

7.2 The Tamil Nadu Transparency in Tenders Act, 1998 - Appointment of State Tender Bulletin Officer/District Tender Bulletin Officers - Notified.

**GOVERNMENT OF TAMIL NADU
FINANCE (SALARIES) DEPARTMENT
The Tamil Nadu Transparency in Tenders Act, 1998
and
The Tamil Nadu Transparency in Tenders Rules, 2000
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**Part IV – Section 2
Tamil Nadu Acts and Ordinances**

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:-

ACT No.43 OF 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 maximize economy and efficiency in Government procurement;

AND WHEREAS to foster and encourage effective participation by tenders in the process of tenders;

AND WHEREAS to promote healthy competition among tenders;

AND WHEREAS to provide for fair and equitable treatment of all tenders;

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:-

7. ஒப்பந்தப்புள்ளி

1. (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 as the Government may, by notification, appoint.
2. 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;
 - (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 Bulleting 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;
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 organizations for any Government programme, such procurement shall be only by tender.
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.
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 Officer;
 - (b) an officer not below the rank of Deputy Collector as District Tender Bulletin Officer for every district;
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;

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.
 - (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 authorized 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. (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. (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 objection and quantifiable factors specified in the tender document and giving relating 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 ever 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 tenderes 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.
- (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.
- (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.
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, statistics relating to such tenders; and
- (c) to furnish any report.
15. The provisions of this Act to the extent they are not consistent with procedure prescribed in the Projects funded by International Agreements of International Financial Agencies shall not apply.

16. The provisions of sections 9 and 10 shall not apply to procurement,-
- during natural calamities and emergencies declared by Government;
 - available from a single source only from a supplier or case which a particular supplier or contractor has exclusive rights in respect of the good services or construction and no reasonable alternative or substitute exists or where procuring entity having procured goods, equipment, technology from a supplier, contractor determines that additional supplies must be procured from that speed supplier or contractor for reasons of standardization and compatibility with the exists 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 for a reputed Academic or Research Institution or Non-commercial Institution have expertise in such line, declares it as single source procurement;
- from certain departments of Government, public sector undertakings, statutory boards and such other institutions only in respect of go manufactured or services provided by them for a period not exceeding 11 years from date of commencement of this Act; (Act. 28/2006)
 - of low value and local purchases as may be prescribed;
 - from the rate contracts of Director-General of Supplies Disposals and Association of State Road Transport Undertakings; and
 - by spot purchase of cotton by Spinning Millis, Oils Seeds and ?? by Tamil Nadu Agro Industries Corporation or Tamil Nadu Cooperative Oil See Growers' Federation Limited, animals from shandies, Sugarcane by Sugar Mills, Pa by direct purchase centres of the Tamil Nadu Civil Supplies Corporation, Clothing Co-optex from registered Primary Weaver Co-operatives, Milk by Tamil Nadu Cooperative Milk Producers Federation from Districts and Primary Milk Co-operation Societies, Palm oil by Tamil Nadu Civil Supplies Corporation from Tamil Nadu Cooperative Oil Seeds Growers' Federation for Noon Meal Scheme, Clothing Government Departments, Public Sector Undertakings and statutory departments from Co-optex and similar organizations and materials as may be notified by Government.
17. Every Officer acting under or in pursuance of, the provisions of this Act or rule or order or notification made thereunder, shall be deemed to be public servant within the meaning of section 21 of the Indian Panel Code.
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.
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.
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.
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;

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.

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 order should not be made or issued, the 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. 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.

(By order of the Governor)

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