



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

N\$10.80

WINDHOEK - 18 December 2018

No. 6796

### CONTENTS

*Page*

#### GOVERNMENT NOTICE

No. 353 Public Private Partnership Regulations: Public Private Partnership Act, 2017 ..... 1

## Government Notice

### MINISTRY OF FINANCE

No. 353

2018

#### PUBLIC PRIVATE PARTNERSHIP REGULATIONS: PUBLIC PRIVATE PARTNERSHIP ACT, 2017

Under Section 40(1) of the Public Private Partnership Act, 2017 (Act No. 4 of 2017), I have, after consultation with the Committee, made the regulations set out in the Schedule.

**C. SCHLETTWEIN**  
**MINISTER OF FINANCE**

Windhoek, 12 December 2018

### SCHEDULE

#### ARRANGEMENT OF REGULATIONS

#### PART 1 PRELIMINARY PROVISIONS

1. Definitions

PART 2  
PUBLIC PRIVATE PARTNERSHIP COMMITTEE

2. Reporting to Minister
3. Disclosure of interest by accounting officer

PART 3  
PUBLIC PRIVATE PARTNERSHIP PROJECT INITIATION

4. Unsolicited proposals
5. Appointment of project officer
6. Appointment of transaction advisor

PART 4  
FEASIBILITY ASSESSMENT

7. Feasibility assessment
8. Management of contingent liabilities
9. Revenue sharing or revenue support mechanisms

PART 5  
PUBLIC PRIVATE PARTNERSHIP PROJECT PROCUREMENT

10. Developing the procurement plan
11. Constitution of procurement committee
12. Form of communication in procurement documents
13. Publication of advertisement or notification of procurement documents
14. Preparation of the request for qualification
15. Contents of request for qualification
16. Number of applications
17. Qualifying criteria for evaluation of request for qualification application
18. Content of request for proposal
19. Evaluation criteria for proposals
20. Eligibility of bidders
21. Disqualification of bidders
22. Conflict of interest
23. Security deposit for bidders
24. Acceptance or rejection of bids
25. Pre-submission meeting
26. Manner, place and due date for submission of bids
27. Confidentiality
28. Record of tender proceedings
29. Treatment of sole bid
30. Treatment of speculative bids
31. Data room

PART 6  
PROJECT IMPLEMENTATION

32. Site visit
33. Functions and responsibilities of management team
34. Disqualification for appointment as a member of the management team
35. Appointment of independent expert
36. Exit strategy for continued service delivery

PART 1  
PRELIMINARY PROVISIONS

**Definitions**

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

“bid security” means the specified acceptable security furnished by the private party to the public entity to ensure performance of any obligation under the request for proposal;

“concession period” means the period beginning from the date of appointment of the private entity to the date of termination of the public private partnership agreement;

“independent expert” means the independent expert referred to in regulation 35;

“performance security” means the specified acceptable security furnished by the private entity to the public entity for the performance of its obligations under the public private partnership agreement;

“procurement documents” means the request for qualification, request for proposals, draft public private partnership agreement and any additional document furnished by the public entity in respect of the process of pre-qualification or selection of a private entity for a public private partnership project;

“the Act” means the Public Private Partnership Act, 2017 (Act No. 4 of 2017); and

“unsolicited proposal” means a proposal made by a private party to undertake a public private partnership project submitted at the initiative of the private party.

PART 2  
PUBLIC PRIVATE PARTNERSHIP COMMITTEE

**Reporting to Minister**

2. Not later than one month after the end of each quarter the Committee must submit to the Minister a report relating to the quarter and the report must contain -

- (a) particulars of all activities of the Committee during the quarter under review; and
- (b) other information as the Minister may require or as may be required under the Act.

**Disclosure of interest by accounting officer**

3. (1) The accounting officer may not have direct or indirect interest in public private partnership projects that a public entity is intending to implement.

(2) The accounting officer must disclose to the Committee any direct or indirect interest he or she has or may have in a public private partnership project the public entity is intending to implement before any decision is taken by the public entity.

(3) The Committee must keep or cause to be kept a record of disclosures made in terms of subregulation (2).

(4) The accounting officer who made a disclosure of interest as contemplated in subregulation (2) may not participate in decision making processes with respect to that public private partnership project.

