

THE PROVINCE OF THE NORTHERN CAPE
DIE PROVINSIE NOORD-KAAP

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No. 11

OFFICE OF THE PREMIER

KANTOOR VAN DIE PREMIER

No. 3

12 September 1994

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:—

No. 2 of 1994: Northern Cape Tender Board Act, 1994.

No. 3

12 September 1994

Hierby word bekendgemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby vir algemene kennisname gepubliseer word:—

No. 2 van 1994: Noord-Kaapse Wet op die Tenderraad, 1994.

ACT

To provide for the procurement of supplies and services for, the disposal of moveable property of, and the hiring or letting of anything or the acquisition or granting of any right for or on behalf of, the Province, and to that end to establish a Provincial Tender Board and to define its functions, and to provide for incidental matters.

(English text signed by the Premier)
(Assented to 2 September 1994)

BE IT ENACTED by the Provincial legislature of the Northern Cape Province, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—

"best interests", means that the interests of the State were better served by taking a particular action that if the action had not been taken; 5

"Board" means the Northern Cape Provincial Tender Board established under section 2;

"damage", means any financial loss, loss of prestige or any other unfavourable result of a particular action; 10

"emergency", means any situation of immediate danger to life or damage to the State arising from *force majeure*;

"employee" means an employee as defined in section 1 of the Public Service Act, 1994; 15

"Executive Council" means the Executive Council of the Northern Cape Province as referred to in section 149 of the Constitution of South Africa, 1993 (Act No. 200 of 1993);

WET

Om voorsiening te maak vir die reëling van die verkryging van lewens-
ransies en dienste vir, die vervreemding van roerende goed van,
en die huur of verhuur van enigiets of die verkryging of verlening
van enige reg vir of namens, die Provinsie, en om te dien einde 'n
Tenderraad in te stel en sy werksaamhede te bepaal; en om vir
bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur Premier geteken)
(Goedgekeur op 2 September 1994)

DAAR WORD BEPAAL deur die Provinsiale wetgewer van die Noord-
Kaap, soos volg:—

Woordomsrywings

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

- 5 “aanbod” enige aanbod, insluitende 'n tender of kwotasie, gemaak
deur 'n persoon binne of buite die Republiek, met die oog op die
aangaan van 'n ooreenkoms in artikel 4(1)(a) bedoel;
- “beampte” 'n beampte soos omskryf in artikel 1 van die
Staatsdienswet, 1994;
- 10 “beste belang” wanneer, indien 'n bepaalde optrede geneem is, die
belange van die Staat beter gedien was as sou sodanige optrede nie
geneem gewees het nie;
- “beperking” 'n beperking opgelê ten opsigte van enige persoon en
wat voortspruit uit 'n beslissing van die Raad soos in artikel 4(3)
15 voorsien;
- “die verantwoordelike Lid” die lid van die Uitvoerende Raad van die
Provinsie belas met finansiële aangeleenthede;
- “hierdie Wet” ook enige regulasie uitgevaardig daarkragtens;

- "guidelines" means the set of principles determined by the national government, within which the procurement process should function;
- "offer" means any offer, including a tender or quotation, by a person within or outside the Republic, for concluding an agreement referred to in section 4(1)(a); 5
- "officer" means an officer as defined in section 1 of the Public Service Act, 1994;
- "negligence" means that prescribed procedures could have been carried out but were not, whether wittingly or unwittingly;
- "political party" means a party as defined in section 1 of the Electoral Act, 1993 (Act No. 202 of 1993); 10
- "Province" means the Northern Cape Province and includes all provincial government departments and statutory bodies, as defined in section 1 of the Northern Cape Exchequer Act, 1994 (Act No. 1 of 1994), but excludes local governments, and "Provincial" has a corresponding meaning; 15
- "restriction" means a restriction that is imposed on any person and that arises from a decision of the Board referred to in section 4(3);
- "the responsible Member" means the member of the Executive Council responsible for financial matters; 20
- "this Act" includes any regulation made thereunder;
- "Treasury" means the Treasury as defined in section 1 of the Northern Cape Exchequer Act, 1994 (Act No. 1 of 1994).

CHAPTER 1

THE NORTHERN CAPE PROVINCIAL TENDER BOARD 25

Establishment of the Board

2. (1) As from a date to be fixed by the responsible Member by notice in the *Provincial Gazette*, there shall be established a Board to be known as the Northern Cape Provincial Tender Board.

(2) The powers and functions exercised or performed prior to the date referred to in subsection (1) by the tender board which exercised such powers and performed such functions in relation to 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 Province, shall for the purposes of this Act be deemed to have been exercised or performed by the Board referred to in subsection (1). 30

(3) The tendering system contemplated in this Act shall be fair and the proceedings thereof be accessible to the public.

Constitution of the Board 40

3. (1) The Board shall consist of not fewer than 12 and not more than 16 members to be appointed by the Executive Council, of whom 6 shall be officers or employees.

