

NORTH-WEST TENDER BOARD ACT**NO. 3 OF 1994**

[ASSENTED TO 24 JUNE, 1994] [DATE OF COMMENCEMENT: 24 JUNE, 1994]

(English text signed by the Premier)

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 Government of the North West Province and to that end to establish the North West Tender Board, and to define its functions; and to provide for incidental matters.

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

"**board**" means the North West Tender Board established by section 2;

"**chairperson**" means the chairman of the board designated by the responsible Member in terms of section 3 (2) and also a person who acts as chairman;

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

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

"**Government**" means the Government of the North West and excludes local government;

"**North West**" means the Province of the North West as defined in Schedule 1 of the Constitution of the Republic of South Africa Act, 1993 (Act 200 of 1993);

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

"**Province**" means the Province of the North West as defined in Schedule 1 of the Constitution of the Republic of South Africa Act, 1993 (Act No. 200 of 1993);

"**Provincial Treasury**" means the Provincial Treasury as defined in the Exchequer Act, 1994;

"**Regulations**" means the regulations made under section 10;

"**the responsible Member**" means the Member of the Executive Council of the North West responsible for financial matters.

2. Establishment of the North West Tender Board.—(1) There is hereby established a board to be known as the North West Tender Board.

(2) The powers and functions exercised or performed prior to the date of commencement of this Act by any tender board 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 Government or a traditional authority, shall for the purpose of this Act be deemed to have been exercised or performed by the tender board referred to in subsection (1).

3. Constitution of the board.—(1) The board shall consist of not less than six and not more than ten members, to be appointed by the Executive Council, all of whom shall not be officers or employees.

(2) The responsible Member shall designate 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 duties, and when both the chairperson and vice-chairperson are absent from a meeting of the board, the members present thereat may elect one of their number to preside at such a meeting.

(3) Subject to the provisions of subsection (4) a member of the board shall hold office for a period of three years.

(4) A member of the board shall vacate his office—

(a) if he resigns;

(b) if he absents himself from two consecutive meetings of the board without its leave; or

(c) if he is dismissed by the responsible Member for reasons which render him unsuitable to serve on the board.

(5) The remuneration and allowances of members of the board shall be determined from time to time by the responsible Member.

4. Powers of the board.—(1) The board shall have power to procure supplies and services for the Government and, subject to the provisions of any other Act of the Legislature of the North West, to arrange the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the Government and to dispose of movable Government property, and may for that purpose—

(a) on behalf of the Government, conclude an agreement with a person within or outside the Province for the furnishing or supplies and services to the Government or for the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the Government or for the disposal of movable Government 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) subject to the provisions of section 6, accept or reject any offer for the conclusion of an agreement referred to in paragraph (a);

(e) on behalf of the Government, resile from any agreement concluded under this section and, in appropriate cases, claim damages;

(f) subject to the provision of subsection (2), on such condition it may determine, exempt any person with whom such an agreement has been concluded from compliance therewith or condone the failure of such person to comply with such agreement;

(g) subject to the provisions of subsection (2), negotiate a settlement with a person referred to in paragraph (f), or amend the agreement concerned with the approval of such person;

(h) issue directives to departments in regard to the procurement of supplies and services, the hiring or letting of anything, the acquisition or granting of any right, or the disposal of movable property

belonging to the Province in order to achieve the objects of the Act;

(2) No exemption, condonation, settlement or amendment which may be to the prejudice of the Government shall be granted, negotiated or made under paragraphs (f) and (g) of subsection (1) without the prior approval of the Provincial 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) 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, the board may exercise any power which it may exercise for and on behalf of the Province in terms of this Act, for and on behalf of any body established by or under any law.

5. Committees of the Board and delegation of powers.—(1) The board may from among its members appoint committees and designate a chairperson in respect of 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 authorize the committee, person, body of persons or holder of the post concerned to delegate that power to any person, body or 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 for the time being performs the functions attached to such post.

6. Decisions of the board.—(1) (a) No employee of Government and no member of any organ of Government or any other person shall improperly interfere with the decisions or operations of the board.

(b) No decisions of the board which was influenced by improper interference as contemplated by paragraph (a) of this subsection shall be valid.

(2) All decisions of the board shall be recorded in such manner as the responsible Member may from time to time determine.

(3) The tendering system provided for in this Act shall be fair, public and competitive.

(4) (a) Any interested party may within 14 (fourteen) days of the publication of a decision of the board submit to the board a written request for the reasons for such decision.

(b) Within 14 (fourteen) days of receipt of a written request referred to in subsection (4) (a), the board shall furnish the person making the request with the full reasons for its decision.

(5) 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.

7. Government and traditional authorities to procure supplies and services and dispose of stores and other movable property through board.—Subject to the provisions of this Act and the regulations made under section 10, the Government or any traditional authority in the Province shall procure its supplies and services and dispose of all its stores and other movable property through the board.

8. Expenditure—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 North West Legislature for the purpose.

9. Administrative work.—(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.

(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.

10. Regulations.—(1) The responsible Member may make regulations—

(a) in relation to the convening of, and the procedure and quorum to be followed 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;

(b) prescribing the manner in which movable property of the Government or of any tribal authority shall be disposed;

(c) in relation to the manner in which and the conditions on which tenders are to be invited;

(d) in relation to the manner in which decisions of the board are to be recorded and to be publicised;

(e) with regard to all matters for which he deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Notwithstanding anything to the contrary in any law contained, 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 Government or any tribal authority 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.

11. Repeal of the State Tender Board Act, No. 86 of 1968 and the Bophuthatswana Tender Act, No. 8 of 1975.—The State Tender Board Act, No. 86 of 1968 and the Bophuthatswana Tender Act, No. 8 of 1975 (Bophuthatswana) are repealed insofar as they are applicable to the procurement of supplies and services for, the disposal of movable property of, and the hiring or the letting of anything or the acquisition or granting of any right for or on behalf of, the Government of the North West.

12. Short title and date of commencement.—This Act shall be called the North West Tender Board Act, 1994 and shall come into operation on a date fixed by the responsible Member by Proclamation in the *Provincial Gazette*.