

Public Sector Management (Goods and Services) Regulation 2000

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New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Note**

The *Public Sector Management (Goods and Services) Regulation 2000* made under the *Public Sector Management Act 1988* is on and from 9.9.2002 taken to be a regulation made under the *Public Sector Employment and Management Act 2002 No 43*. See clause 4 of Schedule 4 to the *Public Sector Employment and Management Act 2002*.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the *Interpretation Act 1987*.

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New South Wales

Contents

Part 1 Preliminary	4
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Objects of Regulation	5
5 Government procurement and tendering policies and codes of practice	5
Part 2 (Repealed)	6
Part 3 General provisions relating to supply and disposal of goods and services	6
16 Board to arrange for supply of goods and services for Public Service	6
17 Board to arrange for disposal of goods for Public Service	6
18 Board may also arrange supply or disposal for other public sector agencies	7
19 Board directions	7
20 Supply or disposal under delegation	8
21 Basis on which Board arranges supply or disposal	8
22 Method of obtaining supply or disposal	8
23 Review by Board of supply and disposal.....	9
24 Information concerning supply and disposal arrangements	9
25 Information to be provided by the Public Service	9

Part 4 Special provisions relating to tenders	9
26 Application of Part	9
27 When tenders required	10
28 Acceptance of tenders.....	10
29 Form of tenders	10
30 Limit on duration of tenders	10
31 Opening of tenders	10
32 Confidentiality and security of electronic tenders	11
33 Re-use of tenders	11
34 Security deposits	11
Part 5 Emergencies, exemptions and variations	11
35 Exemption for emergencies.....	11
36 Exemption for supply of goods and services not in period contract	12
37 Exemption for supply by government trading enterprises.....	12
38 Variation to requirements for supply or disposal	12
39 Exemptions by Minister	13
Part 6 Miscellaneous	13
40 Responsibility of Department Heads	13
41 Public servants not to circumvent or avoid Regulation.....	13
42 Misconduct by members of staff in relation to supply or disposal of goods or services	13
43 Saving of proper contractual arrangements	13
44 Provisions relating to members and procedure of Board	13
45 General savings provision	14
Schedule 1 Provisions relating to members of Board	14
Schedule 2 Provisions relating to procedure of Board	16

Public Sector Management (Goods and Services) Regulation 2000



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Sector Management (Goods and Services) Regulation 2000*.

2 Commencement

This Regulation commences on 1 September 2000.

Note—

This Regulation replaces the *Public Sector Management (Goods and Services) Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

Board means the State Contracts Control Board established under Chapter 7 of the Act.

Board Directions means directions (including guidelines) issued by the Board under clause 19.

Chairperson means the Chairperson of the Board.

exercise a function includes perform a duty.

function includes a power, authority or duty.

goods includes, without limiting the generality of the expression, plant, machinery, motor vehicles, tools, furniture, floor coverings, office equipment, scientific apparatus, appliances, hardware, medical and pharmaceutical supplies, information technology software and hardware, fuel and provisions.

Minister means the Minister administering Chapter 7 of the Act.

period contract means a contract under which there is a standing offer for the provision or disposal of goods or services over the period of the contract on the order of any customer for whom the Board has arranged the contract.

public servant means an officer or a temporary employee of a Department.

services includes, without limiting the generality of the expression, advisings (other than legal advising), consultancies, management of information technology projects, printing services and the performance of professional or trade operations of any kind.

supplier means any provider or potential provider of goods or services.

the Act means the *Public Sector Employment and Management Act 2002*.

- (2) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

4 Objects of Regulation

The objects of this Regulation are as follows:

- (a) to establish the basis on which the Public Service acquires goods and services, or disposes of goods, so as to maximise value for money for the Public Service, within a framework of probity and fairness to suppliers,
- (b) to establish appropriate Public Service procurement, tendering and disposal procedures so that the private sector is able to deal with the Public Service in a way that is open, fair and as practical and convenient as possible,
- (c) to facilitate the supply of goods and services to, and the disposal of goods by, the public sector generally by making available procurement and disposal facilities and services established for the Public Service.

