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PROVINCIAL NOTICE

OFFICE OF THE PREMIER

PROVINCE OF THE EASTERN CAPE

No. 2

14 September 1994

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

No. 2 of 1994(E.C.): Provincial Tender Board Act, 1994(Eastern Cape).

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 Provincial Tender Board and to define its functions; and to provide for incidental matters.

(Signed and assented to by the Premier on 14 September 1994)

BE IT ENACTED by the Provincial Legislature of the Province of the Eastern Cape, as follows:—

Definitions

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

“Board” means the Tender Board established under section 2 and includes any committee of the Board or any person, body of persons or holder of a post to which the Board has at any time delegated its powers or functions;

“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;

“Province” means the Province of the Eastern Cape and “Provincial” shall bear a like meaning;

“Republic” means the Republic of South Africa referred to in section 1 of the Constitution of the Republic of South Africa, 1993;

“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 Provincial Exchequer Act, 1994 (Eastern Cape).

PART 1

TENDER BOARD

Establishment of Tender Board

2. (1) As from a date to be fixed by the responsible Member after consultation with the Executive Council, there shall be established, by notice in the *Provincial Gazette*, a Board to be known as the Provincial 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 now forms part of the national territory, shall for the purposes of this Act be deemed to have been exercised or performed by the Board referred to in subsection (1).

(3) The Board shall exercise its powers and perform its functions fairly, impartially and independently.

Constitution of 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: Provided that, in the constitution of the Board, the Executive Council shall ensure that both men and women are adequately represented, and shall also take into account the need to ensure that its composition reflects that it is widely representative of the interests of all the people resident within the Province.

(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 or she 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) (a) The members or alternate members of the Board shall not be appointed unless the responsible Member has invited interested parties to nominate candidates for consideration by the Executive Council.

(b) The invitation contemplated in paragraph (a) shall be published or advertised in the *Provincial Gazette* and in public media having a wide circulation or listenership in the Province and in languages widely spoken in the Province.

(c) The interviews of candidates shall be open to the public and shall be held and presided over in such a manner as may be prescribed:

Provided that the provisions of this subsection shall not apply in respect of members or alternate members who are officers or employees.

(5) The responsible Member shall appoint any member of the Board as chairperson and any other member as vice-chairperson who shall act as chairperson of the Board when the chairperson is absent or is unable to perform his or her duties, and when both the chairperson and the vice-chairperson 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 or her appointment, and shall be eligible for reappointment at the termination of his or her term of office.

(7) A member or alternate member of the Board shall vacate his or her office—

- (a) if he or she resigns;
- (b) if he or she is absent from two consecutive meetings of the Board without leave of the chairperson; or
- (c) if his or her 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 and valid reasons for doing so: Provided that the Executive Council shall, before taking such decision, advise the member or alternate member concerned of the proposed action and the reasons therefor and afford him or her an opportunity to make representations thereon.

(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 subsections (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 after consultation with the select committee of the Provincial Legislature dealing with financial matters.

Powers of 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, which shall be in writing, 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, rescind 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) A tendering system devised by the Board shall be fair, public and competitive.
- (3) 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.
- (4) Any approval referred to in subsection (3) 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.
- (5) 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 the Act exercise for and on behalf of the Province, for and on behalf of any body established by or under any law.

(6) The Board may sit anywhere in the Province in accordance with such resolution as it may adopt from time to time.

Committees of Board and delegation of powers

5. (1) The Board may, in order to expedite matters serving before it and to ensure accessibility and maximum efficiency and effectiveness, appoint committees from among its members and designate a chairperson for every such committee.

(2) The Board may, in writing, from time to time delegate any of its powers to any of its committees, any person (including any member of the Board) and to any body of persons or the holder of any post designated by the Board: Provided that such delegation shall first be approved by the responsible Member.

(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 or her, as the case may be, 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 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 and, where such decision is of interest to third parties, it shall be notified, as soon as practicable after adoption, by notice in the *Provincial Gazette*: Provided that where such notification proves to be impractical in any particular instance, notification shall take place in such manner as the responsible Member may determine.

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, acting on the recommendation of the administrative head of the Department of Finance and Provincial Expenditure.

(2) The chairperson 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 this Act, the calling, 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.

(3) The responsible Member shall, not later than 14 days prior to the promulgation of the regulations contemplated in subsection (1), publish or advertise such regulations for comment in the public media having a wide circulation, or listenership, in the Province and in languages widely used in the Province.

Advisory duties

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

- (a) Promoting 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 Provincial Tender Board Act, 1994 (Eastern Cape).