PART 3  
PUBLIC PRIVATE PARTNERSHIP PROJECT INITIATION

**Unsolicited proposals**

4. (1) A public entity may consider unsolicited project proposals by taking into consideration whether the proposed scale and scope of the project is in line with the mandate of the public entity.

(2) If the public entity finds merit in an unsolicited proposal, the accounting officer may register the project in terms of section 16 of the Act.

**Appointment of project officer**

5. (1) The public entity must appoint a project officer from within its establishment who will be responsible for the preparation and procurement of the public private partnership project.

(2) The project officer is responsible for -

- (a) analysing and maintaining all documentation related to the public private partnership project;
- (b) defining the objective of the public private partnership project;
- (c) undertaking and documenting consultations with stakeholders for the identification of the public private partnership project;
- (d) establishing the suitability of a project for public private partnership and determining the value for money of the project;
- (e) assessing payment for the public private partnership project and establishing its affordability for the public entity and end users;
- (f) developing the structure of the public private partnership project;
- (g) undertaking the processes for appointment of a transaction advisor, if required;
- (h) undertaking the appointment of a legal advisor, if required;
- (i) planning, budgeting and implementing feasibility assessment and procurement process;
- (j) obtaining necessary approvals from relevant authorities for developing the public private partnership project;
- (k) efficiently managing all key activities related to the development and procurement of the public private partnership project, on behalf of the public entity; and
- (l) supporting the management team, as a member in an efficient implementation after the issue of award of project to the preferred bidder.

**Appointment of transaction advisor**

6. (1) As contemplated in section 16(2)(b) of the Act the public entity may appoint a transaction advisor to -

- (a) prepare a feasibility assessment;
  - (b) prepare a public private partnership agreement; and
  - (c) assist and advise the public entity on matters relating to the procurement, management and implementation of the public private partnership project.
- (2) Before appointing a transaction advisor the public entity must prepare a procurement plan for transaction advisory services and that plan must cover the -
- (a) duration of the transaction advisory services;
  - (b) terms of reference of the transaction advisory services;
  - (c) milestones and schedule of the transaction advisory services;
  - (d) skills, expertise and knowledge needed from each transaction advisor;
  - (e) estimated budget for the transaction advisory services;
  - (f) objective and transparent criteria for selection of transaction advisors;
  - (g) procurement schedule for transaction advisory services; and
  - (h) other matters concerning the procurement of transaction advisory services.

#### PART 4 FEASIBILITY ASSESSMENT

##### **Feasibility assessment**

7. (1) The feasibility assessment for the public private partnership project in terms of section 17 of the Act must include but is not limited to the following -
- (a) market assessment to assess the need for and appropriate scope of the project, containing a needs analysis, options analysis and demand forecast;
  - (b) technical feasibility and technical parameters based on the market analysis including specifications of required facilities and detailed project costing;
  - (c) legal analysis to assess the impact of the applicable laws;
  - (d) preliminary social and environmental feasibility, including the requirements for environmental and social impact assessments and for the associated mitigations;
  - (e) project structuring in terms of the recommended public private partnership mode;
  - (f) financial analysis incorporating a projected revenue structure, financial viability and affordability of the public private partnership project for the public entity and the end users and assessing any need for financial support from the public sector through the government budget or otherwise;
  - (g) risk assessment of the public private partnership project, involving the identification of risk and allocation of risk to the party that is best able to manage each risk;

- (h) a quantification of the potential contingent liabilities that the public entity may have to incur over the project cycle;
- (i) value for money analysis, for evaluating the suitability for implementing a project on a public private partnership basis; and
- (j) project implementation schedule, including an outline of the proposed public private partnership procurement and award process through to the pre-construction, construction and operation phases of the project.

(2) The feasibility assessment for the public private partnership must give consideration to the lifecycle costs and revenues from the public private partnership project as it establishes the sustainability of the public private partnership project throughout the concession period.

### **Management of contingent liabilities**

**8.** (1) The public entity must at the time of the feasibility assessment, analyse various scenarios and assess the maximum adverse impact that could arise on account of contingent liabilities for the public entity.