5 Government procurement and tendering policies and codes of practice

- (1) In this clause:

NSW Government's procurement and tendering policies and codes of practice means the policies and codes of practice adopted by the Government of New South Wales from time to time with respect to:

- (a) the procurement of goods and services for the Government of New South Wales, and
 - (b) the tendering process in relation to those goods and services.
- (2) The Minister, the Board, the Board's delegates or committees, Department Heads and other bodies or persons must, in exercising a function under this Regulation, do so in accordance with the provisions of the NSW Government's procurement and tendering

policies and codes of practice.

- (3) Any agreement entered into under clause 18 between the Board and a public sector agency not within the Public Service may make provision for the application of the provisions of the NSW Government's procurement and tendering policies and codes of practice to matters arising under the agreement.
- (4) This clause does not authorise any act or omission that contravenes a requirement of this Regulation.

Part 2

6-15 (Repealed)

Part 3 General provisions relating to supply and disposal of goods and services

16 Board to arrange for supply of goods and services for Public Service

- (1) The Board alone is responsible for arranging the supply of all goods and services necessary for the operation of the Public Service.
- (2) In particular, the Board alone is responsible for:
 - (a) inviting or accepting tenders for the supply of those goods and services, and
 - (b) determining the conditions under which those tenders are invited or accepted, and
 - (c) entering into contracts on behalf of any Department for the supply of those goods and services.
- (3) If a period contract is arranged by the Board, Departments must use that contract for obtaining goods and services to which it applies.
- (4) The Board may authorise a Department for whom a contract is arranged to enter into the contract with the supplier as a principal party to the contract.
- (5) This clause is subject to the other provisions of this Regulation.

17 Board to arrange for disposal of goods for Public Service

- (1) The Board alone is responsible for arranging the disposal of any goods by the Public Service that are either unserviceable or no longer required by the Public Service.
- (2) In particular, the Board alone is responsible for:
 - (a) inviting or accepting tenders for the disposal of those goods, and
 - (b) determining the conditions under which those tenders are invited or accepted,

and

(c) entering into contracts on behalf of any Department for the disposal of those goods.

- (3) If a period contract is arranged by the Board, Departments must use that contract for disposing of goods to which it applies.
- (4) The Board may authorise a Department for whom a contract is arranged to enter into the contract with the supplier as a principal party to the contract.
- (5) This clause is subject to the other provisions of this Regulation.

18 Board may also arrange supply or disposal for other public sector agencies

- (1) The Board may enter into agreements with public sector agencies not within the Public Service for the supply of goods and services for, or the disposal of goods by, those agencies.
- (2) The Board may do so by allowing those agencies to have access to the arrangements for the Public Service or by making separate arrangements.
- (3) The Board may establish criteria for the exercise of the Board's functions under this clause. Those criteria may be set out in the Board Directions.
- (4) In this clause, **public sector agency** includes:
 - (a) a government trading enterprise (including a State owned corporation),
 - (b) a public or private hospital (including an area health service),
 - (c) a local government agency,
 - (d) a charity or other community non-profit organisation,
 - (e) a public or private school, college or university,
 - (f) a public sector agency of this State, the Commonwealth or of any other State or Territory,
 - (g) a contractor to a public sector agency (but only in respect of things done as such a contractor).

19 Board directions

- (1) The Board may issue directions regarding the supply of goods and services for, and the disposal of goods by, the Public Service.
- (2) Without limiting the generality of subclause (1), the Board may issue directions regarding:

- (a) any matter relating to tenders under Part 4 (in particular, an amount for the purposes of clause 27 (1) (b)), and
 - (b) the method for obtaining supply of goods or services, or disposing of goods, by contract arranged by the Board where the contract concerned is not a contract to which clause 27 applies.
- (3) The directions may include guidelines for action that is appropriate but not mandatory.

20 Supply or disposal under delegation

Any arrangements made by delegation from the Board for the supply of goods or services for, or the disposal of goods by, the Public Service are to be made in accordance with the Board Directions and any conditions to which the delegation is subject.

21 Basis on which Board arranges supply or disposal

- (1) The Board must exercise its function of arranging the supply of goods or services for, or the disposal of goods by, the Public Service on the basis of:
- (a) providing value for money for the Public Service, and
 - (b) probity and fairness, and
 - (c) any other obligation under this Regulation, including any directions given by the Minister.
- (2) The Board is to record in writing the basis of its decision as to what constitutes value for money for the Public Service.

