

# 2024-28 Code for Tenders and Contracts



**GLENORCHY**  
CITY COUNCIL



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# Introduction

This Code for Tenders and Contracts provides a statement of the principles, process and ethics that underline best practices for Procurement at Glenorchy City Council, it applies to anyone with a role in the acquisition of goods, services and/or works on Council's behalf and to suppliers and contractors seeking or doing business with Council. Council may, from time to time, make or approve policies that amend or supplement the Code. Where this is the case, they will be issued as addenda to the Code and provided on Council's website.

## Definitions

- Council Buyer means any officer, official, office bearer, consultant or agent that participates in a Council Procurement activity.
- Conflict of Interest means any financial or non-financial or familial or other close personal relationship or interest that is, or which may be perceived as being, in conflict with a Council' Buyer's official duties in respect of a Procurement process or contract in a Service Provider participating in a Procurement process or being awarded a contract.
- Council's Requirements means any type of:
  - -equipment, materials, goods and/or services; and
  - -building and construction and civic and civil works, maintenance and services.
- Dumped Goods means goods that are brought into Australia at a price below the price charged in the country of manufacture or below the cost of manufacturing the product
- Indigenous Business means a business that is verified as an Indigenous business or an Indigenous business enterprise by Supply Nation.
- Legislative Requirements includes any Acts, Regulations, local laws and by-laws, Codes of Practice and any other instruments made under any Act or subordinate legislation, whether State or Federal.
- Local Business means a business which has a permanent presence and workforce located within the Glenorchy municipality, southern Tasmania or the state of Tasmania as a whole.

# Definitions (cont.)

- **Modern Slavery includes:**
  - human trafficking;
  - slavery;
  - child labour;
  - servitude;
  - forced labour;
  - debt bondage;
  - deceptive recruiting for labour or services;
  - forced marriage; or
  - any other practices which Council, acting reasonably, determines to be exploitative or a violation of an individual's dignity and human rights.
- **Procurement** means any process whereby Council seeks to acquire any goods or services, including building, construction and civic and civil works and services.
- **Service Provider** includes prospective suppliers and contractors seeking to do business with Council and suppliers and contractors engaged by Council to provide goods, services and/or works.
- **Sham Contracting** means disguising an employment relationship as a contractor relationship.
- **Subsidised Goods** means goods that are supplied by an exporter that benefits from government assistance in the country of export allowing the exporter to sell the goods to Australia at a lower price which causes material injury to the Australian industry.



# Legislative Requirements

<b>Acts</b>	Sections 333A and 333B of the <i>Local Government Act 1993</i> (Tas) (the 'Act') require compliance with this Code when acquiring goods and/or services for Council.
<b>Regulations</b>	The information contained in the Code must be consistent with the requirements of the <i>Local Government (General) Regulations 2015</i> (Tas) (the 'Regulations').

## Council's Procurement Approach

Council Procurement is largely devolved. This means Procurement responsibilities and accountabilities are shared between individual Council departments and Council's Procurement and Contracts section.

Routine and low complexity Procurements valued less than \$100,000 (excluding GST) are the responsibility of the department which requires the goods, services and/or works. The department which makes the purchase is responsible for ensuring processes are in place to comply with the Code.

Procurements valued at \$100,000 or higher (excluding GST) are managed by Council's Procurement and Contracts section. Procurements valued at less than \$100,000 may be managed by the Procurement and Contracts section if warranted due to complexity or risk.

## Procurement Principles

Council purchasing must be conducted legally and by encouraging fair and open competition between Service Providers. The Regulations require Council Procurement to promote the principles of:

- Open and effective competition.
- Value for money.
- Enhancement of the capabilities of local business and industry.
- Ethical behaviour and fair dealing.

## Open and effective competition

Through open and effective competition, Council ensures that purchasing decisions are impartial, open and transparent and that competitive tenders and quotes are encouraged.