(2) The public entity must satisfy itself that possible negative financial impact is not financially debilitating to it and that it is able to manage the outcomes should they materialise.

(3) The analysis of contingent liabilities contemplated in subregulation (1) and (2) must be submitted to the Committee as a standalone note in addition to the feasibility assessment.

(4) The public entity must record in its annual report the current estimate of all guarantees and assessed contingent liabilities of the public entity with respect to public private partnership projects.

### **Revenue sharing or revenue support mechanisms**

**9.** (1) During the feasibility assessment the public entity must assess the need to provide revenue sharing or revenue support for the public private partnership project.

(2) The public entity must ensure that -

- (a) the revenue sharing and support mechanism compensates the private entity for risks allocated to the private entity under the public private partnership agreement and does not curtail private efficiency; and
- (b) in the case of provision of a public service, the public entity must structure the revenue sharing and support mechanism while ensuring that the end users pay reasonable and affordable tariffs for the service.

## **PART 5**

### **PUBLIC PRIVATE PARTNERSHIP PROJECT PROCUREMENT**

#### **Developing the procurement plan**

**10.** (1) The project officer must develop and submit to the procurement committee a procurement plan for the tender proceedings which -

- (a) defines each stage of the tender proceedings in accordance with the procurement method selected; and

(b) prepares a schedule of the tender proceedings.

(2) The public entity must make the schedule referred to in subregulation (1)(b) public on its website.

(3) If the tender proceedings are not completed within the schedule referred to in subregulation (1)(b), the public entity must record in writing its reasons and provide a revised timeline for the completion of the tender proceedings to the procurement committee.

### **Constitution of procurement committee**

**11.** (1) In terms of section 19 of the Act the public entity must establish a procurement committee for the evaluation of applications and bids and to recommend results of the procurement process to the accounting officer.

(2) The procurement committee referred to in subregulation (1) must comprise of not less than three and not more than five persons of suitable seniority within or from another public entity appointed in writing by the accounting officer.

(3) Persons appointed to the procurement committee must be suitably qualified, fit and proper persons, having the knowledge, skills and experience relevant to the public private partnership project.

(4) The accounting officer must appoint one of the members of the procurement committee referred to in subregulation (1) as chairperson.

### **Form of communication in procurement documents**

**12.** (1) Communication between applicants and bidders and the public entity must be in a form that provides a record of the content of the communication.

(2) Any document, notification, decision or any other information produced in the course of the procurement process and communicated as required under the Act or in the course of a meeting or forming part of the record of procurement proceedings must be in a form that serves as a record of the content of the information and that is accessible so as to be usable for subsequent reference.

### **Publication of advertisement or notification of procurement documents**

**13.** (1) The public entity must publish the advertisement or notification of the procurement documents in at least two daily newspapers in national circulation in Namibia, of which at least one daily newspaper must be in English.

(2) Based on the nature of the procurement and the prospective applicants, the public entity may, at its discretion, issue the advertisement or notification of the procurement documents in newspapers of regional and international circulation.

(3) The procurement documents must be formulated in English.

(4) The public entity must publish the advertisement or notification of the procurement documents on its own website and on any centralised procurement website of Government.

(5) The public entity must publish any additions or corrections, following an advertisement or notification of the procurement documents in the same daily newspapers in which the advertisement or notification was issued and on its own website and any centralised procurement website of Government.

(6) Once advertisement of the procurement documents is published, the public entity must make available the corresponding procurement documents in the manner, form, place, date and time and such other conditions as may be specified in the advertisement.

#### **Preparation of the request for qualification**

14. (1) The public entity must prepare the request for qualification.
- (2) The public entity must ensure that -
- (a) the request for qualification contains sufficient information to allow potential applicants to form a view on whether they have sufficient capabilities, and
  - (b) the information requested from the applicants is such that the public entity would be able to evaluate the applicants.

#### **Contents of request for qualification**

15. The request for qualification document must contain -
- (a) a description of the public private partnership project and the project structure;
  - (b) the conditions of eligibility of applicants, the information sought from applicants for qualification and the form and procedure of the application;
  - (c) a description of the parameters and method of evaluating qualification of applicants and the objective of the evaluation should be to identify suitable applicants that have the requisite capability to take up the public private partnership project; and
  - (d) the criteria or conditions, if any, for the disqualification of applicants.

