

## CHAPTER 424A

### THE TENDERS BOARD ACT

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## TENDERS BOARD

(27th December, 1991.)

16/1991.

An Act to establish a Tenders Board for the procurement and supply of articles and materials; the award of contracts for the execution of works and the provision of services for the Government of Antigua and Barbuda, any corporate body established by an Act of Parliament or any company limited by liability in which the Government is the majority share holder; and to do other things connected therewith.

**1.** This Act may be cited as the Tenders Board Act. **Short title.**

**2.** In this Act— **Interpretation.**

"articles" means all goods, materials, stores, vehicles, machinery, equipment and things of all kinds;

"Board" means the Tenders Board established under section 4 of this Act;

"committee" means a Committee of the Board appointed under section 17 of this Act;

"ex-officio members" means the members of the Board appointed under section 5 (1) (a), (b) and (c);

"Government" means the Government of Antigua and Barbuda;

"Minister" means the Minister of Finance;

"person" includes a company, firm, partnership, society or association of persons;

"public officer" means the holder of a pensionable office under the law for the time being in force or any person appointed to act in any such office and any person serving the Government on contract or on a temporary basis;

"public service" means the service of the Crown in respect of the Government of Antigua and Barbuda;

"statutory body" means any local government, commission, a body corporate established by an Act of Parliament and a company limited by liability of which the Government is the majority shareholder;

"work" means building, constructions and engineering works of all kinds.

Application of Act.

**3.** This Act applies to the Government and any statutory body notwithstanding any general or special power or authority vested in such statutory body by an Act of Parliament.

Establishment and functions of Board.

**4.** (1) There is hereby established a Tenders Board which shall have the sole and exclusive authority in accordance with this Act—

(a) to act for, in the name and on behalf of the Government and the statutory bodies to which this Act applies, to invite consider and accept or reject offers for the supply of articles or for the undertaking of works or any services in connection therewith, necessary for carrying out the functions of the Government or any such statutory body;

(b) to dispose of surplus or unserviceable articles belonging to the Government or any of the statutory bodies to which this Act applies.

(2) The Board shall have such other functions and duties as the Cabinet may, from time to time, by order prescribe.

Composition of Board.

**5.** (1) The Board shall compose of seven members consisting of—

(a) the Crown Solicitor;

(b) the Permanent Secretary, Ministry of Finance;

(c) two public officers appointed by the Minister to represent statutory bodies to which this Act applies;

(6) three other persons with requisite qualification and experience in accountancy or business management to be appointed by the Minister.

(2) The Minister shall appoint, from among the members of the Board, other than the Crown Solicitor, a Chairman and a Deputy Chairman of the Board.

**6.** The Minister may, after consultation with the Board, appoint such officers and other staff as may be deemed necessary for the proper carrying out of the provisions of this Act.

Officers of the Board.

**7.** (1) Subject to subsection (2), members of the Board other than the *ex-officio* members shall hold office for two years.

Tenure of non-*ex-officio* members.

(2) A member of the Board, other than an *ex-officio* member, shall vacate his office—

(a) after his term of office expires;

(b) by written notice of resignation addressed by him to the Minister;

(c) if he departs from Antigua and Barbuda for a period of thirty days without the leave of the Minister or remains out of Antigua and Barbuda after the expiration of his leave without the special permission of the Minister;

(6) if he fails without reasonable excuse (the sufficiency whereof shall be determined by the Minister) to attend three consecutive regular meetings of the Board.

(3) A member of the Board who has vacated his office shall be eligible for re-appointment.

**8.** The Minister may in his discretion direct that such remuneration as he may determine shall be paid to members of the Board.

Payment of remuneration to members of the Board.

**9.** Where, by reason of death, illness, absence, resignation or otherwise of a member other than an *ex-officio* member, a vacancy occurs in the membership of the Board, the Minister shall appoint some other person to be a member

Filling of vacancies on the Board.

of the Board for the unexpired term of the member whose office so become vacant; but so long as a quorum is present at any meeting, the Board shall be deemed to be duly constituted notwithstanding any vacancy in the membership of the Board.

Leave of absence  
of members of  
the Board.

**10.** (1) The Minister may grant leave of absence to a member of the Board other than an *ex-officio* member.

(2) Except in the case of an *ex-officio* member the Minister may appoint a person in the place of any member of the Board who is temporarily absent from Antigua and Barbuda or unable to perform his duties by reason of illness or other cause.

Functions of the  
Chairman of the  
Board.

**11.** (1) Meetings of the Board shall be presided over by the Chairman.

(2) The Deputy Chairman shall, in the absence or inability of the Chairman, perform all functions and duties of the Chairman and shall perform such other functions and duties as may be required of him by the Board.

Meetings of the  
Board.

