

LEGAL NOTICE No. 4

REPUBLIC OF TRINIDAD AND TOBAGO

THE REGIONAL HEALTH AUTHORITIES ACT, 1994

REGULATIONS

MADE BY THE MINISTER OF HEALTH UNDER SECTION 35(b) OF THE
REGIONAL HEALTH AUTHORITIES ACT

THE REGIONAL HEALTH AUTHORITIES (CONTRACTING FOR
GOODS AND SERVICES) REGULATIONS, 1994

1. These Regulations may be cited as the Regional Health Authorities (Contracting for Goods and Services) Regulations, 1994. Citation

2. These Regulations apply to the Regional Health Authorities established by the Regional Health Authorities Act (hereinafter called "the Act"). Application Act No. 5 of 1994

3. In these Regulations—

Interpreta-
tion

"Authority" means a Regional Health Authority established under section 4 of the Act;

"business entity" includes a sole proprietorship, company, firm and partnership;

"Board" means a Board of Directors constituted under section 7 and the Second Schedule of the Act;

"Chairman" means the Chairman of a Board and the Chairman of a Tenders Committee established under regulation 4, as applicable;

"Chief Executive Officer" means a Chief Executive Officer appointed under section 10 of the Act;

"goods" means materials, products, implements, tools, devices, machinery, equipment, plant and articles of all kinds;

"relative" means spouse, father, mother, brother, sister, son, daughter, son-in-law, daughter-in-law, parent of a spouse;

"services" includes assistance in doing things or getting things done and includes professional or consultancy services;

"Tenders Committee" or "Committee" means a Tenders Committee established by a Board under regulation 4(1) or 4(3);

"works" means activities, equipment and other resources related to construction, maintenance and refurbishing of buildings, equipment, plant and facilities of all kinds.

Establish-
ment of
Committee

4. (1) A Board may establish a Tenders Committee for the purpose of inviting, considering, accepting or rejecting offers in excess of fifty thousand dollars for the supply of goods or the undertaking of works or services necessary for carrying out the objects of the Authority and for the disposal of surplus or unserviceable goods.

(2) The Tenders Committee established by a Board under regulation 4(1) shall comprise seven members consisting of—

- (a) the Deputy Chairman of the Board who shall be the Chairman of the Tenders Committee and in his absence one of the two other Board members appointed under paragraph (b) shall preside as Chairman;
- (b) two other members of the Board;
- (c) the Chief Executive Officer;
- (d) two employees of the Authority; and
- (e) such other person appointed by the Board.

(3) A Board may establish Tenders Committees for the purpose of inviting, considering, accepting or rejecting offers of fifty thousand dollars or less for the supply of goods or the undertaking of works and services necessary for carrying out the objects of the Authority and for the disposal of surplus or unserviceable goods, but no Committee, shall for the purpose of purporting to give itself authority to act under this subregulation, subdivide the quantity of goods to be supplied or the works or services to be undertaken into two or more portions so that the value of the portions shall be fifty thousand dollars or less.

(4) A Committee established under subregulation (3) shall comprise such members as the Board determines.

(5) At the first meeting of a Committee a member shall be appointed to act as Secretary whose duties shall include the organizing of the agenda and the circulation of documents.

(6) Tenders Committees established under regulation 4(1) or 4(3) shall submit monthly reports in writing to the Board in respect of their activities in relation to the provisions of these Regulations.

Tenure of
committee
members

5. (1) The members of the Committee established under regulation 4(1) shall be appointed for a period of no more than three years and shall be eligible for reappointment.

(2) The members of a Committee established under regulation 4(3) shall be appointed for such period as the Board determines and shall be eligible for reappointment.

(3) Where a vacancy arises by reason of death, permanent disability, resignation or termination of appointment, that vacancy may be filled by way of appointment for the unexpired portion of the term of the member whose place is being filled.

(4) A member who is absent without leave for three consecutive meetings is deemed to have vacated his seat.

(5) The Committee is deemed to be properly constituted for all purposes, notwithstanding any defect in the appointment of a member.

6. (1) A Board or a Committee appointed under regulation 4 shall— 4 Powers of
Board or
Committee

- (a) determine whether an invitation to tender should be public or selective and in the case of selective tendering determine which person or business entity should be invited to tender;
- (b) establish such Evaluation Committees as it considers necessary.

(2) A Board or a Committee may, by process of selective tendering purchase goods, works or services for use by the Authority where—

- (a) there is a limitation of sources of supply of goods or works or services;
- (b) the goods are spares or replacement parts for other goods or form part of a system already in use by the Authority;
- (c) the goods, works or services are—
 - (i) proprietary or specialty products; or
 - (ii) supplied or disposed of on a repetitive basis; or
- (d) such goods form part of the Authority's inventory of stock items, the replenishment of which is repetitive and cost effectively negotiable at each point of replenishment.

