



GLENORCHY CITY
Where ideas happen.

Code for Tenders and Contracts



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1 | Introduction

The purpose of this Code for Tenders and Contracts ('the Code') is to provide a policy framework on best practice tendering and procurement methods in line with the legislative requirements of the *Local Government Act 1993* ('the Act') and the *Local Government (General) Regulations 2015* ('the Regulations').

This Code is consistent with the Act and the Regulations and includes some procedures and guidelines for prescribed matters. 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 the legislated Prescribed Amount. This Code also deals with procurement requirements at or below the Prescribed Amount.

As a measure of accountability and transparency, the General Manager will make a copy of this Code (and any amendments) available to the public, in accordance with section 11.2 of this Code.

This Code applies to the Glenorchy City Council and Council officers for the purchase of goods and services and the management of tenders and contracts.

2 | Definitions

In this document the following terms have the following meanings:

Act means the *Local Government Act 1993*;

Code means this Code for Tenders and Contracts (as may be amended from time to time);

Council means the Glenorchy City Council established under section 18 and section 19 of the Act;

Council officer means an employee, contractor or consultant of Council;

EOI means expression of interest;

General Manager means the person appointed to the position of General Manager of the Council from time to time pursuant to section 61 of the Act;

GST means goods and services tax pursuant to the *A New Tax System (Goods and Services Tax) Act 1999*;

Local Business means suppliers whose principal place of business is located within the Municipal Area;

Municipal Area means the municipal area of the Council as specified by section 16 of the Act;

Prescribed Amount means the dollar figure prescribed in Regulation 23 of the Regulations which as at the date of this Code is \$250,000 (excluding GST);

Regulations means the *Local Government (General) Regulations 2015*;

RFQ means Request for Quotation;

RFT means Request for Tender;

Tender Register Book means written records maintained by Council to record tender submissions received; and

TRC means a Tender Review Committee which may be established by the General Manager from time to time comprised of Council officers appointed by the General

Manager in relation to new procurement exceeding the Prescribed Amount.

3 | Legislation

This Code has been made and adopted by Council in accordance with section 333B of the Act.

In accordance with section 333B(2) of the Act, this Code:

- a) is consistent with the Act; and
- b) includes all matters prescribed by the Regulations.

4 | Aims of this Code

The aims of this Code are to:

- a) ensure compliance with all relevant legislation;
- b) enhance value for money through the use of fair, competitive, non-discriminatory procurement practices;
- c) promote the use of resources in an efficient, effective and ethical manner;
- d) encourage probity, accountability and transparency in procurement;
- e) provide reasonable opportunity for competitive local businesses to supply to Council;
- f) minimise the cost to tenderers of participating in the tendering process;
- g) allow Council to appropriately manage risk; and
- h) promote Council's economic, social and environmental plans and policies.

5 | Scope of Code

5.1 Procurement procedures

This Code provides an overview of the procedures to be applied by Council in the procurement of goods and/or services.

In accordance with Regulation 28 of the Regulations, this Code:

- a) promotes the principles set out in Regulation 28(a) of the Regulations;

- b) establishes and maintains procedures to ensure all potential service providers are provided with the same information relating to the requirements of a tender or contract and are given equal opportunity to meet those requirements;
- c) establishes and maintains procedures to ensure that fair and equitable consideration is given to all tenders or quotations received;
- d) establishes and maintains procedures to ensure that Council deals honestly with, and is equitable in the treatment of, all potential or existing service providers;
- e) establishes and maintains procedures to ensure that prompt and courteous responses are given to all reasonable requests for advice and information from potential or existing service providers;
- f) seeks to minimise costs to tenderers of participating in the tendering process;
- g) protects commercial in confidence information;
- h) prescribes when 3 written quotations are required for contracts valued at less than the Prescribed Amount;
- i) establishes and maintains procedures for reporting by the General Manager to Council in relation to the purchase of goods or services in circumstances where a public tender or quotation process is not used; and
- j) establishes and maintains procedures for the review of each tender process to ensure that each tender process is in accordance with the Regulations and this Code;
- k) establishes and maintains procedures for:
 - i) amending or extending a tender once it has been released;
 - ii) opening tenders;
 - iii) the consideration of tenders that do not fully conform with the tender requirements;
 - iv) debriefing unsuccessful tenderers; and
 - v) handling complaints regarding processes related to the supply of goods or services.