- "nalatigheid" wanneer voorgeskrewe prosedures nagevolg kon gewees het, maar dit wetend of onwetend nie gedoen was nie;
- "noodtoestand" enige toestand wat onmiddellike gevaar vir lewe en skade vir die Staat inhou voortspruitend uit *force majeure*;
- 5 "politieke party" 'n party soos omskryf in artikel 1 van die Kieswet, 1993 (Wet No. 202 van 1993);
- "Provinsie" die Provinsie Noord-Kaap met die insluiting van alle provinsiale regeringsdepartemente en statutêre liggame, soos omskryf in artikel 1 van die Noord-Kaapse Skatkiswet, 1994 (Wet No. 1 van 1994), met uitsluiting van plaaslike owerhede en het "Provinsiaal" 'n ooreenstemmende betekenis;
- 10 "Raad" die Noord-Kaapse Tenderraad ingestel kragtens artikel 2;
- "riglyne" die stel beginsels bepaal deur die nasionale regering, waarbinne die verkrygingsproses moet funksioneer;
- 15 "skade" enige finansiële verlies, verlies aan aansien of enige ander ongunstige resultaat as gevolg van 'n spesifieke optrede;
- "Tesourie" die Tesourie soos in artikel 1 van die Noord-Kaapse Skatkiswet, 1994 (Wet No. 1 van 1994), omskryf;
- 20 "Uitvoerende Raad" die Uitvoerende Raad van die Provinsie soos bedoel in artikel 149 van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993);
- "werknemer" 'n werknemer soos in artikel 1 van die Staatsdienswet, 1994, omskryf.

HOOFSTUK 1

25 DIE NOORD-KAAPSE TENDERRAAD

Instelling van die Tenderraad

2. (1) Met ingang van 'n datum wat die verantwoordelike Lid by kennisgewing in die *Provinsiale Koerant* bepaal, word daar 'n Raad ingestel wat die Noord-Kaapse Tenderraad heet.
- 30 (2) Die bevoegdhede en werksaamhede uitgeoefen of verrig voor die datum bedoel in subartikel (1) deur die tenderraad wat sulke bevoegdhede uitgeoefen en sulke werksaamhede verrig het in verband met die verkryging van leweransies en dienste, vir die vervreemding van roerende goed van, en die huur of verhuur van enigiets of die verkryging of verlening van
- 35 enige reg vir of namens die Provinsie word vir die doeleindes van hierdie Wet geag deur die Raad bedoel in subartikel (1), uitgeoefen of verrig te gewees het.
- (3) Die tenderstelsel in hierdie Wet voorsien moet regverdig wees en die werksaamhede daarvan moet toeganklik wees vir die publiek.

40 Samestelling van die Raad

3. (1) Die Raad bestaan uit minstens 12 en hoogstens 16 lede deur die Uitvoerende Raad aangestel, van wie 6 beamptes of werknemers moet wees.

- (2) The Executive Council may appoint an alternate member for each member of the Board, and any alternate member so appointed may attend and take part in the proceedings at any meetings of the Board or a committee thereof including the casting of a vote on any matter, during the absence, or vacancy in the office, of the member for whom he or she has been appointed as alternate member. 5
- (3) No person shall be qualified to become or remain a member or alternate member of the Board if he or she is an office bearer of a political party or if he or she is a member of the National Assembly, the Senate, a provincial legislature or a local government. 10
- (4) Members and alternate members of the Board, who are not officers or employees, shall be appointed from nominations submitted in terms of regulations thereanent which regulations shall be made by the responsible Member in concurrence with the Executive Council. 15
- (5) If for any reason no or an insufficient number of appropriate nominations have been received as envisaged in subsection (4), the Executive Council shall, having due regard to the guidelines, appoint such persons as it may deem fit. 20
- (6) The Executive Council shall appoint any member of the Board as chairperson and any other member as vice-chairperson who shall act as chairperson of the Board when the chairperson is absent or is unable to perform his or her duties, and when both the chairperson and the vice-chairperson are absent from a meeting of the Board, the members present thereat may elect one of their number to preside at such meeting. 25
- (7) Subject to the provisions of subsection (7), a member or alternate member who is an officer or employee shall hold office at the pleasure of the Executive Council and any other member or alternate member shall hold office for such period, not exceeding 3 years, as the Executive Council may determine at the time of his or her appointment, and shall be eligible for reappointment at the termination of his or her term of office: Provided that the membership periods of such members or alternate members shall be staggered from one to three years to ensure that all expiry dates do not coincide. 30
- (8) A member or alternate member of the Board shall vacate his or her office— 35
- (a) if he or she resigns;
 - (b) if he or she is absent from 2 consecutive meetings of the Board without leave of the chairperson; or
 - (c) if his or her term of office is terminated under subsection (9).
- (9) The Executive Council may at any time terminate the term of office of any member of the Board— 40
- (a) on account of misconduct;
 - (b) on account of unfitness for his or her duties or incapacity to carry them out efficiently; or
 - (c) if for reasons other than unfitness or incapacity, his or her removal from office will promote efficiency. 45
- (10) If a member or alternate member of the Board dies, or ceases to be a member or alternate member in terms of subsection (7) or (8), the Executive Council may, subject to the provisions of subsection (3) and (4), appoint any person in the place of such member or alternate member for the unexpired period of office of such member or alternate member. 50

(2) Die Uitvoerende Raad kan vir elke lid van die Raad 'n plaasvervangende lid aanstel, en 'n plaasvervangende lid aldus aangestel, kan 'n vergadering van die Raad of 'n Komitee daarvan bywoon en aan die verrigtinge aldaar deelneem, ook deur 'n stem uit te bring ten opsigte van enige aangeleentheid, tydens die afwesigheid, of vakature in die amp, van die lid vir wie hy of sy as plaasvervangende lid aangestel is.

