

**THE TAMIL NADU TRANSPARENCY
IN
TENDERS ACT, 1998**

(TAMIL NADU ACT NO.43 OF 1998)

THE TAMIL NADU TRANSPARENCY IN TENDERS ACT, 1998

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THE TAMIL NADU TRANSPARENCY IN TENDERS ACT, 1998

TAMIL NADU ACT NO.43 OF 1998

The following act of the Tamil Nadu Legislative Assembly received the assent of the President on the 11th December 1998 and is hereby published for general information:-

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. (1) This Act may be called the Tamil Nadu Transparency in Tenders Act, 1998.

Short title, extent and commencement

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date¹ as the Government may, by notification, appoint.

2. In this Act, unless the context otherwise requires,-

Definitions.

(a) '**Construction**' means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or any other related works;

²(aa) '**domestic small scale industrial unit**' means an industrial unit in which the investment in fixed assets in plant and machinery, whether held in ownership or on lease or by hire purchase, does not exceed rupees one hundred lakhs, and which manufactures the goods within the State and registered with the Director of Industries and Commerce.

(b) '**Goods**' means raw materials, products, equipment and other objects of every kind and description and includes electricity;

(c) '**Government**' means the State Government;

(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;

(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;

¹ 1st day of October 2000 (*Vide G.O.Ms.No.445, Finance (Salaries) Department., dated 26th September 2000*)

² This clause was inserted by section 2(1) of the Tamil Nadu Transparency in Tenders (Amendment) Act, 2001 (Tamil Nadu Act 14 of 2001) which came into effect on the 1st day of December 2001. [*G.O .Ms.No .451, Finance (Salaries) Dept. Dated 16th November 2001*]

(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;

¹"Provided that such criteria for evaluation and comparison of tenders shall also provide for a price preference, -

- (a) not exceeding fifteen percent for the domestic small scale industrial units;
- (b) not exceeding ten percent for the Public Sector Undertakings of the Government in respect of products and quantities manufactured by them."

Prohibition
or
procurement
except by
tender

3.(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.

Regulation
of Tenders

4. 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.

Appoint of
Bulletin
Officer

5. 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 Officer²;
- (b) an officer not below the rank of a Deputy Collector as District Tender Bulletin Officer³ for every district;

¹ This proviso was added by section 2(i) of the Tamil Nadu Transparency in Tenders (Amendment) Act, 2001 (Tamil Nadu Act 14 of 2001) which came into effect on the 1st day of December 2001. [G.O.Ms.No.451, Finance (Salaries) Dept., Dated 16th November 2001]

² The Director, Information and Public Relations was appointed as State Tender Bulletin Officer[Vide G.O.Ms.No.233,Finance(Salaries)Dept, dated 15th June, 2001].

³ The District Public Relation Officer attached to the Collector of every district was appointed as District Tender Bulletin Officer for respective districts [Vide G.O.Ms.No.447, Finance (Salaries) Dept., dated 26th September, 2000].

6.(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;

**Functions
of Bulletin
Officers**

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. (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.

**Appointment of
Tender Inviting
Authority and
Tender Accepting
Authority**

(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. 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;

**Opening
of tender**

9. (1) The Tender Inviting Authority shall invite tenders in the form of a notice containing such particulars as may be prescribed.

**Functions
of Tender
Inviting
Authority**

(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.

**Evaluation
and
Acceptance
of Tender**

10. (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.

(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, he 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, he 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, he shall record reasons for the same.

(6) If the Tender Accepting Authority proposes to accept the tender as per the provisions of this section, he shall pass orders accepting the tender together with reasons for such acceptance.

(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. (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.

Appeal.

(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. (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, he shall reject the tender.

Right to reject 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. 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.

Power to obtain information

14. 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
- (c) to furnish any report.

Power of Government to call for records.

15. 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.

Procedure to be followed in certain cases.

Provisions of this Act not to apply in certain cases.

16. 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 certain departments of Government, public sector undertakings, statutory boards and such other institutions only in respect of goods manufactured or services provided by them for a period not exceeding **eleven years**¹ from the date of commencement of this Act;

(d) of low value and local purchases as may be prescribed;

²(dd) from domestic small-scale industrial unit for the reserved items identified by the Central Government:

Provided that where a procuring entity intends to procure any of such reserved items, the procuring entity shall procure such item from the domestic small-scale industrial units and the provisions of section 9 and 10 shall apply to such procurement;

¹ These words were substituted for the words "six years" by Section 2 of the Tamil Nadu Transparency in Tenders (Amendment) Act, 2006 (Tamil Nadu Act 28 of 2006) which came into effect on the 1st day of October 2006.(This provision of section 16 (c) was extended by the Government in two spells of two years each from 01.10.2002 and from 01.10.2004 i.e., upto 30.09.2006 by amendments issued to the Act in Gazette Notification No.757, dated 18.11.2002 and in Gazette Notification No.305, dated 09.12.2004)

² This clause was inserted by section 3(a) of the Tamil Nadu Transparency in Tenders (Amendment) Act, 2001 (Tamil Nadu Act 14 of 2001) which came into effect on the 1st day of December 2001.