**12.** (1) The Board shall meet as often as may be necessary or expedient for transacting its business; but shall meet at least once in every month.

(2) Except in such cases as may be determined by the Chairman, notices of meetings together with agendas shall be circulated to members at least forty-eight hours before the time appointed for such meetings.

(3) A member of the Board or a committee thereof who is a member of a company, firm or other body or is a partner or is in the employment of a person or a company or other body or is married to a person who has submitted an offer for the supply of articles or for the provision of service in connection therewith which is the subject of consideration by the Board, shall disclose the fact and shall not take part in the consideration or discussion of, or vote on any question relating to such offer.

**13.** (1) Minutes of each meeting shall be kept in a proper form in a minute book by the Secretary of the Board and shall be confirmed by the Board and certified by the Chairman at the next succeeding meeting. **Record of meetings.**

(2) Copies of such minutes certified by the Chairman shall be forwarded to the Minister.

(3) The Board shall furnish the Minister with all information or documents which the Minister may, from time to time, require.

**14.** At any meeting of the Board or for the purpose of voting on papers circulated, the Chairman or the Deputy Chairman and any three members shall constitute a quorum. **Quorum for conducting meetings.**

**15.** (1) Decisions of the Board shall be taken at meetings of the Board. **Decisions of the Board.**

(2) The decisions of the Board shall be by a majority of votes and for that purpose the Chairman shall have both an original and a casting vote.

**16.** Any document purporting to record a decision of the Board and signed by the Chairman and any notification in the *Gazette* purporting to record a decision of the Board, are admissible in evidence as *prima facie* proof of the decision recorded. **Method of recording decisions of the Board.**

**17.** (1) The Board may, from time to time, appoint such committees as it considers necessary to advise and make recommendations to the Board on— **Committees of the Board.**

(a) the supply of articles;

(b) the undertaking of works or the provision of services; or

(c) the disposal of surplus or unserviceable articles.

(2) Any committee appointed under subsection (1) shall consist of—

(a) three members of the Board, one of whom shall be appointed Chairman of the Committee;

(6) one member nominated by the department of Government or the statutory body on whose behalf the offer is to be considered by such committee.

(3) The committee may after considering any matter referred to it under subsection (1) submit its report and the recommendations to the Board.

(4) The Board may accept or reject any such recommendations made by a committee or make its own decision on the matter.

Meetings of committees.

**18.** (1) Each committee shall meet as often as is necessary or expedient for the transaction of its business.

(2) Section 12 (2) and (3) shall, with such modifications as may be necessary, apply to meetings of committees.

(3) The Chairman shall assign one of the officers of the Board to act as Secretary to any committee appointed under section 17.

(4) Minutes of each meeting of the committee shall be kept in a form approved by the Board and signed by the Chairman and all the members of the committee who participated in the deliberations.

(5) Copies of such minutes certified by the Chairman of the committee shall be submitted to the Board who shall forward copies thereof to the Minister.

Quorum of committees.

**19.** The Chairman of a committee and any two members thereof including the member nominated under section 17 (2) (b) shall constitute a quorum for the transaction of its business.

Application to Board for the supply of articles etc.

**20.** (1) Whenever articles or works or any services in connection therewith are required to be supplied or undertaken on behalf of the Government or a statutory body to which this Act applies, the Government or such statutory body shall apply in writing to the Board to invite on its behalf tenders for the supply of those articles or for the undertaking of the works or services in connection therewith.



(2) The application referred to in subsection (1) shall contain a sufficient description of the articles, works or services to be supplied or undertaken and in the case of—

(a) the Government shall be signed by the Permanent Secretary;

(b) a statutory body by the Managing Director or the administrative head of the statutory body as the case may be.

(3) On the receipt of any such application, the Board shall either—

(a) invite members of the public in general to make offers for the supply of such articles or for the undertaking of such works or the provision of services, as the case may be, by notice published in the *Gazette* and in local or overseas newspapers, or

(b) subject to the approval of the Minister, invite such bodies or persons as may be selected by the Board to make offers for the supply of such articles or for the undertaking of such works or services, as the case may be, whenever the Board considers it expedient or desirable so to do.

(4) The notice shall contain—

(a) a sufficient description of the articles required or of the works or services to be undertaken and shall whenever necessary also contain the place where and the time when additional information relating thereto can be obtained;

(b) the form or manner in which an offer is to be made;

(c) the date and time within which an offer is to be made;

(d) the place where and the manner in which the offer is to be submitted.

**21.** (1) The Board shall keep at its office and in such other places as it thinks necessary specially constructed boxes in which all offers shall be lodged.

Offers to be lodged in specially constructed and designated boxes.