5.2 Application of Code

The Code applies to Council, Council employees, Council agents and any service provider wishing to supply goods and/or services to Council.

Service providers engaged by Council will, where it is practical to do so, be required to apply the principles of this Code (as applicable) when seeking tenders or quotations from their sub-contractors and suppliers.

6 | Procurement Principles

In accordance with Regulation 28(a) of the Regulations, this Code promotes the following principles to which Council will have regard when procuring goods and services.

6.1 Open and effective competition

Council will ensure that the procurement of goods and/or services is an impartial and open process which encourages the making of competitive offers.

In practice this means that Council will:

- a) use transparent and open procurement processes to ensure that both service providers and the public can have confidence in both the process and its outcomes;
- b) adequately test the market by seeking quotations or tenders as appropriate;
- c) avoid biased specifications;
- d) treat all service providers consistently and equitably; and
- e) ensure that prompt, courteous and informative responses are given to all reasonable requests for advice and information received from service providers.

6.2 Value for Money

Council will ensure that it is procuring goods and/or services at the most competitive price available whilst at the same time recognising that value for money does not always equate to buying at the lowest available price.

In practice this means that Council will:

- a) assess the contribution that the relevant goods and/or services make towards achieving Council's strategic plans or policies;
- b) weigh the anticipated benefits of a procurement against the costs of that procurement;
- c) perform an assessment of the risks associated with the procurement, including the preferred procurement method;
- d) assess how well the proposed goods and/or services meet Council's needs;
- e) assess the maintenance and running costs over the lifetime of a product;
- f) consider the relevant disposal value;
- g) have regard to any relevant time constraints;
- h) consider the impact of the procurement decision on the local economy, including but not limited to any impacts (both positive and negative) on industrial development and the creation of employment opportunities;

- i) consider the impacts (both positive and negative) of the procurement decision on the environment, taking into account the need to minimise waste and reduce the demand for goods and/or services which have a negative impact on the environment; and
- j) consider the impact of the procurement decision on local society, taking into account the need to eliminate discrimination and promote equal opportunity, training, and other identified social objectives.

6.3 Enhancement of the capabilities of local business and industry

Council will ensure that, where the required capability and/or expertise is held by Local Businesses, Council will look to engage Local Businesses and encourage their participation in procurement processes.

In practice this means that Council will use reasonable endeavours to:

- a) actively invite tenders and seek quotes from Local Businesses that have the requisite capability and/or expertise to respond to a given procurement;
- b) where local capability exists, ensure that discretionary elements of specifications do not prevent Local Businesses from effectively participating in the procurement process; and
- c) not give preferential treatment to Local Businesses where it cannot be reasonably justified.

6.4 Ethical behaviour and fair dealing

6.4.1 Council will promote procurement practices that are legal, ethical, fair and unbiased.

In practice this means that Council will:

- a) comply with all applicable legislative requirements, including the Act, the Regulations and this Code;
- b) conduct all business in the best interests of the Council;
- c) establish, maintain and document all tender and quotation procedures;
- d) be as effective and efficient as possible when sourcing, ordering and paying for goods and/or services;
- e) expect individuals involved in procurement processes to disclose any actual or perceived conflicts of interest;
- f) ensure that all specifications are clearly stated;
- g) ensure that any information or clarification provided to a potential service provider is also provided to all other relevant potential service providers;

- h) maintain confidentiality in its dealings with service providers and potential service providers, including the protection of commercial-in-confidence information;
- i) ensure that conditions of contract are not excessively onerous; and
- j) decline gifts or benefits offered by those involved in the procurement process, particularly from existing or potential service providers.

6.4.2 Expectations of service providers

Council expects service providers to:

- a) ensure that they are acquainted with the requirements identified in this Code;
- b) be familiar with the particulars relating to a specific tender and quotation process, including all relevant specifications;
- c) not submit a tender or quotation unless they have, where applicable, the relevant financial, technical, physical, work health and safety, management resources or other relevant capabilities requirement to fulfil the tender or quotation requirements;
- d) not seek to influence a procurement process by improper means or collude with other service providers;
- e) disclose any actual or perceived conflicts of interest relevant to a procurement process;
- f) comply with all applicable legislative, regulatory and statutory requirements, including Acts of the Commonwealth and State, regulations, by laws and proclamations made or issued under such Acts and lawful requirements or directions of public and other authorities; and
- g) not offer gifts or benefits to any Council officer.

