

Tamil Nadu Transparency in Tenders Act, 1998

TAMILNADU

India

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Act 43 of 1998

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1. [Amended by Tamil Nadu Transparency in Tenders (Amendment) Act, 2022 (Act 46 of 2022) on 28 December 2022]

Tamil Nadu Transparency in Tenders Act, 1998(Tamil Nadu Act No. 43 of 1998)Last Updated 10th December, 2019[Dated 11.12.1998]An Act to provide for transparency in the public procurement and to regulate the procedure in inviting and accepting tenders and matters connected therewith or incidental thereto.Whereas to maximise economy and efficiency in Government procurement;And Whereas to foster and encourage effective participation by tenderers in the process of tenders;And Whereas to promote healthy competition among tenderers;And Whereas to provide for fair and equitable treatment of all tenderers;And Whereas it is expedient to eliminate irregularities, interference and corrupt practices in the matters relating to tender processes by providing transparency in such matters;And Whereas to promote the integrity of the process of tenders and to promote fairness and public confidence in the processing of tenders by ensuring transparency in the procedure relating to procurement;Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Forty-ninth year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1)This Act may be called the Tamil Nadu Transparency in Tenders Act, 1998.(2)It extends to the whole of the State of Tamil Nadu.(3)It shall come into force on [such date] [Appoints 1st day of October 2000 as the date on which the said Act shall come into force. [TNGGE No.701 / 1-10-2000 (No.II(2)/FIN/1051(d1)/2000) - G.O.Ms.No.445 / 26th September, 2000].] as the Government may, by notification, appoint.

2. Definitions.

In this Act, unless the context otherwise requires,-(a)'Construction' means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or any other related works;(aa)“domestic enterprise” means any enterprise located in the State, which manufactures or produces goods or provides or renders services within the State and which fulfills

the criteria to qualify as a micro or small enterprise as may be notified by the Central Government under clause (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (Central Act 27 of 2006). (i) any domestic enterprise located in the State, which is owned by any person belonging to a Scheduled Caste or a Scheduled Tribe; or (ii) any domestic enterprise, which is a firm or limited liability partnership, having its registered office and place of business in the State, where not less than three-fourths of the partners belong to the Scheduled Castes or Scheduled Tribes; or (iii) any domestic enterprise, which is a company having its registered office and place of business in the State where, - (aaa) "domestic enterprise owned by Scheduled Castes or Scheduled Tribes" means - (1) more than fifty per cent. of the ordinary shareholdings pertain to persons belonging to the Scheduled Castes or Scheduled Tribes; and (2) the control of the company, as defined in section 2 (27) of the Companies Act, 2013 (Central Act 18 of 2013) vests with persons belonging to the Scheduled Castes or Scheduled Tribes. (b) 'Goods' means raw materials, products, equipment and other objects of every kind and description and includes electricity; (c) 'Government' means the State Government; (cc) ['Lowest Tender' means the tender which, on evaluation, is found to be the most beneficial to the procuring entity in financially quantifiable terms.] [Inserted by the Tamil Nadu Transparency in Tenders (Second Amendment) Act, 2012 (Tamil Nadu Act 31 of 2012) sec. 2(2) [TNGGE No. 320/15-11-2012] (w.e.f. 07-12-2012) Appoints 7th day of December 2012 as the date on which the said Act shall come into force. [TNGGE No. 342/7-12-2012 (No. II(2)/FIN/815(g)/2012) - G.O. Ms. No. 422 / 7th December, 2012].] (d) 'Procurement' means acquisition by any means by purchase of goods or services and also of construction; (e) 'Procuring Entity' means the entity specified in the Schedule to this Act; (ee) "Scheduled Castes" and "Scheduled Tribes" shall have the meanings assigned to them respectively under clauses (24) and (25) of Article 366 of the Constitution. (eeee) "State" means the State of Tamil Nadu. (f) 'Tender' means the formal offer made in pursuance of an invitation by the procuring entity (g) 'Tender Bulletin' means the bulletin published for each district or State, containing details of invitation and acceptance of tender; (h) 'Tender Bulletin Officer' means any officer appointed by the Government to publish the district or State Tender Bulletin; (i) 'Tender Document' means a set of papers containing schedule of works, rates, requirement of goods or services, technical specifications, procedure and criteria as may be prescribed for evaluation and comparison of tenders and such other particulars as may be prescribed; [* * *] [Omitted by the Tamil Nadu Transparency in Tenders (Second Amendment) Act, 2012 (Tamil Nadu Act 31 of 2012) sec. 2(ii) (w.e.f. 07-12-2012).]