(3) Where the Committee appointed under regulation 4(1) proposes to award a contract, the value of which is one million dollars or more the Committee shall seek the prior approval of the Board, but no Committee shall, for the purpose, of avoiding the stipulations of this subregulation, subdivide the quantity of the goods to be supplied or the works or services to be undertaken into two or more portions so that the value of the portions is less than one million dollars.

(4) The Board with the approval of the Minister may, by resolution, vary the limit of one million dollars given in subregulation (3).

Quorum 7. At any meeting of a Committee established under regulation 4(1) or for the purpose of voting on papers in circulation, two Board members, one of whom shall be the Chairman of the Tenders Committee, and two other members shall constitute a quorum.

Meetings 8. (1) A Board or a Committee shall meet as often as is necessary or expedient for the transaction of business.

(2) The Chairman shall fix the date, time and place at which meetings shall take place and may call special meetings for the consideration of any urgent matter.

(3) The notice and agenda of a meeting shall be circulated at least forty-eight hours before the time fixed for the meeting, unless the Chairman determines otherwise.

(4) Every item of business to be considered by a Board or a Committee shall be set out in the agenda.

Emergencies 9. In cases of emergency, the Chairman or in his absence his alternate Board member of the Tenders Committee or in the absence of them both, the Chief Executive Officer shall be empowered, without inviting tenders, to authorise the award of contracts for the supply of any goods or the undertaking of any works or services necessary for the expeditious handling of such emergency, the total cost of which does not exceed one hundred thousand dollars, and when any such action is taken it must be reported to the Board or Committee at the next succeeding meeting.

Decisions of a Board or Committee 10. (1) The decision of a Board or Committee shall be taken at a meeting or where a decision is needed but a meeting cannot be convened, opinions shall be solicited and votes taken by circulation amongst members of the papers relevant to the matter under consideration.

(2) Where papers are circulated amongst members, a member may request that the Chairman reserves the matter for discussion at the next meeting.

(3) A response to a circulation of papers under subregulation (1) shall be as valid as if made in a properly constituted meeting.

(4) A member of a Board or a Tenders Committee who dissents from a decision may request that the Chairman record such dissent and the reason therefor and the Chairman shall so record.

11. (1) The minutes of each meeting shall be prepared in proper Minutes form, and confirmed by the Board or Committee and certified by the Chairman at the next succeeding meeting.

(2) A copy of the confirmed minutes of the Committee shall be forwarded to the Board and to the Minister within one month of certification.

12. (1) A member of a Board or Tenders Committee who—

Disclosure of
interest

(a) is employed by, or is a member of or has a financial or other vested interest in a business entity; or

(b) has a relative or whose spouse has a relative who is a member of or has a financial or other vested interest in a business entity,

where the business entity has submitted a tender for the supply or purchase of goods or for the undertaking of works or services which is the subject of consideration by the Board or Committee, shall disclose the fact and shall not be present at or take part in the consideration or discussion of, or vote on, any question relating thereto.

(2) Where papers are to be circulated under regulation 10(1) the Chairman shall direct that the papers are not circulated to the member, who through declared interest is precluded from taking part in the consideration, discussion and voting on the matter.

(3) If any person fails to comply with the provisions of subregulation (1), he is guilty of an offence and liable on summary conviction to a fine of five hundred dollars, unless he proves that he did not know that a tender for the supply or purchase of goods or for the undertaking of works or services in connection therewith was the subject of consideration by the Board or Tenders Committee.

13. (1) Whenever goods or services are required to be supplied to, or works or services are required to be undertaken on behalf of, an Authority, the Chief Executive Officer shall make a written request to the Board or the appropriate Tenders Committee to invite tenders for the supply of the goods or the undertaking of the works or services.

Invitation to
tender

(2) The request referred to in subregulation (1) shall precisely describe the goods, works or services in respect of which the request is made.

(3) On receipt of any such request, a Board or a Committee shall either—

(a) by way of the local or overseas print or electronic media, invite members of the public to submit tenders; or

(b) invite such person or business entity as may be selected by the Board or Tenders Committee under subregulation 6(1)(a) to submit tenders.

- (4) The invitation to tender shall contain—
- (a) a precise description of the goods required or scope of works or services to be undertaken, and where necessary, the place where and the time when additional information relating thereto may be obtained;
 - (b) the form or manner in which a tender is to be submitted;
 - (c) the date and time within which a tender is to be submitted;
 - (d) the place where and the manner in which a tender is to be submitted;
 - (e) instructions relating to essential documents which must accompany the tender including in the case of a local business entity, an Income Tax Certificate and Value Added Tax Certificate, and in the case of any other business entity, the appropriate certificate of registration to establish the legal identity of the tenderer;
 - (f) instructions with respect to the payment of tender fees and deposits and performance deposits or bonds;
 - (g) the date and time for the opening of tenders;
 - (h) any other relevant matter.