(3) Geen persoon word of bly 'n lid of plaasvervangende lid van die Raad as hy of sy 'n ampsdraer is van 'n politieke party of as hy of sy 'n lid is van die Nasionale vergadering, die Senaat, 'n provinsiale wetgewer of 'n plaaslike owerheid.

(4) Lede en plaasvervangende lede van die Raad, wat nie beamptes of werknemers is nie, word aangestel uit nominasies ingedien ingevolge regulasies daaroor, welke regulasies deur die verantwoordelike Lid met die instemming van die Uitvoerende Raad uitgevaardig word.

(5) Indien daar vir enige rede geen of te min geskikte nominasies, soos in subartikel (4) voorsien, ontvang word, stel die Uitvoerende Raad, behoudens die bepalings van die riglyne, sodanige persone aan as wat dit gerade ag.

(6) Die Uitvoerende Raad wys 'n lid van die Raad as voorsitter en 'n ander lid as ondervoorsitter aan en laasgenoemde tree as voorsitter van die Raad op wanneer die voorsitter afwesig is of nie in staat is om sy of haar pligte uit te voer nie, en wanneer sowel die voorsitter as die ondervoorsitter van 'n vergadering van die Raad afwesig is, kan die lede wat daarop aanwesig is, een uit hul midde kies om op dié vergadering voor te sit.

(7) Behoudens die bepalings van subartikel (7), bly 'n lid of plaasvervangende lid aan as lid van die Raad vir solank dit die Uitvoerende Raad behaag en enige ander lid of plaasvervangende lid bly aan as lid vir sodanige periode, wat nie 3 jaar te bowe mag gaan nie, as wat die Uitvoerende Raad by sy of haar aanstelling bepaal en sodanige lede kan weer aangestel word by die afloop van sy of haar termyn: Met dien verstande dat die ampstermyne van lede so gewissel word vanaf een jaar tot drie jaar dat die afloop van al die termyne nie sal saamval nie.

(8) 'n Lid of plaasvervangende lid van die Raad ontruim sy amp—

- (a) indien hy of sy bedank;
- (b) indien hy of sy sonder verlof van die voorsitter van 2 agtereenvolgende vergaderings van die Raad afwesig is; of
- (c) indien hy of sy ampstermyn kragtens subartikel (9) beëindig word.

(9) Die Uitvoerende Raad kan te eniger tyd die ampstermyn van 'n lid of alternatiewe lid van die Raad beëindig—

- (a) weens wangedrag;
- (b) weens ongeskiktheid vir sy of haar amp of onvermoë om dit op 'n bekwame wyse te verrig, of
- (c) indien sy of haar ontheffing uit die amp, om ander redes as ongeskiktheid of onvermoë, doeltreffendheid sal bevorder.

(10) Indien 'n lid of plaasvervangende lid van die Raad sterf, of ingevolge subartikel (7) of (8) ophou om 'n lid of plaasvervangende lid te wees, kan die Uitvoerende Raad, behoudens die bepalings van subartikel (3) en (4), iemand in die plek van daardie lid of plaasvervangende lid aanstel vir die onverstreke ampstermyn van daardie lid of plaasvervangende lid.

(11) Members or alternate members of the Board who are not officers or employees, may, in respect of their services, be paid such remuneration and allowances as may be determined by the Premier.

Powers of the Board

4. (1) Subject to the provisions of section 187 of the Constitution 5
in particular or that of any other Act and within the framework of the prin-
ciples set out in the guidelines, the Board shall have the sole power to
procure supplies and services for the Province or for the hiring or letting of
anything or the acquisition or granting of any right for or on behalf of the
Province or for the disposal of Provincial property, and may for that pur- 10
pose—
- (a) on behalf of the Province conclude an agreement with a person
within or outside the Province or the Republic for the furnishing of
supplies and services to the Province or for the hiring or letting of 15
anything or the acquisition or granting of any right for or on behalf
of the Province or for the disposal of Provincial property;
 - (b) invite offers in the manner decided upon by the Executive Coun-
cil and determine the manner in which and the conditions subject
to which such offers shall be made, with a view to concluding an 20
agreement referred to in paragraph (a);
 - (c) inspect and test or cause to be inspected and tested supplies
and services which are offered or which are or have been fur-
nished in terms of an agreement concluded under this section,
and anything offered for hire;
 - (d) subject to the provisions of section 6 accept or reject any offer for 25
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;
 - (f) on behalf of the Province, rescind any agreement concluded
under this section, and in appropriate cases claim damage; 30
 - (g) subject to the provisions of subsection (5), 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 35
such agreement;
 - (h) subject to the provisions of subsection (5), negotiate a settlement
with a person referred to in paragraph (g), or amend the
agreement concerned with the approval of such person;
 - (i) issue directives to Provincial departments and relevant statutory
bodies in regard to the procurement of supplies and services, the 40
hiring or letting of anything, the acquisition or granting of any
right, or the disposal of Provincial property in order to achieve the
objects of the Act;
 - (j) invite expert or technical advice, and call upon any officer or
employee to provide expert or technical advice in so far as it is 45
legally permissible for such officer or employee to provide the
required advice to the Board.