# Open and effective competition

For Council Buyers this means:

- using well documented, transparent, open purchasing procedures, so Service Providers and the public can have confidence in Council Procurement;
- ensuring records keeping practices enable audit and review of purchasing and procurement decisions and actions;
- providing a diversity of Service Providers with the opportunity to compete for Council business, including not making repeated purchases from the same Service Providers without testing the market compliant with Procurement thresholds;
- avoiding use of biased specifications and wherever possible not exclusively purchasing or specifying a particular brand or product;
- adopting transparent, open purchasing procedures and treating Service Providers consistently and equitably by:
  - ensuring Service Providers are provided with the same information about Council's requirements including circulating any amendments and clarifications to all prospective Service Providers;
  - allocating a common deadline date and time for submission of tenders or quotes, applying it equally to all Service Providers and not opening tenders or quotes until the deadline has lapsed;
  - ensuring the same amount of time to prepare and submit a tender or quote (including any additional time) is provided to all prospective Service Providers;
  - evaluating all tenders and quotes against the same predetermined evaluation criteria and ensuring the same criteria (including any applicable weightings) are disclosed to prospective Service Providers;
  - giving all Service Providers that submitted an tender or quote have the same opportunity to clarify or correct, or not to clarify or correct, unintentional errors; and
  - if requested, de-briefing unsuccessful Service Providers; and
- being mindful of the cost of bidding and not:
  - knowingly inviting quotes or tenders without a genuine intention or the financial capacity to proceed with a purchase, contract or project; or
  - requiring Service Providers to undertake undue unpaid design work or provide unnecessary information in order to lodge tender or submit a quote.

# Open and effective competition (Cont.)

For Service Providers, promoting open and effective competition means not engaging in uncompetitive behaviour, or other practices, which are intended to deny legitimate access to, or discourage other Service Providers from, competing for Council business.

## Value for Money

The objective of Council Procurement is to ensure that goods and services purchased by Council are fit for purpose and satisfy Council's Requirements at the most competitive price available. Achieving value for money does not always mean buying at the lowest price.

Council Buyers are required to weigh up the quality and other relevant non-price factors against the purchase price to ensure value for money.

The relevant value for money considerations should be considered when planning the purchase and before testing the market. These include:

- Reasons for the purchase. For example, why Council needs the goods and/or services who will use them and how often, what community and other benefits the purchase generates or supports.
- Potential to encourage or enhance Local Business participation.
- Possibility of meeting the need at reduced risk and enhanced value for money by:
  - sharing services with another council or councils;
  - utilising an existing Council standing contract or multiple-use register; or
  - acquiring Council's Requirements through a strategic procurement arrangement established by or through the Local Government Association of Tasmania or a Tasmanian Government common use contract.
- Potential to achieve efficiency and productivity improvements through consolidation or aggregation of Council's Requirements.
- Relevant commercial and cost factors such as:
  - income generation;
  - cost escalation and indexation;
  - recurrent costs;
  - maintenance and upgrading requirements;
  - useable life, obsolescence, and replacement cost; and
  - residual value.
- Fitness for purpose, quality and performance requirements.



# Value for Money (cont.)

- Required Service Provider capacity and capability requirements. For example, management and technical capability, physical and human resources, relevant experience and work health and safety management capability.
- Contribution to achieving Council's policy and strategic objectives.
- Impact on the environment and opportunities to achieve environmental benefits. For example:
  - reduced carbon emissions and/or energy conservation;
  - improved waste management through the purchase of reusable, compostable and recyclable products; and
  - promoting reduction in the demand for products that have a direct negative impact on the environment and carbon emissions reduction.
- Potential for social benefits. For example, acquiring Council's Requirements through Indigenous Business or the not for profit sector.



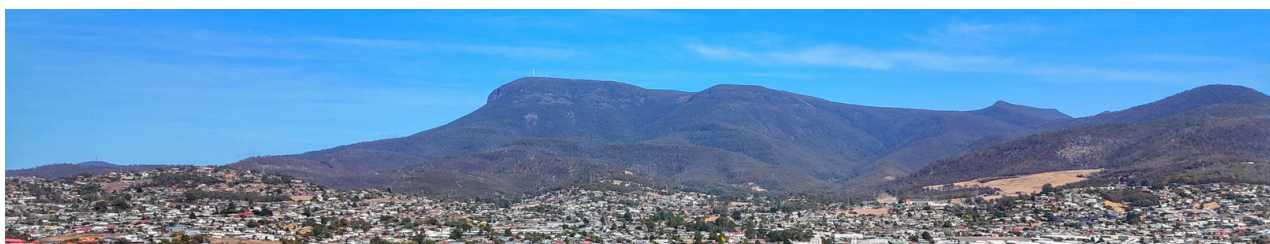
# Enhancing the capabilities of local business and industry

