement costs or lead times; and
4. there is a need to have non-consultancy services “on call off” and the extent and timing of the requirement including repairs and servicing of equipment cannot be defined in advance.

(2) The Board or a public entity shall not use a framework agreement to prevent, restrict or distort competition by:

(a) setting specifications that favour certain suppliers; or

(b) setting ambiguous scope of goods, works or non-consultancy services; or

(c) setting vague evaluation criteria; or

(d) procuring of goods, works or non-consultancy services that are outside the scope of the existing framework agreement.

(3) A public entity shall not procure goods, works or non-consultancy services using a framework agreement of another public entity except for those concluded under pooled procurement as prescribed in these Regulations.

(4) The Board or public entity may not procure goods, works or non-consultancy services outside the concluded framework agreement, except where the price under the framework agreement is not fair and reasonable, or an additional delivery of related goods, works or non-consultancy services falls outside the scope of that framework agreement.

**Types of framework agreements**

 **4.** Subject to section 38A(6) of the Act, the Board or a public entity may use any of the following framework agreements-

1. Complete framework agreement-
2. Closed framework agreement on rotational basis
3. Closed framework agreement on ranking basis

1. Incomplete framework agreement with mini competition.

**Complete framework agreements**

**5.** Complete framework agreement for the procurement of goods, works and non-consultancy services for framework contract may be executed on the basis of rotation or ranking of the suppliers.

**Closed framework agreement on rotational basis**

**6.** (1) The Board or a public entity may enter into a framework agreement with a minimum of three (3) suppliers on a rotational basis with fixed prices where after conducting the procedures set out in regulation 10 the supplier is substantially responsive.

(2) The Board or a public entity must ensure that the framework suppliers are at par in terms of responsiveness and competitiveness provided that the prices are the same and fixed for the duration of the framework agreement.

**Closed framework agreement on ranking basis**

**7.** (1) Under this framework agreement, the Board or public entity may rank the framework suppliers based on responsiveness of their bids for inclusion in the framework agreement.

1. The Board or a public entity shall select a minimum of three (3) bidders who meet the evaluation and qualification criteria and whose bids have been determined to be substantially responsive to conclude the framework agreement.
2. All technically responsive bidders shall be ranked in terms of the lowest evaluated price per lot, with the first ranked being the lowest evaluated price, the second ranked being the second lowest evaluated price per lot, and so on.
3. The first ranked shall have the right of first refusal for purposes of awarding the framework contract.

**Incomplete framework agreement with mini competition**

**8**. (1) The Board or a public entity may enter into an incomplete framework agreement with a minimum of three suppliers in terms of which the Board or public entity will conduct a mini competition between framework agreement suppliers if the Board or public entity is not able to determine the following terms and conditions, in the first stage bidding-

1. Quality;
2. Price;
3. Lead time; and
4. Availability of the goods, works or non-consultancy services.
5. The Board or public entities may use this type of framework agreement only if it's necessary to achieve value for money and the object of that procurement, provided there is sufficient market intelligence that points out to the need to allow for such competition at stage two of the framework agreement process.

**Duration of Framework agreements**

**9**. (1) The Board or public entity may enter into a framework agreement for a period of not less than one year and not exceeding a period of 3 years.

1. Notwithstanding sub regulation 1 the Board or public entity in respect of a single supplier framework agreement may not set a period exceeding two years to allow the public entity to undertake and finalise the new procurement process.
2. The Board or public entity should in setting the period of the framework agreement balance between long and short duration risks.

