

Public Sector Employment and Management (Goods and Services) Regulation 2010

[2010-448]



New South Wales

Status Information

Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Repeal**

The Regulation was repealed by Sch 3.5 to the [Public Sector Employment and Management Amendment \(Procurement of Goods and Services\) Act 2012 No 43](#) with effect from 1.7.2012.

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

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Public Sector Employment and Management (Goods and Services) Regulation 2010



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Sector Employment and Management (Goods and Services) Regulation 2010*.

2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Public Sector Management (Goods and Services) Regulation 2000* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.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 10.

Chairperson means the Chairperson of the Board.

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 sector agency means the whole or a part of a public sector service or an employer constituting, or within, a public sector service and includes a Division of the Government Service.

public sector agency head (or **head** of a public sector agency) means the person who is the chief executive officer, or who exercises the functions of chief executive officer, of the public sector agency.

public sector employee means a person employed in the public sector service.

public sector service has the meaning given to it under the Act, except that it does not include the service of either House of Parliament, or the President or Speaker, or the President and the Speaker jointly.

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) Notes included in 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 sector service acquires goods and services, or disposes of goods, so as to maximise value for money, within a framework of probity and fairness to suppliers,
- (b) to establish appropriate public sector service procurement, tendering and disposal procedures so that the private sector is able to deal with the public sector 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 sector service.

5 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, public sector agency 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 9 between the Board and a public body not within the public sector 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.

6 Nation Building and Jobs Plan projects—special provision

- (1) This clause applies to infrastructure projects to which the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009* applies.
- (2) The Co-ordinator General under that Act may determine policies and procedures with respect to the procurement of goods and services by a public sector agency for the delivery of any such infrastructure projects, and to any tendering or contracts for those goods and services.
- (3) This clause has effect despite anything to the contrary in the other provisions of this Regulation.

Part 2 Supply and disposal of goods and services

7 Board to arrange for supply of goods and services

- (1) The Board alone is responsible for arranging the supply of all goods and services necessary for the operation of the public sector service.
- (2) In particular, the Board alone is responsible for the following:
- (a) determining the method for obtaining supply of goods and services or disposing of goods,
 - (b) inviting or accepting tenders for the supply of goods and services,
 - (c) determining the conditions under which tenders are invited or accepted,
 - (d) entering into contracts on behalf of any public sector agency for the supply of goods and services.

- (3) If a period contract is arranged by the Board, public sector agencies must use that contract for obtaining goods and services to which it applies.
- (4) The Board may authorise a public sector agency 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.

8 Board to arrange for disposal of goods

- (1) The Board alone is responsible for arranging the disposal of any goods by the public sector service that are either unserviceable or no longer required by the public sector 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 public sector agency for the disposal of those goods.
- (3) If a period contract is arranged by the Board, public sector agencies must use that contract for disposing of goods to which it applies.
- (4) The Board may authorise a public sector agency 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.

9 Board may arrange supply or disposal for other public bodies

- (1) The Board may enter into agreements with public bodies not within the public sector service for the supply of goods and services for, or the disposal of goods by, those bodies.
- (2) The Board may do so by allowing those bodies to have access to the arrangements for the public sector service or by making separate arrangements.
- (3) The Board may establish criteria for the exercise of the Board's functions under this clause, including but not limited to the circumstances in which, and the public bodies to which, access to the arrangements for the public sector service will not be given.
- (4) The criteria may be set out in the Board Directions.
- (5) In this clause:

community non-profit organisation does not include an industry association or

similar body the activities of which are intended to promote the interests of a particular industry or sector of an industry.

public body includes the following:

- (a) a government trading enterprise (including a State owned corporation),
- (b) a public or private hospital (including a local health district),
- (c) a local government agency,
- (d) a charity or other community non-profit organisation,
- (e) a public or private school or a college or university,
- (f) a public authority of this State, the Commonwealth or any other State or Territory,
- (g) a public authority of any other jurisdiction (but only if it carries on activities in this State),
- (h) a contractor to a public authority (but only in respect of things done as such a contractor).

10 Board directions

- (1) The Board may issue directions regarding the supply of goods and services for, and the disposal of goods by, the public sector service.
- (2) Without limiting the generality of subclause (1), the Board may issue directions regarding:
 - (a) any matter relating to tenders under Part 3 (in particular, an amount for the purposes of clause 18 (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 18 applies.
- (3) The directions may include guidelines for action that is appropriate but not mandatory.

11 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 sector service are to be made in accordance with the Board Directions and any conditions to which the delegation is subject.

12 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 sector service on the basis of:

- (a) obtaining value for money, 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.

13 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.
- (2) The Board is not obliged to call tenders despite anything to the contrary in clause 18. However, if the Board does not call tenders in a case in which it is required to do so under clause 18:
 - (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 18 requires tenders to be called for all period contracts and all other contracts the value of which exceeds an amount determined by the Board.

14 Review by Board of supply and disposal

- (1) The Board may review the process by which goods and services are supplied to, and goods are disposed of by, the public sector 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.

15 Information to be provided by the public sector service

- (1) A public sector employee 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 public sector agency under delegation from the Board, notify the public sector agency head without delay. The public sector agency head must then so notify the Chairperson.
- (2) A public sector employee must report to the appropriate public sector agency 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 agency. The public sector agency head must then so notify the Chairperson.

