

## STATE TENDER BOARD ACT 86 OF 1968

[ASSENTED TO 20 JUNE 1968]

[DATE OF COMMENCEMENT: 1 OCTOBER 1968]

*(English text signed by the State President)*

### as amended by

Finance Act 102 of 1969  
State Tender Board and State Procurement Board Amendment Act 74 of 1971  
Finance Act 63 of 1973  
Finance Act 102 of 1976  
Finance Act 113 of 1984  
State Tender Board Amendment Act 18 of 1987  
Post Office Amendment Act 85 of 1991  
General Law Amendment Act 49 of 1996  
Department of Communications Rationalisation Act 10 of 1998

### Regulations under this Act

REGULATIONS

### 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 State and to that end to establish a State Tender Board, to provide for the establishment of regional tender boards and to define their functions; and to provide for incidental matters.**

[Long title substituted by s. 9 of Act 74 of 1971, by s. 19 (1) of Act 102 of 1976 and by s. 7 of Act 18 of 1987.]

Cases

## 1 Definitions

In this Act, unless the context otherwise indicates-

'**board**' means the State Tender Board established by section 2;

'**employee**' means an employee as defined in section 1 (1) of the Public Service Act, 1957 (Act 54 of 1957);

'**Minister**' means the Minister of Finance;

'**officer**' means an officer as defined in section 1 (1) of the Public Service Act, 1957;

'**State Procurement Board**' .....

[Definition of 'State Procurement Board' deleted by s. 1 of Act 74 of 1971.]

'**the Services**' .....

[Definition of 'the Services' deleted by s. 1 of Act 74 of 1971.]

## PART I

### THE STATE TENDER BOARD (ss 2-6)

## 2 Establishment of the State Tender Board

(1) As from a date to be fixed by the State President by proclamation in the

*Gazette*, there shall be established a board to be known as the State Tender Board.

(2) On the date referred to in subsection (1) the State Tender Board established under section 61*bis* of the Exchequer and Audit Act, 1956 (Act 23 of 1956), shall cease to exist and as from that date a reference in any law or otherwise to such board shall be deemed to be a reference to the board referred to in subsection (1).

## **2A Establishment of regional tender boards**

The Minister shall on the recommendation of the board establish regional tender boards in respect of such regions as the Minister may determine.

[S. 2A inserted by s. 1 of Act 18 of 1987.]

## **3 Constitution of the board**

(1) The board shall consist of not less than sixteen and not more than twenty members, to be appointed by the Minister, of whom at least half shall be officers or employees.

(2) The Minister shall designate 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.

(3) Subject to the provisions of subsection (4) a member of the board who is an officer or employee shall hold office during the Minister's pleasure and any other member 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 Minister for reasons which, in the opinion of the Minister, render him unsuitable to serve on the board.

(5) The remuneration and allowances of a member of the board not being in the full-time employment of the State shall be determined from time to time by the Minister.

## **3A Constitution of regional tender boards**

(1) A regional tender board shall consist of not fewer than 10 and not more than 14 members appointed by the Minister, of whom-

- (a) one shall be appointed out of a list of names of two persons designated by the Chairman of the Ministers' Council in the House of Assembly;
- (b) one shall be appointed out of a list of names of two persons designated by the Chairman of the Ministers' Council in the House of Representatives;
- (c) one shall be appointed out of a list of names of two persons designated by the Chairman of the Ministers' Council in the House of Delegates;
- (d) two shall be appointed out of a list of names of four persons designated by the relevant Administrator;
- (e) so many who are officers or employees may be appointed as, together with

any members appointed under paragraphs (a), (b), (c) and (d) who are officers or employees, do not exceed half the total number of the members.

(2) If for any reason no person is or can be designated in terms of subsection (1) (a), (b), or (c) within 30 days after the Minister has requested the Chairman concerned to do so, the Minister may appoint as a member such person as he may deem fit.

[S. 3A inserted by s. 2 of Act 18 of 1987.]

#### **4 Powers of the board**

##### Cases

(1) Subject to the provisions of section 4 (1) (a) of the Armaments Act, 1964 (Act 87 of 1964), the board shall have power to procure supplies and services for the State, and, subject to the provisions of any other Act of Parliament, to arrange the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the State, and to dispose of movable State property, and may for that purpose-

(a) on behalf of the State, conclude an agreement with a person within or outside the Republic for the furnishing of supplies and services to the State or for the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the State or for the disposal of movable State property;

[Para. (a) substituted by s. 17 (1) (a) of Act 102 of 1976.]

(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;

[Para. (c) substituted by s. 17 (1) (b) of Act 102 of 1976 and by s. 9 (a) of Act 113 of 1984.]