#### **Number of applications**

16. An applicant applying individually or as a lead member of a joint venture of entities must not submit any other application under the same public private partnership project either individually, as a lead member or as a member of a joint venture of entities.

#### **Qualifying criteria for evaluation of request for qualification application**

17. (1) The qualifying criteria used by the public entity to evaluate the application to the request for qualification must be objective, reasonable, unambiguous and must be clearly stated in the request for qualification.
- (2) The qualifying criteria must cover the following aspects of the applicant -
- (a) ability to deliver against the physical aspects of the public private partnership project and its ability and track record in delivering services under long-term contractual arrangements;
  - (b) experience and track record in delivering projects of similar nature, defined in terms of any or all of the following, based on the nature of the public private partnership project -
    - (i) minimum number of projects of more than a specified capacity developed, constructed or operated;



- (ii) minimum number of projects of more than a specified project value developed, constructed or operated;
  - (iii) minimum number of contracts for operation and maintenance of similar facility; and
  - (iv) any other criteria suitable for the need of the public private partnership project;
- (c) the capability of the applicant to invest the capital and secure adequate funds that would be needed for the public private partnership project, defined in terms of any or all of the following -
- (i) net worth of the applicant defined as the sum of subscribed and paid up equity and reserves from which must be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders;
  - (ii) average annual turnover defined as the simple average of sales figures of the applicant for the immediately preceding three years derived from audited financial statements;
  - (iii) average net cash accrual defined as the sum of profit after tax and depreciation for the immediate preceding three years derived from audited financial statements;
  - (iv) any other criteria suitable for the need of the public private partnership project; and
- (d) the ability of the applicant to support the contractual arrangements over the contract term.
- (3) Based on the nature of the public private partnership project, the public entity may, in addition to the criteria referred to in subregulation (2), specify qualifying criteria in relation to -
- (a) a proposed team of experts, if the public private partnership project requires specialised technical expertise; and
  - (b) the experience of the applicant or the proposed team for working in local conditions.

### **Contents of request for proposal**

- 18.** (1) The request for proposal must have the following components -
- (a) a detailed description of the public private partnership project and the project scope;
  - (b) a project information memorandum providing such information to bidders that is adequate for them to evaluate the public private partnership project and estimate their financial offer, including, but not limited to -
    - (i) project objectives and rationale;
    - (ii) site details;
    - (iii) role and responsibility of key stakeholders;

- (iv) project scope in line with subregulation (2); and
- (v) output specification;
- (c) instructions to bidders including all procedures, terms and conditions to be followed by bidders for submission of bids and the public entity in accepting and evaluating the bids; and
- (d) the draft public private partnership agreement which governs the contractual relations between the private entity and public entity which must include -
  - (i) rights and obligations of contracting parties;
  - (ii) definition of the subject matter of the agreement;
  - (iii) payment terms;
  - (iv) performance obligations;
  - (v) defaults and their consequences;
  - (vi) events of termination;
  - (vii) any restrictions related to change in ownership; and
  - (viii) contract exit provisions, including hand back of project assets.

(2) To the extent practicable, the description of the public private partnership project and project scope must be objective, functional and set out the relevant technical, quality and performance characteristics expected.

(3) The request for proposal must have no reference to a particular trademark or trade name, patent, design or type, specific origin of producer unless there is no sufficiently precise or understandable way of describing the characteristics of the project scope or specifications.

(4) In case of reference to trade names or related specific descriptions referred to in subregulation (3), a phrase such as “or equivalent” must be included to allow sufficient flexibility to bidders.

### **Evaluation criteria for proposals**

**19.** (1) For the purposes of this regulation, “technical” and “quality” means all project factors under evaluation other than the financial criteria or preference elements.

- (2) The criteria for evaluation of proposals must be -
  - (a) a quality and cost based selection approach where values are assigned to technical proposals, financial offer and other evaluation criteria; or
  - (b) evaluation of the best financial offer.

