



ORANGE FREE STATE PROVINCE

# PROVINCIAL GAZETTE

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# PROVINSIALE KOERANT

VAN DIE PROVINSIE ORANJE-VRYSTAAT

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OFFICE OF THE PREMIER

KANTOOR VAN DIE PREMIER

No. 3

1 July 1994

No. 3

1 Julie 1994

It is hereby notified that the Premier has assentend to the following Act which is hereby published for general information:-

No. 2 of 1994: Tender Board Act, 1994

Hierby word bekend gemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:-

No. 2 van 1994: Wet op die Tenderraad, 1994

# ACT

To provide for the regulation of the procurement of supplies and services for, the disposal of movable property of, and the hiring or letting of anything or the acquisition or granting of any right for or on behalf of, the Province, and to that end to establish a Tender Board and to define its functions; and to provide for incidental matters.

(English text signed by the Premier.)  
(Assented to 30 June 1994.)

**BE** IT ENACTED by the provincial legislature of the Orange Free State Province, as follows : -

## Definitions

1. In this Act, unless the context otherwise indicates -

"Board" means the Tender Board established under section 2;

"employee" means an employee as defined in section 1 of the Public Service Act, 1994;

"Executive Council" means the Executive Council of the Province as referred to in section 149 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

"guidelines" means the set of principles determined by the national government, within which the procurement process should function;

"officer" means an officer as defined in section 1 of the Public Service Act, 1994;

"the responsible Member" means the member of the Executive Council of the Province responsible for financial matters;

"this Act" includes any regulation made under this Act;

"Treasury" means the Treasury as defined in section 1 of the Exchequer Act, 1994 (Act No. 1 of 1994).

## PART 1

### *The Tender Board*

#### Establishment of the Tender Board

2. (1) As from a date to be fixed by the Executive Council by notice in the *Provincial Gazette*, there shall be established a Board to be known as the Tender Board.

(2) The powers and functions exercised or performed prior to the date referred to in subsection (1) by the tender boards which exercised such powers and performed such functions in relation to the procurement of supplies and services for, the disposal of movable property of, and the hiring or letting of anything or the acquisition or granting of any right for or on behalf of, the Province or the government of any area which forms part of the national territory, shall for the purposes of this Act be deemed to have been exercised or performed by the Tender Board referred to in subsection (1).

#### Constitution of the Board

3. (1) The Board shall consist of not fewer than 12 and not more than 16 members to be appointed by the Executive Council, of whom not more than half but not fewer than 6 shall be officers or employees.

(2) The Executive Council may appoint an alternate member for each member of the Board, and any alternate member so appointed may attend and take part in the proceedings at any meeting of the Board during the absence, or vacancy in the office, of the member for whom he has been appointed as alternate member.

- (3) No person shall be qualified to become or remain a member or alternate member of the Board, if he or she is a member of the National Assembly, the Senate, a provincial legislature or a local government.
- (4) The members or alternate members of the Board shall not be appointed unless the responsible Member has invited interested parties by notice in the *Provincial Gazette* to nominate candidates for consideration by the Executive Council within 14 days of the publication of such notice.
- (5) The responsible Member shall appoint any member of the Board as chairman and any other member as vice-chairman who shall act as chairman of the Board when the chairman is absent or is unable to perform his duties, and when both the chairman and the vice-chairman are absent from a meeting of the Board, the members present thereat may elect one of their number to preside at such meeting.
- (6) Subject to the provisions of subsection (7), a member or alternate member of the Board shall hold office for such period, not exceeding 3 years, as the Executive Council may determine at the time of his appointment, and shall be eligible for reappointment at the termination of his term of office.
- (7) A member or alternate member of the Board shall vacate his office -
- (a) if he resigns;
  - (b) if he is absent from 2 consecutive meetings of the Board without leave of the chairman; or
  - (c) if his term of office is terminated under subsection (8).
- (8) The Executive Council may at any time terminate the term of office of any member or alternate member of the Board if there are good reasons for doing so.
- (9) If a member or alternate member of the Board dies, or ceases to be a member or alternate member in terms of subsection (7) or (8), the Executive Council may, subject to the provisions of subsection (3) and (4), appoint any person in the place of such member or alternate member for the unexpired period of office of such member or alternate member.
- (10) Members or alternate members of the Board who are not in the full-time service of the Province, may, in respect of their services, be paid such remuneration and allowances as may be determined by the responsible Member.

#### **Powers of the Board**

4. (1) Within the framework of the principles set out in the guidelines, the Board shall have the sole power to procure supplies and services for the Province, and, subject to the provisions of any other Act of the provincial legislature, to arrange the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the Province, and to dispose of movable Provincial property, and may for that purpose -
- (a) on behalf of the Province conclude an agreement with a person within or outside the Republic for the furnishing of supplies and services to the Province or for the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the Province or for the disposal of movable Provincial property;
  - (b) with a view to concluding an agreement referred to in paragraph (a), in any manner it may deem fit, invite offers and determine the manner in which and the conditions subject to which such offers shall be made;
  - (c) inspect and test or cause to be inspected and tested supplies and services which are offered or which are or have been furnished in terms of an agreement concluded under this section, and anything offered for hire;

- (d) accept or reject any offer for the conclusion of an agreement referred to in paragraph (a);
- (e) take steps or cause steps to be taken to enforce an agreement concluded under this section;
- (f) on behalf of the Province, resile from any agreement concluded under this section and, in an appropriate case, claim damages;
- (g) subject to the provisions of subsection (2), on such conditions as it may determine, exempt any person with whom such an agreement has been concluded from compliance with such agreement or condone the failure of such person to comply with such agreement;
- (h) subject to the provisions of subsection (2), negotiate a settlement with a person referred to in paragraph (g), or amend the agreement concerned with the approval of such person;
- (i) issue directives to Provincial departments with regard to the procurement of supplies and services for, the disposal of movable property of, and the hiring or letting of anything or the acquisition or granting of any right for or on behalf of, the Province, in order to achieve the objects of this Act;
- (j) invite expert or technical advice, and call upon any officer or employee to provide expert or technical advice in so far as it is legally permissible for such officer or employee to provide the required advice to the Board;
- (k) exercise such other powers as may be prescribed by regulation under section 9.