22 Method of obtaining supply or disposal

- (1) The Board may use, or authorise the use of, any method for obtaining supply of goods and services or disposing of goods it considers provides value for money for the Public Service.
- (2) The Board is not obliged to call tenders despite anything to the contrary in clause 27. However, if the Board does not call tenders in a case in which it is required to do so under clause 27:
- (a) the Board must approve of a procurement plan or disposal plan, as the case requires, and
 - (b) the Board must record in writing its reasons for not calling tenders and report the matter in the Board's annual report.

Note—

Clause 27 requires tenders to be called for all period contracts and all other contracts whose value exceeds an

amount determined by the Board.

23 Review by Board of supply and disposal

- (1) The Board may review the process by which goods and services are supplied for, and goods are disposed of by, the Public Service for the purpose of ensuring compliance with this Regulation.
- (2) The Board may include in its annual report particulars of any failure to comply with this Regulation or any Board Direction.

24 Information concerning supply and disposal arrangements

- (1) The Board may provide information to interested persons on the basis on which the Public Service manages the supply and disposal of goods and services.
- (2) This section is subject to the provisions of the *Freedom of Information Act 1989* and any contractual obligation of the Board regarding confidentiality.

25 Information to be provided by the Public Service

- (1) A public servant must, on becoming aware in the course of official duties that goods or services are available at prices or on terms more favourable than those being paid or obtained or proposed to be paid or obtained by any Department under delegation from the Board, notify the Department Head without delay. The Department Head must then so notify the Chairperson.
- (2) A public servant must report to the appropriate Department Head, without delay, any case in which a supplier has not fulfilled any condition of a contract made between the Board and the supplier or the supplier and the Department. The Department Head must then so notify the Chairperson.
- (3) Public servants must, on request by the Chairperson, furnish to the Board such information as it requires to perform its functions under this Regulation.
- (4) In particular, the Chairperson may require any public servant to inform the Board on any matter arising between any public servant and any supplier in relation to quantity, quality, delay in delivery, unethical behaviour or any other matter concerning the supply of goods or services for, or the disposal of goods by, the Public Service.

Part 4 Special provisions relating to tenders

26 Application of Part

- (1) This Part applies to tenders for contracts arranged by the Board under this Regulation.
- (2) In the case of tenders that do not relate to the Public Service, this Part applies subject to the agreement between the Board and the public sector agency concerned.

27 When tenders required

- (1) Tenders must be invited for:
 - (a) all period contracts, and
 - (b) any contract (other than a period contract) the estimated value of which exceeds such amount as the Board from time to time directs under clause 19 for the purposes of this paragraph.
- (2) (Repealed)
- (3) This clause is subject to the other provisions of this Regulation.

Note—

Exceptions to this clause include:

- (a) clause 22 which enables the Board not to call tenders required by this clause, and
- (b) clause 35 which enables Departments to obtain goods or services in an emergency, and
- (c) clause 36 which enables Departments to obtain goods or services of a certain value directly if they are not available under period contract.

In relation to contracts where tenders are not required under this clause, Board directions (if any) made under clause 19 apply.

28 Acceptance of tenders

- (1) The Board may accept the tender that, in the opinion of the Board, represents the best value for money for the Public Service.
- (2) If the tender accepted is not the lowest received, the Board must record in writing the reasons for not accepting any such lower tender.
- (3) The Board is not bound to accept any tender and may invite fresh tenders.

29 Form of tenders

A tender must be in a form approved by the Board.

30 Limit on duration of tenders

- (1) Tenders must not be invited to cover a period of supply or disposal exceeding 5 years without the prior approval, in writing, of the Minister.
- (2) The approval of the Minister may be given for a particular case or class of cases.

31 Opening of tenders

- (1) The Board is to establish a Tender Opening Committee whenever tenders are invited. The functions of any such committee are to be exercised in accordance with the Board

Directions.

- (2) Each tender box for tenders must be opened in the presence of a Tender Opening Committee as soon as practicable after the time fixed for the closing of the tenders.
- (3) The particulars of each tender received and opened must be recorded in scheduled form.

