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NOTIFICATION

No. H. 12018/135/04 - LJD/4, the 23rd April, 2008. The following Act of the Mizoram Legislative Assembly which received the assent of the Governor of Mizoram is hereby published for general information.

The Mizoram Transparency in Public Procurement Act, 2008

(Act No. 7 of 2008)

[Received the assent of the Governor of Mizoram on 31st March, 2008]

AN

ACT

to provide for ensuring transparency in public procurement of goods and services by streamlining the procedure in inviting, processing and acceptance of tenders by procurement entities, and for matters related thereto.

Whereas it is expedient in public interest to render the process of procurement of goods and services by the procuring authorities transparent by streamlining the procedure of inviting, processing and acceptance of tenders.

It is enacted by the Mizoram Legislative Assembly in the fifty ninth year of the Republic of India as follows :-

CHAPTER - I

1. **Short title and commencement :-**

- (1) This Act may be called **The Mizoram Transparency in Public Procurements Act, 2008.**
- (2) It shall extend to the whole of Mizoram.
- (3) It shall come into force on such date as the Government may by Notification appoints, and different dates may be appointed for different provision of this Act.

2. **Definitions :-**

In this Act, unless the context otherwise requires, :-

- (a) **“Construction works”** means putting up, demolishing, repairs or renovation of buildings, roads, bridges or other structures including fabrication of steel structures and all other civil works;
- (b) **“Goods”** means other machinery, motor vehicles, equipment, furnitures, articles of stationery, drugs, scientific and laboratory instruments, chemicals, oil and oil seeds or other agriculture and horticulture inputs for consumption, use or by a procurement entity in discharge of its public duties;
- (c) **“Government”** means the State Government of Mizoram;
- (d) **“Prescribed”** means prescribed under the rules framed under this Act ;
- (e) **“Procuring authority”** means any Government Department, a State Government Undertaking, Local Authority or Board, Body of Corporation established by or under any law and owned or controlled by the Government, and as may be specified by it;
- (f) **“Public Procurement” or “Procurement”** means purchase of goods, obtaining of services or undertaking of construction works by the procuring authorities.
- (g) **“Services”** means the actions of serving, attending upon, helping or benefiting a procuring authority in the course of discharging its public duties and includes construction works;

- (h) **“Specified goods or services”** means the goods or services as the case may be, specified in a tender and identified in the contract resulting from acceptance of a tender by a procuring authority;
- (i) **“Tender”** means the formal offer made for supply of goods or services in response to an invitation for tender published in a Tender Bulletin;
- (j) **“Tender Accepting Authority”** means an officer or a Committee appointed to accept tenders and a **“Tender Inviting Authority”** means an officer or a Committee to invite tenders, under Section 9;
- (k) **“Tender Bulletin”** means a bulletin published for the state as a whole or for any district or districts within the State containing the details of invitation, processing and acceptance of Tenders;
- (l) **“Tender Bulletin Officer”** means a State Tender Bulletin Officer or a Tender Bulletin Officer referred to in Section 7;
- (m) **“Tender Document”** means the set of papers containing schedule of works, calendar of events, requirement of goods and services, technical specifications, procurement criteria and such other particulars, as may be prescribed for evaluation and comparison of tenders.

3. Provisions not to apply to certain cases :

The provisions of this Act, in so far as they are inconsistent with the procedure specified in respect of the Projects funded by International Financial Agencies or Projects covered under International Agreements, shall not apply to procurement of goods or services for such project.

4. Exceptions to applicability :

The provisions of Chapter II shall not apply to procurement of goods and services :-

- (a) during the period of natural calamity or disaster declared by the government;
- (b) where the goods or services are available from a single source or where a particular supplier or contractor has exclusive rights in respect of the goods or services or construction work and no reasonable alternatives or substitutes exist;

Provided that for the purpose of this clause there shall be a Committee of three experts consisting of one technical representative of the procuring authority one technical representative of the Government organisation dealing with similar procurement and one representative from a reputed Academic or Research Institution or Non-Commercial Institution having expertise in such line to examine and declare that the goods or services are available from a single source;

- (c) where the procuring authority having procured goods, services or technology from a supplier or contractor determines that the supplies must be procured from the same supplier or contractor for reasons of standardization and compatibility with the existing goods service or technology;
- (d) where the goods or services are procured from certain Departments of Government, public sector undertakings, statutory boards and such other institutions specified by the Government and such goods are manufactured or services are provided only by them, for a period not exceeding two years from the date of commencement of this Act;
- (e) where the value of the goods or services to be procured.
 - (i) by the Government Departments does not exceed rupees ten thousand ,or
 - (ii) by a local authority for the purpose of implementing schemes or programmes, or construction of schools granted by Central or State Government does not exceed rupees fifty thousand and for other purposes, does not exceed rupees one lakh.

