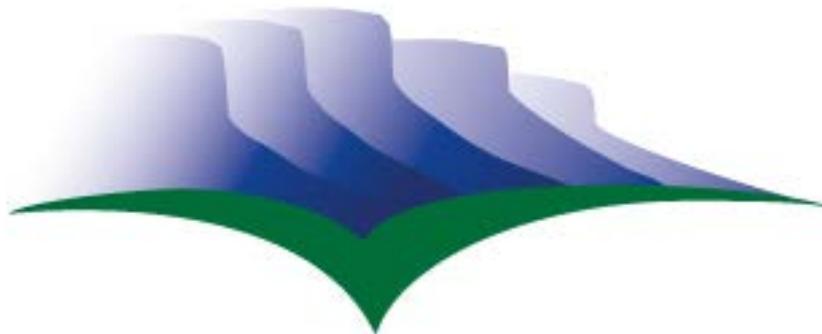


Code for Tenders and Contracts 2015



Meander Valley Council

W O R K I N G T O G E T H E R

Approved by Meander Valley Council

Date: 9 June 2015

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1.0 Introduction

This Code for Tenders and Contracts (Code) provides a policy framework on best practice tendering and procurement methods in line with the legislative requirements of Sections 333A and B of the Local Government Act 1993 (the Act) and the Local Government Regulations 2005 (Regulations).

With this Code Council aims to achieve the procurement principles of:

- Open and effective competition
- Value for money
- Sustainability, and
- Ethical behaviour and fair dealing.

In addition, the Code aims to:

- Ensure compliance with relevant legislation
- Promote the efficient and ethical use of resources
- Encourage probity in decision making
- Provide opportunities for local suppliers
- Minimise the cost to suppliers during the tendering period
- Allow Council to appropriately manage risk, and
- Promote Council's economic, social and environmental plans and policies.

The Act and Regulations require Council to invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above \$100,000 (exc. GST). For purchases under \$100,000 (exc. GST) alternate procurement processes will apply.

2.0 Definitions

the Act	Means the Local Government Act 1993.
alternative tender	A tender, or quote, that offers an alternative proposal that still satisfies Council's requirements. An alternative tender will not be considered unless it is submitted as an accompanying tender to a conforming tender.
bid shopping	The practice of trading off one supplier's prices against another's in order to obtain lower prices.
Code	Refers to this Code for Tender and Contracts, which has been developed in accordance with the requirements of the Act and Regulations.
consultant	A person or organisation, external to Council, engaged under a contract on a temporary basis to provide recommendations or high

level specialist or professional advice to assist decision making by Council. The consultant is expected to exercise their own skills and judgement independently of Council. It is the advisory nature of the work that distinguishes a consultant from a contractor.

contract	A contract is a binding agreement entered into between two or more parties that involve an exchange of specified goods and/or services for a specified financial reimbursement or other considerations. The terms of the agreement are usually set out in writing and specific legal obligations are created by the signing of the contract.
contractor	A persons or organisation, external to Council, engaged under contract for service (other than as an employee) to provide specified services to Council.
Council	Meander Valley Council (MVC). Represented by the General Manager and/or Director.
direct procurement	Direct procurement for operational requirements. Values are determined by each Council officer's delegated authority.
evaluation panel	Council officers or consultants who have been assigned to assess the quotations/tenders. The evaluation panel provides recommendations to the Director/General Manager/Council.
expressions of interest (EOI)	A means of exploring the market or to pre-qualify suppliers to reduce the cost of quotation/tendering by restricting the issue of formal quotations/tenders.
open tender	Call for tenders by placing an advertisement in the newspaper.
multiple use register	Through an EOI process, Council invites suppliers to register with Council for the supply of particular categories of goods and services.
procurement	The entire process by which resources are obtained by Council, including planning, design, standards determination, specification writing, selection of suppliers, financing, contract administration, disposals and other related functions.
probity	Probity is a risk management approach to ensuring procedural integrity.
project manager	A nominated Council officer that will manage the project and act as the direct liaison with the suppliers.
public tender	A tender where a supplier that can meet the requirements of the request for tender has the opportunity to bid.

purchasing	The acquisition of goods or services.
quotation	The bid submitted in response to a request for quotation from Council.
quotation package	Accompanying required documentation and any supplementary information that will support the quotation bid.
Regulations	Means the Local Government Regulations 2005 or subsequent updated regulation.
request for quotation	A request for written offers from Council to suppliers capable of providing a specified work, goods or service.
request for tender	A document soliciting offers from suppliers capable of providing a specified work, goods or service. Requests for tender are usually advertised.
periodic tender	A tender from which a single tenderer or multiple tenderers may be contracted for a specific period to provide specific services during that period without the need for a further tender process.
supplier	Any party submitting a tender/quote. A competent supplier that is able to comply with the requirements as stated in the tendering/quotation process and delivers the requested goods or service in compliance with this Code and relevant legislation..
tender	A proposal, bid or offer that is submitted by a consultant, contractor or supplier in response to a request for tender.
tenderer	An individual or supplier/company that submits a tender.
tender box	A box or cabinet used as the point of lodgement for tenders to ensure that the documentation is kept secure until the tender period closes. Council also provides this facility through the provision of an electronic account.
tender briefing	A session in which tenderers are invited to attend to enable Council to provide the tenderers with more information and answer questions. This process enables all interested parties to receive the same information. Meeting minutes shall be provided to all attendees prior to the close of tender.
tender package	Accompanying required documentation and any supplementary information that will support the tender bid.