(2) No exemption, condonation, settlement or amendment which may be to the prejudice of the Province shall be granted, negotiated or made under paragraphs (g) and (h) of subsection (1) without the prior approval of the Treasury.

(3) Any approval referred to in subsection (2) may be granted in respect of a specific agreement or in respect of two or more or all agreements entered into for the procurement of a specific supply or service.

(4) The Board may, with the approval of the responsible Member in each case, and on such conditions, including conditions regarding compensation (if any), as the responsible Member may approve, exercise any power which the Board may in terms of this Act exercise for and on behalf of the Province, for and on behalf of any body established by or under any law.

#### **Committees of the Board and delegation of powers**

5. (1) The Board may appoint committees from among its members and designate a chairman for every such committee.

(2) The Board may from time to time delegate any of its powers to any of its committees, any person (including any member of the Board), any body of persons or the holder of any post designated by the Board.

(3) Where the Board has delegated any power under subsection (2), it may authorise the committee, person, body of persons or holder of the post concerned to delegate that power to any person, body of persons or the holder of a post.

(4) Any delegation under subsection (2) or (3) may be made subject to such conditions and restrictions (if any) as may be determined by the Board or the committee, person, body of persons or holder of the post concerned.

- (5) The Board shall not be divested of any power delegated by it or under its authority and may amend or withdraw any decision made in the exercise of such power, including any decision of any committee, person, body of persons or holder of any post amending or withdrawing any decision referred to in subsection (6).
- (6) Any committee, person, body of persons or holder of a post shall not be divested of any power delegated by it or him and may amend or withdraw any decision made in the exercise of that power.
- (7) Where any power has been delegated to the holder of a post, that power may be exercised by the person who at any time performs the functions attached to such post.

### **Decisions of the Board**

6. (1) No decision of the Board or act performed under authority of the Board shall be invalid by reason only of a vacancy on the Board, or of the fact that a person who was not entitled to sit as a member of the Board sat as 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 requisite majority of the members of the Board who were present at the time and entitled to sit as members.
- (2) The Board shall on request give reasons for its decisions to interested parties.
- (3) No organ of state and no member of any organ of state or any other person shall improperly interfere with the decisions and operations of the Board.
- (4) All decisions of the Board shall be recorded.

## **PART II**

### ***Miscellaneous Provisions***

#### **Expenditure**

7. Subject to the provisions of this Act, or an agreement concluded under this Act, all expenditure in connection with the performance of the functions and the exercise of the powers of the Board shall be defrayed from moneys appropriated by the provincial legislature for the purpose.

#### **Administrative work**

8. (1) All administrative work, including the payment and receipt of moneys, in connection with the performance of the functions and the exercise of the powers of the Board shall be performed by officers and employees designated by the Director-General of the Province.
- (2) The chairman of the Board or any other person designated by the Board shall be competent to execute all documents on behalf of the Board.

#### **Regulations**

9. (1) The responsible Member may make regulations regarding -
- (a) the detailed composition of the Board within the provisions of the Act, the calling of, the procedure and quorum at meetings of the Board or any committee thereof, including the manner of voting and the number of votes required for a decision of the Board or a committee thereof;
  - (b) the manner in which and the conditions subject to which preferences may be granted;

- (c) any matter that may in terms of this Act be prescribed;
- (d) in general, any other matter which the responsible Member may consider it necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

(2) Notwithstanding anything to the contrary contained in any law, any regulations made in terms of subsection (1) may, in addition to any other remedies prescribed therein, provide for the imposition by the Board of a monetary penalty, calculated on such basis or bases as may be prescribed therein, on any person with whom the Board concluded an agreement on behalf of the Province on the strength of information furnished by such person which, subsequent to the conclusion of such agreement, is shown to have been incorrect information, and may prescribe the manner in which any such monetary penalty may be recovered.

#### Advisory duties

10. The Board shall advise the responsible Member on the following :

- (a) promoting the use of full and open competition in procurement;
- (b) establishing policies, procedures and practices to ensure procurement of the requisite quality within the time available at the lowest practicable cost, to minimise fraud and waste in procurement and to eliminate unnecessary overlapping or duplication of functions and effort;
- (c) achieving greater uniformity and simplicity in procurement;
- (d) promoting economy, efficiency and effectiveness in procurement;
- (e) minimising disruptive effects of provincial procurement on particular industries, areas or occupations;
- (f) improving understanding of provincial procurement policy and procedures by everyone concerned with provincial procurement in both the public and private sectors;
- (g) promoting fair dealing and equitable relationships among parties to provincial contracts; and
- (h) any other matters relating to provincial procurement.

#### Transitional provision

11. The Tender Board directives, issued by the State Tender Board in terms of the State Tender Board Act, 1968 (Act No. 86 of 1968), and which were in force immediately prior to the commencement of this Act, shall apply *mutatis mutandis* to the Province and be deemed to have been issued under section 4(1)(i) of this Act, until amended or replaced in terms of this Act.

#### Short title

12. This Act shall be called the Tender Board Act, 1994.