## Local Businesses

Where the required industry capability exists, Council will actively seek to engage with Local Businesses and encourage their participation in Council Procurement. For Council Buyers, this means ensuring that Local Businesses are not unnecessarily precluded from competing for Council business by:

- considering the capability for Local Businesses to fulfil Council's Requirements and the benefits of acquiring Council's Requirements from one or more Local Businesses before making a purchase or inviting quotes;
- wherever possible and without compromising value for money and ethical behaviour and fair dealing principles:
  - specifying or giving preference to Tasmanian sourced and manufactured goods;
  - encouraging tenders and quotes from Local Businesses, particularly from those that have previously requested the opportunity to compete for Council business;
  - ensuring that specifications do not unnecessarily preclude Local Businesses from competing for Council business;
  - for low value purchases (less than \$25,000 in value excluding GST), approaching Local Businesses first, where there is local capacity and capability;
  - for purchases valued at \$25,000 and less than \$100,000 (excluding GST), limiting the invitees to Local Businesses if possible; and
  - for purchases valued at \$100,000 and higher (excluding GST), where it is appropriate and beneficial, including suitably weighted evaluation and selection criteria relating to a Service Provider's status as a Local Business and the contribution made by the Service Provider to the municipal, regional and Tasmanian economy and community.

The weight applied to consideration of Service Providers' status as a Local Business and contribution made to the economy and community will not exceed 40% of the total weightings for a Procurement.



# Enhancing the capabilities of local business and industry

## Indigenous Businesses

Priority or preference may be given to acquiring goods and services from Indigenous Businesses. For purchases valued at less than \$250,000 (excluding GST), subject to value for money considerations and with approval at the director level or higher, this may include inviting fewer than the normally required number of quotes for the purpose of limiting the invitees to capable Indigenous Businesses or directly engaging an Indigenous Business.

## Ethical behaviour and fair dealing

### Adoption of ethical and fair behaviours and practices

Council will not engage in or seek to benefit from practices that are dishonest, unethical or illegal. To that end, Council has established the following ethical standards and procedures for Procurement.

Council Buyers must adopt the following ethical standards of behaviour:

- Complying with Legislative Requirements and not exposing Council to sustainable allegations of impropriety, unwarranted preference or unfair dealings.
- Acting in good faith in dealings with Service Providers, including:
  - not knowingly or deliberately engaging in unreasonably harsh, oppressive, deceptive, misleading or dishonest practices;
  - acting in a manner that is ethical to all parties involved, including not engaging in reverse auctions, playing a Service Provider's prices off against those of other Service Providers or misusing any information included in a tender or quote or supplied by a Service Provider;
  - complying with Council's Fraud Control and Corruption Prevention and Conflicts of Interest policies and Code of Conduct; and
  - not inappropriately intervening in or exerting inappropriate influence over the outcomes of procurement process and in particular the evaluation of quotes and tenders and selection and engagement of suppliers and contractors, or attempting to do so.
- Making decisions in the best interest of Council and the public, and not based on personal bias or preference, self-interest or for convenience.
- Ensuring Service Providers are given time to fully understand all the terms of the contract or transaction which they are agreeing to. This includes notifying Service Providers of applicable terms and conditions of contract, where applicable.