- (3) Public sector employees 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 sector employee to inform the Board of any matter arising between any public sector employee and any supplier in relation to quantity, quality, delay in delivery, unethical behaviour or any other matter concerning the supply of goods or services to, or the disposal of goods by, the public sector service.

16 Information concerning supply and disposal arrangements

- (1) The Board may provide information to interested persons on the basis on which the public sector service manages the supply and disposal of goods and services.
- (2) This section is subject to any contractual obligation of the Board regarding confidentiality.
- (3) This clause does not require the Board to provide information that it would not be required to disclose under the [Government Information \(Public Access\) Act 2009](#).

Part 3 Tenders

17 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 sector service, this Part applies subject to the agreement between the Board and the public body concerned.

18 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 10 for the purposes of this paragraph.
- (2) This clause is subject to the other provisions of this Regulation.

Note—

Exceptions to this clause include:

- (a) clause 13 which enables the Board not to call tenders required by this clause, and
- (b) clause 24 which enables public sector agencies to obtain goods or services in an emergency, and
- (c) clause 25 which enables public sector agencies 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 10 apply.

19 Acceptance of tenders

- (1) The Board may accept the tender that, in the opinion of the Board, represents the best value for money.
- (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.
- (4) A tender must be in a form approved by the Board.

20 Limit on duration of tenders and contracts

- (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) Contracts (including any options to extend any such contract) for supply or disposal arising from any tender process cannot cover a period of more than 5 years without the prior approval, in writing, of the Minister.
- (3) The approval of the Minister may be given for a particular case or class of cases.

21 Receipt and confidentiality 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) The particulars of each tender received and opened must be recorded in scheduled form.
- (3) The Board must include in the Board Directions procedures to be observed in processing tenders that ensure the confidentiality and security of the information in those tenders.

22 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 are to be recorded in writing.

23 Security deposits

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.

Part 4 Emergencies, exemptions and variations

24 Exemption for emergencies

- (1) The Chairperson, a public sector agency head or any other public sector employee specially nominated for the purposes of this clause by the appropriate public sector agency 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, public sector agency head or other public sector employee 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 sector employee who is not specially nominated for the purposes of this clause may act under this clause. The public sector employee must, without delay, report the matter (including relevant particulars) to the appropriate public sector agency 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 public sector agency's need.

25 Exemption for supply not in period contract

- (1) A public sector agency 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.

26 Exemption for supply by government trading enterprises

- (1) A public sector agency 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.

27 Exemption for supply by approved disability employment organisations

- (1) A public sector agency may, without reference to the Board and the procedures prescribed by this Regulation, obtain goods or services that are supplied by a person or body approved as a disability employment organisation under this clause.
- (2) However, any such acquisition is subject to any Board Direction relating to acquisitions under this clause.
- (3) The Minister for Disability Services may, by order, approve a person or body as a disability employment organisation if satisfied that the person or body conducts a business a principal purpose of which is to provide employment to persons with a disability.
- (4) An approval may apply to a specified person or body or to all members of a specified class of persons or bodies.
- (5) An approval may apply to a branch or unit within a larger body. For that purpose, a reference in this clause to a body includes a reference to a branch or unit within a larger body.
- (6) An approval may be limited to specified goods or services supplied by a person or body. In that case, the person or body is approved as a disability employment organisation only in relation to those specified goods or services.
- (7) A register of disability employment organisations is to be kept for the purposes of this clause.
- (8) The register is to include particulars of approvals given under this clause.
- (9) The register is to be kept by a person or body appointed for the time being by the Minister for Disability Services to maintain the register.
- (10) Information contained on the register is to be made available to the public in such manner as the Minister for Disability Services directs.

(11) In this clause:

disability, in relation to a person, has the same meaning as it has in the *Disability Discrimination Act 1992* of the Commonwealth.

28 Variation to requirements for supply or disposal

- (1) The Board, the Chairperson or a public sector employee 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.
- (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.

29 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 5 Miscellaneous

30 Responsibility of public sector agency heads

The head of a public sector agency is responsible for ensuring that systems in the agency:

- (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 the reasonable needs of the agency, and
- (c) identify excess goods for disposal.

31 Employees not to circumvent or avoid Regulation

A public sector employee 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.

32 Chairperson to report misconduct

The Chairperson is to report to the appropriate public sector agency head any public

sector employee 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.

33 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.

34 Savings

Any act, matter or thing that, immediately before the repeal of the *Public Sector Management (Goods and Services) Regulation 2000*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Constitution and procedure of Board

1 Deputies of members

- (1) The Chairperson may, from time to time, appoint a public sector employee 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.

8 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.

9 Quorum

The quorum for a meeting of the Board is 4 members or a majority of the members appointed for the time being (whichever is the greater).

10 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.

11 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.

12 Transaction of business outside meetings or by telephone

- (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.

13 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.

14 Attendance at meetings by public sector agency head or nominee

The head of a public sector agency, 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 the agency is being considered by the Board.

15 Minutes of meetings

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

16 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 sector employee authorised to do so by the Chairperson.