PART 3

STAGE ONE OF FRAMEWORK AGREEMENTS

**Bidding Procedure** **for stage one of framework agreements**

**10**. (1) This procedure applies to all framework agreements referred to in regulation 4.

1. For purposes of section 38A a public entity must incorporate framework agreement procurement needs into the annual procurement plan in line with section 25 of the Act read with regulation 8(d) of the Public Procurement Regulation.
2. The Board or a public entity must, in line with section 38A(2) of the Act, invite bidders for inclusion in the framework agreement through open advertised bidding method.
3. The Board or public entity shall specify in its invitation to bid-
4. the Name of the public entity;
5. the Procurement reference number;
6. the Description of the procurement;
7. the Deadline for submission of bids for a period not less than 20 days;
8. the Place and manner of bids submission;
9. that the procuring entity intends to establish a framework agreement;
10. the number of suppliers or contractors which shall not be less than three alternative suppliers;
11. the duration of the framework agreement which shall not exceed three years;
12. the application of the Code of Good Practice on Preference where applicable; and
13. any other information as may be deemed relevant.
14. The public entity must conduct a procurement process for framework agreements for procurements within the thresholds specified in Annexure 1 of the Public Procurement Regulations.
15. Subject to section 8 and section 38A(1)(c) of the Act, the Board must conduct the procurement process on behalf of the public entities for all procurements beyond their respective thresholds.
16. Where the Board or a public entity make use of framework agreement, the Board or public entity must note in the record of the procurement proceedings the reasons and circumstance on which it relied to justify the use of the framework agreement and the type of framework agreement used.
17. Where, after conducting the procedures set out in this regulation, the Board or a public entity must select responsive bidders to enter into the framework agreement.
18. Notwithstanding, section 38A(3), where, after conducting the procedures set out in this regulation only one bidder submitted a substantially responsive bid, the Board or public entity may enter into a framework agreement with a single supplier for a period not exceeding 2 years to allow the public entity to undertake and finalise the new procurement process.
19. The Board or public entity must ensure that the framework agreement, clearly states the procedure of allocation of framework contracts.
20. The Board or public entity may provide estimates of the quantities which may be required during the given period of time but must not make a commitment to purchase the goods, works or non-consultancy services estimated when establishing the framework agreement as the procurement of the goods, works or non-consultancy services will be based on the actual demand.
21. The Board or a public entity must provide clarification related to the bidding process in accordance with regulation 34 of the Public Procurement Regulations.
22. Subject to section 55(4A), (4B), (4C) and (4D) of the Act upon selection of the responsive bidders in terms of sub regulation 8, an accounting officer shall enter into a framework agreement with successful suppliers.

**Standard bidding document**

**11.** (1) The Board or public entity must use the standard bidding document issued by the Procurement Policy Unit.

(2) The Board or Public entity shall specify the following in the bidding document-

(a) the number of suppliers or contractors which shall not be less than three alternative suppliers;

(b) the duration of the framework agreement which shall not exceed three years;

1. the specifications of the goods, works or non-consultancy services to be procured;
2. an estimate of the total volume, scope of work or services, or quantity of purchases expected to be made for the duration of the framework agreement as appropriate;
3. the qualifications required to perform the framework contract;
4. the methodology and criteria to be used in the evaluation of bids and the determination of-
5. substantially responsive bids under closed framework agreements on rotation basis on the highest scoring in the technical and qualification evaluation;
6. lowest substantially responsive bids under closed framework agreements on ranking basis for suppliers who meet the minimum requirements and scores for technical and qualification criteria;
7. substantially responsive bids under incomplete framework agreements based on the highest scores in technical and qualification evaluation; and
8. any other information as may be deemed relevant.

PART 4

TERMS AND CONDITIONS OF FRAMEWORK AGREEMENTS

**Terms and conditions of framework agreements**

1. (1) The framework agreement to be entered into between the Board or public entity and successful suppliers must be in the form substantially corresponding to a form determined by the Policy Unit.

(2) A framework agreement must include the terms and conditions –

1. stating that the framework agreement and the subsequent contracts shall be governed and construed in accordance with the laws of Namibia;
2. relating to termination of the framework agreement;
3. relating to intellectual property rights;
4. outlining the terms of payment;
5. stating that assignment and subcontracting will not be allowed without first obtaining the prior written consent of the Board or public entity;
6. outlining the obligations of the supplier;
7. stating how a supplier may withdraw or may be withdrawn from a framework agreement;
8. outlining the dispute resolution in relation to the framework agreement;
9. outlining the dispute resolution in relation to framework contracts;
10. stating the duration of the framework agreement;
11. specifying the contract price in respect of complete framework agreement;
12. on how contracts will be awarded under the framework agreement;
13. relating to additions or changes to the framework agreement terms and conditions; and
14. any other terms and conditions deemed necessary.