3. Prohibition or Procurement except by tender.

(1) No procurement shall be made by the procuring entity except by tender. (2) The provisions of sections 9 and 10 shall not apply to any procurement made by a procuring entity, in the normal course, if it is for carrying on business of selling and buying goods: Provided that in case of procurement by the procuring entities on behalf of and for sale to Government or Government organisations for any Government programme, such procurement shall be only by tender.

4. Regulation of Tenders.

No tender shall be invited or accepted by any authority after the commencement of this Act, except in accordance with the procedure specified in this Act and the rules made there under.

5. Appoint of Bulletin Officer.

The Government may, by notification appoint,-(a)[an officer of the Government not below the rank of a Deputy Secretary to Government as State Tender Bulletin Officer] [Appoints the Director, Information and Public Relations as State Tender Bulletin Officer. [TNGGE No.701 / 1-10-2000 (No.II(2)/FIN/1051(d2)/2000) - G.O.Ms.No.447 / 26th September, 2000 and Amendment issued TNGG No.27, / 18-7-2001 (No.II/(2)FIN/561/2001) - G.O.Ms.No.233 / 15th June, 2001].];(b)[an officer not below the rank of a Deputy Collector as District Tender Bulletin Officer for every district] [Appoints the District Public Relation Officer attached to the Collector of every district as District Tender Bulletin Officer for the respective districts. [TNGGE No.701 / 1-10-2000 (No.II(2)/FIN/1051(d2)/2000) - G.O.Ms.No.447 / 26th September, 2000].];

6. Functions of Bulletin Officers.

(1)On receipt of intimation relating to details of notice of invitation of Tender, from the Tender Inviting Authority, information relating to acceptance of tender together with a comparative analysis and reasons for acceptance of tenders from the Tender Accepting Authority, the State or as the case may be, the District Tender Bulletin Officer shall, publish the same in the State or District Tender Bulletin, as the case may be within such time as may be prescribed:Provided that, if the procurement covers more than one district, the invitation and the acceptance of tenders shall be published in the State Tender Bulletin and also in the District Tender Bulletin of such districts.(2)The Tender Bulletin shall be made available for sale in the office of the Tender Bulletin Officer and at such other places as may be specified by him.

7. Appointment of Tender Inviting Authority and Tender Accepting Authority.

(1)The Government or the procuring entity, may, by order, appoint an officer under its control as Tender Inviting Authority for carrying out the functions assigned to it under this Act.(2)The Government or the procuring entity, may, by order, appoint an officer or a committee consisting such number of officers as may be prescribed as Tender Accepting Authority for carrying out the functions assigned to it under this Act.(3)Notwithstanding anything contained in sub-sections (1) and (2), -(a)where the Government is the Tender Accepting Authority, Tamil Nadu Government Business Rules shall be followed for tender acceptance ensuring adherence to the other provisions of this Act;(b)where a Multi-member Tender Accepting Authority is discharging its functions under other Acts, such Multi-member Authority shall be deemed to be Tender Accepting Authority under this Act.

8. Opening of Tender.

The Tender Accepting Authority or any other officer authorised by it, shall open the tenders in the presence of tenderers present and who have submitted tenders in such time and in such place as may be specified in the tender document.

9. Functions of Tender Inviting Authority.

(1)The Tender Inviting Authority shall invite tenders in the form of a notice containing such particulars as may be prescribed.(2)The Tender Inviting Authority shall communicate the Notice Inviting Tenders to the Bulletin Officers according to the value of the procurement and within such time as may be prescribed, so as to publish the same in the appropriate Tender Bulletin.(3)The Tender Inviting Authority shall also publish the Notice Inviting Tenders in Indian Trade Journal and in daily newspapers having wide circulation depending upon the value of the procurement prescribed.(4)The Tender Inviting Authority shall supply the schedule of rates and tender documents in such manner and in such places as may be prescribed to every intending tenderer who has applied for such document.