3.0 Application of this Code

3.1 Review of the Code

Consistent with the requirements identified in Section 333B of the Act, Council will formally review this Code at least every four (4) years.

The Code may be modified from time to time by Council to reflect changed operational requirements.

3.2 Accountability

As a measure of accountability and transparency, the Council will:

- Make a copy of this Code (and any amendments) available for public inspection at the Council's offices during ordinary office hours
- Make copies of this Code available for purchase at a reasonable charge, and
- Make this Code available on Council's website.

3.3 Delegation

Financial limits for Council officers for procurement processes shall be in accordance with Council's approved procurement delegations.

3.4 Breach of the Code

Council will take all reasonable steps to comply with this Code.

Council will not be liable in any way to a supplier or any person for a breach of this Code.

If any employee of the Council, or a body controlled by the Council breaches this Code, Council may take disciplinary action, if in its absolute discretion it considers it desirable to do so.

If a supplier commits a breach of this Code, Council may, in its absolute discretion, take action against that supplier.

3.5 Engaging a Third Party to Manage a Procurement Process

Council may engage third parties to manage the procurement process for individual projects. The use of a third party as an agent or consultant to advise on, arrange or manage a procurement process does not exempt Council from complying with Council procurement policy and procedures.

Should Council engage a third party to manage a procurement process, it will be ensured that material is included in the contractual arrangements with the third party that requires the third party to comply with Council's procurement policy and procedures.

4.0 Procurement Principles

This Code has been developed in order to have a transparent set of strategies that Council will follow in order to comply with the procurement principles as required in the Act.

The Code will apply to Councillors, Council employees and agents and any supplier wishing to compete for Council business or provide goods, services or works to Council, including contractors, subcontractors, consultants and suppliers.

Wherever reasonably possible suppliers engaged by Council will also apply the Code when seeking tenders or quotations from subcontractors and suppliers.

4.1 Council Procurement Principles

Council will:

- Promote fair and open competition and seek value for money for the Council and its local community
- Protect commercial-in-confidence information
- Establish and maintain procedures to ensure that fair and equal consideration is given to all tenders and quotations received
- Provide a prompt and courteous response to all reasonable requests for advice and information from potential or existing suppliers
- Seek to minimise the cost to suppliers for participation in the quotation/tender process
- Evaluate tenders/quotes based on the pre-specified selection criteria defined in the quotation/tender documentation (e.g. do not develop selection criteria after distribution of quotation/tender documentation), and
- Consider the procurement of recycled, recyclable, reusable, sustainable goods in procurement processes.

All suppliers involved in tenders and quotations to which this Code applies must:

- Promote honesty and equity in the treatment of all suppliers of goods and services
- Ensure that they are well acquainted with Council requirements identified in this Code
- Refrain from submitting tenders/quotations without firm intention to proceed
- Refrain from improper practice including collusive tendering/quoting
- Not canvas any employees of Council in relation to the request for quotation/tender process
- Not offer gifts or benefits to a Council officer for the discharge of official business
- Declare any conflicts of interest, and
- Comply with applicable legislative, regulatory and statutory requirements.

4.2 Open and Effective Communication

Open and effective communication is ensuring that the procurement process is impartial, open and encourages competitive offers. In practice, this means that Council will:

- Use transparent and open procurement processes so that potential suppliers and the public can have confidence in the outcomes
- Adequately test the market by applicable processes through open tender or seeking quotations
- Avoid biased specifications
- Treat all suppliers consistently and equitably, and
- Ensure a prompt and courteous response to all reasonable requests for advice and information from suppliers.

4.3 Value for Money

Value for money is achieving the desired outcome at the best possible price. In practice this means that Council will ensure that it is buying at the most competitive price available, but value for money does not mean buying at the lowest price. In doing this, Council may take the following factors into consideration:

- Fit for purpose
- Maintenance and running costs over the lifetime of the product
- The value of the acquisition and potential benefits against the cost of that purchase
- An assessment of risks associated with the purchase including the preferred procurement method
- The contribution to the achievement of other Council objectives
- Quality assurance and perceived level of risk
- The capacity of the supplier
- Time constraints
- Disposal value
- Maintenance costs over the expected life of the asset or product
- The impact of the procurement decision on the environment: minimising waste and reducing demand for goods and services which have a direct impact on the environment
- The impact of the procurement decision on the local economy: industry development and employment creation, and
- The impact of the procurement decision on the society - elimination of discrimination and the promotion of equal opportunity.

