Tender Procedures Presentation

By

Sankwasa James Sankwasa
Management & Labour Consultant
Introduction.

• The Collins C- Build English defines a tender “as a formal offer to supply goods or services and a statement of the price that a company charges for supplying such goods and or rendering such services”.

• Government therefore engages in the tendering process to purchase goods and services from suppliers of such goods and services at a price determined by the supplier and agreed to by the government.

• Supply Chain Management (procurement-purchases) forms the largest portion of the annual government of an ministry or agency.

• This requires efficient financial management from both administrators and political office bearers, as their respective performance within this designated area impacts either positively or negatively on the overall financial situation of the ministry or agency in question.
Tender Board – Legal Framework

- Tender Board of Namibia Act, 1996 (Act 16 of 1996)- national level ministries/agencies
- Tender Board Regulations No 237 of 1996- national level ministries/agencies.
- Tender Board of Namibia Code of Procedure No. 191 of 1997- national & regional level
- RC Tender Board Regulations, Gazette No. 2492, 2001- regional council level
- Code of conduct for Regional Councils
- LA Tender Board Regulations- Local Authority level.
Composition of the Tender Board

- The Namibia Tender Board is composed of the Permanent Secretary of Finance as Chairperson, one staff member from each office, ministry and agency nominated by the respective minister or head of the institution and two persons who are Namibian citizens.
- The RTB consist of seven (7) members of which no less than two members must be women.
- The Chief Regional Officer (CRO): chairperson.
- Four staff members of the Council
- Any two persons resident within the region concerned appointed in writing by the RC.
Tenure of office

• Any member who is a government employee shall hold office during the minister’s pleasure and any other member for a period of three (3) years.

• Any member of the Tender Board may be removed by the minister if such member become unsuitable to serve on the Board.

• A member of the TB whose tenure of office has expired is eligible for reappointment.

• A member shall vacate office if s/he ceases to be an employee of the state or resigns
Disclosure of interest.

• Members of the tender board are required to disclose their interest in any tender or agreement and not to take part in the deliberations of such tenders or agreements.

• Section 6 provides that members of TB who have interests or intends to have interests in a specific tender must declare in writing the nature, extent and particulars of such interest to the Board during the meeting but before the deliberations of the given tender.
Disclosure of interest cont..

- To avoid conflict of interest, such member must not take part in any proceedings concerning the tender as far as his/her interests are concerned.
- In the event a ministry makes use of an administrative technical evaluation-tender committee, staff members having any personal interest in a tender must not take part in the technical evaluation of the tender concerned.
Disclosure of interest cont..

• Members of the TB, or staff who drafts or are involved in the drafting of a submission to a TB, who contravene or fail to comply with the provisions in section 6 of the Tender Board Act & Regulations are guilty of an offence and;

• Any member who contravenes this provision shall be guilty and liable to a fine not exceeding N$500 000 or imprisonment not exceeding 10 years or to both such fine and imprisonment.
Meetings Tender Board

- The Chairperson shall preside at every meeting of a regional tender board,
- In the absence of the Chairperson, the vice-chairperson shall chair the meeting.
- If both the chairperson and vice-chairperson are absent, the members of the tender board present may elect under the chairpersonship of the Secretary to the Tender Board one of their number to preside at such meeting.
Meetings of Tender Board cont..

• Meetings shall be held on dates, times and venues as determined by the chairperson from time to time, and any meeting so determined shall be adjourned or postponed by the chairperson.

• Meetings shall be held on dates, times and venues as determined by the chairperson from time to time, and any meeting so determined shall be adjourned or postponed by the chairperson.

• More than half of the members of the Board shall form a quorum for any meeting of the Board concerned.
Decisions of the Board.

• Decisions of the Board shall be conveyed in writing to the person concerned by the Secretary in a manner approved by the Board.
• Shall be obtained by means of meetings, and minutes must be kept.
• Reason for acceptance of a tender shall be recorded in the minutes.
• No decision of the Board shall be invalid because it is merely based on an erroneous calculation or bona fide incorrect application of these regulations.
Decisions of the Board cont...

• The Tender Board shall not be obliged to accept the lowest tender or in case of property disposal, the highest tender or any other tender.

• 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.

• May accept any tender notwithstanding the fact that such tender was not made in response to any particular tender invitation.