7 | Procurement Methods

7.1 Overview of procurement requirements

While open and fair competition is often best achieved by undertaking a public tender process, there are times when this practice will not deliver the most appropriate outcomes for Council. In those instances, and where the relevant legislation permits, other more appropriate methods may be used.

After having regard to the procurement principles set out in Part 6 of this Code, all applicable legislative requirements and any other relevant factors, Council will determine the appropriate method to be employed in the procurement of goods and/or services at any particular time.

The minimum or 'default' procurement methods to be employed by Council are summarised in the table below:

Procurement Value (exclusive of GST)	Minimum Requirement
<p>Up to \$2,000 (refer to clause 7.3.1)</p>	<p><u>No</u> Purchase Order required.</p>
<p>Between \$2,001 - \$5,000 (refer to clause 7.3.2)</p>	<p>Purchase Order required.</p>
<p>Between \$5,001 - \$10,000 (refer to clause 7.3.3)</p>	<p>Council will seek at least one (1) written quotation. Purchase Order is required.</p>
<p>Between \$10,001 - \$50,000 (refer to clause 7.3.4)</p>	<p>Council will seek at least two (2) written quotations. Purchase Order is required.</p>
<p>Between \$50,001 - \$249,999 (refer to clause 7.3.5)</p>	<p>Council will seek at least three (3) written quotations. Purchase Order is required.</p>
<p>\$250,000 and above</p>	<p>Council will go to public tender</p>

7.2 Procurement planning

Prior to the procurement of any goods and/or services, Council must:

- a) plan the procurement, which includes the development and approval of the appropriate project management documentation as necessary; and
- b) determine whether or not a public tender process should be used, regardless of the value of the procurement; e.g. where the procurement could be regarded as high risk

and/or as having high importance to Council or where the goods and/or services could be applicable to more than one area of Council's operations.

7.3 Procurement by quotation (procurements valued at less than \$250,000, exclusive of GST)

Council may procure goods and/or services through a written quotation process (or reasonable written estimate to the satisfaction of the General Manager or delegate) in situations where:

- a) the value is below \$250,000; or
- b) the procurement may be for relatively low risk or medium risk goods and services; or
- c) the prospective service provider/s have a successful history of supplying goods and/or services to Council.

The Code provides further guidance in 7.3.1 – 7.3.5 (inclusive) in relation to procurement thresholds.

The requirements set out in 7.3.1 – 7.3.5 (inclusive) of this Code do not apply to the procurement of goods and/or services:

- d) determined by the General Manager to be of high value and/or high risk (where a public tender process should be used); or
- e) under a standing contract arrangement (see clause 7.5 of this Code for details regarding standing contracts).

7.3.1 Procurements valued at less than \$2,000 (exclusive of GST)

- a) Records must be kept of all relevant approved documentation and/or receipts received.

7.3.2 Procurements valued between \$2,001 and \$5,000 (exclusive of GST)

- a) Purchase Order to be raised where possible prior to purchase;
- b) Records must be kept of all quotations or estimates received and/or approved, including all relevant approved documentation and/or receipts received and recorded within Council's financial system; and
- c) Each quotation or estimate must be assessed against the relevant selection criteria in order to award the contract to a successful service provider.

7.3.3 Procurements valued between \$5,001 and \$10,000 (exclusive of GST)

- a) Council will only enter into contracts or procure goods and services in this value range where at least one (1) written quotation (or a reasonable estimate of the range of costs is obtained in writing to the satisfaction of the General Manager where a quotation cannot be supplied) from suitable service providers and the other matters in this 7.3.3 have been satisfied;
- b) Council will not use this method of procurement for high risk goods and/or services unless in the reasonable opinion of the General Manager it is appropriate to do so;
- c) Records must be kept of all quotations or estimates received and/or approved and recorded within Council's financial system;
- d) Each quotation or estimate must be assessed against the relevant selection criteria in order to award the contract to a successful service provider; and
- e) A Council purchase order is required.