(11) Lede of plaasvervangende lede van die Raad wat nie beamptes of werknemers is nie, kan ten opsigte van hul dienste die vergoeding en toelaes betaal word wat die Premier bepaal.

Bevoegdhede van die Raad

- 5 4. (1) Behoudens die bepalings van artikel 187 van die Grondwet in die besonder of die van enige ander Wet en die raamwerk van beginsels wat in die riglyne uiteengesit is, is slegs die Raad bevoeg om leweransies en dienste vir die Provinsie te verkry of om die huur of verhuur van enigiets of die verkryging of verlening van enige reg vir of namens die Provinsie te reël of om Provinsiale goed te vervreem, en kan vir die doel—
- 10 (a) namens die Provinsie met 'n persoon binne of buite die Provinsie of die Republiek 'n ooreenkoms aangaan vir die verskaffing van leweransies en dienste aan die Provinsie of vir die huur of verhuur van enigiets of die verkryging of verlening van enige reg vir of namens die Provinsie, of vir die vervreemding van roerende Provinsiale goed;
- 15 (b) met die oog op die aangaan van 'n ooreenkoms in paragraaf (a) bedoel, op die wyse wat die Uitvoerende Raad bepaal aanbiedinge aanvra en die wyse en voorwaardes waarop sodanige aanbiedinge gemaak moet word, bepaal;
- 20 (c) leweransies en dienste wat aangebied word of ingevolge 'n ooreenkoms wat kragtens hierdie artikel aangegaan is, gelewer word of is, en enigiets wat te huur aangebied word, inspekteer en toets of laat inspekteer en toets;
- 25 (d) enige aanbod vir die aangaan van 'n in paragraaf (a) bedoelde ooreenkoms, behoudens die bepalings van artikel 6, aanvaar of verwerp;
- 30 (e) stappe doen of laat doen om 'n ooreenkoms wat kragtens hierdie artikel aangegaan is, af te dwing;
- 35 (f) namens die Provinsie terugtree uit 'n ooreenkoms wat kragtens hierdie artikel aangegaan is en, in 'n gepaste geval skadevergoeding eis;
- 40 (g) behoudens die bepalings van subartikel (5), op die voorwaardes wat hy of sy bepaal, 'n persoon met wie so 'n ooreenkoms aangegaan is, van nakoming van so 'n ooreenkoms vrystel, of die versuim van so 'n persoon om aan so 'n ooreenkoms te voldoen, kondoneer;
- 45 (h) behoudens die bepalings van subartikel (5) met 'n persoon in paragraaf (g) bedoel, 'n skikking aangaan of, met die goedkeuring van sodanige persoon, die betrokke ooreenkoms wysig;
- 50 (i) voorskrifte uitreik aan Provinsiale departemente en betrokke statutêre liggame in verband met die verkryging van leweransies en dienste vir, die vervreemding van roerende goed van, en die huur of verhuur van enigiets of die verkryging of verlening van enige reg vir of namens, die Provinsie, ten einde die oogmerke van hierdie Wet te bereik;
- (j) deskundige of tegniese advies inwin, en enige beampte of werknemer versoek om deskundige of tegniese advies te voorsien in soverre dit wettig toelaatbaar is vir sodanige beampte of werknemer om die nodige advies aan die Raad te voorsien;

exercise such other powers as may be prescribed by regulation 5
under section 9.

(2) The Board may approve *ex post facto* any action of a Provincial department or relevant statutory body whereby any power of the Board has been exercised, if the Board is satisfied that such action took place in circumstances of emergency or was in the best interests of the State 10 provided that it took place without negligence, and provided that the State did not suffer any damage as a result thereof.

(3) (a) If the Board is of opinion that a person—

- (i) has amended or withdrawn an offer after the closing time for receipt of offers but before he or she has been notified of its 15 acceptance; or
- (ii) has failed to sign a contract or to provide security within the period stipulated in the conditions of tender, or such extended period as the Board may allow, when required to do so; or
- (iii) fails or has failed to comply with any of the conditions of an 20 agreement, or performs or has performed unsatisfactorily under an agreement; or
- (iv) who has concluded an agreement referred to in section 4(1)(a) has promised, offered or given a bribe, or has acted in respect thereof in a fraudulent manner or in bad faith or in any other 25 improper manner,

the Board may, in addition to any other legal remedies it may have, restrict the person concerned by resolving that no offer from that person should be considered during such period as the Board may stipulate, and, in the case of sub-paragraphs (iii) and (iv), cancel any contracts which the person may 30 be executing.

(b) The Board may at any time vary or rescind any restriction.

(c) Any restriction imposed on any person by the Board may at the discretion of the Board also be made applicable to any other enterprise, or to any partner, manager, director or other person, who wholly or partly 35 exercises or exercised or may exercise control over the enterprise of the first-mentioned person if it is or was in the opinion of the Board actively associated.

(d) For the purposes of this subsection the expression "person", in respect of any restriction, shall also include an employee or agent of such 40 person.