# Ethical behaviour and fair dealing (cont.)

Service Providers, and any persons representing them must:

- in so far as is reasonably practicable, apply the principles and procedures required by this Code in their dealings with suppliers and subcontractors;
- comply with Legislative Requirements;
- not engage in unconscionable behaviour in dealings with Council and Council

Buyers, or any subcontractors and suppliers;

- ensure they are acquainted with Council's Requirements and the procurement documentation and only submit a tender or quote if they genuinely believe they are financially and otherwise capable of performing Council's requirements;
- not engage in any uncompetitive practices, which deny or reduce legitimate business opportunities to other potential Service Providers or Council, including:
  - the creation or formation of bidding cartels;
  - making payments in return for, or otherwise incentivising another party to, not submit a quote or tender; or
  - submission of an artificially high price on the assumption that the tender or quote will not be accepted in order to benefit another Service Provider or disadvantage Council;
- not collude with other Service Providers or Council Buyers to influence the outcomes of a Procurement process by illegal, illegitimate or dishonest agreements or other means;
- comply with the provisions of awards and workplace arrangements, which have been certified, registered or approved under relevant industrial relations legislation;
- not deliberately or knowingly engage in:
  - practices amounting to any form of Modern Slavery or Sham Contracting; or
  - the supply of Dumped Goods and Subsidised Goods;
- not offer money, gifts, gratuities, entertainment, hospitality and other benefits to a Council Buyers in exchange for the discharge of their official duties; and
- notify Council of any breach by a Council Buyer of the ethical standards.

Service Providers may be required to attest to the probity of their tender or quote, either at lodgement or before being awarded a contract.

# Ethical behaviour and fair dealing (cont.)

## Conflicts of Interest

- Council Buyers with a role in evaluating tenders and quotes and engaging Service Providers must:
  - declare any actual or potential Conflicts of Interest they may have;
  - declare that they are not aware of any Conflicts of Interest where instructed; and
  - ensure that any Conflicts of Interest are effectively managed.

Service Providers must:

- advise Council if they are aware of any actual or potential Conflicts of Interest when submitting tenders and quotes; and
- immediately notify Council if any Conflict of Interest arises or comes to the Service Provider's attention during a Procurement or contract.

## Protection of commercial in confidence information

Council Buyers must protect commercially sensitive or valuable and proprietary information which is included in a tender or quote. This means that Council Buyers must:

- ensure that tenders and quotes are treated as confidential until a contract is awarded;
- not provide or disclose any information in a tender or quote to another Service Provider; or
- only reproduce and use the information supplied by a Service Provider for legitimate purposes, related to the Procurement process.

Once a contract is awarded, the terms of the contract, including the final or estimated contract sum, but excluding detailed prices or pricing, are no longer confidential and may be published:

- as required for Council to meet and comply with any Legislative Requirements;
- as otherwise required by law; or
- as required to meet any reporting, disclosure, governmental and transparency obligations.

Council may, on a confidential basis, disclose the contents of a tender, quote or a contract, including commercially sensitive or valuable and proprietary information, to professional advisers in order to obtain advice about the Procurement or contract.

# Ethical behaviour and fair dealing (cont.)

## **Protection of commercial in confidence information**

The prices and other information supplied by one Service Provider must not be disclosed to another Service Provider for the purpose of obtaining, or attempting to obtain, lower prices.

Where a tender or quote includes commercially sensitive, valuable or proprietary information, Council may, on a case by case basis, consider any request by a Service Provider for the information to be treated as confidential after the award of a contract. Council will make commitments to maintain confidentiality only when they are appropriate and do not prevent Council from meeting Legislative Requirements or any reporting, disclosure, governmental and transparency obligations.

## **Breaches of Ethical Requirements**

Council will take all reasonable steps to ensure compliance with the standards of ethics in the Code. However, Council will not be liable in any way to a Service Provider for any breach of the Code.

If any employee of the Council, or a body controlled by the Council, breaches the ethical standards, Council may, in its absolute discretion, apply its normal human resources policy and procedures in respect of performance management and disciplinary action.

If a Service Provider commits a breach of the ethical standards, Council may, in its absolute discretion, act against that Service Provider. Such action may include, as determined by the General Manager:

- giving a warning to Service Provider;
- the Service Provider's suspension from participating in Council tenders, quotes and contracts and/or the supply of goods, services and/or works to Council for a specified time;
- a reduction in future opportunities for that Service Provider to compete for Council business;
- reporting of the breach to a statutory, professional or other relevant body; and/or
- legal action against the Service Provider.

# Procedures applicable to all Procurement

## **Procurement thresholds**

Council has established the following Procurement Thresholds to set out the minimum Procurement methods at certain purchase values. All values are GST exclusive:

### *Purchases valued at less than \$25,000*

A single price is acceptable. For purchases valued at \$2,000 or more, the price must be in writing.

