

LG302\*

Local Government Act 1995

## **Local Government (Functions and General) Amendment Regulations 2015**

Made by the Governor in Executive Council.

### **Part 1 — Preliminary**

#### **1. Citation**

These regulations are the *Local Government (Functions and General) Amendment Regulations 2015*.

#### **2. Commencement**

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 October 2015.

### **Part 2 — *Local Government (Functions and General) Regulations 1996* amended**

#### **3. Regulations amended**

This Part amends the *Local Government (Functions and General) Regulations 1996*.

#### **4. Regulation 11A amended**

- (1) In regulation 11A(1) delete “\$100 000” (each occurrence) and insert:

\$150 000

- (2) After regulation 11A(3)(a) insert:

- (ba) the minimum number of oral quotations and written quotations that must be obtained; and

- (3) Delete regulation 11A(4).

#### **5. Regulation 11 amended**

- (1) In regulation 11(1) delete “\$100 000” and insert:

\$150 000

- (2) In regulation 11(2):
- (a) in paragraph (b) delete “Council Purchasing Service of WALGA; or” and insert:
- WALGA Preferred Supplier Program; or
- (b) delete paragraph (ba);
- (c) in paragraph (c)(i) delete “specifications; or” and insert:
- specifications or satisfied the value for money assessment; or
- (d) in paragraph (g) delete “engines.” and insert:
- engines;
- (e) after paragraph (g) insert:
- or
- (h) the following apply —
- (i) the goods or services are to be supplied by a person registered on the Aboriginal Business Directory WA published by the Small Business Development Corporation established under the *Small Business Development Corporation Act 1983*; and
- (ii) the consideration under the contract is \$250 000 or less, or worth \$250 000 or less; and
- (iii) the local government is satisfied that the contract represents value for money;
- or
- (i) the goods or services are to be supplied by an Australian Disability Enterprise; or
- (j) the contract is a renewal or extension of the term of a contract (the *original contract*) where —
- (i) the original contract was entered into after the local government, according to the requirements of this Division, publicly invited tenders for the supply of goods or services; and
- (ii) the invitation for tenders contained provision for the renewal or extension of a contract entered into with a successful tenderer; and

- (iii) the original contract contains an option to renew or extend its term; and
- (iv) the supplier's tender included a requirement for such an option and specified the consideration payable, or the method by which the consideration is to be calculated, if the option were exercised;

or

- (k) the goods or services are to be supplied by a pre-qualified supplier under Division 3.

**6. Regulation 12 replaced**

Delete regulation 12 and insert:

**12. Anti-avoidance provision for r. 11(1)**

- (1) This regulation applies if a local government intends to enter into 2 or more contracts (the *contracts*) in circumstances such that the desire to avoid the requirements of regulation 11(1) is a significant reason for not dealing with the matter in a single contract.
- (2) If this regulation applies, tenders are to be publicly invited according to the requirements of this Division before the local government enters into any of the contracts regardless of the consideration.

**7. Regulation 14 amended**

- (1) In regulation 14(1) delete "12" and insert:

12(2)

- (2) Delete regulation 14(4)(d) and (e) and insert:

- (d) whether the local government has decided to submit a tender.

**8. Regulation 15 replaced**

Delete regulation 15 and insert:

**15. Minimum time to be allowed for submitting tenders**

- (1) If a notice under regulation 14(1) is given, the date and time referred to in regulation 14(3)(d) has to be at least

14 days after the notice is first published in the newspaper circulating generally throughout the State.

- (2) If a notice under regulation 14(2) is given to a person listed as an acceptable tenderer, the date and time referred to in regulation 14(3)(d) has to be at least 14 days after the notice is given.

**9. Regulation 16 amended**

Delete regulation 16(3)(a) and insert:

- (a) there must be present —
- (i) at least 2 employees of the local government; or
  - (ii) one employee of the local government and at least one person authorised by the CEO to open tenders;
- and

**10. Regulation 17 amended**

Delete regulation 17(2)(b).