(d) without giving reasons therefor, 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;

(eA) on behalf of the State, resile from any agreement concluded under this section and, in an appropriate case, claim damages;

[Para. (eA) inserted by s. 9 (b) of Act 113 of 1984.]

(f) 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;

(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) exercise such other powers as may be conferred upon it by the Minister by regulation.

[Sub-s. (1) substituted by s. 2 (a) of Act 74 of 1971 and amended by s. 17 (1) (a) of Act 102 of 1976.]

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

- (a) .....

[Para. (a) substituted by s. 2 (b) of Act 74 of 1971 and by s. 17 (1) (c) of Act 102 of 1976 and deleted by s. 6 of Act 10 of 1998.]

- (b) .....

[Para. (b) deleted by s. 6 of Act 10 of 1998.]

[Sub-s. (2) substituted by s. 11 of Act 102 of 1969 and amended by s. 6 of Act 10 of 1998.]

(2A) 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.

[Sub-s. (2A) inserted by s. 15 (a) of Act 63 of 1973.]

(3) The board may, with the approval of the Minister in each case, and on such conditions, including conditions regarding compensation (if any), as the Minister may approve, exercise any power which the board may in terms of this Act exercise for and on behalf of the State, for and on behalf of any body established by or under any law, including-

- (a) .....

[Para. (a) deleted by s. 1 of Act 49 of 1996.]

- (b) the Government of any territory declared by or under any Act of Parliament to be a self-governing territory within the Republic;
- (c) the Government of any territory granted independence by or under any Act of Parliament.

[Sub-s. (3) substituted by s. 15 (b) of Act 63 of 1973 and by s. 17 (1) (d) of Act 102 of 1976.]

(4) (a) With effect from the postal transfer date and the telecommunications transfer date the board shall have no power under this section in respect of any matter transferred to the postal company and the telecommunications company under section 4 of the Post Office Act, 1958 (Act 44 of 1958).

(b) For the purposes of paragraph (a) 'postal transfer date', 'telecommunications transfer date', 'postal company' and 'telecommunications company' shall have the meaning assigned thereto in section 1 of the Post Office Act, 1958.

[Sub-s. (4) added by s. 78 of Act 85 of 1991.]

#### **4A Powers of regional tender boards**

The powers of a regional tender board shall be such as may be delegated to it

under section 5 (2), and such powers as may be conferred upon it by regulation made under section 13.

[S. 4A inserted by s. 3 of Act 18 of 1987.]

## **5 Committees of the board and delegation of powers**

(1) The board may from among its members appoint committees and designate a chairman in respect of every such committee.

(2) The board may from time to time delegate any of its powers to any regional tender board or 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.

[Sub-s. (2) substituted by s. 3 (1) of Act 74 of 1971 and by s. 4 of Act 18 of 1987.]

(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 of persons or the holder of a post.

[Sub-s. (3) added by s. 3 (1) of Act 74 of 1971.]

(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.

[Sub-s. (4) added by s. 3 (1) of Act 74 of 1971.]

(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).

[Sub-s. (5) added by s. 3 (1) of Act 74 of 1971.]

(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.

[Sub-s. (6) added by s. 3 (1) of Act 74 of 1971.]

(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.

[Sub-s. (7) added by s. 3 (1) of Act 74 of 1971.]

## **6 Decisions of the board**

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 authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the board who were present at the time and entitled to sit as members.

## **PART II**

### **THE STATE PROCUREMENT BOARD (ss 7-10)**

**7 to 10 inclusive** .....

[Ss. 7 to 10 inclusive repealed by s. 4 (1) of Act 74 of 1971.]

**PART III**  
**MISCELLANEOUS PROVISIONS (ss 11-15)**

**11 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 Parliament for the purpose.

[S. 11 substituted by s. 5 of Act 74 of 1971.]

**12 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 designated by the Director-General: Finance.

[Sub-s. (1) substituted by s. 6 (a) of Act 74 of 1971 and by s. 5 of Act 18 of 1987.]

(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.

(3) .....

[Sub-s. (3) deleted by s. 6 (b) of Act 74 of 1971.]

**12A Application of certain sections in respect of regional tender boards**

The provisions of sections 3 (2), 3 (3), 3 (4), 3 (5), 5 (3), 5 (4), 5 (5), 5 (6), 5 (7), 6, 11, 12 (1) and 13 (1) (a) shall *mutatis mutandis* apply to a regional tender board.

[S. 12A inserted by s. 6 of Act 18 of 1987.]

**13 Regulations**

(1) The Minister may make regulations-

- (a) with regard to the calling of and 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;
- (b) providing that, subject to the provisions of any Act of Parliament, supplies and services shall not be procured for and on behalf of the State, that the hiring or letting of anything or the acquisition or granting of any right shall not be arranged for and on behalf of the State and that movable State property shall not be disposed of except through the board or in such other manner as may be prescribed in or determined in accordance with such regulations;

[Para. (b) substituted by s. 18(1) of Act 102 of 1976.]

