# Submission FORM

Have your say

Submissions can be made using this form or in writing and emailed or posted to OLG.

By email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Attention Council Governance Team – Review of Tendering Regulation

By post: Office of Local Government

Attention Council Governance Team – Review of Tendering Regulation

Department of Planning, Industry and Environment

Office of Local Government

Locked Bag 3015

NOWRA NSW 2541

### Closing date

Friday 15 October 2021

### Privacy Notice

When you give us your feedback, OLG will be collecting some personal information about you, in particular:

* your name
* your email address
* the name of your organisation (if provided)
* any personal information you decide to put in the additional comments fields.

All feedback received through this consultation process may be made **publicly available**. Please do not include any personal information in your feedback that you do not want published.

As part of the consultation process, we may need to share your information with people outside OLG, including other public authorities and government agencies. We may also use your email contact details to send you notifications about further feedback opportunities or the outcome of the consultation.

You should also be aware there may be circumstances when OLG is required by law to release information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*. There is also a privacy policy located on OLG’s website that explains how some data is automatically collected (such as your internet protocol (IP) address) whenever you visit OLG’s website.  The link to that policy is <http://www.olg.nsw.gov.au/privacy>

# Submission form

Please use this form if sending by email or post. Submissions can also be made online.

Please select all organisations relevant to you. This assists in determining if there are suggestions or concerns common to a particular sector or local government area.

|  |  |
| --- | --- |
| ORGANISATION | PLEASE TICK ALL APPLICABLE |
| Council - Metropolitan |  |
| Council - Metropolitan Fringe |  |
| Council - Regional |  |
| Council - Rural |  |
| Council - Large Rural |  |
| Council employee |  |
| Councillor |  |
| Business / Contractor to council |  |
| Member of public |  |
| Other – please specify |  |

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### Response to identified areas