### *Purchases valued \$25,000 and less than \$50,000*

At least two prices will be sought before committing Council to a purchase. The prices will be sought and received in writing. Unless otherwise agreed or required by Council, Council's Standard Goods and Services Terms published on the internet will apply.

### *Purchases valued at \$50,000 and less than \$100,000*

At least three prices will be sought before committing Council to a purchase. The prices will be sought and received in writing through a properly documented request for quotes which includes a specification or other description of Council's Requirements and any essential terms and conditions of contract.

### *Purchases and contracts valued at \$100,000 and less than \$250,000*

A limited tender process, where Council invites formal written tender submissions from at least three prospective tenderers known to have the ability to provide goods and services of the type required or to undertake the required project, will be completed before a contract is entered into. The limited tender process will be administered by Council's Procurement and Contracts section. Tenders must be received in writing and made in accordance with the requirements and instructions specified in the procurement documentation. A secure electronic facility for lodgement will be provided.

### *Purchases and contracts valued at \$250,000 and higher*

A public tender process with no restriction on the number of potential participants will be completed before a contract is entered into. The public tender process will be administered by Council's Procurement and Contracts section. The procurement documentation will be publicly accessible and any essential contract terms and conditions will be included or specified. Tenders must be made and received in writing and lodged in accordance with the conditions and instructions in the procurement documentation. A secure electronic facility for lodgement will be provided.

# Procedures applicable to all Procurement (cont.)

## Valuing Procurements

Transaction splitting to avoid adopting a procurement threshold is not allowed. Council Buyers must not divide a purchase into smaller or multiple contracts, transactions or purchase orders, nor underestimate the expected value, for the purpose of avoiding the requirement to invite an appropriate number of quotes or undertake a public tender process.

The expected value of a Procurement must be estimated before a decision is made on whether a purchase should proceed and the Procurement method adopted. The expected value must be the maximum value excluding GST over the life of the proposed contract or entire duration of the need.

Where the maximum value cannot be estimated, there must be a call for public tenders.

## Rejection of bids

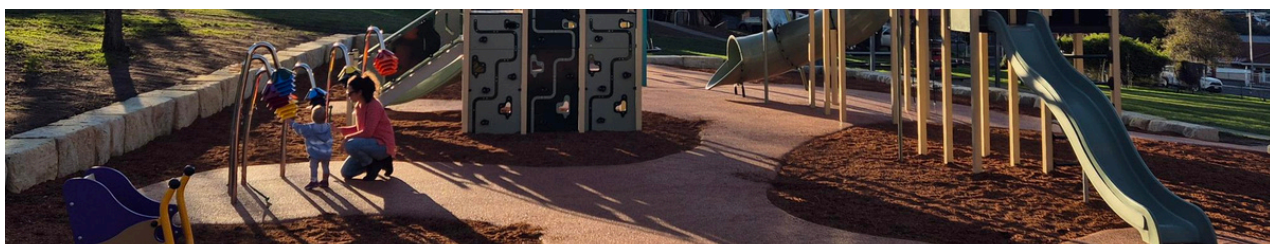
In respect of any Procurement process, Council is not necessarily obliged to accept the lowest or any other tender or quote.

On the conclusion of a Procurement process:

- the unsuccessful Service Providers will be notified of the outcome, including the name of the successful Service Provider (the price or prices in the successful tender or quote will not be disclosed to the unsuccessful Service Providers); and
- if a decision is made not to accept any tender or quote, all parties that made a submission will be notified of the decision and the reasons, and the information included in a tender or quote will not be used as the basis for any re-call.

## Amending or clarifying procurement documents after issue

Before the specified closing date and time has elapsed, Council may amend or clarify the procurement documents by issuing an addendum or a notice to all prospective Service Providers that are known to have been issued with or obtained the procurement documents by legitimate means.





# Procedures applicable to all Procurement (cont.)

## Late offers

The closing date and time will be specified in the procurement documents and equally applied to all prospective Service Providers. A tender or quote which is received after the specified closing time will not be accepted unless Council is satisfied that:

- the lateness was due to mishandling on the part of Council or a failure in the electronic or other tendering system or procedures specified the lodgement of tenders or quotes; and
- accepting the late tender or quote will not provide an unfair advantage to the Service Provider that lodged it.

