

Local Government (Competitive Tendering) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 30 March 1994

(Brought in by the Honourable R. M. Hallam)

A BILL

to amend the **Local Government Act 1989**.

Local Government (Competitive Tendering) Act 1994

The Parliament of Victoria enacts as follows:

1. *Purpose*

The main purpose of this Act is to amend the **Local Government Act 1989** to require Councils to participate in competitive tendering arrangements with respect to a specified percentage of their total expenditure.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

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2. Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), section 6 comes into operation on a day to be proclaimed. 5
- (3) If section 6 does not come into operation before 1 October 1994, it comes into operation on that day.
- (4) The remaining provisions of this Act come into operation on 1 October 1994.

3. Insertion of Division 3 into Part 9

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After section 208 of the **Local Government Act 1989** insert—

“Division 3—Competitive Tendering

208A. Councils must become parties to competitive arrangements

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- (1) A Council must ensure that in any financial year it is a party to competitive arrangements that have a total value of 50% or more of the total expenses set out in the Council’s operating statement for that year. 20

- (2) Despite sub-section (1)—

- (a) in the 1994–95 financial year, a Council need only ensure that it is a party to competitive arrangements that have a total value of 20% or more of the total expenses set out in the Council’s operating statement for that year; and 25

- (b) in the 1995–96 financial year, a Council need only ensure that it is a party to competitive arrangements that have a total value of 30% or more of the total expenses set out in 30

the Council's operating statement for that year.

208B. What is a competitive arrangement?

(1) A competitive arrangement is—

(a) any contract for the supply of goods or services to a Council, or for the undertaking of works for a Council, entered into by the Council in writing after a competitive process conducted by it;

(b) any in-house agreement;

(c) any contract for the supply of goods or services, or for the undertaking of works, by a Council to, or for, another person entered into by the Council in writing after it submitted a tender as part of a competitive process conducted by that person;

(d) any contract in writing or in-house agreement that has been approved by the Minister under section 208F.

(2) Subject to sub-section (1) (d), contracts and in-house agreements entered into for a period of more than 5 years (or that have terms that might enable them to have a life of more than 5 years) and employment contracts are not competitive arrangements.

(3) A Council is still a party to a competitive arrangement even though—

(a) it is a joint party with one or more other Councils to the contract or agreement; or

(b) it conducted the competitive process jointly with one or more other Councils.

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- (4) A contract or in-house agreement that complies with sub-section (1) and that is in force on 1 October 1994 is a competitive arrangement even though it has been entered into for a period of more than 5 years or has terms that might enable it to have a life of more than 5 years. 5
- (5) However, any such contract or in-house agreement that is still in force on 1 October 1999 ceases to be a competitive arrangement on that date. 10

208c. *What is a competitive process?*

- (1) A competitive process in the awarding of a contract occurs if— 15
- (a) tenders are called for by public notice or are invited from those who have registered their interest in the contract (or any project which the contract is a part of) in response to an earlier public notice; and 20
- (b) consideration is given to all written tenders received by the date specified by the Council as being the closing date for the submission of tenders; and 25
- (c) the contract is awarded to a person or group of persons who submitted a written tender (regardless of whether or not the tender was the lowest tender); and 30
- (d) any other requirement specified in the regulations concerning the awarding of the contract has been complied with. 35
- (2) In the absence of any requirement in the regulations to the contrary, a competitive

process in the awarding of a contract still occurs even though no written or detailed specifications are made available to those who might be interested in submitting a tender.

- (3) In this section a reference to the awarding of a contract includes a reference to the entering into of an agreement.

208D. What is an in-house agreement?

An in-house agreement is an agreement by a member or members of a Council's staff to supply goods or services to the Council, or to undertake works for the Council, that—

- (a) is entered into by the Council after a competitive process conducted by it; and
- (b) is in writing; and
- (c) describes the goods or services to be supplied, or the works to be undertaken; and
- (d) sets out the annual cost of, and performance criteria relating to, those goods, services or works.

208E. How is the total value of competitive arrangements to be determined?