• Shall not accept a tender if the tender price is quoted in relation to the price tendered or quoted in all other tenders or any specific tender
The procurement process – step by step.

- Four phases:
  - Planning phase: identification of type and nature of procurement; assessment of market conditions and choice of tendering procedure.
  - Tendering procedure: preparation of tender document; invitation to tender; receipt of tenders and opening of tenders.
  - Evaluation and award of tender phase
  - Implementation and completion of contract phase
Planning of procurement.

- Starts simultaneously with the preparation of the ministry or agency’s annual budgets.
- The ministries or agencies and their tender board committee should have their procurement plans and – ideally- tender documents ready from the beginning of the financial year.
- Tenders (works) should be called immediately the budget is approved and implemented.
Types or categories of tenders

- Normal tender (either for goods or service) is advertised for 24 working days (one month)
- Q-Tender (Quotation tender) (either for goods or service) is advertised for 14 working days (less than one month)
- Q-tender are sometime obtained telephonically or through personal visits to suppliers.
- The requirement is to always obtain a minimum of three (3) quotations from different suppliers.
Exceptions To The Tendering Process

- There are three (3) exceptions to the normal Tendering Process, these being:
- Sole Source or Supplier Justification
- Emergency Purchases
- Sole Source Justification By Reason of Compatibility

**Exception #1: Sole Source Justification**
- A Sole Source or Supplier purchase is one where the specifications of the product / service, limit its purchase to the only one known source of supply.

- An Emergency Purchase is classified as a procurement which is needed to "protect life and property, prevent substantial economic loss, and/or prevent the interruption of essential services".
Choice of tender procedure.

Three types of procurement:

- **Works (‘construction’)**: Works include design/construction, rehabilitation, maintenance and repair of buildings, factories, roads, plants, bridges, and the like.

- **Supplies (‘goods’)**: defined as raw materials, products, equipment and other physical objects in any state or form, including utilities.

- **Services (‘consultancies’)**: defined as tasks to be performed by the consultant under a service contract such as studies, designs, provision of technical assistance and training.
Terms of Reference or technical specification

- Purpose of TOR /technical specification:
  - specification of the service to be purchased; quality level of the needed service and conditions for the delivery of the service.
- Well-prepared TOR:
  - Force the Tenderers to define the objectives, required outputs and outcome and scope of work of the assignment
  - Guide the Tenderers on the preparation of the technical and price proposals
  - Constitute a monitoring and evaluation tool for the purchaser
Submission and receipt of tenders

• Tender Board should consider the period allocated to the Tenderers for preparing and submitting the tenders.
• The time depends on the size and nature (complexity) of the procurement in question, but should not be less than 21 days after the date of the last publication of the invitation to tender.
• Tender Board may decide to extend the period for submission in cases where modifications of the tender document is necessary.
Submission and receipt of tenders cont..

• The Tenderer must ask for clarification in writing, and both the queries raised by the Tenderer and the clarification provided by the purchaser must be communicated in writing to all Tenderers.

• No member of the TB or any other staff member or must provide any information to a Tenderer, which favour the Tenderer in question.

• Tenderers must submit their bid in two separate sealed envelopes, one bearing “Technical Tender” and the other envelope “Price Tender”, especially in case of service tenders.
Opening of tenders.

• The tender opening procedure is done by the Secretary to the TB flanked by at least two other officials.

• The opening of the tenders is open to the public.

• The Secretary will record the names of those attending the opening and undertake that the records are signed by the attendees.

• The container with the tenders will be unlocked by the Secretary to the Tender Board at the indicated time in the presence of at least two officials.

• Members of the public and Tenderers may also be present at the opening.
Opening of tenders cont..

• The Secretary will verify that Tenderers have followed procedures and formats as prescribed in the instruction to Tenderers.

• The Secretary will announce the:
  • the names of the Tenderers
  • number of copies
  • tender prices (only in works and supplies tenders)
  • written notifications of tender modifications and withdrawals
  • presence of a tender guarantee if required in the Instruction to Tenderers
Opening of tenders cont..