4.4 Ethical Behaviour and Fair Dealing

Ethical behaviour and fair dealing means that all procurement is undertaken in a fair and unbiased way and in the best interests of Council. In practice, this means that Council will:

- Be fully accountable for the procurement practices that Council will use and the decisions Council will make
- Comply with legal requirements
- Ensure that decisions are not influenced by conflicts of interest and expect individuals involved in procurement processes to declare and act upon any conflicts of interest that may be seen to influence impartiality
- Maintain confidentiality

- Deal honestly with and be equitable in the treatment of all potential suppliers
- Ensure that all procurement is undertaken in accordance with Council's policies
- Conduct all business in the best interests of Council
- Ensure that all information and clarifications provided in the initial procurement stages are distributed to all prospective suppliers
- Enhance the capabilities of local suppliers and industry
- Ensure that specifications are clear and ensure that conditions of contract are not excessively onerous, and
- Decline gifts or benefits offered by those involved in the procurement process, particularly from suppliers.

5.0 Procurement Processes

5.1 Procurement Values

Council applies three (3) thresholds to procurement values:

- \$20,000 and below
- Between \$20,000 and \$100,000, and
- \$100,000 and above.

The methods of procurement differ within these values however, the margins do not preclude Council obtaining written quotations or calling for tenders for procurement values outside of the stipulated values. The use of these processes will be in accordance with this Code. The types of contracts used for each of the procurement values will be at the discretion of Council.

Tenders and quotations must be sought on a GST exclusive basis.

5.2 Procurement Overview Processes

The following procurement overview is provided to give a brief outline on the way in which Council procures routine goods and services:

- Plan the procurement (which includes the selection of the most appropriate procurement method)
- Prepare the relevant documents (e.g. quotation, tender)
- Invite and receive offers
- Evaluate offers
- Advise both the successful and unsuccessful bidders
- Manage any contract that has been implemented as a result of the procurement, and
- Conduct a project evaluation (if required).

5.3 Planning the Procurement

During the planning phase of the procurement process where written quotations or tenders are to be requested, the following steps may be taken:

- Any relevant approval to undertake a purchase is obtained
- An estimate of the cost of the goods or service is undertaken and available Council funding of such a purchase is confirmed and an appropriate method of procurement is chosen
- The specification is defined and mandatory requirements are identified
- The method of receipt of offers is defined
- The establishment of an evaluation panel
- The establishment of evaluation criteria and evaluation methodology
- The development of a risk assessment and management plan, and
- The commencement of a contract management plan.

The following table refers to the three (3) procurement thresholds and summarises what procurement method Council utilises based on the value of the purchase.

Procurement Value	Minimum Requirement
At or below \$20,000	Direct Purchases No formal quotations are required however the Council may at their discretion obtain written quotations.
Between \$20,000 and \$100,000	Written Quotations Where possible, at least three (3) written quotations will be obtained.
\$100,000 and above	Public Tender Council will advertise each tender. All applications will be assessed using Council's assessment matrix.

Council will apply the above requirements to the purchase of all goods and services with the exception of the circumstances described under Section 7.0 Exemptions.

If it is known that only one specialist supplier is available for work or there are specific reasons for wanting to utilise one supplier, then that supplier may be invited to provide a quotation/tender with the permission of the General Manager. The project manager will be required to document reasoning and demonstrate that the procurement process is being undertaken in accordance with Council's principals of this Code.

5.4 Calculating the Value of a Purchase

5.4.1 Price

The dollar value of the purchase may be calculated as follows:

- **single one-off purchase** – the total amount, or estimated amount, of the purchase (excluding GST), or
- **multiple purchases** – the gross value, or the estimated gross value, of the purchases (excluding GST), or
- **ongoing purchases over a period of time** – the annual gross value, or the estimated annual gross value, of the purchases (excluding GST)

As per Regulation 23, Council will not split a single procurement activity into two or more separate contracts for the primary purpose of avoiding the requirement to publicly invite tenders.

5.4.2 Non Price Considerations

Council will ensure that it is buying at the most competitive price available, but quantifying the value of a purchase does not simply mean buying at the lowest price. Specific issues that will be taken into account by Council that relate to non price related matters are identified in section 4.0 Procurement Principles.

5.5 Minimum Requirements

It will be a minimum requirement of all suppliers that they must be able to meet Council's and all legislated Work Health and Safety (WHS), risk management and insurance requirements.

The supplier must be included on Council's contractor list prior to the awarding of any contract. To do so the supplier shall provide Council with a copy of their;

- Public Liability Insurance (\$10,000,000)
- Workers Compensation
- Vehicle Insurance
- Personal Cover Insurance (if the supplier is an individual)

If this documentation is not provided to Council or not kept up to date, Council will not to enter into any business agreements with that supplier.

5.6 Council Conditions of Contract

Where specified in quotation/tender documentation suppliers will be required to meet the requirements of Council's Conditions of Contract. Practical completion and final payments will not be awarded if these conditions are not met and signed off by Council.

5.7 Project Manager/Enquiries

For the purposes of communication with all potential suppliers, Council must nominate a project manager for each procurement activity, and clearly specify their name and contact details. Suppliers may seek further information only from the project manager or in the event of their absence, from a nominated substitute person.