(e) Where the Board imposes a restriction regarding the consideration of an offer, or varies or rescinds such restriction, it shall inform any other tender boards on which it may decide, all Provincial departments and relevant statutory bodies and, where the Board deems it necessary, the 45 Republic's representatives abroad, of any resolution relating to such restriction or rescindment or variation, and request the said boards, departments, bodies and representatives to take similar steps in respect of the person concerned.

die ander bevoegdhede, voorgeskryf by regulasie kragtens artikel 9, uitoefen.

5 (2) Die Raad kan, waar enige Provinsiale departement of toepaslike statutêre liggaam 'n bevoegdheid van die Raad uitgeoefen het, daardie optrede *ex post facto* goedkeur, indien die Raad daarvan oortuig is dat dit plaasgevind het in 'n noodtoestand of in die beste belang van die Staat met die voorbehoud dat daar nie nalatigheid was nie en dat die Staat nie skade as gevolg daarvan gely het nie.

(3) (a) Indien die Raad van oordeel is dat 'n persoon —

10 (i) 'n aanbod gewysig of teruggetrek het na die sluitingstyd vir ontvangs van aanbiedinge maar voordat hy of sy van die aanvaarding daarvan in kennis gestel is; of

15 (ii) versuim het om binne die tydperk in die tendervoorwaardes bepaal, of die langer tydperk wat die Raad toegelaat het, 'n kontrak te onderteken of sekerheid te stel wanneer dit van hom of haar vereis is; of

(iii) in gebreke bly of gebly het om enige voorwaarde van 'n ooreenkoms na te kom, of 'n ooreenkoms op 'n onbevredigende wyse uit te voer of uitgevoer het; of

20 (iv) wat 'n ooreenkoms in artikel 4(1)(a) bedoel, aangegaan het, omkoopgeld ten opsigte van die ooreenkoms beloof, aangebied of gegee het, of ten opsigte daarvan op 'n bedrieglike wyse of te kwader trou of op 'n ander onbehoorlike wyse opgetree het.

25 kan die Raad, benewens enige ander regs middels waaroor dit nog beskik, daardie betrokke persoon beperk deur te beslis dat gedurende die tydperk wat dit bepaal, geen aanbod van daardie persoon oorweeg sal word nie, en in die gevalle in subparagrafe (iii) en (iv), enige kontrakte kanselleer wat daardie persoon besig is om uit te voer.

(b) Die Raad kan 'n beperking te eniger tyd wysig of ophef.

30 (c) Enige beperking deur die Raad aan 'n persoon opgelê, kan na goeddunke van die Raad ook van toepassing gemaak word op enige ander onderneming, of op 'n vennoot, bestuurder, direkteur of ander persoon, wat ten volle of gedeeltelik beheer oor die onderneming van die tenderaar uitoefen of uitgeoefen het of kan uitoefen, en met welke onderneming of
35 persoon die tenderaar na die oordeel van die Raad aktief geassosieer is of was.

(d) Vir die doeleindes van hierdie subartikel sluit die uitdrukking "tenderaar", in verband met enige beperking, ook 'n werknemer of agent van sodanige tenderaar in.

40 (e) Waar die Raad 'n beperking met betrekking tot die oorweging van aanbiedinge deur 'n tenderaar opelê, of sodanige beperking wysig of ophef, kan dit enige ander aankoopinstansies waarop dit mag besluit en alle Provinsiale departemente en toepaslike statutêre liggame van enige besluit met betrekking tot sodanige beperking, of die opheffing of wysiging daarvan in kennis stel en die instansies, departemente en toepaslike statutêre
45 liggame versoek om soortgelyke stappe te doen.

(f) Whenever it comes to the attention of the Board that any other tender board referred to in paragraph (e) has taken a decision referred to in paragraph (a) in respect of a person in respect of agreements similar to those contemplated in section 4(1)(a), the Board may resolve that a similar restriction shall be imposed by it on the person concerned in respect of 5 agreements with the Board.

(4) If an agreement has been concluded with any contractor on the strength of information furnished by him or her in respect of which, after the conclusion of such agreement, it is proved that such information was incorrect the Board may, in addition to any other legal remedy it may have— 10

- (a) recover from the contractor any costs and any damages incurred or sustained, as the case may be, by the Province as a result of the conclusion of the agreement; or
- (b) terminate the agreement and recover from the contractor any damages which the Province may suffer by having to make less 15 favourable arrangements thereafter; and
- (c) impose a penalty not exceeding five per cent of the monetary value of the agreement by written notice directed to the contractor and delivered to him or her by registered post.

(5) No exemption, condonation, settlement or amendment which 20 may be to the prejudice of the Province shall be granted, negotiated or made under paragraphs (g) and (h) of subsection (1) without the prior approval of the Treasury.

(6) Any approval referred to in subsection (5) may be granted in respect of a specific agreement or in respect of two or more or all 25 agreements entered into for the procurement of a specific supply or service.