10. Evaluation and Acceptance of Tender.

(1)The Tender Accepting Authority shall cause an objective evaluation of the tenders taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market rate for procurement and comparison of the tenders in accordance with the procedure and criteria specified in the tender document.(2)After evaluation and comparison of tenders as specified in sub-section (1), the Tender Accepting Authority shall accept the lowest tender ascertained on the basis of objective and quantifiable factors specified in the tender document and giving relative weights among them.Provided also that the Tender Accepting Authority shall accept the tender of the domestic enterprises owned by Scheduled Castes or Scheduled Tribes, not being the lowest tender, upon satisfaction of such conditions as may be prescribed, in respect of goods manufactured or produced and services provided or rendered by them, to the extent of five per cent. of the total requirement in that procurement, if such enterprise is willing to match the price of the lowest tender.(3)Notwithstanding anything contained in sub-section (2), if the Tender Accepting Authority decides that the price of the lowest tender is higher with reference to the prevailing market rate or the schedule of rates, [the said authority] [Substituted by the Tamil Nadu Transparency in Tenders (Second Amendment) Act, 2012 (Tamil Nadu Act 31 of 2012) sec. 3(i) (w.e.f. 07-12-2012).] may negotiate for a reduction of price with that tenderer.(4)If at any time before the acceptance of tender, the Tender Accepting Authority receives information that a tenderer who has submitted tender has been banned by any Procuring Entity, 9[the said authority] shall not accept the tender of that tenderer even if it may be the lowest tender.(5)In case where two or more tenderers quoted the same price, the Tender Accepting Authority shall split the procurement among such tenderers taking into consideration the experience and credentials of such tenderers. Where such splitting is not possible or could not be done equally, 9[the said authority] shall record reasons for the same.(6)If the Tender Accepting Authority proposes to accept the tender as per the provisions of this section, 9[the said authority] shall pass orders accepting the tender together with reasons for such acceptance.[Provided that if the tenderer is unable to supply the entire quantity required, the Tender Accepting Authority may follow the fixed rate contract procedure as may be prescribed.] [Inserted by the Tamil Nadu Transparency in Tenders (Second Amendment) Act, 2012 (Tamil Nadu Act 31 of 2012) sec. 3(ii) (w.e.f. 07-12-2012).](7)The Tender Accepting Authority shall intimate the information regarding the name and address of the tenderer whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate Tender Bulletin Officers.

11. Appeal.

(1)Any tenderer aggrieved by the order passed by the Tender Accepting Authority under section 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.(2)In disposing of an appeal under sub-section (1), the Government may, after giving the party an opportunity of making his representations, pass such order thereon as they may deem fit.(3)The order of the Government on such appeal shall be final.(4)The Government may, pending the exercise of their powers under this section pass such interlocutory orders as they may deem fit.

12. Right to reject Tender.

(1)After negotiation with the tenderer and before passing the order accepting a tender as under sub-section (6) of Section 10, if the Tender Accepting Authority decides that the price quoted by such tenderer is higher by the percentage as may be prescribed over the schedule of rates or prevailing market price, [the said authority] [Substituted by the Tamil Nadu Transparency in Tenders (Second Amendment) Act, 2012 (Tamil Nadu Act 31 of 2012) sec. 4 (w.e.f. 07-12-2012).] shall reject the tender.(2)The Tender Accepting Authority before passing the order accepting a tender, may also reject all the tenders for reasons such as changes in the scope of procurement, new technologies or substantial design changes, lack of anticipated financial resources, court orders, accidents or calamities and other unforeseen circumstances.

13. Power to obtain information.

Notwithstanding anything contained in this Act or in any other law for the time being in force, the Government may with a view to ensuring transparency in tender process, by order in writing, call for any information relating to transparency from the Tender Inviting Authority or from the Tender Accepting Authority on any matter in tender processing and the said Authority shall furnish the same to the Government.

14. Power of Government to call for records.

The Government may at any time, with a view to ensuring transparency in tender process, require any authority,-(a)to produce records relating to invitation and acceptance of tenders;(b)to furnish the tender document, estimate, statement, accounts or statistics relating to such tenders; and to furnish any report.

15. Procedure to be followed in certain cases.

The provisions of this Act to the extent they are not consistent with the procedure prescribed in the Projects funded by International Agreements or by International Financial Agencies shall not apply.