(3) The financial offer criteria for a public private partnership project may be one or a combination of the following -

- (a) lowest contract value;

- (b) lowest bid in terms of the present value of user fees;
- (c) highest revenue share to the Government;
- (d) highest upfront fee;
- (e) shortest concession period;
- (f) lowest present value of the subsidy;
- (g) lowest capital cost and operation and management cost for projects having a definite scope;
- (h) highest equity premium;
- (i) lowest quantum of state support solicited in present value;
- (j) lowest net present value of payments required from the Government; or
- (k) other suitable selection criteria as the Committee may approve, allow or prescribe.

#### **Eligibility of bidders**

20. (1) A bidder may be a single entity or joint venture of entities.

(2) A bidder applying individually or as a lead member of an association of entities, may not submit more than one bid under the same public private partnership project procurement activity either individually, as a lead member or as a member of another association.

#### **Disqualification of bidders**

21. (1) The public entity may disqualify a bidder if it finds at any time that a bid is inaccurate or incomplete in a material respect.

(2) The public entity may not disqualify a bidder on the ground that the bid was inaccurate or incomplete in a non-material respect.

(3) A bidder may be disqualified if it fails to promptly remedy non-material deficiencies as contemplated in subregulation (2) upon request by the public entity.

(4) The public entity must disqualify a bidder from the tender proceedings if it is of the view that -

- (a) the bidder has offered, given or agreed to give, directly or indirectly, to any current or former officer or staff member of the public entity or other governmental institution -
  - (i) a gratuity in any form;
  - (ii) an offer of employment; or
  - (iii) any other thing of service or value,

so as to influence an act, decision of or procedure followed by the public entity in connection with the procurement proceedings;

- (b) a conflict of interest exists in terms of regulation 22;
  - (c) the bidder has submitted a false certificate of no conflict of interest, in the event that such certificate is required by the public entity;
  - (d) the bidder has made a material misrepresentation;
  - (e) one or more of the qualification criteria have not been met by the bidder; or
  - (f) the bidder is not in good standing with Inland Revenue of the Ministry of Finance.
- (5) Any decision of the public entity to disqualify a bidder and the reasons must be included in the record of the tender proceedings and be promptly communicated to the bidder concerned.
- (6) If the preferred bidder is disqualified after the bids have been opened and evaluated, the public entity may -
- (a) invite the remaining bidders to match financial offer of the preferred bidder in case their financial offer was adverse or scored lower than the preferred bidder or resubmit their bids in accordance with the request for proposal; or
  - (b) take any such measure as may be considered necessary in the sole discretion of the public entity, including annulment of the tender proceedings.

### **Conflict of interest**

- 22.** (1) The public entity may determine that a bidder has a conflict of interest if -
- (a) any other bidder or its lead member have substantive common controlling shareholders or other ownership interest except ownership by a bank, insurance company, pension fund or a public financial institution;
  - (b) a bidder or its lead member is also a member of another bidder;
  - (c) the bidder or its lead member receives, has received or has provided, or is providing any direct or indirect subsidy, grant, concessional loan or subordinated debt from or to any other bidder or its lead member;
  - (d) the bidder or its member has a relationship with another bidder or its member, directly or through a common third party that puts either or both of them in a position to have access to each other's information about, or to influence the bid of either or each other;
  - (e) the bidder or its member has participated as a consultant to the public entity in the preparation of any documents, design or technical specifications of the public private partnership project; or
  - (f) any legal, financial or technical adviser of the public entity in relation to the public private partnership project is engaged by the bidder, its members or third parties in matters related to or incidental to the public private partnership project.
- (2) This regulation does not apply where the transaction adviser -

- (a) was engaged by the bidder, its members or any other third parties in the past but such engagement expired or was terminated six months prior to the date of issue of concerned procurement document; or
- (b) is engaged within a period of three years from the date of commercial operation of the public private partnership project.

### **Security deposit for bidders**

**23.** (1) The bidders will be required to provide a bid security to the public entity in the form of -

- (a) bank guarantee;
- (b) an on-demand bank deposit; or
- (c) equivalent security that is considered suitable for this purpose.

(2) The procurement documents must specify any requirements for securities to be provided by bidders.