7.3.4 Procurements valued between \$10,001 and \$50,000 (exclusive of GST)

- a) Council will only enter into contracts or procure goods and services in this value range where at least two (2) written quotations are obtained (or a reasonable estimate of the range of costs are obtained in writing to the satisfaction of the General Manager where a quotation cannot be obtained) from suitable service providers and the other matters in this 7.3.4 have been satisfied;
- b) Where possible, it is encouraged that at least one (1) of the quotations is obtained from a Local Business;
- c) Council will not use this method of procurement for high risk goods and/or services unless in the reasonable opinion of the General Manager it is appropriate to do so;
- d) Records must be kept of all quotations or estimates received and/or approved and recorded within Council's financial system;
- e) Each quotation or estimate must be assessed against the relevant selection criteria in order to award the contract to a successful service provider; and
- f) A Council purchase order is required.

7.3.5 Procurements valued between \$50,001 and \$249,999 (exclusive of GST)

- a) Council will only enter into contracts in this value range where at least three (3) written quotations are obtained (or a reasonable estimate of the range of costs is obtained in writing to the satisfaction of the General Manager or delegate where a quotation cannot be obtained) from suitable service providers and the other matters in this 7.3.5 have been satisfied;
- b) Where possible, it is encouraged that at least one (1) of the quotations is obtained from a Local Business;
- c) Council will not use this method of procurement for high risk goods and/or services unless in the reasonable opinion of the General Manager it is appropriate to do so;
- d) This is a more formal quotation process which requires the use of Council's formal Request for Quotation template (RFQ) where possible or a comprehensive written quote from the provider;
- e) The complexity of the RFQ will depend on the nature and value of the procurement and the appropriate template documentation will be identified during the planning phase;
- f) Records must be kept of all quotations or estimates received and/or approved and recorded within Council's financial system;
- g) Each quotation or estimate must be assessed against the relevant selection criteria in order to award the contract to a successful service provider; and
- h) A Council purchase order is required.

7.4 Procurement by Public Tender

Section 333A of the Act provides that, subject to specific exemptions, Council must invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above the Prescribed Amount.

In certain circumstances Council may determine that tenders should be invited regardless of the contract value; e.g. where the procurement could be regarded as high risk and/or as having high importance to Council, and/or where the goods and/or services could be applicable to more than one area of Council's operations.

7.4.1 Tender Procedures

Pursuant to Regulation 28(l)(i), (ii) and (iii) of the Regulations, Council is to establish and maintain procedures for amending or extending a tender once it has been released, opening tenders and the consideration of tenders that do not fully conform with the tender requirements. Council's procedures are summarised in Appendix A of this Code.

7.4.2 Open Tenders

An open tender process is an invitation to tender by public advertisement referred to as a Request for Tender (RFT). There are generally no restrictions regarding who can submit a tender, however, service providers are required to submit all required information and will be evaluated against the selection criteria set out in the RFT.

General Manager – open tender responsibilities

In accordance with Regulation 24(1) of the Regulations, when open tenders are used as a method of procurement the General Manager will invite tenders by notice published at least once in a daily newspaper circulating in the municipal area.

Such notice will specify:

- a) the nature of the goods and or services the Council requires;
- b) the period within which the tender must be lodged (which in accordance with Regulation 24(2) of the Regulations must be at least 14 days after the date on which the notice is published);
- c) where tenders must be lodged;
- d) the details of the person (or persons) from whom more detailed information relating to the tender may be obtained; and
- e) any identification details allocated to the relevant contract.

In accordance with Regulation 24(3) of the Regulations, the General Manager will ensure that all prospective tenderers are provided with the following details as part of the RFT:

- a) the specifications of the goods and/or services required;
- b) the duration of the contract, including any extensions that are specified in the contract;
- c) any mandatory tender specifications and contract conditions;
- d) the criteria for evaluating tenders;
- e) the method of evaluating tenders against the relevant evaluation criteria; and
- f) a reference to this Code including where a copy of this Code can be obtained.

Service Provider – open tender responsibilities

In accordance with Regulation 24(4) of the Regulations, a person or entity making a tender must:

- a) do so in writing;

- b) specify the goods or services tendered for; and
- c) lodge their tender within the period specified in the notice referred to in paragraph 7.4.2 of this Code.

7.4.3 Multiple-stage tenders

In accordance with Regulation 26 of the Regulations, under appropriate circumstances Council may use a multi-stage tender process.

A multiple-stage tender will typically be used by Council to gain knowledge about the relevant market, obtain industry input (i.e. where it is unclear what goods and services are available) and/or to shortlist appropriate suppliers.

At each stage of a multi-stage tender process, service providers may be selected according to those who are most suited to the specific contract requirements. Service providers will be evaluated against criteria determined by Council.