(7) If, and when, the Board acts on behalf of any statutory body, it do so on such conditions, including conditions regarding compensation (if any), as the responsible Member prescribes. 30

(8) Notwithstanding any other provision of this Act and in order to achieve the advancement of persons disadvantaged by unfair discrimination as envisaged in section 8(3)(a) of the Constitution, the Board shall in the exercise of its powers—

- (a) ensure that at least 30% of the monetary value of each tender it 35 awards, is awarded to a member or members of such disadvantaged group: Provided that the enforcement of this measure shall not lead to a lowering in the standards or the quality of goods and services;
- (b) award, if no tender, or tenders amounting to less than 30% of the 40 monetary value thereof are received from a member or members of such disadvantaged group, or if no other contractor submits a tender in which at least 30% of the monetary value will be executed by subcontractors who are members of such disadvantaged group, the tender or the balance thereof to any one or 45 more of the other persons who tendered.

(f) Wanneer dit tot die Raad se kennis kom dat enige ander aankoopinstansie in paragraaf (e) bedoel in beslissing soos in paragraaf (a) beoog, ten opsigte van 'n tenderaar geneem het ten opsigte van ooreenkomste soortgelyk aan dié beoog in artikel 4(1)(a), kan die Raad beslis dat

5 'n soortgelyke beperking deur dit aan die betrokke persoon ten opsigte van ooreenkomste met die Raad, opgelê word.

(4) In die geval van 'n ooreenkoms aangegaan met 'n kontrakteur op grond van inligting deur hom of haar verskaf, en dit blyk na die aangaan van daardie ooreenkoms dat die inligting foutief was, kan die Raad, bene-

10 wens enige ander regsmiddels waaroor dit mag beskik —

- (a) enige koste of skade wat die Provinsie opgedoen het of gely het, wat die geval ook al mag wees, vanaf die kontrakteur verhaal; of
- (b) die ooreenkoms kanselleer en enige verliese wat die Provinsie mag ly as gevolg van die feit dat dit 'n minder gunstige reëling
- 15 daarna moes aanvaar, vanaf die kontrakteur verhaal; en
- (c) 'n boete, wat nie vyf persent van die geldwaarde van die ooreenkoms te bowe gaan nie, op die kontrakteur hef by wyse van 'n skriftelike kennisgewing wat per geregistreerde pos aan die kontrakteur versend word.

(5) Geen vrystelling, kondonasie, skikking of wysiging wat tot nadeel van die Provinsie strek word toegestaan, geonderhandel of gemaak ingevolge paragrawe (g) en (h) van subartikel (1) sonder die vooraf verkreeë toestemming van die Tesourie nie.

(6) Enige goedkeuring bedoel in subartikel (5) kan verleen word ten

25 opsigte van 'n bepaalde ooreenkoms of ten opsigte van twee of meer of al die ooreenkomste wat aangegaan is vir die verkryging van 'n bepaalde leweransie of diens.

(7) Indien, en wanneer, die Raad optree namens enige statutêre liggaam, geskied dit op die voorwaardes, insluitende voorwaardes met

30 betrekking tot vergoeding (indien enige), as wat die verantwoordelike Lid neerlê.

(8) Nieteenstaande enige ander bepaling van hierdie Wet en ten einde die vooruitgang van persone te bewerkstellig wat deur onbillike diskriminasie benadeel is soos in artikel 8(3)(a) van die Grondwet voorsien

35 word, moet die Raad in die uitvoering van sy werksaamhede —

- (a) verseker dat ten minste 30% van die geldwaarde van elke tender wat dit toeken, toegeken word aan persone wat sodanig benadeel is: Met dien verstande dat hierdie maatreël nie tot 'n daling in die standaard en kwaliteit van produkte en dienste aanleiding sal gee nie;
- 40 (b) indien geen tender of tenders ten bedrae van minder as 30% van die geldwaarde van 'n tender vanaf 'n persoon of persone wat sodanige benadeel is ontvang is, of as geen kontrakteur 'n tender indien in terme waarvan ten minste 30% van die geldwaarde van daardie tender deur lede van sodanige benadeelde groep uitgevoer word nie, die tender of die oorblywende gedeelte daarvan toeken aan een of meer van die ander persone wat getender het.
- 45

Committees of the Board and delegation of powers

5. (1) The Board may appoint committees from among its members and designate a chairperson for every such committee.

(2) The Board may from time to time delegate any of its powers to 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. 5

(3) Where the Board has delegated any power under subsection (2), it may authorise 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. 10

(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.

(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). 15

(6) Any committee, person, body of persons or holder of a post shall not be divested of any power delegated by it or him or her and may amend or withdraw any decision made in the exercise of that power. 20

(7) Where any power has been delegated to the holder of a post, that power may be exercised by the person who at any time performs the functions attached to such post. 25

Decisions of the Board

6. (1) 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, if the decision was taken or the act was authorised by the requisite majority of the members of the Board who were present at the time and entitled to sit as members. 30

(2) At the written request for reasons for a particular decision, the Board shall release within 30 days as much relevant information as possible without infringing on the right of any other body to confidentiality.

(3) A court of law shall have power to adjudicate on the validity of a Board decision but Board decisions shall otherwise be final and no member of the Executive Council or the legislature or any organ of the Province or any other person shall improperly interfere with the decisions and operations of the Board. 35

(4) When, at the invitation of the Board, offers are submitted for the purpose of concluding an agreement referred to in section 4(1)(a)— 40

(a) the Board shall not be obliged to accept the lowest or any offer;

Komitees van die Raad en delegering van bevoegdhede

5. (1) Die Raad kan uit sy geledere komitees aanstel en 'n voor-
sitter vir elke sodanige komitee aanwys.

