

TENDERING AND CONTRACTING

INFORMATION SHEET
July 15

Introduction

The purpose of this information sheet is to provide guidance to councils when inviting tenders and contracts for the supply of goods and services.

Legislative context

The legislative provisions relating to tenders are found in Part 16 Division 2A of the *Local Government Act 1993* (the Act) and Part 3 of the *Local Government (General) Regulations 2015* (the Regulations).

Section 333A of the Act requires a council to invite tenders for any contract it intends to enter into for the supply of goods and services at or above the prescribed amount and in the manner prescribed.

Section 333B of the Act provides that a council must adopt a code relating to tenders and contracts that is consistent with prescribed matters and promotes prescribed principles.

Part 3 of the Regulations prescribes the following matters in relation to tendering and contracting:

- public tenders (regulation 23);
- open tenders (regulation 24);
- multiple-use registers (regulation 25);
- multiple-stage tenders (regulation 26);
- non-application of public tender process (regulation 27);
- codes for tenders and contracts (regulation 28); and
- annual reporting requirements (regulation 29).

Public tender requirements (regulation 23)

A council must invite a tender for the supply of goods or services at or above \$250 000 (excluding GST).

However, councils should consider whether to conduct a tender process involving amounts below this prescribed threshold, to ensure that the best value for the goods/services is obtained.

A council must not split a contract into two or more contracts for the primary purpose of avoiding compliance with the prescribed threshold and a council cannot invite a person to tender if the tender is closed.

Tenders must be publicly invited and made in one of the following ways:

- an open tender;
- a multiple-use register; or
- a multiple-stage tender.

More information on each of these tender types is provided below.

Open tenders (regulation 24)

The general manager is to invite tenders by publishing at least one notice in a daily newspaper with details including the nature of the goods or services the council requires, the person in the council who can provide more detailed information and the period in which the tender must be lodged.

The lodgement period for the tender must be at least 14 days after the date the notice is published.

The general manager is to ensure that prospective tenderers are provided with detailed information regarding the tender, including the duration of the contract, the criteria and method for evaluating tenders, any mandatory tender specifications and contract conditions and a reference to the council's code relating to tenders and contracts.

Multiple-use register (regulation 25)

A council may establish a multiple-use register of suppliers who meet criteria established by the council in respect of the supply of particular categories of goods or services.

Once established, a multiple-use register is to be reviewed every two years.

A council is to invite applications from suppliers for inclusion on a multiple-use register by publishing a notice in a daily newspaper with details including any identification details allocated to the register, when and where the application is to be lodged and the person from whom more information may be obtained.

The general manager is to ensure that applicants are provided with detailed information, including the criteria and method for evaluating applications and a reference to the council's code relating to tenders and contracts.

A council may decide to reject or accept an application and is to advise the applicant accordingly.

Multiple-stage tender (regulation 26)

A multiple-stage tender process is a process by which suppliers are evaluated through stages against criteria determined by the council.

A council may wish to invite tenders for a contract using a multiple-stage tender process for reasons such as gaining market knowledge or clarifying the capability of suppliers.

A council is to invite expressions of interest from prospective tenders by publishing a notice in a daily newspaper with details including any identification details allocated to the contract, when and where the expression of interest is to be lodged and the person from whom more information may be obtained.

The general manager is to ensure that prospective tenderers are provided with detailed information including the criteria and method for evaluating expressions of interest, details of any further stages in the tender process and a reference to the council's code relating to tenders and contracts.

At the final stage of this process, the general manager is to invite all suppliers who have met the criteria to tender for the supply of goods and services.

Exemptions (regulation 27)

There are a number of exemptions to the requirement to invite tenders.

These include where there is insufficient time to invite tenders for the goods or services required in an emergency, or where there are extenuating circumstances.

An exemption exists for contracts obtained as a result of a tender process conducted by another council, a single/joint authority, the Local Government Association of Tasmania (LGAT), any other local government association in Tasmania or in another state or territory, or any organisation or entity established by any other local government association in Tasmania or in another state or territory. This exemption allows for tendering for certain goods and services where increased bargaining power is beneficial.

Any instances where an exemption has been applied must be reported in the council's annual report.

The National Procurement Network (NPN) is an alliance of state and territory local government associations. The NPN combines the purchasing power of around 350 councils Australia wide.

LGAT is a member of the NPN and more information regarding the opportunities to improve local purchasing arrangements through the Network is available on the LGAT website at www.lgat.tas.gov.au.

Code for tenders and contracts (regulation 28)

A council must adopt a code for tenders and contracts that is consistent with prescribed matters and promotes prescribed principles.

The code is to be made available to the public and should act as a guide for tenderers regarding what behaviour they should expect when dealing with a council during a tender process.

The prescribed principles are:

- open and effective competition;
- value for money;
- enhancement of the capabilities of local business and industry; and
- ethical behaviour and fair dealing.

For guidance in respect to the principle of enhancing the capabilities of local business and industry, councils should refer to the Department of Treasury and Finance's *Buy Local:*

Guidelines for Tasmanian Government Businesses at

[http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/0/4c16750cdccd73acca257da300193b3e/\\$FILE/GBE-13-114-11-Buy-local-Guideline.pdf](http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/0/4c16750cdccd73acca257da300193b3e/$FILE/GBE-13-114-11-Buy-local-Guideline.pdf).

The prescribed matters include establishing and maintaining procedures to ensure that a council engages with tenderers in a fair and equitable manner, including:

- providing all suppliers with the same information;
- protecting commercial-in-confidence information;
- amending/extending a tender once released;
- opening tenders;
- considering tenders that do not fully conform to tender requirements; and
- handling complaints regarding processes related to the supply of goods or services.

Annual reporting requirements (regulation 29)

A council is required to disclose the details of any tenders valued at over \$250 000 and contracts awarded by a council over \$100 000 (excluding GST) in its annual report, including a description of the contract, the period and value of the tender or contract, the value of the tender or contract awarded, and the business name and address of the successful contractor.

Where the exemptions to the public tender process of emergency or extenuating circumstances apply, a council is required to report in its annual report a description of the reason for not inviting tenders and the goods or services acquired, the value of the goods or services and the name of the supplier.

Disclaimer: Information on legislation contained in this document is intended for information and general guidance only. Such information is not professional legal opinion.