Once a short list of potential service providers is developed, these service providers may be invited to participate in an open tender process.

General Manager – Multiple-stage tender responsibilities

In accordance with Regulation 26(3) of the Regulations, as the first stage of a multiple-stage tender process the General Manager will invite Expressions of Interest (EOI's) from prospective tenderers.

The General Manager will do so by causing a notice to be published at least once in a daily newspaper circulating in the municipal area with such notice to specify:

- a) the nature of the goods and/or services Council requires;
- b) any contract identification details;
- c) the period within which the EOI must be lodged;
- d) where the EOI must be lodged; and
- e) the details of a person from whom more detailed information relating to the EOI may be obtained.

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

- a) the specifications of the goods and or services required;
- b) the criteria for evaluating the EOI;
- c) the method of evaluating EOI's against the criteria;
- d) details of any further stages in the tender process; and
- e) a reference to this Code, including where a copy of this Code can be obtained.

In accordance with Regulation 26(5) of the Regulations, at the final stage of a multiple-stage tender process, the General Manager will invite all service providers who have met the criteria determined by Council to tender for the supply of the relevant goods and/or services.

In accordance with Regulation 26(6) of the Regulations, if only one service provider meets the criteria determined by Council at the first stage, the Council may contract with that supplier after:

- a) a tender from that service provider; or
- b) a decision by an absolute majority of the Council to do so.

Service Provider – multiple-stage tender responsibilities

A person or entity making an EOI must:

- a) do so in writing;
 - b) specify the goods or services tendered for; and
- lodge the EOI within the period specified in the invitation.

7.4.4 Tender Review Committee - Review of Tender Processes

A TRC will be established by Council to review all tenders prior to the awarding of contracts and/or to review proposed tenders.

Subject to its terms of reference, the TRC may:

- a) review each tender process to ensure compliance with the Act, the Regulations and this Code;
- b) perform reviews prior to advertising tenders and again prior to awarding a contract to a successful tenderer; and
- c) review and consider aspects of a tender including but not limited to the tender and evaluation process adopted, the final tender evaluation report and any other issue or information it considers relevant.

7.4.5 Extension of contracts entered into by tender

In accordance with Regulation 23(5) of the Regulations, Council may extend a contract entered into by tender:

- a) in the manner specified in the relevant contract; or
- b) if the relevant contract does not specify extensions, by a resolution of Council made by absolute majority.

7.5 Standing contracts

In accordance with Regulation 23(3) of the Regulations, through a public tender process Council may establish a standing contract in which a single tenderer or multiple tenderers may be contracted for a specified period to provide specified goods and/or services during that period without the need for a further tender process. Where multiple tenderers are engaged, those tenderers form part of a 'panel' of prospective suppliers.

A separate contract is formed under the standing contract (on terms specified in the standing contract) each time Council purchases goods and/or services under the standing contract from a panel member.

Service providers listed on a standing contract panel will be selected following an evaluation process, the details of which will be set out in the relevant RFT.

A contract formed in accordance with Regulation 23(3) of the Regulations is exempt from the requirements of 7.3.2, 7.3.3 and 7.3.4 of this Code.

7.6 Multiple-Use Register

7.6.1 Introduction

A multiple-use register is a list of suppliers who have satisfied the conditions for participation or inclusion on the register and are pre-qualified to supply certain goods and/or services to Council.

Pursuant to Regulation 25(1) of the Regulations, Council may establish a multiple-use register of service providers who meet criteria established by Council in respect to the supply of particular categories of goods and/or services.

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

The differences between a standing contract (see Clause 7.5 of this Code) and a multiple-use register are as follows:

Standing Contract	Multiple Use Register
<ul style="list-style-type: none"> • Outcome of an initial public tender process • Council can procure goods/services directly from any member of the panel • Size of panel is determined when the standing contract commences • Operators on indicative or set prices for goods and services • Operates for a finite period of time 	<ul style="list-style-type: none"> • Part of a public tender process • Forms a basis for select tendering to members of the register • Conditions for participation stated • Size not limited • No indicative or set pricing • Can operate indefinitely subject to review every 2 years • Open continuously or annually

7.6.2 Procedural requirements

In accordance with Regulation 28(i) of the Regulations, this Code is required to establish and maintain procedures for the use of multiple-use registers for contracts valued at under the Prescribed Amount.

In accordance with Regulation 25(2) of the Regulations, Council will invite applications from suppliers for inclusion on a multiple-use register.