Explanation - For the purpose of this clause local authority includes Village Councils, Autonomous District Councils and any other similar authorities.

- (f) where the goods or services are procured under rate contracts from the Director General of Supplies and Disposals or from Associations of State Road Transport Undertakings;
- (g) in respect of specific procurements as may be notified by the Government from time to time; or
- (h) in respect of spot purchase of agriculture & animal products by MAMCO, cane, bamboos and minor forest products purchased by ZOHANDCO, purchase of silk cocoons by Government Departments, or purchase of any other materials as may be notified by the Government from time to time.

CHAPTER – II

Regulation of Procurement

5. Procurement other than by tender prohibited:

On and from the date of commencement of this Act no Procuring Authority shall procure goods or services except by inviting tenders.

6. Procuring Authority to follow procedure:

No tender shall be invited, processed or accepted by the Procuring Authority after the commencement of this Act except in accordance with the procedure laid down in this Act or the rules made thereunder.

7. Tender Bulletin Officers:

- (1) The Government may, by notification, appoint an officer not below the rank of a Deputy Secretary to the Government in concerned department to be the State Tender Bulletin Officer for the State in respect of that department where the procurement of that department covers more than one district.
- (2) Deputy Commissioner of the District shall be the District Bulletin Officer.

8. Publication of Tender Bulletin:

- (1) The State Tender Bulletin Officer, or as the case may be, the District Tender Bulletin Officer shall on receipt of intimation relating to notice of invitation of tender from tender inviting authority or information relating to details of acceptance of tender under Section 13 or rejection of tender under Section 14 from the tender Accepting Authority, publish the same within the prescribed time, the in the State Tender Bulletin or in District Tender Bulletin, as the case may be.
- (2) The Tender Bulletin shall be made available for sale in the office of the Tender Bulletin Officer and in such other places as the Tender Bulletin Officer deems fit to make the same easily available.

9. Tender Inviting Authority and Tender Accepting Authority:

The Procuring Authority may, by order, appoint –

- (1) One or more officers or a Committee of Officers to be the Tender Inviting Authority for any specified area, specified procurement or specified class of goods or services; and
- (2) One or more officers or a Committee of Officers to be the Tender Accepting Authority for any specified area or Specified Procurement, specified class of goods and services;

Provided that where a multi-member Committee is already appointed by any Procuring Authority for discharging the functions of accepting tenders, such Committee shall be deemed to be a Tender Accepting Authority appointed under this Act.

10. Tender Scrutiny Committee:

The Tender Accepting Authority shall constitute a Tender Scrutiny Committee consisting of such person or persons as it may deem fit to scrutinise tenders if the cost of goods and/or services is above rupees 20 lakhs.

11. Opening of Tender:

- (1) The Procuring Authority may authorize either the Tender Inviting Authority or the Tender Accepting Authority or any other Officer to open the tenders and draw up a list of Tenderers responding to the notice inviting tender, in each case.
- (2) The Authority or, as the case may be, the officer referred to in sub-section (1) shall open the tender, draw up a list of tenderers in the prescribed manner and unless it is also the Tender Accepting Authority, forward the tenders along with the list of tenderers, to the Tender Accepting Authority.

12. Duties of Tender Inviting Authority:

- (1) It shall be the duty of every Tender Inviting Authority :-
 - (a) to take out notice inviting tenders at the behest of the Procuring Authority in the prescribed manner.
 - (b) to communicate the notice inviting tenders by marking a copy thereof to the Tender Bulletin Officer concerned immediately after issue of the notice.
 - (c) to cause publication of notice inviting tenders in the prescribed manner; and
 - (d) to supply the Schedule of Rates and Tender Documents to every intending tenderer who had applied to get such documents.
- (2) The Tender Inviting Authority shall take out notices, communications and publications required to be taken out under this section in such form, in such manner, by such mode and at such time and interval as may be prescribed and different manners and mode of publication may be prescribed for different procurements depending on the value of the procurement.
- (3) The Tender Inviting Authority shall collect all the details received in response to the notice inviting tender, within the time stipulated and unless it is itself authorised to open the tender shall compile and forward all the tenders received to the Authority or Officer authorised to open the tenders.