32 Confidentiality and security of electronic tenders

- (1) The Board must include in the Board Directions procedures to be observed in processing tenders in electronic format.
- (2) The procedures are to ensure levels of confidentiality that are no less than those required for tenders that are not in electronic format.
- (3) The procedures are to ensure appropriate levels of security to maintain the integrity of the data concerned in any tenders submitted in electronic format.

33 Re-use of tenders

- (1) If the Board has received tenders in relation to a specification for a single requisition and, within a time period specified by the Board from time to time, has a further requirement for goods or services to that specification, the original tender may be used if the supplier agrees to the further contract.
- (2) If the Board acts under this clause, the reasons why that action will provide value for money for the Public Service are to be recorded in writing.

34 Security deposits

- (1) The Board may require a supplier who lodges a tender to lodge an amount specified by the Board as a security deposit for the due performance of any contract to which the tender relates.
- (2) The Board must keep a register that records the receipt and disposal of security deposits.

Part 5 Emergencies, exemptions and variations

35 Exemption for emergencies

- (1) The Chairperson, a Department Head or any other public servant specially nominated for the purposes of this clause by the appropriate Department Head may, in any case of emergency, authorise the acquisition of goods or services to a value sufficient to meet that particular emergency.
- (2) The Chairperson, Department Head or other public servant may do so despite any procedure for obtaining the goods or services prescribed by, or any other provision of,

this Regulation.

- (3) Every authorisation under this clause must, without delay, be reported:
 - (a) if given otherwise than by the Chairperson—to the Chairperson, or
 - (b) if given by the Chairperson—to the Board.
- (4) A public servant who is not specially nominated for the purposes of this clause may act under this clause. The public servant must, without delay, report the matter (including relevant particulars) to the appropriate Department Head.
- (5) Nothing in this clause authorises the acquisition of goods or services:
 - (a) in excess of those necessary to meet the immediate needs of any emergency, or
 - (b) otherwise than in accordance with the procedures provided for by this Regulation in any case where any approval under this Regulation can be obtained in sufficient time to meet the Departmental need.

36 Exemption for supply of goods and services not in period contract

- (1) A Department may obtain goods or services not available under a period contract, without reference to the Board and the procedures prescribed by this Regulation, if the value does not exceed the amount determined by the Board for the purposes of this clause.
- (2) However, any such acquisition is subject to any Board Direction relating to acquisitions under this clause.

37 Exemption for supply by government trading enterprises

- (1) A Department may, without reference to the Board and the procedures prescribed by this Regulation, obtain goods or services directly from any government trading enterprise that provides those goods or services in the exercise of its principal functions.
- (2) However, any such acquisition is subject to any Board Direction relating to acquisitions under this clause.

38 Variation to requirements for supply or disposal

- (1) The Board, the Chairperson or a public servant so authorised by the Board or Chairperson may vary any of the requirements of this Regulation relating to the supply or disposal of goods or services:
 - (a) in order to comply with normal business practice, or
 - (b) because of the nature of the particular goods or services to be acquired or disposed of, or

(c) to provide value for money for the Public Service.

(2) Any such variation (unless made by the Board) must be reported to the first meeting of the Board held after the variation was made.

(3) Any such variation must be recorded in writing by the Board.

39 Exemptions by Minister

The Minister may grant exemptions to the Board or any delegate of the Board from any of the provisions of this Regulation, subject to such conditions as the Minister may from time to time determine.

Part 6 Miscellaneous

40 Responsibility of Department Heads

The Department Head of a Department is responsible for ensuring that systems in the Department:

- (a) comply with the requirements of this Regulation and any Board Direction, and
- (b) prevent acquisition of goods and services exceeding those sufficient to meet reasonable Departmental needs, and
- (c) identify excess goods for disposal.

41 Public servants not to circumvent or avoid Regulation

A public servant must not knowingly obtain or attempt to obtain any goods or services, or dispose or attempt to dispose of goods, in a manner designed to circumvent or avoid any provision of this Regulation or any Board Direction.

42 Misconduct by members of staff in relation to supply or disposal of goods or services

The Chairperson is to report to the appropriate Department Head any public servant who has, in the opinion of the Chairperson, engaged in any misconduct in the exercise of any function concerning the supply or disposal of goods or services.