PART 5

PROCEDURE FOR STAGE TWO OF THE FRAMEWORK AGREEMENT

**Eligibility for award of framework contract**

1. (1) The Board or Public entity must select from the successful suppliers referred to in sub regulation 10(8), the supplier(s) to supply the goods, works or non-consultancy services as and when the need arises within the period of the framework agreement.

(2) The Board or public entity must follow the provisions of the framework agreement to award framework contracts.

**Procedure for Closed framework agreements on rotational basis**

1. (1) In respect of the closed framework agreements on rotational basis, the Board or public entity must award the contract in accordance with the rotation list as per the framework agreement.

(2) The rotation of suppliers must be defined in the framework agreement.

1. The Board or public entity shall not change or re-define the rotation during purchasing unless a supplier to the framework agreement is unable to perform.
2. Where a supplier to the framework agreement for any reason is unable to perform, such supplier becomes last on the list and the next supplier in line on the rotation list shall be issued with the purchase order.
3. The terms and conditions of the framework agreement that were agreed with the framework suppliers shall not be amended without the consent of all the parties

**Procedure for Closed framework agreement on ranking basis**

1. (1) In respect of the closed framework agreement on ranking basis, the Board or Public entity must award the contract in accordance with the rank order as per the framework agreement.
2. This rank order shall be used to decide on selection of a supplier to be issued with purchase order, starting with the most responsive and competitive framework agreement supplier.
3. If the selected framework agreement supplier is no longer able or fails to perform, then the next in rank order shall be approached with the same purchase order.
4. The terms and conditions of the framework agreement that was agreed with the framework suppliers shall not be amended without the consent of all the parties

**Procedure for Incomplete framework agreement with Mini competition amongst framework agreement suppliers**

1. (1) In respect of the incomplete framework agreement, the Board or public entity must for each procurement conduct a mini competition between the suppliers in the framework agreement using the request for sealed quotations method regardless of the threshold referred to in Annexure 2 of the Public Procurement Regulations.

(2) The terms and conditions of the framework agreement that was agreed with the framework suppliers shall not be amended without the consent of all the parties.

(3) Where a supplier to the framework agreement for any justifiable reason is unable to participate in the mini competition or perform, and as a result, the number of framework suppliers falls below the minimum number of framework suppliers, the public entity shall proceed and obtain quotations from the remaining framework suppliers.

(4) Where framework suppliers are continuously unable to provide quotations thereby reducing the numbers of the framework suppliers below the minimum number of framework suppliers, the Board or a public entity shall terminate the framework agreement and start the process afresh.

**Awarding of contracts under the framework agreements**

1. (1) In respect of the incomplete framework agreement the awarding of the procurement contract is subject to section 55(4A), (4B), (4C), and (4D) of the Act.
2. In respect of complete framework agreement, the awarding of framework contracts in terms of regulation 10(9), 14 and 15 shall not be subject to section 55(4A), (4B) (4C) and (4D) of the Act.
3. In respect of complete framework agreement, the awarding of framework contracts in terms of regulation 10(9), 14 and 15, the Board or public entity shall on a call off basis, issue a purchase order.
4. For incomplete framework agreement, the Board or the public entity must consider the offer and may make an award subject to the price being considered as fair and reasonable taking into consideration value for money.
5. Subject to regulation 3(4), where after a mini-competition process, the Board or public entity determines that the prices are not fair and reasonable, the Board or public entity must procure from suppliers outside the framework agreement through open advertised bidding process.
6. Where framework suppliers are continuously submitting bids that are not fair and reasonable, the Board or a public entity shall terminate the framework agreement and start the process afresh.
7. All awards of procurement contracts under the framework agreements are subject to the provision of section 50(2) of the Act.

PART 6

CONDITIONS FOR USE OF POOLED PROCUREMENT

**Conditions for use of pooled procurement with other public entities in Namibia in terms of section 38B(1)(a)**

1. (1) Public entities may use pooled procurement to jointly procure goods or works with other public entities in Namibia through the Board, if the goods or works to be procured are identical.

(2) When public entities are jointly procuring goods or works, the Board must, regardless of the threshold, conduct the bidding process and enter into procurement contracts with supplier(s) and the procuring public entities.