- (e) from the rate contracts of Director-General of Supplies and Disposals and Association of State Road Transport Undertakings; and
- (f) by spot purchase of cotton by Spinning Mills, Oil Seeds and Oils by Tamil Nadu Agro Industries Corporation or Tamil Nadu Cooperative Oil Seeds Growers' Federation Limited, animals from shanties, Sugarcane by Sugar Mills, Paddy by direct purchase centres of the Tamil Nadu Civil Supplies Corporation, Clothing by Co-optex from registered Primary Weaver Co-operatives, Milk by Tamil Nadu Cooperative Milk Producers Federation from Districts and Primary Milk Co-operative Societies, Palm oil by Tamil Nadu Civil Supplies Corporation from Tamil Nadu Cooperative Oil Seeds Growers' Federation for Noon Meal Scheme, Clothing by Government Departments, Public Sector Undertakings and statutory departments from Co-optex and similar organisations and materials as may be **notified**¹ by Government.

¹ National Textile Corporation, Coimbatore has been notified for purchase of uniform cloth by Police Department [*Vide G.O.Ms.No.179, Finance (Salaries) Dept., Dated: 17th May, 2002*].

The Ordnance Factory and the Defence Research and Development Organisation of the Ministry of Defence, Government of India and the Bureau of Police Research and Development Organisation of the Ministry of the Home Affairs, Government of India have been notified for purchase of defence and security related items by Director General of Police. [*Vide G.O.Ms.No.166, Finance (Salaries) Dept., Dated: 28th May, 2003*].

The procurement of weaning food directly from Women's Industrial Co-operative Societies to the extent of 65% of the requirement or upto the optimum level that could be supplied by the said societies whichever is less and entrustment of work relating to stitching of school uniforms intended for free supply to school going children to the Women's Co-operative Tailoring Societies registered with the Director of Social Welfare as on the date of entrustment of work have been notified (*Vide G.O.Ms.No.63, Finance (Salaries) Department, dated 16.2.2007*).

The Tamil Nadu Salt Corporation Limited, Chennai has been notified for supply of Double Fortified Salt to all the Nutritious Meal Programme Centres in all the Districts so as to enable the Government to procure the entire quantity of Double Fortified Salt required for the Nutritious Meal Programme Centres under Puratchi Thalaivar MGR Nutritious Meal Programme. (*Vide G.O.Ms.No.239, Finance (Salaries) Department, dated 12.06.2007*)

The procurement of wooden and steel furniture including computer furniture from Tamil Nadu Small Industries Corporation Limited (TANSI), by the procuring entities under the Act, subject to the condition that Tamil Nadu Small Industries Corporation Limited (TANSI) shall effect the supplies within the time stipulated by the procuring entities has been notified (*Vide G.O.Ms.No.401, Finance (Salaries) Department, dated 29.08.2007*).

Entrustment the work of redesigning the Perambur fly-over with the assistance of a suitable consultant to the Anna University, Chennai has been notified (*Vide G.O.Ms.No.472, Finance (Salaries) Department, dated 01.10.2007*).

Entrustment of works taken up under Namakku Naame Thittam to the contributors themselves on optional basis in respect of the works in which the Government contribution is 50% or less in terms of the value of the work has been notified (*Vide G.O.Ms.No.548, Finance (Salaries) Department, dated 14.11.2007*).

Delhi Metro Rail Corporation Limited, a joint venture of Government of India and Government of Delhi, as Interim Consultants for a period of one year and subsequently as Prime Consultants has been notified for Chennai Metro Rail Project (*Vide G.O.Ms.No.45, Finance (Salaries) Department, dated 13.02.2008*).

The procurement of indigenous coal by Tamil Nadu Electricity Board from the Public Sector Undertakings of Government of India at the prices as notified by the Government of India and to import coal through Minerals and Metals Trading Corporation (MMTC) at negotiated price, subject to the Tamil Nadu Electricity Board's right to purchase Coal through competitive bidding as per the said Act has been notified (*Vide G.O.Ms.No.172, Finance (Salaries) Department, dated 28.04.2008*).

The award of execution of works by the Tamil Nadu Electricity Board under Rajiv Gandhi Grameen Vidyutikaran Yojana in 26 districts of Tamil Nadu and all future works under Rajiv Gandhi Grameen Vidyutikaran Yojana to M/s.Tamil Nadu Small Industries Corporation, a Government of Tamil Nadu Undertaking on total turnkey contract basis has been notified (*VideG.O.Ms.No.242, Finance (Salaries) Department, dated 16.06.2008*).