**11. Regulation 18 amended**

In regulation 18(4) after “them” insert:

(if any)

**12. Regulation 21A inserted**

After regulation 20 insert:

**21A. Varying a contract for the supply of goods or services**

If a local government has entered into a contract for the supply of goods or services with a successful tenderer, the contract must not be varied unless —

- (a) the variation is necessary in order for the goods or services to be supplied and does not change the scope of the contract; or
- (b) the variation is a renewal or extension of the term of the contract as described in regulation 11(2)(j).

**13. Regulation 21 amended**

- (1) In regulation 21(1) delete “thinks that there is good reason” and insert:

decides

- (2) Delete regulation 21(2).

**14. Part 4 Division 3 inserted**

At the end of Part 4 insert:

**Division 3 — Panels of pre-qualified suppliers****24AA. Terms used**

In this Division —

*panel of pre-qualified suppliers* means a panel of pre-qualified suppliers of goods or services established in accordance with this Division;

*pre-qualified supplier*, of particular goods or services, means a person who is part of a panel of pre-qualified suppliers for the supply of those goods or services.

**24AB. Local government may establish panels of pre-qualified suppliers**

A local government may establish a panel of pre-qualified suppliers to supply particular goods or services to the local government in accordance with this Division.

**24AC. Requirements before establishing panels of pre-qualified suppliers**

- (1) A local government must not establish a panel of pre-qualified suppliers unless —
- (a) it has a written policy that makes provision in respect of the matters set out in subregulation (2); and
  - (b) the local government is satisfied that there is, or will be, a continuing need for the particular goods or services to be supplied by pre-qualified suppliers.
- (2) The matters referred to in subregulation (1)(a) are —
- (a) how the local government will procure goods or services from pre-qualified suppliers, including any process for obtaining quotations from them; and

- (b) how the local government will ensure that each pre-qualified supplier on a panel of pre-qualified suppliers will be invited to quote for the supply of the goods or services that the pre-qualified suppliers will be expected to supply; and
- (c) how the local government will ensure clear, consistent and regular communication between the local government and pre-qualified suppliers; and
- (d) any factors that the local government will take into account when distributing work among pre-qualified suppliers; and
- (e) the recording and retention of written information, or documents, in respect of —
  - (i) all quotations received from pre-qualified suppliers; and
  - (ii) all purchases made from pre-qualified suppliers.

**24AD. Requirements when inviting persons to apply to join panel of pre-qualified suppliers**

- (1) If a local government decides to establish a panel of pre-qualified suppliers of particular goods or services, persons are to be publicly invited to apply to join the panel.
- (2) Statewide public notice of the invitation to apply to join a panel of pre-qualified suppliers is to be given.
- (3) The local government must, before applications to join a panel of pre-qualified suppliers for particular goods or services are publicly invited, determine in writing the criteria for deciding which applications should be accepted.
- (4) A notice under subregulation (2) is to include —
  - (a) a brief description of the goods or services that persons on the panel of pre-qualified suppliers will be expected to supply; and
  - (b) particulars identifying a person from whom more detailed information about the proposed panel of pre-qualified suppliers of particular goods or services may be obtained; and
  - (c) information as to where and how applications to join the panel of pre-qualified suppliers may be submitted; and
  - (d) the date and time after which applications to join the panel of pre-qualified suppliers cannot be submitted.

- (5) In subregulation (4)(b) a reference to detailed information about a proposed panel of pre-qualified suppliers of particular goods or services includes a reference to —
- (a) the local government's written policy referred to in regulation 24AC(1)(a); and
  - (b) such information as the local government decides should be disclosed to those interested in applying to join the panel; and
  - (c) detailed specifications of the goods or services that pre-qualified suppliers on the panel will be expected to supply; and
  - (d) the criteria for deciding which applications to join the panel should be accepted; and
  - (e) an explanation of how the panel will operate; and
  - (f) whether or not the local government intends to purchase the goods or services exclusively from pre-qualified suppliers on the panel; and
  - (g) a statement to the effect that there is no guarantee that the local government will purchase goods or services from pre-qualified suppliers on the panel; and
  - (h) the period for which the panel will be established; and
  - (i) the number of pre-qualified suppliers the local government intends to put on the panel.
- (6) After a notice has been given under subregulation (2), a local government may vary the information referred to in subregulations (4) and (5) by taking reasonable steps to give each person who has sought detailed information about the proposed panel or each person who has submitted an application, as the case may be, notice of the variation.