(2) Each box shall bear the inscription "Tenders Box" and shall have two independent locks. The key for one lock shall be kept by the Chairman of the Board and the key to the other lock by a member of the Board or a member of the committee appointed by the Board.

Opening of  
Tenders Boxes.

**22.** On the date appointed for the opening of offers, the box shall be unlocked by the persons to whom the custody of the keys have been entrusted under section 21 in the presence of—

(a) the Chairman and two members of the Board, and

(b) the members of the committee set up to advise the Board on the offers for the supply of articles or the undertaking of work or the provision of services.

Board may  
demand deposit.

**23.** (1) The Board may require any person who is desirous of making an offer to deposit with the Treasury a sum in an amount and in a currency or other security to be determined by the Board before any offer is made.

(2) The Board may forfeit any sum or enforce the security so deposited if—

(a) any person making the deposit fails to make an offer,

(b) any person whose offer is accepted fails or refuses to enter into a formal contract, or

(c) any person to whom a contract is awarded fails to execute and fulfil the terms thereof.

(3) After a contract is awarded the Board shall arrange for the refund of any deposit to persons whose offers have not been accepted.

Board to accept  
lowest offer.

**24.** (1) After the offers have been opened the Board or a committee shall, at such time or times as may be deemed necessary or expedient, consider the offers so received.

(2) The Board shall, after taking into account—

(a) the quality of the articles;

(b) in the case of works or services, the financial, technical and administrative competence of the persons making the offer;

(c) the reasonableness of the prices being offered; accept the lowest offer except where it has good reason to justify the acceptance of an offer higher than the lowest offer.

(3) Where the Board accepts an offer higher than the lowest offer it shall submit to the Minister a comprehensive report giving its reasons for accepting an offer higher in value than the lowest offer.

(4) No formal contract of an offer which is higher than the lowest offer shall be entered into until it is approved by the Minister.

**25.** (1) Where an offer has been accepted—

**Board to notify acceptance of offer.**

(a) the person who has submitted the offer shall be notified by the Board of its acceptance, and the Board shall inform him that he is required to enter into a formal contract with the department of the Government or the statutory body, on whose behalf the offers were invited, and

(b) the Government or the statutory body on whose behalf the offers were invited, shall be notified by the Board of the Board's acceptance of the offer.

(2) The notification referred to in subsection (1) is to be in writing and signed by the Chairman or, in his absence, by the Deputy Chairman.

**26.** (1) Where an offer has been accepted by the Board, the Government or the statutory body on whose behalf the invitation to offer was issued and the person whose offer has been accepted shall enter into a formal contract for the supply of the articles or the undertaking of the works or services, as the case may be.

**Formal contract to be entered into.**

(2) A formal contract shall be in such form, and contain such terms, conditions and provisions, as the Attorney-General may determine.

(3) Any formal contract arising out of the acceptance of an offer under this Act shall, except as otherwise determined in writing by the Attorney-General, be drawn up by a legal officer appointed by the Attorney-General.

(4) The Board shall publish in the *Gazette* the name of the person or body to whom the contract is awarded, the amount of the tender and the date on which the award was made.

Contractor to provide security.

**27.** The Board shall demand from every person to whom any contract is awarded to provide security in such form and to such extent as the Board may determine.

Disposal of surplus or unserviceable articles.

**28.** (1) Whenever the Government or a statutory body to which this Act applies determines that any article which is the property of the Government or the property of such statutory body and which was originally valued at more than \$10,000 is unserviceable or is surplus to the requirements of the Government or of such statutory body, the Government or the statutory body concerned shall report to the Board to this effect.

(2) The report shall contain a full description of the articles, the quantity thereof and the places where the articles are stored.

(3) The Government or the statutory body shall continue to be responsible for the surplus or unserviceable articles until it surrenders the custody or control thereof to the Board.

(4) Any surplus or unserviceable article the original value of which is \$10,000 or less may be disposed of by a department of Government or a statutory body after obtaining the approval of the Board.

Custody and control of surplus and unserviceable articles.

**29.** (1) On the receipt by the Board of a report under section 28 (1) the Board may in its discretion assume the custody and control of the surplus and unserviceable articles.

(2) The Board shall sell and dispose of the articles by public auction, or where it is not possible to dispose of the

articles by public auction it may adopt such other method of disposal as the Board may consider proper and desirable.

(3) A member of the Board or such officer of the Board as may be appointed by the Board shall attend every such sale and submit to the Board a report of the result of the sale.

(4) The Board shall make arrangements for the deposit of the proceeds of such sales less all expenses incurred as a result thereof with the Accountant-General for the account of the Government or the statutory body concerned as the case may be.