The procurement of services of training by Government Departments and other procuring entities under the said Act from the State Government and the Government of India Educational and Training Institutes and the Universities established by the State and Central Government has been notified (*VideG.O.Ms.No.437, Finance (Salaries) Department, dated 07.10.2008*).

The procurement of milk and milk products from the Tamil Nadu Cooperative Milk Producers Federation (Aavin) and controlled essential commodities such as Rice, Wheat, Sugar, Rava and Maida from the Tamil Nadu Civil Supplies Corporation Limited by the Prison Department subject to the condition that the said corporation shall supply Rice at above poverty line rate fixed by the Government of India has been notified (*VideG.O.Ms.No.483, Finance (Salaries) Department, dated 11.11.2008*).

The appointment of the Centre of Environmental Studies, Anna University, Guindy, Chennai-600 025 as the consultant for a period of 4 months to assess the Environmental Impact to the new complex for the Tamil Nadu Legislative Assembly to be constructed by the Public Works Department has been notified (*VideG.O.Ms.No.500, Finance (Salaries) Department, dated 19.11.2008*).

The award of construction of the Dairy-cum-powder plant with a capacity of 2.00 Lakhs Litre per day with 20 metric tonnes of powder plant at Thiruvannamalai on turnkey basis to the National Dairy Development Board by the Commissioner for Milk Production and Dairy Development has been notified (*VideG.O.Ms.No.540, Finance (Salaries) Department, dated 18.12.2008*).

The appointment of the “ Tamil Nadu Urban Infrastructure Financial Services Limited” as the consultant to render advice to the Tourism and Culture Department for the “Miniature Tamil Nadu” project till the completion of the works has been notified (*Vide G.O.Ms.No.4, Finance (Salaries) Department, dated 06.01.2009.*

The procurement of provision of Common User Group Mobile Phone services from Bharat Sanchar Nigam Limited(BSNL) by the Tamil Nadu Police Department has been notified (*Vide G.O.Ms.No7, Finance (Salaries) Department, dated 07.01.2009.*

The entrustment of the project on Geographical Information System (GIS) by the Public (Elections-II) Department for electoral Rolls updation, rationalization of Polling Stations as per the terms and conditions of the orders issued in Government Order Ms No. 88, Public(Elections-II) Department, dated 22.01.2009 in all the districts of Tamil Nadu except Thiruvallur district to the Bharathidasan University, Tiruchirappalli has been notified (*Vide G.O.Ms.No73, Finance (Salaries) Department, dated 23.02.2009.*

¹(g) of cement from the Tamil Nadu Cement Corporation Limited, or of paper from the Tamil Nadu Newsprints and Papers Limited:

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."

17. 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

Officers deemed to be
public servants.

18. 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.

Indemnity

19. 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.

Bar of
Jurisdiction.

¹ This clause was added by section 3(b) of the Tamil Nadu Transparency in Tenders (Amendment) Act, 2001 (Tamil Nadu Act 14 of 2001) which came into effect on the 1st day of December 2001.

Act to
override
other laws.

20. 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.

Power to
remove difficulties

21. 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:

¹[Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.]

Power to make
rules.

22. (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.

Savings

23. 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 there under, continue in force.

¹This proviso was omitted by Section 3 of the Tamil Nadu Transparency in Tenders (Amendment) Act, 2002 (Tamil Nadu Act 43 of 2002) which came into effect on the 30th day of September 2002

THE SCHEDULE

[See Section 2 (e)]

Procuring Entity
<ol style="list-style-type: none">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.

(By Order of the Governor)

A.K. RAJAN,
Secretary to Government,
Law Department.

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GOVERNMENT OF
TAMIL NADU
2000



MANUSCRIPT SERIES

FINANCE (SALARIES) DEPARTMENT

G.O.Ms.No.445, DATED 26th September, 2000
(Vikkirama, Purattasi-11, Thiruvalluvar Aandu 2031)

Act - Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998) – Date of coming into force of the Act - Notified.

ORDER:

The following Notification will be published in the Tamil Nadu Government Gazette, Extraordinary dated the 1st October, 2000.

NOTIFICATION.

In exercise of the powers conferred by sub-section(3) of section 1 of the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998), the Governor of Tamil Nadu hereby appoints the 1st day of October 2000 as the date on which the said Act shall come into force.

(BY ORDER OF THE GOVERNOR)

P.V. RAJARAMAN,
SECRETARY TO GOVERNMENT.

To
The Works Manager, Government Central Press, Chennai-79.
(for the publication of the notification and send 200 copies to Government)
All Secretaries to Government.
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sd/-
SECTION OFFICER.