**24AE. Minimum time to be allowed for submitting application to join panel of pre-qualified suppliers**

If notice under regulation 24AD(2) is given, the date and time referred to in regulation 24AD(4)(d) has to be at least 14 days after the notice is first published in the newspaper circulating generally throughout the State.

**24AF. Procedure for receiving and opening applications**

Regulation 16 applies to the receiving and opening of applications to join a panel of pre-qualified suppliers as if a reference in that regulation to a tender were a reference to an application to join a panel of pre-qualified suppliers.

**24AG. Information about panels of pre-qualified suppliers to be included in tenders register**

- (1) The tenders register kept under these regulations must include, for each invitation to apply to join a panel of pre-qualified suppliers —
  - (a) a brief description of the goods or services persons on the panel will be expected to supply; and
  - (b) a copy of the notice of the invitation to apply to join the panel; and
  - (c) the name of each applicant whose application has been opened; and
  - (d) the name of any successful applicant.
- (2) The tenders register is to include for each invitation to apply to join a panel of pre-qualified suppliers the pricing schedule, or a summary of the amount of the consideration sought, in the applications accepted by the local government.

**24AH. Rejecting and accepting applications to join panel of pre-qualified suppliers**

- (1) An application to join a panel of pre-qualified suppliers (an *application*) is required to be rejected unless it is submitted at a place, and within the time, specified in the invitation for applications to join the panel.
- (2) An application that is submitted at a place, and within the time, specified in the invitation but that fails to comply with any other requirement specified in the invitation may be rejected without considering the merits of the application.
- (3) Applications that have not been rejected under subregulation (1) or (2) are to be assessed by the local government by means of a written evaluation of the extent to which each application satisfies the criteria for deciding which applications to accept and it is to decide which of them (if any) it thinks it would be most advantageous to the local government to accept.
- (4) To assist the local government in deciding whether an application would be advantageous to it to accept, the person who submitted the application may be requested to clarify the information provided in it.
- (5) The local government may decline to accept any application.

**24AI. Applicants to be notified of outcome**

After the local government has decided under regulation 24AH which applications (if any) it will accept, the CEO is to give each person who submitted an application notice in writing advising —

- (a) that the person's application was accepted and that the person is, for the period specified in the notice, to be part of a panel of pre-qualified suppliers of the particular goods or services; or
- (b) that the person's application was not accepted.

**24AJ. Contracts with pre-qualified suppliers**

- (1) The local government may enter into a contract, or contracts, for the supply of goods or services with a pre-qualified supplier who is part of a panel of pre-qualified suppliers for the supply of those particular goods or services.
- (2) A contract referred to in subregulation (1) must not —
  - (a) be for a term exceeding 12 months; or
  - (b) contain an option to renew or extend its term.

**15. Regulation 29A amended**

In regulation 29A(a) delete ““\$200”; and” and insert:

\$500; and

**16. Regulation 30 amended**

Delete regulation 30(3)(b) and insert:

- (b) the entire consideration received by the local government for the disposition is used to purchase other property, and where the total consideration for the other property is not more, or worth more, than \$75 000.

**Part 3 — Local Government (Audit)  
Regulations 1996 amended****17. Regulations amended**

This Part amends the *Local Government (Audit) Regulations 1996*.

**18. Regulation 13 amended**

In regulation 13 in the Table delete the rows under the heading “*Local Government (Functions and General) Regulations 1996*” and insert:

r. 7	r. 9	r. 10
r. 11A	r. 11	r. 12
r. 14(1), (3) and (5)	r. 15	r. 16
r. 17	r. 18(1) and (4)	r. 19
r. 21	r. 22	r. 23
r. 24	r. 24AD(2), (4) and (6)	r. 24AE
r. 24AF	r. 24AG	r. 24AH(1) and (3)
r. 24AI	r. 24E	r. 24F

K. H. ANDREWS, Clerk of the Executive Council.