**30.** (1) In the exercise of the power conferred on it under this Act, the Board or a committee may—

**Board to consult officers and members of the public.**

(a) consult with an officer or officers of the Government or of a statutory body to which this Act applies or such other person or persons as the Board, in its discretion, may consider proper and desirable;

(b) request that the services of any officer of the Government or of a statutory body to which this Act applies be made available to the Board with respect to any of the functions and duties of the Board, and the Government or the statutory body, as the case may be, shall comply with any such request;

(c) require any person who has made an offer to the Board to attend a meeting of the Board and to furnish the Board within a specified time with such information with respect to that person's finances, equipment or professional or technical qualifications as the Board may require; or any other information that in the opinion of the Board is necessary for the proper assessment of the offer and the winner's capacity to execute the same; and

(d) make inspections and arrange for the Chairman or another member or an officer of the Board, to make inspection wherever the Board considers its desirable so to do.

(2) The services referred to in paragraph (b) of subsection (1) include the attendance at meetings, the giving of advice and the making of reports to the Board.

Board business is confidential.

**31.** (1) Every person having an official duty or being employed in the administration of this Act or engaged as a consultant to the Board shall consider and deal with all documents and information relating to the functions of the Board as confidential.

(2) Subject to section 13 (3) no person in possession of or control over any document or information relating to any business or transaction of the Board shall communicate or attempt to communicate any information contained in such document or pass on such document to any person other than a member of the Board.

Minister to give directions to the Board.

**32.** (1) The Minister may, from time to time, give general or special directions to the Board and the Board shall comply with any such direction.

(2) Such directions as may be given by the Minister under subsection (1) shall be in writing and signed by the Minister.

Indemnification for acts or omissions done in good faith.

**33.** No member of the Board is personally liable for any act or omission of the Board done or omitted in good faith in course of the operations of the Board; and any sums of money damages or costs that are recovered against the Board for anything done or omitted as aforesaid shall be paid out of the funds provided by the Treasury.

Corrupt practices prohibited.

**34.** (1) No person, whether such person has made an offer or not, shall, with intent to gaining any advantage or concession for himself or any other person—

(a) offer any member of the Board or a committee thereof or any employee of the Board or any consultant or person providing service under section 30 (1) (a) and (b), a gift of money or other thing;

(b) approach any member of the Board, committee or any officer thereof with respect to any matter that is before the Board or a committee or that is expected to come before the Board or Committee.

(2) No person shall accept any gift of money or other thing with intent—

(a) to vote at any meeting of the Board in a certain manner, or

(b) to influence the Board or any member of the Board or committee with respect to any matter that is before the Board or committee or that is expected to come before the Board or committee.

35. (1) Any person who contravenes section 12 (3) is guilty of an offence and is liable on conviction thereof to a fine of \$20,000 or to a term of imprisonment for twenty-four months or to both such fine and imprisonment. **Offences and penalties.**

(2) Any person requested by the Board or a committee to furnish the Board or a committee any information by virtue of section 30 (1) (c) who wilfully furnishes the Board or a committee with information that is false, is guilty of an offence and is liable upon summary conviction to a fine of \$5,000 or to a term of imprisonment for twelve months or to both such fine and imprisonment.

(3) Any person who contravenes section 31 (2) is guilty of an offence and is liable on summary conviction to a fine of \$10,000 or to a term of imprisonment for twelve months or to both such fine and imprisonment.

(4) Any person who contravenes any of the provisions of section 34 is guilty of an offence and is liable on conviction to a fine of \$100,000 or to a term of imprisonment for five years. Where the person guilty of an offence under section 34 is a corporate body every director or officer thereof who knowingly authorised, acquiesced in or permitted in the contravention is guilty of an offence and is liable on conviction to a fine of \$100,000 or to a term of imprisonment for five years.

36. The Minister may make such regulations as may appear to him to be necessary or expedient for the proper carrying out of the intent and purposes of this Act and without limiting the generality of the foregoing may make regulations— **Regulations.**

(a) prescribing the procedure to be adopted by the Board in the exercise of the powers conferred on it by this Act;

(b) prescribing the forms to be used in making offers;

(c) prescribing the periods for which advertisements should be published and determine responsibility for the cost thereof;

(d) prescribing the forms of contract to be used;

(e) prescribing the financial limits within which contracts may be awarded by officers of statutory bodies;

(f) prescribing the procedure to be adopted in disposing of surplus or unserviceable articles and the limits within which they may be disposed of by prescribed officers of statutory bodies;

(g) for establishing Ministerial, departmental or special committees to deal with departmental contracts or special items or services, the value of which does not exceed an amount, if any, determined by the regulations;

(h) prohibiting the entering into contracts for the supply of articles or the undertaking of works or the provision of any service connected therewith with members of statutory bodies to which this Act applies or any officer thereof or with such other person as may be specified in the regulations.

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