## Non-conforming offers

Council may reject any tender or quote which:

- is not submitted in accordance with the mandatory requirements and conditions for participation or tendering specified in the procurement documentation; or
- requires Council's agreement to any terms, conditions or requirements not allowed or required by the procurement documentation.

## Alternative Proposals

An alternative proposal is a tender or quote that proposes a different approach to meeting Council's Requirements than specified in the procurement documentation. Wherever possible, Council will enable submission of alternative proposals. The procurement documentation will specify any conditions and requirements for submission of alternative proposals. Where a Service Provider submits an alternative proposal, Council Buyers will not seek comparable prices for the alternative from other Service Providers or use the alternative as the basis for any recall of tenders or quotes.

## Evaluating offers

Systematic and consistent tender and quotation evaluation is essential to ensure the fair and equal consideration of the Service Providers involved. Therefore, the evaluation criteria and method which will be used to evaluate offers and select the successful Service Provider will be advised to potential Service Providers and applied equally to all of the tenders or quotes received.

# Procedures applicable to all Procurement (cont.)

## Negotiations

Before a tender or quote can be awarded, it may be necessary for Council Buyers to enter into negotiations with a preferred Service Provider to finalise the commercial and other terms of a contract. However, Council Buyers will:

- not enter into negotiations before the evaluation process is complete and a preferred Service Provider has been identified;
- not attempt to trade off Service Providers' prices against each other in order to seek lower prices; and
- exhaust negotiations with the original preferred Service Provider before negotiating with an alternative Service Provider.

If none of the tenders or quotes received are acceptable, negotiations for an amended offer may be conducted.

## Debriefing unsuccessful Service Providers

Debriefings are offered to promote improvement of submissions provided to Council by prospective Service Providers. This is achieved by offering unsuccessful Service Providers advice regarding their performance relative to the Council's requirements and by identifying opportunities for improvement in future tenders and quotes. All Service Providers that lodged a tender or quote are entitled to a debrief. The debriefing process is not to be seen or used as a means of contesting the outcomes of a Procurement process or to explore the merits of any other Service Provider's submission.



# Additional requirements and procedures for public tenders

## Invitation to tender

At least one advertisement will be placed in the daily newspaper for southern Tasmania. Placements in additional publications and multiple placements may sometimes be made. Tender advertisements will include the following minimum information:

Identification details	Unique reference number and title.
Description	A brief description of Council's Requirements.
Tender documentation	Instructions on how to obtain the procurement documentation.
Place for Lodgement	The website for lodgement of tenders.
Enquiries	Contact point or person.
Time or period for lodgement	Closing date and time.

Tenderers will usually be required to demonstrate they have the necessary competence and capability to perform Council's Requirements. This may include the requirement for a tenderer to meet and respond to essential and/or mandatory criteria specified in the procurement documentation.

For some tenders, Council may make it a tendering eligibility requirement that a tenderer is prequalified to the level specified in the procurement documentation under the:

- Tasmanian Department of Treasury and Finance Prequalification Scheme (for building and construction works or services and consultants); or
- National Prequalification System for Civil (Road and Bridge) Construction.

In recognition of the time and cost to industry, Council will avoid the requirement for tenderers to price multiple rounds of the same tender process or multiple tender options.

## Closing date and time

At least 14 clear days must be provided for tender preparation and lodgement.

Tender lodgement will not be required:

- on a Saturday, Sunday, Monday or Friday;
- before 2.00pm; or
- on a day immediately following a statutory public holiday in southern Tasmania or on 24 December.

# Additional requirements and procedures for public tenders (cont)

## Tenderer's obligations

A Service Provider making a tender must:

- do so in writing;
- specify the goods, services and/or works tendered for;
- lodge the tender within the period specified in the notice;
- provide any mandatory information required by the procurement documentation; and
- comply with any conditions of tendering or conditions of participation stated in the procurement documentation.