• any other supporting documents requested in the Instruction to Tenderer
• in case of a separate tender price envelope, the announcement shall state whether this requirement has been complied with
• price envelopes will not be opened in the opening session.
• In the event Tenderers have failed to comply with the procedural requirements the disqualification of the tender in question will be announced and recorded in the minutes
Disqualification of tenders

• A tender may be disqualified if the Tenderer
  – is deemed not to be capable to fulfil its obligations. Is insolvent
  – has been convicted of an offence concerning professional conduct
  – is guilty of grave professional misconduct
  – has neglected its social security contributions, taxes or levies
  – is guilty of serious misrepresentation in supplying information required by the regional council for its participation in the tender
Disqualification of tenders cont..

– has conflicting interests in the tender (for example if a bidding company is known to be owned by a member of the TB, and he/she is involved in the tender process)

– does not comply with the requirements set forth in the ITT (for example late submission of the tender or failure to separate the price and technical proposal in a double envelope tender)

– proposes personnel, which are included in other competing tenders
Evaluation of tenders.

• Evaluation criteria or grids must be developed to identify the best technical quality and more economical (price) tender.

• Tailor made evaluation grids are developed for each evaluation.

• Weigh the technical quality against the price at a ratio of 80% for the technical tender; and 20% for the price tender, (varies depending on the nature of tender), considered on a case by case.

• Evaluation requires approximately one week in order to give the assessors time to scrutinize the tender documents and for the TB to sit.
Technical evaluation by the ministries/agencies.

- The relevant ministry (and external experts if need be), submits its recommendations to the TB in writing.
- When the ministry does not recommend the lowest tender, the head of must certify in writing that the recommendation is made in the best interest of, and represent the best value to the ministry concerned.
- Where only one tender is received and that tender is recommended, the head must state in the recommendation whether the tender price is considered fair and reasonable.
Cancellation and re-advertising of tender.

- The annulment and re-advertising a tender may take place in following situations if:
  - no tender is responsive to the tender document
  - no tender satisfies the criteria for the award of contract
  - the financial or technical data of the project have been changed
  - all tenders received exceeds the financial ceilings allocated for the procurement
  - the process is hampered by irregularities, inappropriate interference from the administration, political office bearers or Tenderers
  - there has been no competition.
Notification and award of contract

• The TB must award the contract to the Tenderer who receives the highest composite score (technical + price) against the qualifying criteria.

• These can be summarised as follows:

• for works and supplies contracts, the Tenderer who offered the most advantageous tender as assessed on the basis of
  – the price, the operating and maintenance costs
  – the quality of the technical tender
  – the guarantees offered by the Tenderer
Notification and award of contract cont..

– the conditions and time limits for performing the contract
– responsiveness to Namibian procurement policies (for example affirmative action)
– responsiveness to local conditions

• For service contracts, the Tenderer who offers the most advantageous tender taking into account: price, technical quality of the tender, the organisation and methodology proposed for the provision of the services, proven track record in the relevant field, educational academic qualifications and availability of the proposed personnel.
How to determine the ‘best and cheapest’ bid.

• Check for expertise proposed, methodology and technical means to execute the contract.
• The technical evaluation of supplies tenders focuses more on quantities and compliance with the technical specifications and Tenderers’ proposals for after sales service.
• The three main technical criteria are:
  • 1. Experiences, past performance and resources of the bidding company/firm
  • 2. Qualifications and experiences of the proposed personnel
  • 3. Understanding of the assignment (TOR) and methodology.
Price preference

• Section 15 (5) provides that “in comparing tenders, the Board shall give effect to the price preference policy of government to redress social, economic and educational imbalance in a democratic society ---- interest in Namibia”.

• The price preference is prescribed as the requirement for goods and or services produced in Namibia and application of affirmative action policy of government, including the fact of whether the Tenderer is a bona fide Namibian citizen when considering the award of the tender. It is the lack of the consideration and application of the given government policy.
Professional and ethical issues in procurement

• Section 13 of the TB regulations forbids corruption.
• Failure to maintain high professional and ethical standards in procurement compromises the legitimacy of the public sector, and erodes people’s confidence in both the administrative and political leadership in public institutions.
• Corrupt practices inevitably spark a vicious circle ultimately leading to a situation where only corrupt companies engage themselves in public tendering, which in turn leads to monopolies and financial losses for government institutions.
Final remarks.

• Members of the Tender Board are not all doctors, clerks, advocates, tradesmen or technical personnel, and have little time in which to study submissions. Thus, submissions to the Board should as far as practicable and possible, be uncomplicated, free of specialist terminology, short and to the point. Mention only points that are necessary and important for evaluating the award.

• END.