(5) The invitation to tender shall be in such form as a Board or a Committee determines and shall be signed by the Chairman or on his behalf.

Submission of
tender

14. (1) A tender shall be made on the appropriate form specified in the invitation to tender and shall be signed by the person submitting the tender or in the case of a business entity, a duly authorised officer and shall be enclosed in a sealed envelope addressed to the Chairman.

(2) A tender shall, where applicable, be accompanied by a valid Income Tax Certificate and Value Added Tax Certificate both confirming that the tenderer has complied with the provisions of and discharged his or its obligations under the Income Tax legislation and the Value Added Tax legislation, and in the case of a business entity, the appropriate certificate of registration to establish the legal identity of the tenderer.

(3) Any alteration or erasure in a tender shall be initialled by the person submitting the tender or in the case of a business entity a duly authorised officer thereof.

(4) A Board or a Committee may reject any tender which does not comply with any of the provisions of this regulation.

15. (1) A Board may require tenderers to pay non-refundable tender fees, in such sums as may be determined by the Board or Committee, prior to collection of tender documents. ^{Tender fees, deposits}

(2) A Board or Committee may require persons desirous of submitting tenders to deposit with the Authority such sum as may be determined by the Board or Committee prior to the submission of tenders.

(3) A Board or Committee may forfeit any sum so deposited under subregulation (2) if—

- (a) the person making the deposit fails to submit a tender;
- (b) the person whose tender is accepted fails or refuses to enter into a formal contract;
- (c) the person submitting a tender withdraws same.

16. (1) A Board or Committee shall cause to be kept at its office, or in such other place as in the opinion of the Board or Committee is desirable, specially constructed boxes in which tenders shall be deposited. ^{Tender boxes}

(2) Each box shall be marked "Tenders Box" and may carry any other markings necessary to ensure ready identification by tenderers.

(3) Each box shall be of tamper-proof construction which—

- (a) requires operation of two independent locking mechanisms to open the box; and
- (b) affords quick, easy and positive closing of the box at the appointed time and date.

(4) The key for one lock shall be kept by the Chairman and the key for the other lock by such other member of the Board or Committee as the Board or Committee may direct.

17. (1) A tender shall be placed in a sealed envelope and deposited in the tenders box before the time and closing date specified. ^{Receipt of tender}

(2) Subject to subregulation (3), a tender shall be regarded as having been received when it has been deposited in the tenders box.

(3) A Board or Committee may consider a tender which does not comply with subregulation (2), including a tender from an overseas supplier where the requirement to deposit tenders in the tenders box is impractical.

(4) A tender submitted under subregulation (3) shall be regarded as having been received when a telefax, telex or postal transmission containing the tender has been received by the Authority.

(5) In order to ensure the confidentiality of tenders submitted pursuant to subregulation (4), upon receipt of such tenders a person nominated by the Board or Committee shall be responsible for depositing them in the tenders box.

(6) A person nominated by a Board or Committee shall be responsible for ensuring that the tender boxes are closed at the time and on the date appointed by the invitation to tender.

(7) The closed tender boxes shall be left in the custody of the nominated person until the time and date fixed for the opening of tenders.

Withdrawal
of tender

18. (1) A tender may be withdrawn by a letter addressed to the Chairman and shall be signed by the person who submitted the tender or a duly authorised officer of the business entity that submitted the tender and shall reach the Chairman before tenders are opened.

(2) A duly authorised officer of the Board or Committee shall receive such letters of withdrawal and sign for the same, recording the time, date of delivery and name and signature of person delivering the letter of withdrawal.

Opening of
tenders

19. (1) On the date and at the time fixed for the opening of tenders, the Chairman and one other member of the Board or Committee shall unlock the box and remove and open the tenders found therein, and every person submitting a tender shall be entitled to be present either personally or through a duly authorised representative at the opening of the tenders box.

(2) The persons opening the tenders shall initial the tenders, and shall cause a note to be taken of the names of the tenderers, the tender sums quoted and such further information as the Board or Committee directs.

(3) The tenders shall be placed in a safe place to the satisfaction of the Chairman and shall be kept there until the tenders are considered by the Board or Tenders Committee.

Consideration
of tenders

20. (1) After the tenders have been opened, a Board or Committee shall consider them.

(2) A Board may establish Evaluation Committees comprising staff of the Authority as well as non-members of staff to assist the Board or Committee in considering and evaluating tenders.