The project manager will:

- Provide quotation/tender documentation to an enquiring supplier
- Instruct that questions from prospective suppliers be put in writing (electronic documentation or facsimile will suffice)
- Record the time and date of an enquiry, the name of the enquirer, relevant contact details and the substance of the discussion, and
- Provide responses in writing.

Where the information required is for the purposes of clarification then this can be undertaken at any point in the quotation/tender period and be limited to the supplier requesting the information.

Where an enquiry points out a substantial error or makes a material difference then this information shall be provided to all suppliers who have requested or received quotation/tender documentation. The additional information will be provided to allow sufficient time for the suppliers to submit an amended application. This may require an extension of the quotation/tender period.

5.8 Procurement Types

5.8.1 Direct Procurement (for purchases at or below \$20,000)

Direct procurement applies to all operational purchases at or below \$20,000 including one-off and consumable purchases in the course of operational activities. While no formal quotations are required for direct procurements below \$20,000 the project manager may, at their discretion, obtain written quotations from at least two suitable suppliers as a confirmation of the agreed procurement conditions. This method will be used only for low value, low risk goods and services.

The quotation from the supplier can be communicated directly to the project manager.

When detailing conditions and specifications of a purchase the project manager may utilise either a contract or Council's purchase order form. The project manager must provide a clear description of the goods and services required.

Council's Quotation and Record Form can be used to record evaluation and selection process information if appropriate.

5.8.2 Written Quotations (for purchases between \$20,000 to \$100,000)

Council invites written offers from at least three suitable suppliers with a request for quotation, which may be in letter or electronic form. Where less than three suitable suppliers are reasonably available, records outlining this circumstance will be kept.

Council's request for quotation documentation will include the terms and conditions of quotation, together with a clear description of the goods or services (specifications) required.

The response time to the request for quotation provided to suppliers will depend largely upon the nature and the complexity of the purchase. Quotations can be delivered directly to the project manager.

The project manager must record the evaluation and selection process of the successful supplier through the use of Council's Quotation and Record Form. Tender principles may be used at the discretion of the project manager.

5.8.3 Tenders (for purchases \$100,000 or greater)

Council's request for tenders is a formalised process where Council invites offers from suppliers to provide specified goods or services. Council may determine that tenders should be called in certain circumstances as appropriate, where the estimated value of the purchase is less than \$100,000.

5.8.3.1 Open Tenders

An open tender process is an invitation to tender by public advertisement. There are generally no restrictions regarding who can submit a tender, however, tenderers are required to submit all required information and will be evaluated against stated selection criteria.

Consistent with the Regulations (Regulation 24) Council will ensure that when open tenders are used as a method of procurement; the General Manager will invite tenders.

The General Manager will advertise the tender locally via the daily newspaper circulating in the municipal area and on Council's website, making the tender available to all qualified and interested bidders. Council may send tender documentation directly to an identified supplier, however, any documentation will not be provided to a potential tenderer until the tender has been advertised.

The tender advertisement will identify:

- The nature of the goods and or services the Council requires
- The period within which the tender must be lodged (must be at least 14 days after the date on which the notice is published)
- Where the tender must be lodged
- Details of a person from whom more detailed information relating to the tender may be obtained.

The General Manager will ensure that prospective tenderers are provided with details regarding:

- The specifications of the goods and or services required
- The duration of the contract, including any extensions that are specified in the contract
- Any mandatory tender specifications and contract conditions
- Objective criteria for evaluating the contract, and
- Reference to the Council Code for Tenders and Contracts.

All enquiries and provision of tender documentation shall be carried out by Council's project manager.

A tenderer submitting a response in relation to a Council public tender must do so in writing. The tenderer must specify the goods and or services tendered for, provide details of the goods and or services being offered and must lodge the tender within the period specified in the public notice.

The nature of the purchase may require that a tender briefing is conducted. The time and place at which the tender briefing meeting is to be held will be detailed in the tender documentation. The project manager must keep minutes of any tender briefing meeting which will be distributed to all tenderers.

The tenderer must demonstrate through the provision of referees and any requested documentation that they are competent in establishing and managing risk management procedures and can follow WHS legislative requirements.

A tenderer may not withdraw its tender before acceptance without Council's consent other than as permitted in the conditions of tendering included in the tender documents. Council may give or withhold its consent in its absolute discretion.

The tender box will not be opened until the time set for the closing of tenders has elapsed.

Tenders must be opened in the presence of:

- One member of the Council's staff other than the project manager; and
- The project manager.

Each employee present must sign the Tender Received Form showing the tenderer's names, the service tendered for and the tender price. The total tender sums are disclosed only if it is stated in the tender documentation.

The project manager must record the evaluation and selection process of the successful supplier by utilising Council's quotation/tender review form and Council's assessment matrix.

5.8.3.2 Multiple-stage Tender

From time to time Council may utilise a multiple-stage tendering process to:

- Gain market knowledge and clarify the capability of suppliers
- Shortlist qualified tenderers, and
- Obtain industry input.