43 Saving of proper contractual arrangements

This Regulation does not affect the necessity for the making of proper contractual arrangements in respect of any transaction relating to goods and services.

44 Provisions relating to members and procedure of Board

- (1) Schedule 1 has effect with respect to the members of the Board.
- (2) Schedule 2 has effect with respect to the procedure of the Board.

45 General savings provision

Any approval or exemption granted, any appointment or delegation made, or any other act, matter or thing done, under the *Public Sector Management (Goods and Services) Regulation 1995* and in force or having effect immediately before 1 September 2000, is taken to have been granted, made or done under the corresponding provision of this Regulation.

Schedule 1 Provisions relating to members of Board

(Clause 44 (1))

1 Deputies of members

- (1) The Chairperson may, from time to time, appoint a public servant to be the deputy of the Chairperson, and the Chairperson may revoke any such appointment.
- (2) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.
- (3) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be a member.
- (4) The deputy of a member who is Chairperson of the Board has the member's functions as Chairperson and, when exercising those functions, may use the title of Chairperson.

2 Terms of office of appointed members

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration of appointed members

An appointed member or deputy of such a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member or deputy.

4 Vacancy in office of appointed members

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office in writing addressed to the Minister, or

- (d) is removed from office by the Minister under this clause or by the Governor under Chapter 5 of the Act, or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

5 Filling of vacancy in office of appointed member

If the office of an appointed member becomes vacant, a person is, subject to this Regulation, to be appointed to fill the vacancy.

6 Disclosure of pecuniary interests

(1) If:

- (a) a member of the Board has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the duties of the member in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that

company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) The Board must record particulars of any disclosure made under this clause in a book kept for the purpose. The members must ensure that the book is kept open at all reasonable hours to inspection by any person.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
 - (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), if a member has a direct or indirect pecuniary interest in a matter to which the disclosure relates, he or she must not:
 - (a) be present during any deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause does not apply to or in respect of an interest of a member (being the provision of goods or services to the member by the Board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.
- (8) For the purposes of this clause, a member is taken to have a pecuniary interest in a matter if the public sector agency to which the member belongs has such an interest.

7 Personal liability of members of Board

- (1) A matter or thing done by the Board, a member of the Board or any person acting under the direction of the Board does not, if the matter or thing was done in good faith for the purposes of executing this Regulation, subject the member or person so acting personally to any action, liability, claim or demand.
- (2) However, any liability for such a matter or thing attaches instead to the Crown.

Schedule 2 Provisions relating to procedure of Board

(Clause 44 (2))

1 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at

those meetings is, subject to this Regulation, as determined by the Board.

2 Quorum

- (1) The quorum for a meeting of the Board is 4 members.
- (2) However, if the number of members of the Board at any time exceeds 8, the quorum for a meeting is a majority of the members for the time being.

3 Presiding member

- (1) The Chairperson of the Board or, in the absence of the Chairperson (and his or her deputy), another member nominated by the Chairperson is to preside at a meeting of the Board. However, if the nominated member (and his or her deputy) is also absent, another member elected to chair the meeting by the members present is to preside at the meeting.
- (2) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a casting vote.

4 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

5 Transaction of business outside meetings or by telephone etc

- (1) The Board may, if the Chairperson thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of the members is taken to be a decision of the Board.
- (2) The Board may, if the Chairperson thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the members.
- (4) A resolution approved under subclause (1) must be recorded in the minutes of the meetings of the Board. The date the resolution takes effect is the date endorsed on the resolution by the Chairperson as the date it was approved under subclause (1).

- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

6 Times and places for meetings

- (1) The Board is to meet at such times and places as the Chairperson determines.
- (2) The Chairperson must, on receipt of a written request from any member of the Board, convene a special meeting of the Board.

7 Attendance at meetings by Department Head or nominee

The Department Head of a Department, or his or her nominee, may, with the approval of the Chairperson, attend any meeting of the Board at which any matter in relation to the procurement of goods or services required by that Department is being considered by the Board.

8 Minutes of meetings

The Board is to keep minutes of proceedings at its meetings.

9 Authentication of documents

Any document requiring authentication by the Board may be sufficiently authenticated if it is signed by the Chairperson or by any public servant authorised to do so by the Chairperson.