## Tender methods

Tenders will be invited by one of the methods provided for in the Regulations, being:

- an open tender under regulation 24;
- establishment of a multiple-use register under regulation 25; or
- a multiple-stage tender under regulation 26.

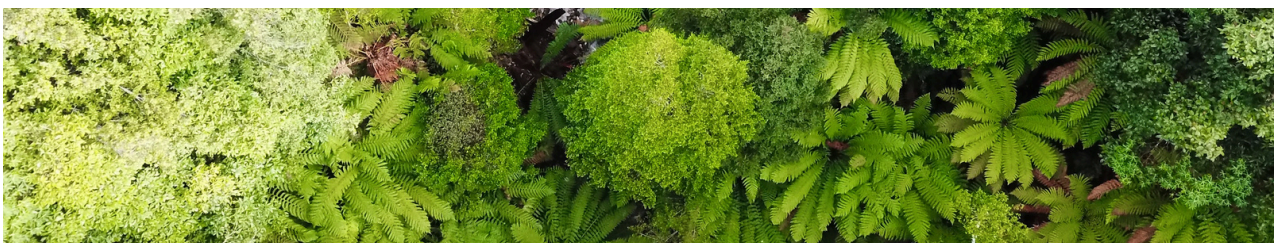
The procurement documentation will, at a minimum, meet the requirements of the Regulations.

Where Council has established a multiple-use register:

- a minimum of three suitably pre-registered Service Providers will be invited to quote on Council's Requirements when the expected value is \$100,000 and less than \$250,000 (excluding GST); and
- when the expected value is \$250,000 or higher (excluding GST) all suitably pre-registered Service Providers will be invited to quote on Council's Requirements or Council may make approval for inclusion on the multiple-use register a tendering eligibility requirement.

## Opening tenders

The opening of tenders will not be in public. All tender submissions, regardless of the value, will be opened by more than one Council officer and a record of the tenders received and the date and time the tender box was opened will be made and signed by the opening officers. The record will not be made public or provided to tenderers.



# Additional requirements and procedures for public tenders (cont)

## Tender process review

Before an RFT is issued to the market, the General Manager or responsible director must give authorisation to undertake the tender process.

- For all Procurements valued at \$250,000 and above (excluding GST), the General Manager has established a tender review committee to review each Procurement process and advise whether:
  - a fair and equitable process was followed;
  - the process was carried out legally and in compliance with the Legislative Requirements;
  - the process was in accordance with this Code;
  - submissions were evaluated against the criteria set out in the procurement documentation;
  - the supporting records and documentation include sufficient information to justify the decisions made and the outcome is reasonable based on the available information; and
  - checks were undertaken to ensure that the recommended supplier is a legal entity, financially viable, and has the experience/ability required.

The tender review committee will also consider all proposals for non-application of the public tender processes before a recommendation is put to the Council.

## Standing offers

Council may establish standing offers where a single or multiple Service Providers are contracted to provide Council with specific goods, services and/or works for a fixed duration. If the total value of transactions under a standing offer is likely to equal or exceed \$250,000 (excluding GST), or if the value cannot be accurately estimated, an open tender process is required.

When a suitable standing offer is in place, Service Providers do not have to repeatedly respond to bid requests and Council Buyers can purchase directly from a contracted Service Provider or providers without being required to repeatedly seek multiple prices. This is because the standing offer has already been the subject of an open and competitive Procurement process.

# Contract Extensions

Council may extend a contract entered into under the following conditions:

## *Extensions under the terms of the original contract:*

If the terms of the original contract include a clause that provides for extension options(s), and if the extension options in the contract have not already been exercised, the contract can be extended without the need for a Council resolution.

Before exercising a contract extension:

- the Service Provider's performance must be reviewed to ensure it is satisfactory; and
- consideration must be given to whether:
  - there is still a requirement for the specified goods and/or services;
  - the contract is fit for purpose and reflects the true nature of Council's Requirements;
  - there has been any substantial change in the market or the nature of Council's Requirements since the previous Procurement process;
  - there has been any change in Legislative Requirements, duty of care obligations or compliance requirements, which are not addressed by the contract; and
  - the contract still achieves value for money.

