

NATIONAL TREASURY
Republic of South Africa
December 2003



**STATE TENDER BOARD ACT, 1968 (ACT 86 OF 1968):
AMENDMENT TO REGULATIONS OF THE STATE TENDER
BOARD ACT IN TERMS OF SECTION 13**

The Minister of Finance has, in terms of Section 13 of the State Tender Board Act, 1968 (Act No. 86 of 1968), amended Regulation 2 of the State Tender Board Regulations that were published in Government Gazette No. 11382 dated 1 July 1988 as set out in the Schedule.

NATIONAL TREASURY

No. R.

December 2003

STATE TENDER BOARD

THIS NOTICE SUPERSEDES GOVERNMENT NOTICE R. 1237 AS PUBLISHED IN *GOVERNMENT GAZETTE* 11382 OF 1 JULY 1988. - REGULATIONS

The Minister of Finance has, under section 13 of the State Tender Board Act, 1968 (Act 86 of 1968), made the regulations contained in the Schedule hereto.

SCHEDULE

1. In these regulations "the Act" means the State Tender Board Act 1968 (Act 86 of 1968), and any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it and, unless the context indicates otherwise-

"chairman", in relation to the Board or a regional tender board, means the chairman referred to in section 3 (2) read with section 12 A of the Act or, in the circumstances contemplated in the first-mentioned section, the relevant vice-chairman or other presiding member;

"contractor" means any person from whom an offer has been accepted by the State;

"offer" means any offer, including a tender or quotation, by a person within or outside the Republic, for concluding an agreement referred to in section 4 (1) (a) of the Act;

"regional tender board" means a regional tender board referred to in section 2 A of the Act;

"restriction" means a restriction that is imposed on any person and that arises from a decision of the Board referred to in regulation 3 (5) (a) or (f).

2. Subject to the provisions of any Act of Parliament supplies and services for and on behalf of the State, the hiring or letting of anything or the acquisition or granting of any right for and on behalf of the state and the disposal of movable State property shall be procured, arranged or disposed of through the Board, or in terms of the Public Finance Management Act, No. 1 of 1999 (as amended by Act 29 of 1999).

POWERS OF THE BOARD

3. (1) The Board may, subject to the applicable provisions of any Act of Parliament, issue directives to Government departments in regard to the procurement of supplies and services, the hiring or letting of anything, or the acquisition or granting of any right, and the disposal of movable Government property in order to achieve the objects of the Act.
- (2) The Board may invite expert or technical advice, and may 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.
- (3) The Board may appoint any officer or employee or any person in the service of any organisation represented on the Board as a co-opted member of the Board to represent in the temporary

absence of a member, the Government department or other organisation concerned: Provided that such co-opted member shall not be entitled to vote on any matter under discussion.

- (4) The Board may approve *ex post facto* any action of a Government department whereby any power conferred upon the Board by the Act or these regulations has been exercised, if the Board is satisfied that such action of the Government department took place in circumstances of emergency or otherwise was in the best interests of the State and was done without negligence, provided that the State has not suffered any damage as a result thereof.
- (5) (a) If the Board is of opinion that a person -
- (i) has amended or withdrawn an offer after the closing time for receipt of offers but before he has been notified of its acceptance; or
 - (ii) has failed to sign a contract or to provide security within the period stipulated in the conditions of tender, or such extended period as the Board may allow, when required to do so; or
 - (iii) fails or has failed to comply with any of the conditions of an agreement or performs or has performed unsatisfactorily under an agreement; or
 - (iv) who has concluded an agreement referred to in section 4 (1) (a) of the Act, has promised, offered or given a bribe, or has acted in respect thereof in a fraudulent manner or in bad faith or in any other improper manner, the Board may, in addition to any other legal remedies it may have, resolve that no offer from the person concerned should be considered during such period as the Board may stipulate.
- (b) The Board may at any time vary or rescind any restriction.
- (c) Any restriction imposed on any person by the Board may at the discretion of the Board also be made applicable to any other enterprise, or to any partner, manager, director or other person, who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person is or was in the opinion of the Board actively associated.
- (d) For the purposes of this sub-regulation the expression "person", in respect of any restriction, shall also include an employee or agent of such person.
- (e) Where the Board imposes a restriction regarding the consideration of an offer, or varies or rescinds such restriction, it shall inform any other tender boards on which it may decide, all Government departments and, where the Board deems it necessary, the Republic's representatives abroad, of any resolution relative to such restriction or rescindment or variation, and request the said boards, departments and representatives to take similar steps in respect of the person concerned.
- (f) Whenever it comes to the attention of the Board that any other tender board referred to in sub-regulation (e) has taken a decision referred to in sub-regulation (a) in respect of a person in respect of agreements similar to those contemplated in section 4 (1) (a) of the Act, the Board may resolve that a similar restriction be imposed by it on the person concerned in respect of agreements with the Board.