|  |  |
| --- | --- |
| 1: Do you support the following amendments to remove barriers to the use of electronic technology in tendering and to improve efficiency? | |
| **Q1.1** | **Definitions** |
| Proposed amendment | Include definition of “document” in clause 164 that includes information provided by electronic means. |
| Effect of amendment | Clarifies that tender documents can be provided and submitted in an electronic form as well as a physical form. |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.2** | **Definitions** |
| Proposed amendment | Amend definition of “formal tender document” to make it clear that formal tender documents may be provided and submitted in an electronic form. |
| Effect of amendment | Clarifies that formal tender documents can be provided and submitted in an electronic form as well as a physical form. |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.3** | **Removal of references to redundant technology** |
| Proposed amendment | Remove references to “facsimile transmissions” from clauses 173, 174 and 177 |
| Effect of amendments | Allows tenders to be submitted in either physical or electronic form, without being prescriptive of the technology used. |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.4** | **cl. 167 – 169 Advertising of tenders** |
| Proposed amendment | Provide that advertisements must specify the method by which applications (in the case of selective tendering) and tenders are to be submitted (ie by electronic or physical means or both). |
| Effect of amendment | Allows councils the flexibility to determine how tenders are to be submitted (ie by electronic or physical means or both). |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.5** | **cl. 168 – 169 Selective tendering** |
| Proposed amendment | Provide that when inviting tenders using selective tendering, the invitation must specify the method by which tenders are to be submitted (ie by electronic or physical means or both). |
| Effect of amendment | Allows councils the flexibility to determine how tenders are to be submitted (ie by electronic or physical means or both). |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.6** | **cl 170 Tender documents** |
| Proposed amendment | Provide that tender documents must specify the method by which tenders are to be submitted (ie by electronic or physical means or both). |
| Effect of amendment | Allows councils the flexibility to determine how tenders are to be submitted (ie by electronic or physical means or both). |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q.1.7** | **cl.173 Submission of tenders** |
| Proposed amendment | Provide that tender documents must be submitted using the method specified in the advertisement (or invitation in the case of selective tendering) and tender documents (ie by electronic or physical means or both). |
| Effect of amendments | Allows councils the flexibility to determine how tenders are to be submitted (ie by electronic or physical means or both). |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q.1.8** | **cl.173(2) Submission of tenders** |
| Proposed amendment | Delete subclause (2)(a) which limits the submission of tenders by electronic means to circumstances authorised by guidelines issued under section 23A.  It is proposed to retain subclause (2)(b) which requires submissions of tenders by electronic means to be effected by a secure mechanism (such as an encryption-based technology) that ensures they cannot subsequently be altered. |
| Effect of amendment | Removes impediments to tenders being submitted by electronic means while retaining the requirement for information provided in tender documents to be stored securely. |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.9** | **cl. 174(1) – (2) Custody of physical tenders after receipt** |
| Proposed amendment | Clarify that clause 174 does not apply where a council has specified that tenders are to be submitted by electronic means only. |
| Effect of amendment | Requires tenders to be kept in a tender box only where a council has specified that they may be submitted in a physical form. Where tenders are submitted electronically, they are to be securely stored electronically (see below). |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.10** | **cl. 174(3) Custody of tenders submitted by electronic means after receipt** |
| Proposed amendment | Make clause 174(3) a standalone provision that will apply to the custody of tenders received by electronic means. |
| Effect of amendment | This is consequential to the amendment proposed under Q1.9. It will allow councils not to use a tender box in circumstances where they have specified that tenders are to be submitted by electronic means only. |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.11** | **cl.175(1) – (2) Opening of tenders** |
| Proposed amendment | Clarify that clause 175(1) – (2) does not apply where a council has specified that tenders are to be submitted by electronic means only. |
| Effect of amendment | This will mean that councils are not required to formally open tenders in the presence of the public where they specify that tenders are to be received by electronic means only.  The requirement for tenders to be opened in the presence of the public operates as an important probity safeguard for tenders that have been posted in or physically deposited in the tender box. Where tenders are submitted in an electronic form, they are more readily auditable, and this safeguard serves no real purpose. |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.12** | **cl.175(1) Opening of tenders** |
| Proposed amendment | Allow persons to attend the opening of tenders in person or online via audio-visual link. |
| Effect of amendment | Enhances transparency and accessibility by allowing interested person to attend the opening of tenders in person or online via audio-visual link. |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.13** | **cl.175(3) – (4) Opening of tenders** |
| Proposed amendment | Make subclauses (3) and (4) of clause 175 a separate clause and amend subclause (4) to require the tender list to be published on the council’s website |
| Effect of amendment | This is consequential to the amendment proposed under Q1.12. It will ensures that the requirement to prepare a tender list will apply to all tenders regardless of how they are received and enhance transparency and accessibility of information published in the tender list by requiring it to be published on the council’s website. |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.14** | **cl. 177 Consideration of tenders** |
| Proposed amendment | Amend clause 177(2) to provide that a council must not consider a tender that is not submitted to the council using the method specified in the advertisement (or invitation in the case of selective tendering) and tender documents (ie by electronic or physical means or both) by the deadline for the closing of tenders. This will be subject to subclauses (3) – (5). |
| Effect of amendment | This is consequential to other proposed amendments and will allow councils enforce the use of the method of submitting tenders specified in advertisements, invitations, and tender documents. Subclause (3) – (5) will continue to apply. |
| Your response | Support / Support in part / Do not support  Comment: |
| **Q1.15** | **cl. 179 Notification of acceptance of successful tender** |
| Proposed amendment | Amend clause 179 to require councils to publish a notice specifying the name of the tenderer whose tender was accepted and the amount of the successful tender or a notice that none of the tenders was accepted on the council’s website. |
| Effect of amendment | Ensure greater transparency and accountability for decisions in relation to tendering by requiring information about the acceptance of tenders to be published on the council’s website. |
| Your response | Support / Support in part / Do not support  Comment: |

|  |  |
| --- | --- |
| 2: Do you support amendments to allow councils to delegate decisions not to accept tenders other than in the circumstances contemplated under clause 178(3)(e)? | |
| **Q2.1** | **cl. 178 Acceptance of tenders** |
| Proposed amendment | Amend clause 178(3) to remove the requirement for decisions referred to in that clause to be made by resolution. Decisions not to accept tenders and to enter into negotiations will continue to be made by a resolution of the council that also states the council’s reasons for declining to invite fresh tenders or applications and the council’s reasons for determining to enter into negotiations. |
| Effect of amendment | Decisions referred to under clause 178(3) other than to reject all tenders and to enter into negotiations may be made under delegation where a council makes such delegations. |
| Your response | Support / Support in part / Do not support  Comment: |

### Discussion response template

|  |  |
| --- | --- |
| Topic |  |
| Clause |  |
| Proposed amendment |  |
| Effect of amendment |  |
| Comment / Justification |  |