(2) Die Raad kan van tyd tot tyd enige van sy bevoegdhede aan
5 enige van sy komitees, 'n persoon (met inbegrip van 'n lid van die Raad), 'n
liggaam van persone of die bekleër van 'n pos deur die Raad aangewys,
delegeer.

(3) Waar die Raad 'n bevoegdheid kragtens subartikel (2) gedele-
geer het, kan dit die betrokke komitee, persoon, liggaam van persone of
10 bekleër van die pos magtig om daardie bevoegdheid aan 'n persoon, lig-
gaam van persone of die bekleër van 'n pos te delegeer.

(4) 'n Delegasie kragtens subartikel (2) of (3) kan verleen word
onderworpe aan sodanige voorwaardes en beperkings (as daar is) wat
15 deur die Raad of die betrokke komitee, persoon, liggaam van persone of
bektelër van die pos bepaal word.

(5) Die Raad word nie ontdoen van 'n bevoegdheid deur dit of krag-
tens sy magtiging gedelegeer nie, en kan 'n beslissing geneem by die
uitoefening van sodanige bevoegdheid, met inbegrip van 'n beslissing van
'n komitee, persoon, liggaam van persone of bekleër van 'n pos waardeur
20 'n in subartikel (6) bedoelde beslissing gewysig of ingetrek word, wysig of
intrek.

(6) 'n Komitee, persoon, liggaam van persone of bekleër van 'n pos
word nie ontdoen van 'n bevoegdheid deur hom gedelegeer nie, en kan 'n
beslissing geneem by die uitoefening van daardie bevoegdheid wysig of
25 intrek.

(7) Waar 'n bevoegdheid aan die bekleër van 'n pos gedelegeer is,
kan daardie bevoegdheid uitgeoefen word deur die persoon wat te eniger
tyd die werksaamhede wat aan daardie pos verbonde is, verrig.

Besluite van die Raad

30 6. (1) Geen besluit van die Raad of handeling verrig op gesag
van die Raad, is ongeldig bloot vanweë 'n vakature in die Raad nie, indien
die besluit geneem of die handeling gemagtig is deur die vereiste meerder-
heid van die lede van die Raad wat toe aanwesig was en geregtig was om
as lede sitting te neem.

35 (2) Op skriftelike aansoek vir die redes vir 'n spesifieke besluit van
die Raad, verskaf die Raad binne 30 dae, sonder om inbreuk te maak op
enigiemand anders se reg tot vertroulikheid, soveel toepaslike inligting as
moontlik.

(3) Behalwe dat 'n geregshof die bevoegdheid het om oor die geldig-
40 heid van 'n Raadsbesluit te beslis, is die Raadsbesluite andersins finaal en
mag geen lid van die Uitvoerende Raad, of die wetgewer of enige liggaam
van die Provinsie of enige ander persoon onbehoorlik inmeng met die
besluite en werksaamhede van die Raad nie.

(4) Wanneer, op uitnodiging van die Raad, aanbiedinge gemaak
45 word met die oog op die aangaan van 'n ooreenkoms in artikel 4(a)
bedoel—

(a) is die Raad nie verplig om die laagste of enige tender aan te
neem nie;

- (b) the Board may, where an offer relates to more than one item, accept such offer in respect of any specific item or items.
- (5) Decisions of the Board shall be conveyed to the persons concerned by officers and employees seconded in terms of section 8, or by members of the Board designated by the Board. 5
- (6) All decisions of the Board shall be recorded.

CHAPTER II

MISCELLANEOUS PROVISIONS

Expenditure

7. 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 the Provincial legislature for the purpose. 10

Administrative work

8. (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 seconded to the Board by the Director-General of the Province. 15
- (2) The chairperson of the Board or any other person designated by the Board shall be competent to execute all documents on behalf of the Board. 20

Regulations

9. (1) The responsible Member, in consultation with the Executive Council, shall make regulations—
- (a) with regard to the detailed composition of the Board within the stipulations of the Act, the calling of and the 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; 25
- (b) determining the manner in which and the conditions subject to which preferences may be granted; 30
- (c) with regard to all matters for which he or she deems it necessary or expedient to make regulations in order to achieve the objects of this Act.
- (2) Notwithstanding anything to the contrary contained in any law, 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 has concluded an agreement on behalf of the Province 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. 40

- (b) kan die Raad, in die geval waar 'n tender op meer as een item betrekking het, sodanige tender ten opsigte van enige bepaalde item of items aanneem.
- (5) Beampptes en werknemers gesekondeer ingevolge artikel 8 of 5 lede van die Raad daartoe aangewys deur die Raad, dra besluite van die Raad aan die betrokke persone oor.
- (6) Alle besluite van die Raad word geboekstaaf.

HOOFSTUK II

DIVERSE BEPALINGS

10 Uitgawes

7. Behoudens die bepalings van hierdie Wet of 'n ooreenkoms kragtens hierdie Wet aangegaan, word alle uitgawes in verband met die verrigting van die werksaamhede en die uitoefening van die bevoegdhede van die Raad bestry uit gelde vir die doel deur die Provinsiale wetgewer 15 bewillig.