- (c) 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 State 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.

[S. 13 substituted by s. 7 of Act 74 of 1971.]

#### **14 Repeal of section 61bis of Act 23 of 1956, as inserted by section 16 of Act 76 of 1964**

Section 61bis of the Exchequer and Audit Act, 1956 (Act 23 of 1956), is hereby repealed.

#### **15 Short title**

This Act shall be called the State Tender Board Act, 1968.

[S. 15 substituted by s. 8 of Act 74 of 1971.]

### **STATE TENDER BOARD AND STATE PROCUREMENT BOARD AMENDMENT ACT 74 OF 1971**

[ASSENTED TO 15 JUNE 1971]

[DATE OF COMMENCEMENT: 1 JULY 1971]

(Unless otherwise indicated)

*(Afrikaans text signed by the State President)*

#### **ACT**

**To amend the provisions of the State Tender Board and State Procurement Board Act, 1968, relating to the definitions; the powers of the State Tender Board; and the delegation of its powers by the State Tender Board; to provide for the abolition of the State Procurement Board; and to provide for incidental matters.**

**1** Amends section 1 of the State Tender Board and State Procurement Board Act 86 of 1968 by deleting the definitions of 'State Procurement Board' and 'the Services'.

**2** Amends section 4 of the State Tender Board and State Procurement Board Act 86 of 1968, as follows: paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsection (2) (a).

**3** (1) Amends section 5 of the State Tender Board and State Procurement Board Act 86 of 1968 by substituting for subsection (2) subsections (2), (3), (4), (5), (6) and (7).

(2) The provisions of subsection (1) shall be deemed to have come into operation on the first day of October, 1968.

#### **4 Repeal of sections 7, 8, 9 and 10 of Act 86 of 1968, and savings**

(1) Subject to the provisions of subsections (2), (3) and (4), sections 7, 8, 9 and 10 of the principal Act are repealed with effect from the first day of July, 1971, and the State Procurement Board established by section 7 of the principal Act shall cease to exist on that date.

(2) All rights and duties of the State Procurement Board conferred or imposed upon such board in terms of any agreement concluded by such board or by or under any provision of the principal Act in respect of any such agreement, and any right of such board to accept or reject any offer for the conclusion of any agreement shall, on the date

referred to in subsection (1), pass to the State Tender Board or, if the Minister so determines, to the Armaments Board established by section 2 of the Armaments Act, 1964 (Act 87 of 1964).

(3) Before making a determination under subsection (2), the Minister shall consult with the Minister of the Department for whose benefit the agreement concerned was concluded or is to be concluded, and with the Minister of Defence.

(4) A determination under subsection (2) may be made with reference to the nature of the supplies and services for the procurement of which the agreement concerned was concluded or is to be concluded.

**5** Substitutes section 11 of the State Tender Board and State Procurement Board Act 86 of 1968.

**6** Amends section 12 of the State Tender Board and the State Procurement Board Act 86 of 1968, as follows: paragraph (a) substitutes subsection (1); and paragraph (b) deletes subsection (3).

**7 to 9 inclusive** Substitute respectively sections 13, 15 and the long title of the State Tender Board and the State Procurement Board Act 86 of 1968.

## **10 Commencement**

Subject to the provisions of section 3(2), the provisions of this Act shall come into operation on the first day of July, 1971.

## **11 Short title**

This Act shall be called the State Tender Board and State Procurement Board Amendment Act, 1971.

## **STATE TENDER BOARD AMENDMENT ACT 18 OF 1987**

[ASSENTED TO 2 MARCH 1987]

[DATE OF COMMENCEMENT: 1 APRIL 1987]

*(Afrikaans text signed by the State President)*

## **ACT**

**To provide for the establishment, constitution and powers of regional tender boards; and for incidental matters.**

**1 to 3 inclusive** Insert respectively sections 2A, 3A and 4A in the State Tender Board Act 86 of 1968.

**4** Amends section 5 of the State Tender Board Act 86 of 1968 by substituting subsection (2).

**5** Amends section 12 of the State Tender Board Act 86 of 1968 by substituting subsection (1).

**6** Inserts section 12A in the State Tender Board Act 86 of 1968.

**7** Substitutes the long title of the State Tender Board Act 86 of 1968.

**8** Repeals sections 27 and 29 (2) of the Provincial Finance and Audit Act 18 of 1972.

## **9 Short title and commencement**

This Act shall be called the State Tender Board Amendment Act, 1987, and shall



come into operation on 1 April, 1987.