A multiple-stage procurement process may be more costly and time-consuming for both suppliers and Council, and as such, Council will usually only use them where:

- The best way to meet requirements is unclear
- It is considered appropriate to pre-qualify suppliers and restrict the issue of formal tender documentation
- Benefits exist which cannot be obtained by researching the market through conventional means, and
- Maximum flexibility is required throughout the procurement process

The multiple-stage processes that Council may use are as follows:

- Expressions of Interest (EOI) – an EOI is generally used to shortlist potential suppliers before seeking detailed offers. Suppliers are shortlisted on their technical, managerial and financial capacity, reducing the cost of tendering by restricting the issue of formal tenders to those suppliers that demonstrated the required capacity.
- Request for proposal – may be used when a project or requirement has been defined, but where an innovative or flexible solution is sought.
- Request for Tender – may be used when a project or requirement has been defined to solicit offers from suppliers capable of providing a specified work, goods or service.
- Request for information – may be used at the planning stage of a project to assist with defining the project. Council will not issue a request for information to identify or select suppliers.

- Closed Tender process – may be used if the initial specification is well defined and an EOI or request for proposal has already been used to shortlist suppliers. Suppliers will be informed in advance that only those short-listed will be requested to tender.

Council is mindful of the following aspects when conducting a Multiple-stage Tender process:

- That a short-listed party cannot be engaged without going through a more detailed second (tender) stage process unless approved by Council, and
- When using a Request for Information, issues relating to intellectual property and copyright must be clarified prior to using the information provided to prepare the Request for Tender.

When calling for EOI Council will generally follow the advertising requirements outlined in 5.8.3.1 Open Tenders.

The General Manager will ensure that suppliers are provided with the following in order to lodge an EOI:

- Details of the goods or services required
- The criteria for evaluating EOI
- The method for evaluating EOI against the criteria
- Details of any further stages in the tender process, and
- A reference to Council's Code for Tenders and Contracts.

The General Manager may then send an invitation to tender to those suppliers that expressed an interest in providing the goods or services required and were selected to tender through the EOI evaluation process.

5.8.4 Ongoing Supply Arrangements – Standing Contracts and Multiple Use Register

5.8.4.1 Standing Contract

A Council, through an open tender process, may establish a standing contract in which a single tenderer or multiple tenderers may be contracted for a specified period to provide specified goods or services during that period without the need for a further tender process.

The way in which a standing contract is established can either be:

- To utilise the open tender process, or
- For Council to assess the suppliers listed in the multiple-use register in line with Council's defined procurement values.

Council may legitimately purchase directly from a supplier listed on a standing contract panel.

The recommended validity period for standing contracts will be stipulated during the Open Tender process.

The selected tenderers can be used to provide the specific goods or services without calling a further tender during the specified period.

Council may implement its own standing contract arrangements or may make use of goods and or services panels that have been negotiated for example for Tasmanian Councils via LGAT as a member of the National Procurement Network or via similar arrangements through State Government.

5.8.4.2 Multiple Use Register

A multiple use register is a list, intended for use in more than one procurement process, of pre-qualified suppliers, who have satisfied the conditions for participation or inclusion on the register.

Council may establish a multi-use register of suppliers who meet criteria established by the Council in respect to the supply of particular categories of goods and services.

Inclusion on a multi-use register provides certainty for potential suppliers that they have been recognised as meeting conditions for participation.

Council will invite tenders or quotations for a contract for the supply of goods and or services from all suppliers included on a multiple use register for a particular category of goods and or services.

The Council will invite applications from suppliers for inclusion on a multiple use register by advertising locally via the daily newspaper circulating in the municipal area and via Councils website. The public notice will identify:

- The nature of the goods and or services the Council requires
- Any identification details associated with the register
- The period within which the application must be lodged
- Where the application must be lodged
- Details of a person from whom more detailed information relating to the multiple use register may be obtained.

The General Manager will ensure that applicants are provided with information regarding:

- The specifications of the goods and or services required
- The criteria for evaluating the applications
- The method of evaluating applications against the criteria
- Council's Code for Tenders and Contracts.

Council may accept an application for inclusion on the multiple use register or reject an application. If Council rejects the application, the General Manager will advise the applicant of the reasons for rejection.

If Council accepts the application, the General Manager will advise the applicant of the category their application will be included in on the multiple use register. The multiple use register will be reviewed by Council at least every two (2) years.

Council will allow a supplier to apply for inclusion on the multiple use register at any time unless the supplier has made an application in the previous 12 months and the application has not been accepted.

5.8.4.3 Strategic Alliances

Council may choose to procure goods and or services through contract arrangements already established and administered by other organisations, including:

- LGAT through the National Procurement Network
- State Government Contracts, and
- any other purchasing group of which Council is a member.

5.9 Amendments to Tender Documentation

The project manager may amend tender documentation if it discovers a significant error or discrepancy in it. If amendments to the tender package are made the project manager must:

- Give the addendum to the tender package to all tenderers
- Provide the addendum to all tenderers at least seven (7) days prior to the close of tender; and
- Permit any tenderer who has already submitted a tender to submit an addendum which is clearly marked "Tender Addendum".