Administratiewe werk

8. (1) Alle administratiewe werk, met inbegrip van die betaling en ontvangs van gelde, in verband met die verrigting van die werksaamhede en die uitoefening van die bevoegdhede van die Raad, word deur 20 beampptes en werknemers verrig wat deur die Direkteur-generaal van die Provinsie aan die Raad gesekondeer word.

- (2) Die voorsitter van die Raad of 'n ander persoon deur die Raad aangewys is bevoeg om alle stukke namens die Raad te verly.

Regulasies

- 25 9. (1) Die verantwoordelike Lid, in oorleg met die Uitvoerende Raad, vaardig regulasies uit betreffende—

- (a) die gedetailleerde samestelling van die Raad binne die bepalings van die Wet, die byeenroep van, die prosedure en kworum op vergaderings van die Raad of enige komitee daarvan, met inbegrip van die wyse waarop stemme uitgebring word en die getal 30 stemme benodig vir 'n besluit van die Raad of 'n komitee daarvan;
- (b) die wyse waarop en die voorwaardes onderworpe waaraan voorkeure verleen kan word;
- 35 (c) in die algemeen, enige ander aangeleentheid wat hy of sy nodig of dienstig ag om voor te skryf ten einde die oogmerke van hierdie Wet te bereik of te bevorder.

- (2) Ondanks andersluidende wetsbepalings kan regulasies ingevolge subartikel (1) uitgevaardig, benewens enige ander remedies daarin 40 voorgeskryf, voorsiening maak vir die oplegging deur die Raad van 'n geldboete, bereken op die grondslag of grondslae wat daarin voorgeskryf word, aan enige persoon met wie die Raad 'n ooreenkoms namens die Provinsie aangegaan het op grond van inligting deur die persoon verstrekte ten opsigte waarvan daar na die sluiting van bedoelde ooreenkoms bewys 45 word dat dit onjuiste inligting was, en die regulasies kan die wyse voorskryf waarop so 'n geldboete verhaal kan word.

Advisory duties

10. The Board shall advise the Executive Council and the responsible Member on the following:

- (a) Promoting the use of full and open competition in procurement;
- (b) establishing policies, procedures and practices to ensure procurement of the requisite quality within the time available at the lowest practicable cost, to minimise fraud and waste in procurement and to eliminate unnecessary overlapping or duplication of functions and effort; 5
- (c) achieving greater uniformity and simplicity in procurement; 10
- (d) promoting economy, efficiency and effectiveness in procurement;
- (e) minimising disruptive effects of procurement on particular industries, areas or occupations;
- (f) improving understanding of procurement policy and procedures by everyone concerned with procurement in both the public and private sectors; 15
- (g) promoting fair dealing and equitable relationships among parties to Provincial contracts; and
- (h) any other matters relating to procurement. 20

Transitional provision

11. The Tender Board directives, issued by the State Tender Board in terms of the State Tender Board Act, 1968 (Act No. 86 of 1968), and which were in force immediately prior to the commencement of this Act, shall apply *mutatis mutandis* to the Province and be deemed to have been issued under section 4(1)(i) of this Act, until amended or replaced in terms of this Act. 25

CHAPTER III**SHORT TITLE**

Short title 30

12. This Act shall be called the Northern Cape Provincial Tender Board Act, 1994.

Adviserende pligte

10. Die Raad adviseer die Uitvoerende Raad en die verantwoordelike Lid oor die volgende:

- (a) Die bevordering van die gebruik van volle en oop mededinging in verkryging;
- 5 (b) die vestiging van beleid, prosedures en praktyke om verkryging van die vereiste gehalte binne die beskikbare tyd teen die laagste moontlike koste te verseker, ten einde bedrog en vermorsing in verkryging te beperk en om onnodige oorvleueling of duplisering van funksies en moeite uit te skakel;
- 10 (c) die bereiking van groter eenvormigheid en eenvoud in verkryging;
- (d) die bevordering van ekonomie, bekwaamheid en doeltreffendheid in verkryging;
- 15 (e) die minimalisering van die ontwrigtende uitwerking van verkryging op spesifieke industrieë, gebiede of beroepe;
- (f) die verbetering van begrip van die verkrygingsbeleid en -prosedures, by alle persone wat betrokke is by provinsiale verkryging in beide die openbare en die privaat sektore;
- 20 (g) die bevordering van regverdige handel en goeie onderlinge verhoudinge tussen partye tot provinsiale kontrakte; en
- (h) enige ander sake rakende verkryging.

Oorgangsbepaling

- 11.** Die Tenderraadvoorskrifte, uitgereik deur die Staatstenderraad ingevolge die Wet op die Staatstenderraad, 1968 (Wet No. 86 van 1968),
25 en wat onmiddellik voor die inwerkingtreding van hierdie Wet van krag was, is *mutatis mutandis* van toepassing op die Provinsie, en word geag kragtens artikel 41(1)(i) van hierdie Wet uitgereik te wees, totdat hulle ingevolge hierdie Wet gewysig of vervang word.

HOOFSTUK III

30

KORT TITEL**Kort titel**

- 12.** Hierdie Wet heet die Noord-Kaapse Wet op die Tenderraad, 1994.