13. Acceptance of Tender:

The Tender Accepting Authority shall, after following such procedure as may be prescribed pass order accepting the tender and shall communicate the information relating to acceptance of tender together with a comparative analysis and reasons for accepting of tender to the Procuring Authority and the Tender Bulletin Officer ;

Provided that where the Tender Accepting Authority consists of a single officer who is due to retire within the next six months, from the date fixed for the acceptance for tender, he shall not act to accept the tender without obtaining prior approval of the Procuring Authority;

Provided further that subject to such general or special order as may be issued by the Government from time to time, the Tender Accepting Authority may before passing order accepting a tender negotiate with lowest tenderer only in public interest so that the financial implication is mostly minimized.

14. General rejection of tenders :

- (1) The Tender Accepting Authority may at any time before passing an order of acceptance under Section 13 reject all the tenders on the ground of changes in the scope of procurement, failure of anticipated financial resources accidents, disasters or any other grounds as may be prescribed which would render the procurement unnecessary or impossible and report the same to the Procuring Authority.
- (2) The Procuring Authority shall thereafter communicate the fact of the rejection under this section to all the Tenderers and also cause the same to be published in the Tender Bulletin.

15. Power to give directions :

It shall be competent for the Government to give appropriate directions to the Procuring Authority or the Authorities under the Act in order to secure and maintain transparency at any stage of the process of procurement, and it shall be the duty of the Procuring Authority or such authority to comply with the directions.

16. Appeal :

- (1) Any tenderer aggrieved by an order passed by the Tender Accepting Authority other than the Government under Section 13 may appeal to the prescribed authority within thirty days from the date of receipt of the order ;

Provided that the prescribed authority as under sub-section(1), may, in its discretion, allow further time not exceeding thirty days for preferring any such appeal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

- (2) The prescribed authority as under sub-section(1) may after giving opportunity of being heard to both the parties pass such order thereon as it deems fit and such order shall be final.
- (3) The prescribed authority as under sub-section (1) shall as far as possible dispose of the appeal within thirty days from the date of filing thereof.

17. Power to obtain information :

Notwithstanding anything contained in this Act or in any other law for the time being in force, the Governor may with a view to ensuring transparency call for and obtain, from any authority under the Act, any information relating to any matter in the process of procurement.

18. Power to call for records :

The Governor may, at any time, with a view to ensuring transparency in the procurement process call upon any authority under the Act :-

- i) to produce records relating to invitation, processing and acceptance of tenders;

- ii) to furnish the tender document, estimates/statements account or statistics relating to such tenders; and
- iii) to furnish report on any specific point incidental to the procurement.

CHAPTER – III **Miscellaneous**

19. Officers deemed to be Public Servants :

Every Officer acting under or in pursuance of the provisions of this Act or under a rule, order or notification made thereunder, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (Central Act XLV of 1860).

20. Immunity for action taken in good faith :

No suit or other legal proceeding shall lie against the Government or any officer or authority empowered to exercise powers or perform the functions under the Act in respect of anything which is in good faith done or intended to be done under this Act.

21. Bar of jurisdiction of Courts :

Save as otherwise provided in this Act, no order passed or proceedings taken by any officer or authority under this Act shall be called in question in any Court except the Writ Courts, and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer or authority in exercise of powers conferred on him or it, by or under this Act.

22. Act to override other laws :

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage agreement, decree or order of a Court or a Tribunal or other authority.

23. Penalty :

Whoever contravenes the provisions of this Act or the rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees.

24. Power to remove difficulties :

If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order published in the Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to them to be necessary or expedient for removing the difficulties ;

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of the Act.


25. Power to make rules:

- (1) The Government, may by notification, make such rules as are necessary for carrying out the purposes of this Act.

- (2) Every rule made under this Act shall as soon as possible, after it is made or issued, be laid before the House of Mizoram Legislature for a total period of thirty days, which may be comprised in one or more Sessions.

26. **Savings :**

All rules, regulations, orders, notifications, departmental codes, manuals, bye-laws, official memoranda, circulars or any other order made or issued before the commencement of this Act and in force on the date of such commencement providing for or relating to any of the above matters for the furtherance of which this Act is enacted shall continue to be in force and effective as if they are made under the corresponding provisions of this Act, to the extent they are not inconsistent with the provisions of the Act and unless and until superseded by anything done or any action taken or any rule, notification or order, made under this Act.


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