Each tenderer must, not later than tender closing, acknowledge in writing receipt of the addendum given by the project manager. Failure to do so could result in the tender being invalid.

5.10 Supplementary Information

5.10.1 Quotation/Tender Conditions

When preparing the quotation/tender documentation Council will prepare clear and concise information that includes the terms and conditions of the planned purchase with a detailed description of the goods or services required.

The conditions set out the terms under which Council will receive and evaluate offers. The conditions shall include:

- The closing date, time and place of lodgement
- Details on how quotes/tenders are to be lodged
- Advice on the treatment of late submissions
- Pricing requirements
- The project manager's details
- The evaluation criteria and a brief outline of the evaluation methodology used
- Relevant Council policies and principals.

Additional conditions for tenders may include:

- Details of intended duration of the contract including any extensions applicable to the contract
- Details of supporting documents that should accompany the tender
- Advice and details on the availability of any briefing sessions for prospective tenderers

- Advice on how and in what circumstances the procurement documentation can be altered
- Any assessment or presentation requirements, and
- An indication if alternative bids will be considered.

5.10.2 Quotation/Tender Specifications

The specifications clearly, accurately and completely describe the essential requirements of the goods or services being purchased. It is the basis of all offers and is the foundation for the contract. The specifications may include:

- Functional requirements
- Performance requirements, and
- Technical requirements.

5.10.3 Submission of Offers

Council may provide both a locked tender box and the opportunity to submit the offer as an electronic document. Council accepts offers in both formats provided they are a conforming offer. Council will not be responsible for, nor take into consideration any service or transmission delays. Council will not be responsible for the security of the information contained in the electronically transmitted offer. It is the tenderers responsibility to satisfy itself that Council has received the offer by the stated closing time.

The project managers email address, if specified as an acceptable method of submitting offers, may be used for the lodgement of conforming offers.

A person submitting a response in relation to a Council tender must do so in writing.

The tenderer must specify the goods and or services tendered for, provide details of the goods and or services being offered and must lodge the tender within the period specified in the public notice.

5.11 Non-Conforming Offers

Council will reject non-conforming offers (in accordance with the terms of Council's quotation/tender documentation) which:

- Are lodged after the closing time without valid reason
- Are not signed where required
- Are incomplete – for example, questions have not been answered, pages are missing, or required documentation for the evaluation of a supplier has not been attached
- Do not comply with mandatory conditions of the quotation/tender
- Do not observe and comply with requirements of relevant Acts and Statutes of Parliament, Regulations, By-Laws, Orders, Codes of Practice and WHS Legislation and Regulations, or
- Fail to meet mandatory specifications and evaluation criteria.

Any offer which does not comply with the quotation/tender document should be rejected unless the offer satisfies the requirements for an alternative quote/tender.

The Council may, in its absolute discretion, accept an offer received late if it was posted at such a time (postmarked not less than two (2) clear days before closing) that Council should have received it by the stipulated closing date.

5.12 Evaluating Tenders

This clause applies to tenders with an estimated value equal to or greater than \$100,000.

The General Manager may direct a tender evaluation panel to review and assess tenders in line with the evaluation criteria depending on the nature of the project. The tender evaluation panel should comprise of at least three individuals, which includes the project manager.

Council will evaluate tenders in accordance with this Code and against the pre-specified tender evaluation criteria and methodology. Council will utilise the Council assessment matrix during the evaluation of the tender.

Council must take into account the following criteria when considering tenders:

- **Compliance to this Code and tender evaluation criteria and methodology**

It may be necessary to seek clarification from a tenderer if an offer is unclear. Clarification does not mean that tenderers can revise their original offer. Any clarification sought must be documented. Any request for clarification must not turn an alternative tender into a conforming tender.

- **Evaluation against the tender evaluation criteria through the assessment matrix**

The assessment matrix is a framework for the detailed analysis of each offer against both qualitative and quantitative criteria, applying weightings to the pre-specified tender evaluation criteria. The tenderer must demonstrate that they meet the tender evaluation criteria, not just assert it.

Council must determine the weighting to be given to the criteria before the tenders are opened. The weightings are to be determined at Council's absolute discretion. The weightings given to each criterion may vary from project to project. Council may advise the tenderers of the weightings but shall not be obliged to do so.

- **High risk/value/complex tenders**

In selecting a tenderer for a high risk/value or complex process, Council may undertake a due diligence investigation to ensure that the tenderer has the capacity and stability to fulfil all of the requirements of the contract. If Council intends to use this further detailed assessment it must be detailed in the tender documentation.

- **Write an evaluation report**

On completion of the evaluation process Council will document the selection of a successful tenderer in an evaluation report to be submitted to the relevant approval authority (e.g. Council, General Manager or Director level).

Council's evaluation reports include:

- A comprehensive record of the evaluation method, the rationale used to select the preferred supplier, and whether it is recommended that negotiations should be undertaken, and on what basis, and
- Reasons for overlooking lower priced tenders.