## *Extensions pursuant to Council resolution:*

If a contract does not include a clause which provides for it to be extended, or if the extensions provided for under the contract are exhausted, the department proposing extension of the contract must prepare a report to Council recommending that the contract is extended and giving the reasons why the extension is justified. Extensions by Council resolution should only enable a short-term solution due to unforeseen exceptional circumstances.

# Excluded purchases and exceptional circumstances

## **Excluded purchases**

Contracts and transactions for the following are not covered by this Code:

- acquisition, sale or leasing of real property;
- the disposal or sale of surplus or obsolete plant, equipment, materials or goods, other than sale by way of trade-in or part exchange;
- grants; and
- donations.

By virtue of Section 333(1)(3) of the Act, and under regulation 27(j) of the Regulations, the requirement to invite tenders does not apply to contracts of employment with a person as an employee of the Council.

# Contract Extensions

## Non-application of the Public Tender process

### *Exemptions by the General Manager's emergency powers*

The General Manager may authorise non-application of the tender process by exercising the powers given to the position by virtue of section 333(1)(3) of the Act, and under regulation 27(a) of the Regulations, being an emergency situation, if, in the opinion of the General Manager, there is insufficient time to invite tenders for the goods or services required in that emergency.

### *Statutory exemptions*

The following contracts are exempt from the requirement to call for Public Tenders by virtue of section 333(1)(3) of the Act and under regulations 27(b) to 27(h) inclusive of the Regulations. That is when the contract is a contract for goods or services:

- supplied or provided by, or obtained through, an agency of a State or of the Commonwealth;
- supplied or provided by another council, a single authority, a joint authority or the Local Government Association of Tasmania;
- obtained as a result of a tender process conducted by:
  - another council;
  - a single authority or a joint authority;
  - the Local Government Association of Tasmania;
  - any other local government association in this State [i.e. in Tasmania] or in another State or a Territory; or
  - any organisation, or entity, established by any other local government association in this State [i.e. in Tasmania] or in another State or a Territory;
- a contract for goods or services in respect of which a council is exempted 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; or
- a contract arising when a council is directed to acquire goods or services due to a claim made under a contract of insurance.

### *Exemptions by Council resolution*

By virtue of section 333(1)(3) of the Act, and under regulation 27(i), under exceptional circumstances, contracts may be exempted from the requirement to call for Public Tender if Council resolves by absolute majority and states the reasons for the decision, being that a satisfactory result would not be achieved by inviting tenders because of:

- extenuating circumstances;
- the remoteness of the locality; or
- the unavailability of competitive or reliable tenderers.

# Contract Extensions (cont)

## *Exemptions by Council resolution*

Exemptions by Council resolution under the provisions of the Act and Regulations must only be sought when all other available Procurement methods have been thoroughly considered and there are justifiable reasons that a satisfactory result would not be achieved by inviting tenders.

The most open and effective competitive Procurement process should be adopted. Unless Council's Requirements can only be supplied by a particular Service Provider, competition by inviting a reduced number of multiple quotations must be adopted in preference to a single submission.

Before committing Council to a contract or purchase on the grounds of extenuating circumstances, Council Buyers must obtain a resolution of the Council by absolute majority. Therefore, a recommendation to the Council, which is progressed through Council's standard operating procedures for requesting decisions of the Council, must be made. The report must, at a minimum, include the following:

- The justification for inviting a limited number of suppliers to quote, or for sourcing from a single supplier instead of calling for public tenders.
- The expected purchase value and value for money considerations.
- The market research completed to verify the absence of sufficient competition or other reasons not to undertake a public tender or another competitive Procurement process including why a public tender process would not result in a satisfactory outcome.
- The name, Australian Business Number and business address of the proposed Service Provider(s).
- The due diligence reviews and checks undertaken to establish that the proposed Service Provider(s) have the necessary financial capacity, technical, resource and management capabilities to properly perform Council's requirements.
- Disclosure of any dealings or relationship between any of the Service Providers and the Council Buyer seeking the resolution which could be perceived as having a bearing on the recommendation.
- A declaration by the Council Buyer that they do not have any known actual or perceived Conflicts of Interest in any relationship with any of the Service Provider(s) standing to benefit from the non-application of the public tender process.



# