

TAMIL NADU TRANSPARENCY IN TENDERS ACT 1998 AND RULES:

- The Tamil Nadu Transparency in Public Procurement Act, 1998
- The Tamil Nadu Transparency in Public Procurement Rules 2000
- The Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules 2012.

PROCUREMENTS ONLY BY TENDER s3:

- a) Procurements: acquisition by any means by purchase of goods or services and, also of construction: s2(d)
 - ✓ Construction includes demolition, repair and renovation: s2(a)
 - ✓ Goods includes raw materials, products, electricity: s2(b)
- b) By Procuring Entity, listed in schedule: s2(e)
- c) All Tenders to follow procedure prescribed in Act and Rules: s4

EXEMPTIONS: s3(2) and s16

- a) For procuring entity doing normal business of selling and buying goods, not for government programmes: s3(2)
- b) Natural calamities and emergencies declared by Government: s16(a)
- c) Single source procurement: s16(b)
- d) Purchase preference for NOTIFIED Government Institutions: s16(c)
 - Only for goods manufactured and services provided by them;
 - Preferential procurement not to exceed 40 percent of total requirement
 - Price not exceeding lowest tender.
- e) Low value procurement: s16(d) and r33
 - Construction of value less than Rs.25 lakhs
 - Other procurements of values less than Rs.10 lakhs
- f) Purchase preference for domestic SSI unit: s16(dd)
 - Only for goods manufactured by them;
 - Preferential procurement not to exceed 25 percent of total requirement
 - Price not exceeding lowest tender.

- Domestic SSI Unit defined in s2(aa)
 - Single procurement condition ????
- g) Rate contracts of DGSD and Association of State Road Transport Undertakings: s16(e).
- h) Spot purchases: s16(f), by specified and notified institutions
- i) TANCEM cement and TNPL paper: s16(g)
- j) Purchase by Cooperative Federations from their primaries: s16(h)

RELAXATIONS AND FURTHER CONDITIONS:

- a) International Agency funded Projects: s15. However, the Act shall apply to the extent it is consistent with the procedure prescribed by International Agreements or International Financial Agencies
- b) All existing rules, regulations, departmental codes, manuals, orders apply, in so far as they are not inconsistent with the Act. s23
- c) Tender Act to be superior Act: s20 will have overriding effect, notwithstanding anything inconsistent contained in any other law or custom or usage or agreement or decree or order of a Court or Tribunal or any other Authority.

TENDER BULLETIN

- a) State and District Tender Bulletin officer: s5
- a. DIPR and DPROs as State and District Tender Bulletin officers
- b) Publish the following: (I) NIT and (ii) Acceptance of Tender with comparative analysis and reasons for acceptance. s6(1)
- c) When procurement covers more than one district, shall be published in the State bulletin and, also in the District Bulletins concerned. Proviso to s6(1)
- d) Bulletins to be weekly, extraordinary bulletin also permitted: r4
- e) Anyone can subscribe to bulletins on regular basis: r6(3)
- f) If tender published in newspapers and not in bulletins, it shall not be invalidated: r7(2). However, as public servant, Tender Inviting Authority can be held responsible for lapse.
- g) More than Rs 10 lakhs and less than Rs.25 lakhs: r8,9

- ✓ in district bulletins where Tender Inviting Authority is located and
- ✓ in district bulletins where work is to be executed or the goods and services are to be supplied.
- ✓ Also in State Bulletins when TIA is Secretary to Government, Head of department, Local Authority, or Chief Executive of a PSU, Statutory Board, Apex Cooperative Institution, University or State Level Society formed by the Government.

h) More than 25 lakhs: in State bulletin r9

PUBLICATION IN NEWS PAPERS AND JOURNALS ETC r11

- a) Through DIPR
- b) For more than Rs.50 lakhs, DIPR to publish NIT only as per instructions of procuring entity
- c) For others, DIPR to publish keeping in mind the request of department.
- d) Number, editions and language decided by Tender Inviting Authority: r11(2)
- e) For values exceeding Rs.50 crore, publication in Indian Trade Journal compulsory: r11(1)
- f) Apart from bulletins and newspapers, Tender Inviting Authority may send notices to registered contractor, past supplier and other potential suppliers.

TENDER INVITING AUTHORITY

- (a) Appointed by Government or Procuring Entity:s7(1)

TENDER ACCEPTING AUTHORITY

- (a)Appointed by Government or procuring Entity: s7(2)
- (b)Can be one officer or a committee.
- (c)Where Government is Tender Accepting Authority, Business Rules to apply: s7(3)(a)

- (d)Where a multi member Tender Accepting Authority is functioning under other Acts, it shall be the Tender Accepting Authority.
s7(3)(b)

PUBLICATION OF TENDER

- (a)NIT as per rule 10.
(b)Schedule of rates and tender documents to be supplied to every applicant

TENDER DOCUMENTS

- (a)Should contain schedule of works, rates, requirement of goods or services, technical specifications: s2(i)
(b)Must also contain procedure and criteria for evaluation and comparison of tenders and other particulars as prescribed in rules: s2(i)
(c)Technical Specifications: no brand names; IS numbers, specify output or service levels for services; r13
(d)Commercial conditions: r14
- EMD, not more than 1 percent.
 - Government may exempt EMD for any category of tenderers.
 - Tender validity period r14(2), initial 90 days
 - Performance Guarantee r14(3): not more than 5 percent, DD, bankers cheque, SS instruments or irrevocable bank guarantee.
 - Payment terms: ordinarily after end of delivery.
 - Advance when imports requiring LOC, single source supply with established practice of advance payment, natural calamities, life-saving drugs etc: r14(4)
 - Mobilization advance for large and complex contracts, exceeding Rs.1 crore, not ordinarily more than 10 percent, secured by bank guarantee and hypothecation.
 - Withheld Amount: for effective performance of contract, not more than 10 percent

- Liquidated damages and penalty to be mentioned for non-fulfilment of contract.
 - Price adjustment clause: period of execution exceeding 18 months. Variation of 25 percent allowed.
 - Quantity proposed for procurement to be mentioned.
Variation of
 - Permissible variations in commercial terms to be indicated in tender document.
 - Financial bid to be inclusive of all costs of delivery, including transportation, duties and taxes, insurance and incidental services, giving breakups.
- (e) Tender documents to be made available online for construction more than Rs.25 lakhs and other procurements more than Rs.10 lakhs r16(3)(b).
- (f) Changes, modifications and clarifications to Tender documents r17
- (g) Time for submission of tender: Min 15 days for less than Rs.2 crores, and 30 days for others. Exemption with recorded approval of superior authority: r20.

TENDER OPENING

- (a) By Tender Accepting Authority or any officer authorized by him.
- (b) In the presence of tenderers present: s8
- (c) Time and Place to be specified in tender document: s8
- (d) Procedure in r18-23

TENDER SCRUTINY COMMITTEE r24

- (a) For preliminary examination and detailed evaluation. Prepare evaluation report for Tender Accepting Authority.
- (b) Compulsory for higher value procurements
- (c) Evaluation report r30: in standard format

TENDER EVALUATION

- (a) Objective evaluation

- (b) Consider: schedule of rates and prevailing market rate: s10(1)
- (c) Based only on procedure and criteria specified in tender document: s10(1)
- (d) Objective and quantifiable factors to be specified in the tender documents, also specifying relative weights: s10(2)
- (e) Procedure in r25-30
- (f) To be valued strictly as per evaluation criteria specified in tender documents r25;
- (g) To be done within tender validity period; extensions not to exceed 180 days beyond which tender is invalid r26.
- (h) Bonafide clarification from tenderers permissible: r27(4)
- (i) SUBSTANTIVE RESPONSIVENESS: r28; Initial examination:
 - Meeting eligibility criteria.
 - Crucial documents signed
 - EMD
 - Responsiveness to technical specifications, commercial conditions
 - Tender not substantively responsive to be rejected.
- (j) Determinations of lowest evaluated price or highest score: r29
 - Adjustments to quoted price for non-material quantifiable deviations permissible.
 - Evaluation to include all central duties and sales tax: however, in cases where tenderers are partly from TN and partly from outside, VAT shall be excluded.
 - For purchase of equipment, O&M and spare part costs for appropriate periods as specified in the tender documents to be quantified.

TENDER ACCEPTANCE

- (a) Only lowest tender to be accepted: s10(2)
- (b) Negotiations with 11 only: s10(3)
- (c) If after negotiation, price is higher than schedule or rates or market price by prescribed percentage, tender shall be rejected: s12(1)

- (d) More than one L1: split procurement, considering experience and credentials. When not possible or not equally split, reasons to be recorded: s10(5). Breaking of tie using principles in r29(4), when it is not possible to split:
 - Multistage tenders: higher qualifying score given preference
 - Ask Lis to give best and final offer of financial bid.
 - Draw of lots.
- (e) Black listed tender to be rejected: s10(4)
- (f) If tenderer is unable to supply entire quantity, fixed rate contract to be followed: proviso to s10(6)
- (g) Acceptance proceedings to specify reasons for acceptance or rejection of any tender s10(6)
- (h) Details of acceptance and reasons of acceptance or rejection to be published in Tender Bulletin: s10(7) r/w s6(1)
- (i) Successful tenderer to execute agreement within specified period, failing which EMD is forfeited and tender held non responsive: r30(5)
- (j) Speculative Tenders r29-A: for abnormally low or high quotes: seek further information from tenderer and take recorded decision.

TENDER APPEAL s11

- (a) Appeal with Government within 10 days: s11
- (b) Appeal petitions to be disposed in 15 days.
- (c) Government may pass interlocutory orders.

CANCELLATION OF TENDER s12(2)

Reasons such as change in scope of procurement, new technologies, substantial design changes, lack of anticipated financial resources, court orders, accidents, calamities and other unforeseen circumstances.

TYPES OF CONTRACT

- (a) Piece work contract: r2(i), r4(1)

- (b)Lumpsum contract: r2(g), r4(1)
- (c)Turn key contract: r2(j), r4(1)
- (d)Fixed Rate Contract: r2(e), r4(1)
- (e)Supply and Installation Contract: r2(b)
- (f) Multi stage contracting: (1) pre-qualification, (ii) two cover system
Tender Inviting Authority to decide the type of contract/tendering:
r4(2)

SPECIAL CASES

LIMITED CAPACITY WITH L1: r31

- (g)negotiate with others in strict ascending order of evaluated price or
(ii) ask others how much they are willing to supply at L1 price or if
these don't work then (iii) place orders at differential prices within
acceptable level of prices.

MULTI SUPPLIERS: r31(4)

In vital procurements requiring more than one supplier, specify it in tender documents and supply at least 60 percent to L1, and balance to L2, L3 etc at L1 prices.

FIXED RATE CONTRACT r31-A

Where price quoted by L1 is too high and where it will not be possible for supply to be made by one or a few suppliers, Tender Accepting Authority to obtain approval of Government and then follow fixed rate contract system.

- (a)Negotiate with L1 first to reduce price.
- (b)If not possible, Tender Accepting Authority may after considering relevant factors, determine and notify the fixed rate.
- (c)All eligible suppliers may be enrolled, by advertisement and orders placed based on transparent criteria notified in tender documents or advertisement
- (d)Priority to be given to supplier or suppliers who participated in initial tender and offered the lowest rate.

PREQUALIFICATION PROCEDURE: TWO COVER SYSTEM r32

- (a) Tender Inviting Authority to decide if prequalification is necessary, reasons in writing: r32. Should be mentioned in tender document s10(1).
- (b) Prequalification based on experience, past performance, capability and financial status and capacity.
- (c) Only bids of prequalified bidders to be evaluated.

PREQUALIFICATION WITH MULTI-STAGE TENDERING

- (a) To be decided by procuring entity: r32A
- (b) Where discussions with tenderers are needed to refine aspects of description of subject matter of procurement and formulate them, or where successful tenderer is expected to carry out detailed survey or investigation and undertake comprehensive assessment of risks, costs and obligations or any other cases for reasons recorded in writing.
- (c) First obtain only Technical bids, enter into discussions and prequalify tenderers based on pre-notified eligibility criteria.
- (d) Both selected and non selected tenderers to be informed.
- (e) Financial tenders to be obtained only from pre-qualified tenderers. (1) Evaluation based on pre-notified criteria.

SINGLE SOURCE PROCUREMENT:s16(b)

CASE A:

- (a) Should be available from only a single source or supplier or
- (b) Supplier or contractor should have exclusive rights AND, no other alternative or substitute should exist

CASE B:

- (a) Procurement already has goods, equipment or technology from a supplier or contractor,
- (b) Needs additional supplies from the same supplier or contractor
- (c) For standardization and compatibility

PROCEDURE:

- (a) Declaration of single source procurement, by
- (b) Committee of three experts: 1 technical representative of procuring entity, 1 technical representative of a State or Central Government Organization dealing with similar procurement, and 1 representative from a reputed academic or research institution or non-commercial institution having expertise in such line.