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# Local Government Act 1993 No 30

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## 55 Requirements for tendering

- (1) A council must invite tenders before entering into any of the following contracts—
  - (a) a contract to carry out work that, by or under any Act, is directed or authorised to be carried out by the council,
  - (b) a contract to carry out work that, under some other contract, the council has undertaken to carry out for some other person or body,
  - (c) a contract to perform a service or to provide facilities that, by or under any Act, is directed or authorised to be performed or provided by the council,
  - (d) a contract to perform a service or to provide facilities that, under some other contract, the council has undertaken to perform or provide for some other body,
  - (e) a contract for the provision of goods or materials to the council (whether by sale, lease or otherwise),
  - (f) a contract for the provision of services to the council (other than a contract for the provision of banking, borrowing or investment services),
  - (g) a contract for the disposal of property of the council,
  - (h) a contract requiring the payment of instalments by or to the council over a period of 2 or more years,
  - (i) any other contract, or any contract of a class, prescribed by the regulations.
- (2) Tenders are to be invited, and invitations to tender are to be made, by public notice and in accordance with any provisions prescribed by the regulations.
- (2A) Nothing in this section prevents a council from tendering for any work, service or facility for which it has invited tenders.
- (3) This section does not apply to the following contracts—
  - (a) subject to the regulations, a contract for the purchase of goods, materials or services specified by a person prescribed by the regulations made with another person so specified, during a period so specified and, if a rate is so specified, at a rate not exceeding the rate so specified,
  - (b) a contract entered into by a council with the Crown (whether in right of the Commonwealth, New South Wales or any other State or a Territory), a Minister of the Crown or a statutory body representing the Crown,
  - (c) a contract entered into by a council with another council,

- (d) a contract for the purchase or sale by a council of land,
- (e) a contract for the leasing or licensing of land by the council, other than the leasing or licensing of community land for a term exceeding 5 years to a body that is not a non-profit organisation (see section 46A),
- (f) a contract for purchase or sale by a council at public auction,
- (g) a contract for the purchase of goods, materials or services specified by the NSW Procurement Board or the Department of Administrative Services of the Commonwealth, made with a person so specified, during a period so specified and, if a rate is so specified, at a rate not exceeding the rate so specified,
- (h) a contract for the employment of a person as an employee of the council,
- (i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders,
- (j) contract for which, because of provisions made by or under another Act, a council is exempt from the requirement to invite a tender,
- (k) a contract made in a case of emergency,
- (l) a contract to enter into a public-private partnership,
- (m) if a council has entered into a public-private partnership—a contract entered into by the council for the purposes of carrying out a project under the public-private partnership (but only to the extent that the contract is part of the project that has been assessed or reviewed under Part 6 of Chapter 12),
- (n) a contract involving an estimated expenditure or receipt of an amount of—
  - (i) less than \$250,000 or another amount as may be prescribed by the regulations, or
  - (ii) less than \$150,000 or another amount as may be prescribed by the regulations for a contract involving the provision of services where those services are, at the time of entering the contract, being provided by employees of the council,
- (o) a contract that is an environmental upgrade agreement (within the meaning of Part 2A),
- (p) a contract or arrangement between a council and the Electoral Commissioner for the Electoral Commissioner to administer the council's elections, council polls and constitutional referendums,
- (q) a contract made with a person or body approved as a disability employment organisation under the *Public Works and Procurement Act 1912* for the purchase of goods or services in relation to which the person or body is so approved.

**Note.** Despite the person or body being approved under the *Public Works and Procurement Act 1912*, that Act does not otherwise apply to the procurement of goods and services by or for a council.

- (4) A council that invites tenders from selected persons only is taken to comply with the requirements of this section if those persons are selected—
- (a) from persons who have responded to a public advertisement for expressions of interest in the particular contract for which tenders are being invited, or
  - (b) from persons who have responded to a public advertisement for recognition as recognised contractors with respect to contracts of the same kind as that for which tenders are being invited.
- (5)–(7) (Repealed)