
G O V E R N M E N T N O T I C E

DEPARTMENT OF TRANSPORT

No. R. 1140

13 November 2000

NATIONAL LAND TRANSPORT TRANSITION ACT, 2000 (ACT NO. 22 OF 2000)

**DRAFT REGULATIONS TO BE MADE AND DOCUMENTS TO BE PUBLISHED
BY THE NATIONAL MINISTER**

Draft regulations and documents set out in the attachments hereto to be published by the National Minister of Transport are hereby published for public comment.

The attachments are the following:

Document 1: Draft National Land Transport Regulations on Regulated Competition

Interested parties are invited to submit written comments on these drafts by no later than 22 November 2000 with:

Mrs A Nothnagel
Department of Transport
Room 4099 Forum Building
Corner of Struben and Bosman Streets
PRETORIA.

Tel: (012) 3093638
Fax: (012) 3239370
E-mail: nothnag@ndot.pwv.gov.za

DOCUMENT 1: DRAFT NATIONAL LAND TRANSPORT REGULATIONS ON REGULATED COMPETITION

DEPARTMENT OF TRANSPORT

NATIONAL LAND TRANSPORT TRANSITION ACT, 2000 (ACT NO. 22 OF 2000)

NATIONAL LAND TRANSPORT REGULATIONS ON REGULATED COMPETITION

The Minister of Transport has after consultation with the MECS under section 7 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000), made the Regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act bears that meaning and "the Act" means the National Land Transport Transition Act, 2000 (Act No. 22 of 2000).

Requirements for tender and contract documents, and opening and awarding of tenders

2. (1) Tender and contract documents prepared in terms of Part 10 of the Act must be made available to prospective tenderers not less than 30 days before the relevant closing date for the submission of tenders.

(2) Subject to contrary provisions in provincial legislation, tenders received must be opened in public as soon as practicable, but not later than 30 minutes after the closing time, and the names of the tenderers must be read out and the tender amounts disclosed.

(3) The contract in question must be awarded to the successful tenderer by written notice not later than 90 days after such closing date, unless that period is extended with the written consent of all tenderers or unless the contracting authority has decided not to accept any of the tenders received.

(4) All tender and contract documents must place an obligation on the public transport operator to provide the services in terms of the relevant contract strictly in accordance with the relevant schedules and in an efficient manner, and if the public transport operator fails to comply therewith, penalties will be imposed or, in serious cases, the contract may be terminated.

Negotiated contracts

3. (1) An MEC, transport authority or core city wishing to obtain exemption from the requirements of section 47(2) of the Act and to enter into a negotiated contract contemplated in section 47(3) thereof, must submit a written request to the Minister in that regard within 180 days after the date of commencement of the Act, and if the MEC fails to comply therewith, no such exemption will be granted by the Minister.

(2) The Minister must respond to a request under subregulation (1) and grant or refuse the request within 60 days of receipt of the request.

(3) A request under subregulation (1) will be granted only if the conclusion of the relevant contract will not lead to a substantial increase in the services being provided by the relevant parastatal or municipal transport operator, as contemplated in section 47(3)(b)(i) of the Act.

(4) The percentage of the total value of subsidised service contracts in the transport area or province in question referred to in section 47(3) (b)(ii) of the Act, in any case may not exceed the percentage determined by the Minister in each specific case, but may not exceed 50 percent.

Calculation of cost of negotiated contract

4. The cost of a negotiated contract referred to in section 47(3) (b)(iii) of the Act must be calculated in the following manner:

- (a) The Department must, in the notice contemplated in section 47(6) of the Act, invite proposals from public transport operators to operate the services in terms of the proposed negotiated contract, and provide an estimate of the number of kilometres to be operated in terms thereof;
- (b) the Department must then estimate the cost of the negotiated contract over its proposed period of operation by, among other things, using best available norms relating to cost items and best available evidence relating to likely passenger statistics, and
- (c) the Department must then compare any feasible and acceptable proposals received in terms of paragraph (a) with the estimated cost of the negotiated contract as determined under paragraph (b) to determine whether the cost of the negotiated contract is substantially higher than would have been the case were the services subjected to competitive tendering under similar terms and conditions.

Additional requirements or qualifications for public transport operators to qualify as tenderers

5. (1) On receiving tenders contemplated in section 47(2)(a) of the Act, the contracting authority must—

- (a) examine the safety record of the operator by consulting other contracting authorities, where relevant, or by using any other available lawful methods;
- (b) examine the record of previous convictions, if any, for relevant offences, which must include at least the following:
 - (i) road transport offences;
 - (ii) road traffic offences;
 - (iii) offences in terms of labour legislation or industry agreements; and
 - (iv) offences related to dishonesty.
- (c) obtain audited financial statements of the tenderer's business for at least the three financial years prior to evaluation of the tenders, which must at least show the tenderer's financial position, performance, flow of funds and changes from the tenderer's financial position from year to year;
- (d) visit the depots and other premises, if any, or other facilities proposed to be used by the tenderer if the contract is awarded to that tenderer, to establish their suitability in relation to the performance of the relevant services;
- (e) conduct interviews with the tenderer or representatives of the tenderer to establish the resources, expertise and competence of the tenderer to provide such services, and
- (f) evaluate the cost structure submitted by the tenderer in the tender forms to establish the likely sustainability of the tenderers' operations and whether the tenderer is likely to be able to provide the services for the duration of the contract.

(2) The contracting authority must be satisfied, by virtue of the investigations conducted under subregulation (1), as well as other enquiries and evaluation of the tender submitted, ~~that—~~

- (a) the tenderer is likely to be able to provide the relevant services in an acceptable, efficient and effective manner;
- (b) the tenderer's business undertaking is financially sustainable, and
- (c) the tenderer complies with the other requirements of section 48 of the Act.