Council will do so by publishing on Council’s website and at least once in a daily newspaper circulating in the municipal area, a notice specifying:

- a) the nature of the goods and/or services Council requires;
- b) any identification details associated with the multiple-use register;
- c) the period within which the application must be lodged;
- d) where the application must be lodged; and
- e) details of the person from whom more detailed information relating to the multiple-use register may be obtained.

The General Manager will ensure that all applicants are provided with the following information in order to enable them to make an application:

- a) details of the categories of goods or services required;

- b) the criteria for evaluating applications;
- c) the method of evaluating applications against the criteria; and
- d) a reference to this Code including where a copy of this Code can be obtained.

Council may accept an application for inclusion on the multiple-use register or reject an application.

For the purposes of Regulation 25(5) of the Regulations, if Council rejects an application the General Manager will advise the applicant of the reasons for rejection.

If Council accepts an application the General Manager will advise the applicant of the category for which the application is to be included on the multiple-use register.

Each multiple-use register will be reviewed by Council at least once every two (2) years.

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

8 | Calculating the Value of a Procurement

The dollar value of a procurement is to be calculated as follows:

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

For the avoidance of doubt, in estimating the value of any procurement the estimate must include the total value of the initial term, the total value of any option(s) and the total value of any orders that may be made under the relevant contract.

In accordance with Regulation 23(4), Council will not split a single procurement activity into two (2) or more separate contracts for the primary purpose of avoiding the requirement to publicly invite tenders.

9 | Exemptions and Exceptions

9.1 Statutory exemptions – public tenders

The Regulations prescribe situations and contracts where Council is not required to invite public tenders even though the goods and/or services are valued at or above the Prescribed Amount.

Pursuant to Regulation 27 of the Regulations, the prescribed situations and contracts are as follows:

- a) in 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;
- b) a contract for goods or services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth;
- c) 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;
- d) 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, any other local government association in the State of Tasmania or in another State or a Territory, or any organisation, or entity, established by any other local government association in the State of Tasmania or in another State or a Territory;
- e) a contract for goods or services in respect of which a council is exempted under another Act from the requirement to invite a tender;
- f) a contract for goods or services that is entered into at public auction;
- g) a contract for insurance entered into through a broker;
- h) a contract arising when a council is directed to acquire goods or services due to a claim made under a contract of insurance;
- i) 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:
 - i) extenuating circumstances; or
 - ii) the remoteness of the locality; or
 - iii) the unavailability of competitive or reliable tenderers; and
 - iv) a contract of employment with a person as an employee of the council.

9.2 Exemption – Other Circumstances

For the avoidance of doubt, this clause 9.2 does not apply to the procurement of goods and/or services that are valued at or above the Prescribed Amount.

1. Notwithstanding clauses 7.3.2, 7.3.3, 7.3.4 and 7.3.5 of this Code, Council may approve the procurement of goods and/or services where it can be established to the satisfaction of Council that:
 - a) the relevant goods and/or services are required in order to address an immediate threat to life, damage to property or substantial adverse effect to the environment; or

- b) reasonable enquiries indicate that there may only be one supplier of the required goods and/or services in Australia; or
- c) the supplier sought to be retained has historical knowledge of the project associated with the relevant procurement; or
- d) the original goods and/or services were selected through a procurement process and the proposed procurement is an upgrade or addition to the original procurement, provided that the upgrade or addition will not result in the total expenditure of the original procurement being or exceeding \$250,000 excluding GST; or
- e) in the circumstances, compliance with clauses 7.3.2, 7.3.3, 7.3.4 or 7.3.5 would cause significant, unjustifiable or unreasonable cost or loss or significant and unreasonable business interruption to the activities of the Council (or significant risk of the same happening); or
- f) there is another valid reason for an exemption to be applied having regard to;
 - (i) all the relevant circumstances of the matter; and/or
 - (ii) the procurement principles set forth in Part 6 of this Code; and/or
 - (iii) any other matter that the Council considers relevant.
- g) the payments for goods or services are of an ongoing, mandatory or fixed nature and/or where a specific exemption has been approved by the Council for this class of purchase and/or this supplier, and as may be varied by Council from time to time (at the discretion of Council), are exempt from the requirements of clauses 7.3.2, 7.3.3, 7.3.4 and 7.3.5.