16. Provisions of this Act not to apply in certain cases.

The provisions of sections 9 and 10 shall not apply to procurement, - (a) during natural calamities and emergencies declared by the Government; (b) available from a single source only from a supplier or cases in which a particular supplier or contractor has exclusive rights in respect of the goods or services or construction and no reasonable alternative or substitute exists or where the procuring entity having procured goods, equipment, technology from a supplier or contractor determines that additional supplies must be procured from that specific supplier or contractor for reasons of standardization and compatibility with the existing goods, equipment or technology: Provided that a committee of three experts consisting one technical representative of the procuring entity, one technical representative of a State or Central Government Organisation dealing with similar procurement and one representative from a reputed Academic or Research Institution or Non-commercial Institution having expertise in such line, declares it as single source procurement; (c) [from departments of Government, Public Sector Undertakings, Statutory Boards and such other institutions as may be notified by the Government only in respect of goods manufactured or services provided by them; [Substituted by the Tamil Nadu Transparency in Tenders (Second Amendment) Act, 2012 (Tamil Nadu Act 31 of 2012) sec. 5(i) (w.e.f. 07-12-2012).] Provided that such procurement shall not exceed forty percent of the total requirement in that procurement and shall be at a price not exceeding the price of the lowest tender in respect of the remaining sixty percent.]; (d) of low value and local purchases as may be prescribed; (dd) [from domestic small-scale industrial unit only in respect of goods manufactured by them: [Substituted by the Tamil Nadu Transparency in Tenders (Second Amendment) Act, 2012 (Tamil Nadu Act 31 of 2012) sec. 5(ii) (w.e.f. 07-12-2012).] Provided that such procurement shall not exceed twenty five percent of the total requirement in that procurement and shall be at a price not exceeding the price of the lowest tender in respect of the remaining seventy five percent: Provided further that in case of a single procurement involving clauses (c) and (dd), such procurement shall not exceed forty percent of the total requirement in that procurement.]; (e) from the rate contracts of Director-General of Supplies and Disposals and Association of State Road Transport Undertakings; (f) [by spot purchase of agricultural commodities, agricultural produce and livestock from primary producers; by spot purchase of cotton by Spinning Mills; by spot purchase of animals for Government programmes or schemes or for Government departments from shanties; of Sugarcane purchase from farmers by the State Public Sector Undertakings and Co-operative Sugar Mills; of paddy by Direct Purchase Centres; of Tamil Nadu Civil Supplies Corporation; of clothing by the Government Departments or the State Public Sector Undertakings from the Tamil Nadu Handloom Weavers' Co-operative Society; and by similar organizations and of similar goods and services, as may be notified by the Government;] [Substituted by the Tamil Nadu Transparency in Tenders (Second Amendment) Act, 2012 (Tamil Nadu Act 31 of 2012) sec. 5(iii) (w.e.f. 07-12-2012).]; (g) [of cement from the Tamil Nadu Cement Corporation Limited, or of paper from the Tamil Nadu Newsprints and Papers Limited: [Added by the Tamil Nadu Transparency in Tenders (Amendment) Act, 2001 (Tamil Nadu Act 14 of 2001) s. 3(b) (w.e.f. 1-12-2001).] Provided that, - (a) a committee consisting of the Secretary to Government, Industries Department, the Secretary to Government, Finance Department and the Chairman-cum- Managing Director or the Managing Director, Tamil Nadu Cement Corporation Limited shall determine the price of cement to be procured; (b) the price of paper shall be negotiated with the Tamil Nadu Newsprints and Papers Limited by the procuring

entity.] and(h)[by the Co-operative Federations from their Federating units or Primary Co-operative Societies, of goods manufactured or services provided by them.][Added by the Tamil Nadu Transparency in Tenders (Second Amendment) Act, 2012 (Tamil Nadu Act 31 of 2012) sec. 5(iv) (w.e.f. 07-12-2012).]

17. Officers deemed to be Public Servant.

Every Officer acting under or in pursuance of the provisions of this Act or rule or order or notification made there under, shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

18. Indemnity.

No suit or other legal proceeding shall lie against the Government or any officer or authority of the Government in respect of anything which is in good faith done or intended to be done.

19. Bar of Jurisdiction.

Save as otherwise provided in this Act no order passed or proceeding taken by any officer or authority under this Act shall be called in question in any court, and no injunction shall be granted by any court in respect of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under this Act.

20. Act to override other laws.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or agreement or decree or order of a Court or a Tribunal or other Authority.

21. Power to remove difficulties.

If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order published in the Tamil Nadu Government Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to them to be necessary or expedient for removing the difficulty:[* *] [Proviso omitted by the Tamil Nadu Transparency in Tenders (Amendment) Act, 2002 (Tamil Nadu Act 43 of 2002) s. 3 (w.e.f. 30-9-2002).]

22. Power to make rules.

(1)The Government make rules for carrying out the purposes of this Act.(2)(a)All rules made under this Act shall be published in the Tamil Nadu Government Gazette and unless they are expressed to come into force on a particular day, shall come into force on the date on which they are so published.(b)All notifications issued under this Act shall, unless they are expressed to come into

force on a particular day, come into force on the day on which they are published.(3)Every rule made or notification or order issued under this Act shall, as soon as possible, after it is made or issued, be placed on the table of the Legislative Assembly; and if, before the expiry of the session in which it is so placed or the next session, the Assembly makes any modification in any such rule or notification or order, or the Assembly decides that the rule or notification or order should not be made or issued, the rule or notification or order shall thereafter have effect only in such modified form or to be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

23. Savings.

All the existing rules, regulations, departmental codes, manuals, orders shall so far as they are not inconsistent with the provisions of this Act and the rules made thereunder, continue in force. The Schedule.[See section 2(e)].Procuring Entity

- 1. Government Departments.**
- 2. Public Sector Undertakings of the Government.**
- 3. Statutory Boards formed by the Government.**
- 4. Local Bodies in the State.**
- 5. Co-operative Institutions in the State.**
- 6. Universities.**
- 7. Societies formed by the Government.**