(3) In selecting the tender to be accepted, a Board or Committee shall consider—

- (a) the price quoted;
- (b) the evidence of reliability of performance;
- (c) any warranty or guarantee given;
- (d) technical skills, adequacy of support staff, and financial capability;
- (e) the maintenance or repair service to be provided;
- (f) the compatibility with other goods, works or services used by the Authority;
- (g) the adequacy of stocks or spares held in Trinidad and Tobago by the tenderer;
- (h) evidence of previous performance of similar work or services;
- (i) Government's policy with respect to locally made or processed items and locally offered services being given preference within the limits of reasonable economic operations; and
- (j) any other matter related to the quality, reliability or adequacy of the goods, works or services.

(4) A Board or Committee, and any Evaluation Committee, where established, may in its consideration of any tender—

- (a) consult with any member of staff of the Authority, or such other person as is considered proper and desirable;
- (b) require any tenderer to attend a meeting and to furnish such information as is necessary for the proper assessment of the tender and the tenderer's capacity to execute same;
- (c) make such inspections of the tenderer's operation as is considered necessary;
- (d) require samples to be submitted for test or examination.

(5) Where there is no significant difference in the quality of goods being offered or in the capacity to undertake the works or services between competing tenderers, the lowest tender shall be accepted by the Board.

21. Where a tender has been accepted, a Board or Committee shall cause the tenderer to be notified of its acceptance and, in appropriate cases, of the requirement to enter into a formal contract with the Authority and provide security in the manner and to the extent as the Board or Committee determines. ^{Acceptance of tender}

Form of
contract

22. Every formal contract shall be in such form as a Board or Committee from time to time determines and shall specify, *inter alia*, wherever applicable—

- (a) a description of the goods to be supplied or the works or services to be undertaken;
- (b) the price to be paid for the supply of such goods or the undertaking of such works or services;
- (c) the period within which the matters contemplated by the contract are to be performed;
- (d) the amount of damages payable by the contractor for delay or non-completion within the period stipulated;
- (e) provision for termination on breach.

Performance
deposits,
bonds

23. (1) A performance deposit shall be refunded or performance bond released, as soon as the contract has been completed in accordance with the terms and conditions of the said contract.

(2) Where the contractor fails to complete the contract in accordance with the terms and conditions, the deposit or the amount secured by the bond or a proportionate part thereof shall be forfeited.

(3) The extent to which contract terms and conditions have been fulfilled shall be certified by Receiving Reports or Contract Completion Reports prepared by the receiver of the goods, works or services which are the subject of the contract and approved by the relevant Head of Department.

Disposal of
surplus or
unserviceable
goods

24. (1) A Chief Executive Officer or his nominee shall advise the Board or Committee of any goods, being the property of the Authority, which are surplus to its requirements or are no longer serviceable, together with a full description of the goods including the quantity thereof and location of storage.

(2) Subject to subregulation (4) a Board or Committee may authorise the sale and disposal of the surplus or unserviceable goods by public auction or such other method of disposal as the Board or Committee considers proper.

(3) A member of staff of the Authority shall attend every such sale and a written report shall be submitted to the Board or Committee on the results of the sale.

(4) Where a Committee proposes to dispose of surplus or unserviceable goods the total value of which exceeds fifty thousand dollars based on acquisition cost it shall seek ratification from the Board but no Committee shall, for the purpose of purporting to give itself authority to act under this subregulation, subdivide the quantity of the goods to be disposed into two or more portions so that the value of the portions shall be fifty thousand dollars or less.

(5) The proceeds of sale shall be credited to the appropriate revenue item of the Authority's budget.

25. (1) A person who performs an official duty of, or is engaged in the work of, a Board or Tenders Committee shall regard all documents and information relating to the functions of the Board or Committee as confidential. ^{Confidentiality of documents}

(2) A person having possession or control of a document or information relating to the functions of a Board or Tenders Committee, who at any time communicates or attempts to communicate information contained in such document to a person other than a member of the Board or Tenders Committee or a person authorised by the Board or Committee, otherwise than in the course of carrying out his official duties, is guilty of an offence and is liable upon summary conviction to a fine not exceeding five hundred dollars.

26. (1) Any person who, whether or not he has submitted a tender, offers a member of a Board or Tenders Committee or any member of staff of the Authority a gift of money or other inducement or approaches any member of a Board, Committee or member of staff of an Authority in respect of a matter that is before the Board or Tenders Committee or is expected to come before it, in addition to being disqualified from the award of a contract, is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars. ^{Disqualification and prohibition from being awarded a contract}

(2) A member of a Board or Tenders Committee or a member of staff of an Authority shall not enter into a contract for the supply of goods or the undertaking of any works or services for the Authority.

(3) Any person who contravenes this regulation is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars.

Made this 2nd day of December, 1994.

J. ECKSTEIN
Minister of Health.

Laid before the House of Representatives this 6th day of January, 1995.

N. COX
Acting Clerk of the House

Laid before the Senate this 10th day of January, 1995.

R. CUMBERBATCH
Acting Clerk of the Senate