5.13 Negotiation, Rejection and Acceptance of Tenders

The following points must be noted in relation to consideration of negotiation, rejection and acceptance of tenders:

- Council must consider all conforming tenders.
- Council is not obliged to accept any tender.
- Council is not obliged to accept the lowest or any conforming tender.
- Council may negotiate with the tenderer who submitted an alternative tender and may accept the alternative tender or any variation of it negotiated with the tenderer.
- Council may reject all tenders. If Council rejects all tenders Council must advise each tenderer accordingly and may invite further tenders.
- Council may negotiate with the preferred tenderer and after exhausting negotiations with the preferred tenderer, may negotiate with other tenderers in order of preference.
- In the course of negotiation with a tenderer, Council must not disclose the details of a tender submitted by any other tenderer.
- Prior to awarding the tender the evaluation panel or project manager must prepare a summary report detailing the assessment process of the tenderers and which tenderer they are recommending for acceptance.
- Council must approve the selection of the successful tenderer prior to the contract being awarded where approval of financial value of the contract exceeds the General Manager's delegation.
- Council must issue a letter of offer to the successful tenderer stating the details of the accepted offer and setting out the terms of acceptance.
- Council and the successful tenderer must execute a formal contract document in the form specified in the tender package (with any amendments) within fourteen days from the date when the successful tenderer received the letter of offer.
- Council must advise all other tenderers that their tenders have been unsuccessful and unless it is inappropriate to do so, of the price of the accepted tender.
- The successful tenderer shall not be entitled to receive payment for carrying out the work until it has executed a formal contract document.

5.14 Document Registration and Storage

All documentation relating to a quotation or tender will be stored in Council's document management system.

Supplied hard copies will be stored in an appropriate location. All quotations/tenders that Council receives will be clearly marked with the time and date of receipt.

Offers received as an electronic document to the project managers email address shall be recorded in the same method as offers received in the post.

6.0 Contracts

6.1 Contract Management

A contract defines the rights and obligations of both parties once the quotation/tender has been awarded. A contract is established when an offer is made and accepted. A contract comprises all relevant information provided to and by the supplier that has made the successful offer. This includes:

- The conditions of quotation/tender
- The specifications including any plans and other attachments
- The successful offer, and
- The conditions of contract.

A copy of the conditions of contract may be included in Council's original request for quotation/tender package.

The conditions of contract contain the contractual terms defining the obligations and rights of the parties concerned. Generally, contracts are used for all purchases with a value of \$100,000 or above, or where there are material risks involved.

For complex or high value purchases, it may be necessary for Council to enter into negotiations prior to finalising the contract in consultation with Council's legal advisors. The purpose of these negotiations is to:

- Test the understanding and assumptions made by the suppliers in determining their costs
- Clarify and rectify any false assumptions, and
- Achieve operational refinements and enhancements that may result in cost reductions.

The outcomes of these negotiations will be included in the final contract and once completed and agreed, both parties then sign the formal contract.

A formal contract management plan is not required for all contracts, but Council may develop contract management plans for contracts that involve large dollar amounts, complex technical requirements, or when the contract manager is responsible for managing a large number of contracts simultaneously.

There are limitations on the amount of work which can be added or deleted without affecting the schedule of rates.

6.2 Contract Renewals

In most cases, where the goods or services being delivered under the contract are required on an ongoing basis, Council will undertake a new procurement process prior to the completion of the existing contract.

6.3 Contract Extension

In some circumstances, it may be desirable for Council to extend an existing contract, rather than seek new tenders or quotations for the delivery of the goods or services.

Contracts will only be extended:

- By a majority of Council
- Following a full evaluation of the performance of the current contractor, and
- Where the principals of open and effective competition are protected.

As a rule, Council will not extend contracts if:

- The original contract does not allow an extension
- Since the previous tender, the market has changed substantially, or
- The nature of the goods/services required has substantially changed.

6.4 Contract Reviews

Contract/Contractor review requirements will be specified as determined within the conditions of contract. In addition to the review requirements, at the completion or prior to the renewal of a contract, a contract review should be considered. The review should be used as a process to constructively assess positive and negative outcomes of a contract.

Reviews should include but are not limited to:

- Was the selected project delivery method the best approach
- What were the project issues and how can them be avoided on future projects
- Reasons for any cost increases or variations
- Suggested improvements to contract documentation or overall approach
- What was done well and was successful
- Are the operators accepting of the design, and
- Any safety or environmental issues.

7.0 Exemptions

The Regulations provide that Council must publicly invite tenders for the purchase of goods and services with a value in excess of \$100,000. Council is committed to encouraging open and effective competition between suppliers with the objective of obtaining value for money.