The total value of a competitive arrangement in a financial year is—

- (a) in the case of a contract for the supply of goods or services to a Council, or for the undertaking of works for a Council, the amount which the Council is liable to pay in that year;

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- (b) in the case of an in-house agreement, the amount specified in the agreement as the cost of supplying the goods or services, or of undertaking the works, in that year; 5
- (c) in the case of a contract for the supply of goods or services, or for the undertaking of works, by a Council, the amount which the Council is entitled to receive in that year. 10

208F. *Minister may approve alternative arrangements*

- (1) The Minister may approve as a competitive arrangement a contract or an in-house agreement entered into, or to be entered into— 15
 - (a) by a Council without directly engaging in a competitive process; 20
 - or
 - (b) by a Council for a period of more than 5 years (or that has terms that might enable it to have a life of more than 5 years). 25
- (2) The Minister may give such approval in respect of a particular contract or in-house agreement or in respect of a class of contracts or in-house agreements.
- (3) Any approval given under this section must be in writing and must specify the reasons why it was given. 30

208G. *Councils must prepare a competitive tendering statement*

- (1) As soon as is reasonably practicable after the end of each financial year, a Council 35

must prepare a competitive tendering statement.

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- (2) The statement must be in the form, and must contain the details, required by the regulations.
- (3) The Council must submit the statement to its auditor as soon as possible after the statement has been prepared.
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- (4) The Council must submit the statement to the Minister within 3 months of the end of the financial year to which the statement relates.
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- (5) The Council must do this even if the auditor has not yet prepared the report on the statement required by section 129A (1) (c).
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- (6) If the statement shows that the Council has failed to comply with section 208A, the Council must ensure that the copy of the statement submitted to the Minister is accompanied by a written explanation of why it failed to comply with that section.”.

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4. *Insertion of definition*

In section 3 of the **Local Government Act 1989**, after the definition of “**Chief Executive Officer**” insert—

“**competitive tendering statement**” means the statement required by section 208G;’.

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5. *Reporting and auditing provisions concerning competitive tendering statements*

In the **Local Government Act 1989**—

(a) after section 126 (1) (a) insert—

“(aa) a competitive tendering statement; and

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- (ab) if the competitive tendering statement shows that the Council has failed to comply with section 208A, a statement of that failure and an explanation of why that failure occurred; and 5
- (ac) a copy of the report on the competitive tendering statement prepared by its auditor under section 129A (1) (c); and”;
- (b) after section 129A (1) (b) insert— 10
- “; and
- (c) prepare a report on the competitive tendering statement in the form and containing the details required by the regulations and give a copy of that report to the Minister and the Council as soon as is reasonably practicable after the report has been prepared.”. 15

6. Substitution of section 186

For section 186 of the **Local Government Act 1989** substitute— 20

“186. Restriction on power to enter into contracts

- (1) Before a Council enters into a contract for the purchase of goods or services, or for the carrying out of works, to the value of \$50 000 (or such higher amount as may be fixed by Order in Council) or more, it must— 25
- (a) give public notice of the purpose of the contract and invite tenders from any person wishing to undertake the contract; or 30
- (b) give public notice of the purpose of the contract or the project to which the contract relates and invite expressions of interest from any person interested in undertaking the 35

contract or all, or any part of, the project.

(2) If a Council invites expressions of interest—

(a) it must register those expressions of interest; and

(b) when it is ready to enter into the contract, it must invite tenders from some or all of those who registered their interest in undertaking the contract (or the part of the project to which the contract relates).

(3) The public notice, tenders and expressions of interest must be in the prescribed form (if any) and must contain any details that are prescribed.

(4) Nothing in this section requires a Council to accept the lowest tender or to accept any tender.

(5) This section does not apply if—

(a) the Council resolves that the contract must be entered into because of an emergency; or

(b) the contract is entered into with a Council acting as the agent for a group of Councils and the Council has otherwise complied with this Act; or

(c) the contract is entered into in accordance with arrangements approved by the Minister for the purposes of this sub-section.

(6) Whenever practicable, a Council must give effective and substantial preference to contracts for the purchase of goods, machinery or material manufactured or produced in Australia or New Zealand.”.

7. Insertion of regulation-making powers concerning competitive tendering

In Schedule 12 of the **Local Government Act 1989**—

(a) after item 11 **insert**—

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“**11A.** Prescribing the form and contents of auditors’ reports on competitive tendering statements.”;

(b) after item 19 **insert**—

“**20.** Any matter relating to Division 3 of Part 9 including—

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(a) public notices in relation to invitations for tenders and expressions of interest;

(b) specifications to be provided in relation to tenders and expressions of interest;

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(c) the preparation, submission and evaluation of tenders and expressions of interest;

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(d) the awarding of contracts and the making of in-house agreements;

(e) the administration and supervision of contracts and in-house agreements;

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(f) the costing, including the allocation of overhead costs, of the supply of goods or services or the undertaking of works by members of Council staff;

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(g) the resolution of disputes arising from contracts and in-house agreements;

(h) the involvement of Councillors and Council staff in the competitive process and the administration of contracts and in-house agreements;

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- (i) the form and contents of competitive tendering statements.”.

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