**Conditions for use of pooled procurement with entities outside Namibia in terms of section 38B(1)(b)(i)**

1. (1) A public entity may participate in pooled procurement in line with section 38 B(1)(b)(i) of the Act with an entity in another country provided that there is, in that other country -
2. a public procurement legal framework that allows that entity to engage in procurement with public entities from another country, and
3. a public financial management legal framework that allows financial transactions between that entity’s country and Namibia.
4. A public entity may conduct pooled procurement with an entity in another country provided that the public entity has a clear financial risk management plan in place to safeguard risks associated with –

(a) advance payments;

(b) the absence of performance guarantees; and

(c) foreign currency exchange losses.

(3) A public entity may only jointly procure with an entity in another country if -

(a) the goods or works to be procured are not available in Namibia; or

(b) the public entity is engaged in a joint project involving Namibia and an entity in another country, or

(c) The payment of suppliers is aligned to the Public Finance Management Act, or

(d) if procuring in a pooled procurement organisation where there will be significant savings compared to local procurement.

**Conditions for use of pooled procurement with a foreign state, a regional or an international organisation in terms of section 38B(1)(b)(ii)**

1. (1) A public entity may conduct pooled procurement with a foreign state, a regional or an international organisation provided that the public entity has a clear financial risk management plan in place to safeguard risks associated with -
	1. advance payments;
	2. the absence of performance guarantee; and
	3. foreign currency exchange losses.

(2) A public entity may only jointly procure with a foreign state, a regional or an international organisation when-

1. The goods or works are not available in Namibia.
2. The payment of providers is aligned to the Public Finance Management Act.
3. if procuring in a pooled procurement organisation where there will be significant savings compared to local procurement.

**Condition for use of pooled procurement from a regional or international organisation in terms of section 38B(1)(c)**

1. (1) When a public entity is procuring from a regional or international organisation in terms of section 38B(1)(c) of the Act, the public entity must conduct its own procurement process, irrespective of the thresholds.

(2) A public entity may conduct pooled procurement from a regional or an international organisation provided that the public entity that is an office, ministry, agency or regional council, obtains Treasury authorisation in respect of advance payments and the pooled procurement Agreement is approved by the Attorney-General.

PART 7

POOLED PROCUREMENT PLANNING

**Planning for pooled procurement by public entities**

1. For purposes of section 38B (1) a public entity must –
2. Incorporate pooled procurement needs into the annual procurement plan in line with section 25 of the Act read with regulation 8(d) of the Public Procurement Regulation.
3. Identity and consult the public entity, entity in another country, foreign state, regional or international organisation that it wishes to procure with or from, through pooled procurement.

PART 8

METHODS OF PROCUREMENT TO BE USED

**Pooled procurement of goods and works between public entities in Namibia**

1. The Board may procure goods or works in common use by more than one public entity through pooled procurement using-
2. any of the applicable procurement methods specified in section 27 of the Act, or
3. framework agreements in accordance with these regulations.

**Pooled procurement of goods or works between public entities in Namibia and entities in another country or with a foreign state, a regional or international organisation**

1. (1) Public Entities or the Board, where the procurement exceeds the prescribed threshold of the public entity, may procure goods or works jointly with procuring entities in another country using-
2. any of the applicable procurement methods, or
3. framework agreements,

in accordance with the legal framework of the respective countries, regional or international organisations.

(2) Where the public entity or the Board and the entity in another country, foreign state, regional or international organisation agree on the procurement method, framework agreement or rules and procedures not consistent with the Act, the Board or public entity must obtain authorisation from the Minister.

**Pooled procurement of goods or works from a regional or international organisation**

1. A public entity when procuring from a regional or international organisation may use direct procurement method, provided that the procurement process leads to value for money.

**Bidding documents**

1. In addition to the requirements of regulation 33 of the Public Procurement Regulations, the bidding document for pooled procurement in terms of section 38B(1)(a) must state-
2. The names of all the public entities procuring;
3. The duration of the contract;
4. Whether it is a fixed contract or is through a framework agreement; and
5. The lots into which the contract will be awarded.

PART 9

PROCEDURES FOR POOLED PROCUREMENT

**Procedures for pooled procurement with another public entity in Namibia in terms of section 38B(1)(a)**

1. (1) For purposes of section 38B(4) of the Act the Board shall invite public entities wishing to procure specifically described goods or works listed in terms of section 7(1)(n) of the Act through pooled procurement to make submissions of the quantities of their procurement needs to the Board within the first three months of the financial year.

