



ACCOUNTING OFFICERS/ CHIEF FINANCIAL OFFICERS/ SCM HEADS

BID APPEALS TRIBUNAL

Practice Note Number: SCM-07 of 2006

1 Introduction

- 1.1 The KZN Procurement Act no. 3 of 2001 was repealed on the 20th December 2005, from which date the KwaZulu-Natal SCM Policy Framework and Treasury Regulations 16A have come into effect in this Province. This practice note is issued in accordance with the KZN SCM Policy Framework.
- 1.2 All matters adjudicated by the Central Procurement Committee, which form the basis of an appeal, must be resolved by the Tender Appeals Tribunal in terms of the KZN Procurement Act, 2001. Appeals related to quotations sent to prospective suppliers up to 31 January 2006 and Departmental tenders that have an advertisement date up to 31 January 2006, must also be dealt with in terms of the KZN Procurement Act, 2001. This Practice Note is thus applicable to all quotations and bids invited post 31st January 2006.

2 Bid Appeals Tribunal

- 2.1 The MEC for Finance and Economic Development must establish an independent and impartial Bid Appeals Tribunal.
- 2.2 Members of the Bid Appeals Tribunal must possess the following attributes:
 - Collectively have appropriate skills and expertise that will enhance the capacity and effectiveness of the Bid Appeals Tribunal; and
 - Be fit and proper persons to hold office as members of the Bid Appeals Tribunal.
- 2.3 The Bid Appeals Tribunal must consist of four members appointed from civil society.
- 2.4 Two of the members of the Bid Appeals Tribunal must be appropriately qualified and have experience related to the application or administration of the law, or have lectured in law at a university in the Republic. These members must also have been admitted to practice as a legal practitioner in the Republic.

- 2.5 The other two members of the Appeal Tribunal must have appropriate knowledge of SCM.
- 2.6 The MEC for Finance and Economic Development must appoint the members of the Appeals Tribunal after consultation with Cabinet and the Portfolio Committee.
- 2.7 The MEC for Finance and Economic Development must appoint one of the persons referred to in paragraph 4.4 as the Chairperson and the other as a Deputy Chairperson of the Bid Appeals Tribunal.
- 2.8 A quorum of the Tribunal is constituted by at least three members, of whom one member must be the Chairperson or Deputy Chairperson.

3 Appeal Procedure

- 3.1 A bidder aggrieved by a decision of a Departmental Bid Adjudication Committee or a delegate of an accounting officer, may appeal to the Bid Appeals Tribunal in the prescribed manner.
- 3.2 A Bid Adjudication Committee must, within five working days of the award of the bid, publish a notice in the provincial gazette stating which bidder has been awarded the bid. The bidder must, within five working days of the publication referred to above, deliver written notification of an intention to appeal to: **The Secretariat, Bid Appeals Tribunal, Private Bag X9082, Pietermaritzburg, 3200, Tel no: 033-897 4462, Fax no: 033- 342 4238**
- 3.3 The bidder may, together with the notification of intention to appeal under paragraph 5.2, deliver a request for written reasons for the award of the said bid. The bidder may use this opportunity to also request written reasons as to why the award was not made to the latter.
- 3.4 The Bid Adjudication Committee or a delegate of an accounting officer must deliver to the appellant the written reasons requested under paragraph 5.3 within ten working days.
- 3.5 The appellant must, within ten working days of receipt of the written reasons delivered under paragraph 5.4, or, failing a request for written reasons under paragraph 5.3, within ten working days of giving notice under paragraph 5.2, submit written representations to the Bid Appeals Tribunal, indicating sufficiently and without unnecessary elaboration, the grounds and basis of the appeal and the nature of the complaint.
- 3.6 Upon receipt of a notice of intention to appeal, the Bid Appeals Tribunal must notify other bidders, who may be adversely affected by the appeal, in writing of the appeal and invite them to respond within five working days.

- 3.7 No oral hearing of appeals will be allowed unless the Chairperson of the Bid Appeals Tribunal, in the interests of justice, issues a directive indicating otherwise, in which event the procedure to be followed will be as prescribed.
- 3.8 A decision of the majority of the members of the Bid Appeals Tribunal will be the decision of the Bid Appeals Tribunal.

4 Grounds of Appeal

- 4.1 The Bid Appeals Tribunal may interfere with a decision of an Accounting Officer, a Bid Adjudication Committee or a delegate of the Accounting Officer, only if the Accounting Officer, Bid Adjudication Committee or the delegate -
- (a) committed misconduct in relation to their duties concerning the awarding of contracts;
 - (b) committed a gross irregularity;
 - (c) exceeded its or their power;
 - (d) awarded a bid in an improper manner; or
 - (e) awarded a contract inconsistent with the objectives of the Act.

5 Determining whether an Appeal is frivolous, vexatious or without merit

- 5.1 The Chairperson of the Bid Appeals Tribunal must determine, within three working days after receipt of the written representations of an appellant under paragraph 5.5, whether an appeal is frivolous, vexatious or without any merit.
- 5.2 If the Chairperson of the Bid Appeals Tribunal finds in accordance with sub-paragraph 7.1 that an appeal is frivolous, vexatious or without any merit, the Chairperson of the Bid Appeals Tribunal –
- (a) must dismiss the appeal and in writing notify the appellant and any other bidder which responded under paragraph 5.6, of the decision, together with reasons for the decision; and
 - (b) may make an appropriate order as to costs, which may include the costs to the Province of having the appeal heard.

6 Powers of the Appeals Tribunal

- 6.1 In respect of appeals not determined under paragraph 7 to be frivolous, vexatious or without any merit, the Bid Appeals Tribunal -
- (a) must hear and finalize the appeal within fourteen working days of the determination under paragraph 7;
 - (b) must make recommendations to the MEC for Finance to confirm, vary or set aside the decision of, a Bid Adjudication Committee, an Accounting Officer or his/her delegate; and
 - (c) may make an appropriate order as to costs, which may include the costs to the Province of having the appeal heard.

6.2 If the award is set aside, the Bid Appeals Tribunal must make any order it considers appropriate regarding the procedures to be followed to determine the matter.

7 Remuneration of members of the Appeals Tribunal

7.1 The MEC for Finance and Economic Development must prescribe the remuneration and allowances payable to a member of the Bid Appeals Tribunal out of the funds of Provincial Treasury.

8 Effective Date

8.1 This practice note takes effect from 1st February 2006.



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