(3) The bid security is forfeited if the bidder -

- (a) withdraws its bid after the due date for submission of bids;
- (b) following the opening of bids, withdraws its bid before expiration of the period of effectiveness of the bid;
- (c) fails to furnish the required performance security at the time of award of the public private partnership agreement; or
- (d) stands disqualified in terms of regulations 21(4)(a), 21(4)(b) or 21(4)(c).

(4) The bid security is valid for a period not less than 60 working days after the finalization of the procurement process in order to provide the public entity sufficient time to act if the security is to be called.

(5) The public entity must release the bid securities of bidders who have not been selected not later than 20 working days after the award of the public private partnership project.

(6) The bid security of the private party is discharged when it has furnished the required performance security.

### **Acceptance or rejection of bids**

**24.** (1) The public entity may at its discretion accept or reject all bids or annul the tender proceedings, without incurring any liability or any obligation in respect of such acceptance, rejection or annulment.

(2) Where the public entity rejects or annuls all the bids, it may, in its discretion, invite all bidders to submit fresh bids.

(3) The public entity may reject a bid if the bidder does not comply with any provisions of the request for proposal or does not provide, within the time specified by the public entity, any supplemental information sought by the public entity for evaluation of the bid.

- (4) If the bid of the preferred bidder is rejected after the bids have been opened and evaluated, the public entity may -
- (a) invite the remaining bidders to match the financial offer of the preferred bidder or resubmit their bids in accordance with the request for proposal; or
  - (b) take any such measure as may be considered appropriate in the sole discretion of the public entity, including annulment of the tender proceedings.

### **Pre-submission meeting**

**25.** (1) After issuing of the request for qualification or request for proposal the public entity may organise a pre-submission meeting for the purpose of clarifying the queries and understanding the concerns of bidders.

(2) The public entity must consider comments and suggestions provided by the bidders in the pre-submission meeting and, where appropriate, revise the procurement documents.

(3) The pre-submission meeting referred to in subregulation (1) is not a substitute for any other manner of communication of queries by bidders.

(4) The project officer must maintain the minutes and list of attendees of the pre-submission meeting and circulate the same to all attendees.

### **Manner, place and due date for submission of bids**

**26.** The public entity -

- (a) must specify in the procurement documents, the manner, place and due date for submission of bids, including the name and postal address of the person concerned to whom the bids are to be sent;
- (b) may allow and accept electronic submission of bids through a website if such a facility is available, digital storage media or email to a dedicated and secured email; and
- (c) may, prior to the due date, extend the due date in its discretion and must publish notice of an extension in the manner referred to in regulation 13.

### **Confidentiality**

**27.** (1) The public entity must treat all information submitted as part of a bid, with confidentiality and will require all those who have access to such material to treat the same with confidentiality.

(2) The public entity may disclose confidential information only if -

- (a) directed to do so by any statutory entity that has the power under law to require disclosure;
- (b) disclosure is to enforce or assert any right or privilege of the statutory entity or the public entity; or
- (c) it is required to disclose by law or in connection with any legal process.

**Record of tender proceedings**

- 28.** The record of tender proceedings must contain the -
- (a) subject matter of the procurement process;
  - (b) basic information of bidders, including names, addresses, authorized representatives;
  - (c) statement of the reasons and circumstances relied upon by the public entity for decisions as part of the procurement process;
  - (d) a summary of requests for clarification and the responses;
  - (e) statement of reasons for rejection of bids; and
  - (f) principle terms of the public private partnership agreement.

**Treatment of sole bid**

**29.** (1) Where the competitive bidding process results into a sole bid, the public entity must -

- (a) accept the sole bid, with the concurrence with the Committee, if the procurement committee is of the opinion that retendering will not yield more bids and there is a clear value for money in accepting the sole bid; or
- (b) reject the sole bid.

(2) Where the sole bid is accepted, the public entity may negotiate with the bidder to ascertain better terms for the public entity provided these negotiations result in better terms for the public entity than those outlined in original proposal.

**Treatment of speculative bids**

**30.** (1) The public entity may consider a financial offer as speculative if it is abnormally high or low with reference to -

- (a) the value for money analysis;
- (b) other bids received; or
- (c) such other consideration as it may consider appropriate.