(2) Notwithstanding sub regulation (1) public entities intending to make use of pooled procurement in terms of section 38B(1)(a) of the Act, must submit a joint procurement requisition to the Board of the intended pooled procurement.

1. The public entity must indicate the proposed duration of the contract which may not exceeds three (3) years.

**Procedures for pooled procurement with an entity in another country, foreign state, regional or international organisation in terms of section 38B(1)(b)**

1. (1) Where the values of the procurement are within the threshold of the public entity as per Annexure 1 of the Public Procurement Regulations, the public entity after having identified and consulted with an entity in another country, the foreign state, regional or international organisation, must prepare the procurement requisition and obtain Treasury authorisation if advance payment is applicable, and conclude a pooled procurement agreement.
2. Where the value of the procurement is above the applicable threshold, the procurement must be submitted to the Board in a form of a procurement requisition and obtain Treasury authorisation if advance payment is applicable, for the Board to conclude the pooled procurement agreement and to procure on behalf of the public entity.
3. The public entity must indicate the proposed duration of the contract which may not exceeds three (3) years.
4. The Board or a public entity, when conducting pooled procurement in terms of section 38B(1)(b) with entities from another country, a foreign state, regional or international organisation may do so by means of joint procurement, contract signing and purchasing or through an agent.

**Procedures for pooled procurement from regional or international organisations in terms of section 38B(1)(c)**

1. Prior to signing a pooled procurement agreement, the public entity must prepare the procurement requisition, and obtain Treasury authorisation if advance payment is applicable, relating to the procurement from the regional or international organisation.

**Handling of pooled procurement submissions by the Board in terms section 38B(1)(a)**

1. (1) At the end of the 3 months referred to in sub regulation 27(1) the Board must consolidate the submissions for pooled procurement received.
2. Subject to section 38B(7)(a), the Board and the procuring public entities must enter into a pooled procurement agreement specifying their obligations in addition to those stipulated in the Act and the procurement method as per part 5 of the Act.
3. The Board must solicit bidders as per the procurement method as agreed upon in the pooled procurement agreement as per part 5 of the Act.
4. The Board must conduct the bidding process and award the pooled procurement contract to the successful bidder as per section 55 of the Act.
5. Subject to section 55, the Board must sign the pooled procurement contract with the public entities involved and the successful bidder(s).

**Handling of pooled procurement submissions by the Board in terms of section 38B(1)(b)**

1. (1) Upon receiving the submission to procure on behalf of a public entity with an entity in another country, foreign state, regional or international organisation in terms of section 38B(1)(b), the Board, in consultation with the public entity, shall engage the entity in another country, foreign state, regional or international organisation and enter into a pooled procurement agreement in terms of section 38B(7) of the Act.

(2) The Board or a public entity when conducting pooled procurement in terms of section 38B(1)(b)(ii) with an entity in another country, foreign state, a regional or international organisation may conduct the bidding process through-

1. the internal organisational structures;
2. regional or international organisation; or
3. an agent, and

the Board or a public entity, agent or regional or international organisation must enter into a procurement contract with supplier(s).

PART 10

POOLED PROCUREMENT AGREEMENT

**Content of the pooled procurement agreement**

1. A pooled procurement agreement referred to in section 38B(7)(b) of the Act must include provisions relating to –
	* 1. the procurement method to be used;
		2. the procurement process and procedure;
		3. the evaluation of the bids;
		4. the awarding of the contract;
		5. the types of goods and works to be procured;
		6. the threshold of the estimated price;
		7. the price and non-price benefits which the parties will gain in this procurement;
		8. the duties and responsibilities of the contract manager;
		9. the duties and responsibilities of the parties;
		10. the governing law and the jurisdiction of the agreement;
		11. the currency to be used in the procurement contract;
		12. the terms and conditions that the parties agreed to for the procurement contract of the goods and works to be procured;
		13. the delivery of the goods and works;
		14. the termination of the agreement;
		15. the breach of the agreement;
		16. the dispute settlement mechanism;
		17. the duration of the contract which should not exceed three years in total, including an initial fixed term and possible extensions, and
		18. Any other matter which the parties deem necessary.