- (6) If an agreement has been concluded with any contractor on the strength of information furnished by him in respect of which it is after the conclusion of such agreement proved that such information was incorrect the Board may, in addition to any other legal remedy it may have -
- (a) recover from the contractor any costs, and any damages incurred or sustained, as the case may be, by the State as a result of the conclusion of the agreement; or
 - (b) terminate the agreement and recover from the contractor any damages which the State may suffer by having to make less favourable arrangements thereafter; and
 - (c) impose by written notice directed to the contractor and delivered to him by registered post, a penalty not exceeding 5 per cent of the monetary value of the agreement.

PROCEDURE AT MEETINGS

4. (1) The Board shall meet from time to time on such dates and at such times as determined by the chairman of the Board, and any meeting so convened may be adjourned or postponed by the chairman.
- (2) Five members shall constitute a quorum for a meeting of the Board.
- (3) (a) Subject to the provisions of the Act and these regulations, any member of the Board present at a meeting shall be obliged to cast a vote in respect of any matter which is being put to the vote and in respect of which the member concerned may legally cast a vote.
- (b) In the event of an equality of votes at a meeting of the Board the chairman of the meeting shall have a casting vote as well as a deliberative vote.
- (c) The number of members voting for or against any resolution shall be entered in the minutes of the meeting if so decided by the meeting. Any member may demand that his vote be likewise recorded.
- (4) When a matter affecting a Government department or other organisation represented on the Board is under consideration, the member of such department or organisation shall not be entitled to vote on the matter concerned.
- (5) The chairman of a meeting may decide that any proposal or matter under discussion shall be withdrawn before it has been put to the vote.
- (6) All discussions at Board meetings and all matters considered and decisions arrived at by the Board shall be treated as confidential and shall not be disclosed by any member or co-opted member of the Board, or an officer, employee or any other person invited to provide the Board with expert advice referred to in regulation 3 (2), unless the prior approval of the Board has been obtained and recorded in the minutes.

DECISIONS OF THE BOARD

5. When, at the invitation of the Board, offers are submitted for the purpose of concluding an agreement referred to in section 4 (1) (a) of the Act -
- (a) the Board shall not be obliged to accept the lowest or any offer;
 - (b) the Board may, where an offer relates to more than one item, accept such offer in respect of any specific item or items;
 - (c) the Board may accept any offer notwithstanding the fact that the offer was not made in response to any particular tender invitation, or does not comply with the tender conditions set out in any specific tender invitation in respect of which the offer has been made.

NOTIFICATION OF DECISIONS OF THE BOARD

6. Decisions of the Board shall be conveyed to the persons concerned by officers and employees appointed in terms of section 12 of the Act, or by the member or members of the Board designated by the Board.

APPOINTMENT OF COMMITTEES BY THE BOARD

7. (1) In the case of a committee appointed by the Board in terms of section 5 (1) of the Act the majority of the members; of such committee shall constitute a quorum.
- (2) The provisions of regulations 4 (3) (a) and (c), (5) and (6) and 6, shall *mutatis mutandis* apply to a committee of the Board.
- (3) In the event of an equality of votes at any meeting of a committee, the matter under consideration shall be referred to the Board for a decision.

PREFERENCE

8. When considering the award of agreements the board may accord a preference in respect of goods produced, manufactured or assembled in the Republic, or in respect of goods falling into any other category on the basis determined by the Minister from time to time.

REGIONAL TENDER BOARDS

9. The provisions of regulations 3 (2) and (3), 4, 5 (a) and (b), 6 and 8 shall *mutatis mutandis* apply to a regional tender board.

MISCELLANEOUS

10. (1) The Regulations published by Government Notice R. 1237 of 1 July 1988 are hereby withdrawn.
- (2) Anything done under a provision of a regulation which is withdrawn by sub-regulation (1) and which could have been done under a provision of these regulations shall be deemed to have been done under the last-mentioned provision.