10 | Reporting Requirements

The Act and the Regulations impose the following reporting requirements with respect to the procurement of goods and services by Council:

- a) inclusion of information in Council's Annual Report produced in accordance with section 72 of the Act; and
- b) reporting by the General Manager to Council in relation to the purchase of goods or services in circumstances where a public tender or quotation process is not used.

10.1 Annual Report

In accordance with section 72(1)(e) of the Act and Regulation 29 of the Regulations, Council will ensure that its Annual Report contains the following matters:

- a) in relation to any contract, for the supply or provision of goods or services valued at or exceeding the Prescribed Amount, that is entered into or extended under Regulation 23(5)(b) of the Regulations, in the financial year to which the annual report relates:

- i) a description of the contract;
 - ii) the period of the contract;
 - iii) the periods of any options for extending the contract;
 - iv) the value of any tender awarded or, if a tender was not required, the value of the contract (excluding GST);
 - v) the business name of the successful contractor; and
 - vi) the business address of the successful contractor;
- b) all instances where Regulation 27(a) and (i) of the Regulations have been applied, with the following details:
- i) a brief description of the reason for not inviting public tenders;
 - ii) a description of the goods or services acquired;
 - iii) the value of the goods or services acquired;
 - iv) the name of the supplier; and
- c) in relation to any contract, for the supply or provision of goods or services valued at or exceeding \$100,000 (excluding GST) but less than the Prescribed Amount, that is entered into, or extended, in the financial year to which the annual report relates:
- i) a description of the contract;
 - ii) the period of the contract;
 - iii) the value of the contract (excluding GST);
 - iv) the business name of the successful contractor; and
 - v) the business address of the successful contractor.

10.2 Reporting by General Manager

In accordance with Regulation 28(j), the General Manager will establish and maintain procedures for reporting to Council at the first ordinary meeting of Council after the event in relation to the procurement of goods and/or services in circumstances where a public tender or quotation process is not used. Such report will include the following details of each procurement:

- a) a brief description of the reason for not inviting public tenders or quotations (as applicable);
- b) a brief description of the goods or services acquired;
- c) the approximate value of the goods or services acquired; and
- d) the name of the supplier.

11 | General Matters

11.1 Tenderlink

Council may, in its absolute discretion, utilise the Tenderlink online portal service to invite tenders in addition to using the methods prescribed by the Act and the Regulations.

11.2 Availability of Code

In accordance with section 333B(4) of the Act, the General Manager will ensure that a copy of this Code and any approved amendments are made available:

- a) for public inspection at Council's public office during ordinary office hours; and
- b) for purchase at a reasonable charge from Council's public office; and
- c) on Council's website, free of charge.

11.3 Delegation

Council may, in writing:

- a) delegate any of its functions and powers under this Code to the General Manager; and
- b) authorise the General Manager to further delegate those powers.

The General Manager may delegate:

- a) any functions or powers given to the General Manager under this Code; and
- b) any functions or powers under this Code delegated to the General Manager by the Council which the Council has authorised the General Manager to further delegate.

11.4 Third Party Engagement

Council may engage a third party to manage Council's procurement process for individual projects.

Use of a third party does not relieve Council from its obligation to comply with this Code and all relevant legislative requirements regarding the procurement of goods and/or services by Council.

11.5 Goods and Services Tax (GST)

All procurement thresholds set out in this Code are GST exclusive.

All tenders and quotations must be sought on a GST inclusive basis.

11.6 Work Health and Safety

Where appropriate, contracts granted for the procurement of goods and/or services by Council will include terms and conditions requiring the service provider to acknowledge and agree that, during the term of the contract, the service provider:

- a) will comply with all applicable laws in relation to work health and safety at all times whilst delivering goods and/or services under the contract; and
- b) will ensure that its employees, subcontractors and agents comply with all applicable laws in relation to work health and safety at all times whilst delivering goods and/or services under the contract.

Where appropriate, invitations to tender will require tenderers to provide Council with a copy of the tenderer's work health and safety management systems such as: policies and procedures, including all safety related documentation, and details of any specific control measures relevant to the particular contract.

11.7 Disputes

For the purposes of Regulation 28(l)(v) of the Regulations, information regarding Council's formal complaint resolution process is available in the Council's Customer Service Charter located on the Council's website or alternatively a copy can be obtained upon request to a relevant Council Officer.

In the first instance, complainants are encouraged to seek resolution through the manager in charge of the Council department that has sought to make the procurement. If relevant, complainants should be encouraged to seek a debriefing if they have not already done so.