Council may not issue a tender or use a quotation process where the goods and services relate to:

- An emergency if, in the opinion of the General Manager, there is insufficient time to invite tenders for the goods or services required in that emergency.
- A contract for goods or services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth.
- A contract for goods or services supplied or provided by another Council, a single authority, a joint authority or the Local Government Association of Tasmania.
- A contract for goods or services obtained as a result of a tender process conducted by another Council, a single authority, a joint authority, the Local Government Association of Tasmania or any other local government association in this State or in another State or a Territory.
- A contract for goods or services in respect of which the Council is exempt under another Act from the requirement to invite a tender.
- A contract for goods or services that is entered into at public auction.
- A contract for insurance entered into through a broker.
- A contract arising when Council is directed to acquire goods or services due to a claim made under a contract of insurance.
- A contract for goods or services if the Council resolves by absolute majority and states the reasons for the decision, that a satisfactory result would not be achieved by inviting tenders because of one or more of the following;
 - Extenuating circumstances
 - Remoteness of the locality
 - The unavailability of competitive or reliable tenderers
 - A contract of employment with a person as an employee of the Council.
- Where it can be established that there is only one supplier of a particular product or service and there is no appropriate substitute available, or where alternative options are not viable or do not provide value for money.
- Where the original product or service has been selected through an open tender process and the request for exemption relates to the proposed purchase of an upgrade or addition to the existing system and there are limited supply options.
- The product is being trailed to assist in the evaluation of its performance prior to a large scale purchase for which open tenders will be called.
- To assist in the development of a new product in conjunction with a private sector supplier.
- Where cost to Council and to suppliers would outweigh the value for money benefits of calling public tenders.
- Projects of exceptional circumstances or genuine urgency where conclusive justification of the request is provided.

8.0 Complaints Process

Tasmanian councils are provided with broad competency powers under the Act to carry out the role of providing services to their communities and the Act also includes accountability measures under which councils can be held responsible to the communities for their actions and decisions.

The resolution of complaints against Council is a responsibility of Council and will be dealt with in accordance with the Customer Service Charter.

In the first instance, complainants should be encouraged to seek resolution through the project manager in charge of the tendering process. If the complainant wishes to pursue the matter further, the General Manager will investigate the complaint.

The following records will be maintained for any complaint received and resolved:

- Date of complaint
- Complainant's details
- Description of complaint
- Action taken including dates, and
- The outcome.

8.1 Debriefing Session

The purpose of a debriefing session is to provide feedback to an unsuccessful supplier that could assist the supplier in submitting a more competitive bid in the future. Debriefing sessions will only be provided if requested by the unsuccessful supplier. The debriefing session will address the following issues:

- Their performance against the selection criteria, and
- Their strengths and weakness of the quotation/tender application.

The debriefing session is not a comparison of quotation/tender applicants and is not to be used to justify the selection of the successful supplier. At no point during the session will Council disclose any information regarding any supplier.

The debriefing session should be conducted by the tender evaluation panel if appropriate. Council will document the proceedings of each debriefing session including:

- Attendees and the company names
- Information provided
- Any issues raised
- Detailed information requested but not disclosed
- Any likely future complaints, and
- Recommendations for future action.

9.0 Disposals

Disposals are to be conducted so that the best return to Council is achieved. Disposal of land will be made in accordance with Division 1 of Part 12 of the Act.

9.1 Disposals less than \$20,000

Council will dispose of items with a disposal value of less than \$20,000 at the discretion of the General Manager.

9.2 Disposals greater than \$20,000

Council shall dispose of items with an estimated disposal value in excess of \$20,000 by way of tender, public auction, or trade-in.

When disposing items by tender, Council may choose to advertise the item for disposal in specialist newspapers or journals, or in the appropriate classified section of the local newspaper if these are more likely to attract appropriate interest.

10.0 Reporting

10.1 Procurement at or above the Prescribed Amount

Council will report in its Annual Report details of any contract for the supply or provision of goods and or services valued at or above the currently legislated prescribed amount of \$100,000.

The General Manager will establish and maintain procedures for reporting to Council circumstances where a public tender or quotation process was not used and reasonably should have been.

10.2 Contract Extensions

Council will report in its Annual Report the details of any extension of a contract where Council agreed to extend a contract by an absolute majority and the pre-existing contract did not specify extensions.

Details that will be reported for Clauses 10.1 and 10.2 at a minimum as required under the Regulations are;

- A description of the contract
- The period of the contract
- The periods of any options for extending the contract
- The value of any tender awarded or, if a tender was not required, the value of the contract excluding GST
- The business name of the successful contractor, and
- The business address of the successful contractor.

10.3 Emergency Provisions

Council will report in its Annual Report the details of all instances where non-application of the public tender process has been applied as a result of an emergency, where in the opinion of the General Manager, there was insufficient time to invite tenders for the goods and services required in that emergency.

10.4 Other Circumstances

Council will report in its Annual Report the details of all instances where non-application of the public tender process has been applied because Council agreed by absolute majority, that a satisfactory result would not have been achieved if tenders were invited because of;

- Extenuating circumstances
- The remoteness of the locality
- The unavailability of competitive or reliable tenderers, and
- A contract of employment with a person as an employee of the Council.

Details that will be reported for Clauses 10.3 and 10.4 at a minimum as required under the Regulations are;

- A description of the reason for not inviting public tenders
- A description of the goods and or services acquired
- The value of the goods and or services acquired, and
- The name of the supplier.