



REPUBLIC OF NAMIBIA

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07 May 2021

**HON MINISTERS
HON GOVERNORS
YOUR WORSHIP THE MAYORS
CHAIRPERSONS OF BOARDS**

*Attention: All Accounting Officers for Public Entities
All Heads of procurement Management Units*

**SUBJECT: INSTRUCTION TO ALL PUBLIC ENTITIES WITH REGARD TO THE
VALIDITY PERIOD OF THE AFFIRMATIVE ACTION
COMPLIANCE CERTIFICATE AS CONTEMPLATED IN SECTION 41
AND 42 OF THE AFFIRMATIVE ACTION (EMPLOYMENT) ACT,
ACT 29 OF 1998**

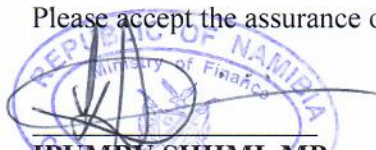
1. The Procurement Policy Unit herewith in terms of Section 7 (d) and (h) of the Public Procurement Act, 2015 issue the following instruction to all public entities:
2. Section 50(2) of the Act states:

A bidder or supplier is disqualified from bidding if such bidder or supplier –
 - (a) is not in good standing with the Receiver of Revenue;
 - (b) is not in possession of a valid certificate of good standing with the Social Security Commission or, in the case where a company has no employees, confirmation letter from Social Security Commission;
 - (c) is not, as required by the Affirmative Action (Employment) Act, 1998 (Act No. 29 of 1998), in possession of –
 - (i) a valid affirmative action compliance certificate issue under section 41 of that Act;

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- (ii) an exemption issued under section 42 of that Act; or
 - (iii) a proof from the Employment Equity Commissioner that the bidder or supplier is not a relevant employer as defined in that Act; or
 - (d) has not submitted a written undertaking as contemplated in section 138(2) of the Labour Act, 2007.
3. It has come to the Procurement Policy Unit's attention that some public entities have been disqualifying bidders on the basis that the Affirmative Action Compliance Certificate submitted as required under Section 50(2)(c) is older than 12 months.
 4. The Procurement Policy Unit in consultation with the Office of the Employment Equity Commissioner wishes to inform the public entities that disqualifying bidders based on the 12 months' validity period in is incorrect and should be discontinued.
 5. It is clear from Section 41 (b) (i) of the Affirmative Action (Employment) Act 29 of 1998 that the Affirmative Action Compliance Certificate is not valid for a period of 12 months as commonly accepted but rather *'until the date the Commission issues to the relevant employer concerned an affirmative action compliance certificate for the very next affirmative action report following on the affirmative action report for which such compliance certificate had been issued'*. This information also appears on the face of the certificate issued to relevant employers.
 6. In light of the above, it has been concluded with regard to Section 50(2)(c) that bidders are required to have a valid certified copy of an Affirmative Action Compliance Certificate, and in the event that the Affirmative Action Compliance Certificate is over 12 months from the date of issue, a confirmation letter from the Employment Equity Commission indicating that the employer did submit the report for the period following from the date when the certificate was issued, or proof from the Employment Equity Commission that the bidder is not relevant employer, or an exemption was issued in terms of Section 42 of the Affirmative Action Act, 1998.
 7. We trust the above is in order.

Please accept the assurance of my highest regard.



IPUMBU SHIIMI, MP
MINISTER OF FINANCE