(2) If the public entity considers a financial offer to be speculative in accordance with subregulation (1), it must request in writing the details of the financial offer that it considers relevant, which may include -

- (a) the economics of the construction method, processes or the services provided;
- (b) the technical solutions chosen or any exceptionally favourable conditions available to the bidder;
- (c) the originality of the work, supplies or services proposed by the bidder;
- (d) compliance with applicable laws;

- (e) assumptions relating to grant, aid or concessions; and
- (f) revenue and expense projections including, input cost, capacity utilization, usage, tariff, traffic, inflation, foreign exchange, interest rate and growth.

(3) The public entity must permit the bidder concerned to make a representation in support of its financial offer with any such information as the bidder may consider necessary or relevant.

(4) If the public entity considers the bid speculative on the basis of the information and representation referred to in subregulation (1), the public entity must seek an opinion on the bid from an independent evaluator appointed by the public entity.

(5) The independent evaluator appointed by the public entity must be from outside the public sector and must be suitably qualified with the knowledge, skills and experience relevant to the public private partnership project.

(6) If following the opinion referred to in subregulation (4), the public entity continues to consider the bid speculative, it must seek approval from the Committee to reject the bid.

(7) If approval in terms of subregulation (6) is granted by the Committee, the public entity must reject the speculative bid.

(8) The decision and reasons of the public entity to reject a bid in accordance with subregulation (7) and all communications with the bidder in terms of this regulation must be included in the record of the tender proceedings and promptly communicated to the bidder concerned.

#### **Data room**

**31.** (1) The public entity must maintain a data room where all project specific information relevant to the bid are kept.

(2) All bidders are allowed to access the data room during working hours and permitted only to review documents that otherwise are not allowed to be distributed.

(3) The data room may be either at a single location or a virtual data room through a secure website, for a limited period of time.

(4) The location, systems and rules for accessing the data room must be stated in the request for proposal.

#### **Site visit**

**32.** (1) If the public private partnership project involves important site-related issues, a site visit must be organised early in the request for proposal stage.

(2) All bidders must be invited to undertake the site visit.

### **PART 6 PROJECT IMPLEMENTATION**

#### **Functions and responsibilities of management team**

**33.** (1) All members of the management team must visit the project site as required and must interact with the project beneficiaries and user representatives during such visits.



- (2) The responsibilities of the management team includes -
- (a) overseeing adherence to timelines and other obligations specified in public private partnership agreement;
  - (b) overseeing adherence to the performance standards specified in the public private partnership agreement;
  - (c) overseeing adherence to reporting procedures between the private entity and the public entity, including a project management information system;
  - (d) periodic measurement and testing as required under the public private partnership agreement;
  - (e) remedial measures and action plan for curing defaults;
  - (f) imposition of penalties in the event of default;
  - (g) progress of ongoing disputes and arbitration proceedings, if any;
  - (h) tracking the events that could lead up to invocation of contingent liabilities; and
  - (i) compliance with instructions of the public entity or the independent expert.

(3) The management team must provide a periodic report to the public entity on issues covered under subregulation (2).

#### **Disqualification for appointment as a member of the management team**

**34.** A person does not qualify for appointment as a member of the management team, if the person -

- (a) is a member of Parliament, a regional council or local authority council;
- (b) has been convicted of, in Namibia or elsewhere, theft, fraud, forgery or perjury, an offence under any law on corruption or any other offence involving dishonesty during the period of 10 years before the date of appointment;
- (c) is an un-rehabilitated insolvent;
- (d) has under any law been declared to be of unsound mind; or
- (e) has been removed from an office of trust during the period of 10 years before the date of appointment.

#### **Appointment of independent expert**

**35.** The public entity may appoint an independent expert to assist the management team in the implementation of the public private partnership agreement.

#### **Exit strategy for continued service delivery**

**36.** (1) The public entity must ensure that the public private partnership agreement provides for an exit strategy for public private partnership projects which includes -

- (a) a review of options to ensure service continuity;
  - (b) an assessment of operations and maintenance needs and service quality;
  - (c) testing and valuation of assets;
  - (d) an implementation plan for returning the public private partnership project to the public entity;
  - (e) resource allocation for implementing the exit strategy; and
  - (f) an obligation of the parties in relation to the exit strategy.
- (2) The management team is responsible for the implementation of the exit strategy referred to in subregulation (1).
-