All otherwise unresolved complaints relating to the procurement of goods, services or products, or with the tender or contract evaluation/acceptance process, must be made in writing to the General Manager outlining the details of the complaint and providing copies of any relevant supporting materials.

11.8 Breach of the Code

Council must take all reasonable steps to comply with this Code. However, Council shall not be liable to any tenderer or prospective tenderer or any other person for any breach or suspected breach of this Code.

11.9 Review of Code

In accordance with section 333B(2)(d) of the Act, Council will review the contents of this Code at least once every 4 years in order to ensure that it is fulfilling the aims set out in Part 4 of this Code.

Appendix A

Tender Procedures

(Regulation 28 (I))

1. Amendment and Extension to Tender (reg.28(I)(i))

For any reason if there is a need to alter the tender documentation once it has been issued, an addendum will be sent to all suppliers that have been issued with that documentation. If it is necessary to extend the closing date of the tender the following will occur:

- all suppliers that have been issued with tender documentation will be advised in writing of the change in closing date; and
- the new closing date will be advertised in all newspapers or websites where the original advertisement was placed.

2. Opening Tenders (reg.28(I)(ii))

Tenders are to be opened in the presence of a minimum of two Council Officers. Preferably, at least one person should be a Council Officer from the Council's records department and the other a member of the TRC.

To ensure that probity is maintained the tender submissions are accessed via the electronic portal of the Tenderlink.

The submissions are downloaded by a Council Officer who has the administrative rights to the Tenderlink portal (for example, the records officer.). If the records officer is not available at the time, then the person acting in the role of Strategic Procurement Coordinator should ideally be present.

After each tender is opened, the following information shall be recorded in the Tender Register Book in respect of each tender submission:

- description of tender and tender number;
- the name of organisations submitting tenders; and
- names and signatures of the Council Officers present at the opening.

After all tenders have been opened and entered in the Tender Register book, the page shall be ruled to prevent further tenders from being added. The Tender Register shall then be signed and dated by at least two (2) of the Council Officers present.

Information provided by tenderers is confidential and must not be provided to unauthorised

persons without the approval of the General Manager.

Tender prices from opposing tenderers will NOT be publicised.

3. Non-conforming Tenders (reg.28(l)(iii))

Council reserves the right to reject any tender which does not comply with the tender requirements.

4. Tender Debrief (reg.28(l)(iv))

An unsuccessful tenderer may request a formal debriefing interview. Written requests should, in the first instance, be directed to the relevant project officer.

Commercial in confidence information of opposing tenders including price, costs, and details of the successful tender, will not be provided or discussed.

a) Objective of the debrief

The objective of the debriefing session is to examine any areas of non-compliance and to assist the tenderer to offer more competitive tenders in the future. The debriefing interview is an opportunity for tenderers to learn how to improve their tender preparation skills. The debriefing interview is not to be used to justify the selection of the successful tenderer.

b) The debriefing interview

If a formal debriefing is requested, a debriefing team may be formed.

The debriefing team conducting the interview should be comprised of two Council Officers including one member of the TRC.

Discussion at the debriefing should be limited to the tenderer's offer. The unsuccessful tenderers offer should not be compared to the winning offer and neither should aspects of the winning offer, or any other offer, be discussed.

Examples of issues that may be discussed at the debriefing, include:

- cost - an indication of competitiveness;
- specification/evaluation criteria - levels of compliance;
- tender/contractual issues including delivery dates;
- design – e.g.. any design deficiencies that would lead to higher operating costs;
- after-sales service - inadequate servicing network, spares held etc.;

- administrative or management systems;
- industrial relations – e.g.. a poor record with no plans for improvement;
- quality management - ineffective control methods, systems, people, training;
- experience/qualifications/referee reports or past performance – eg. inadequate experience or qualifications, or poor performance on previous contracts;
- personnel - number, experience or quality of management and other personnel;
- facilities/equipment – e.g. outdated, inefficient equipment or facilities; and/or
- sub-contracting – e.g. inadequate control mechanisms.

The Council Officers conducting the debriefing may document the proceedings of the debriefing interview, including the following:

- participants;
- information provided to the unsuccessful tenderer and issues arising;
- any issues arising;
- details of any requested information that was not disclosed due to commercial-in-confidence considerations; and
- any likely recommendations for further action.

Document Control

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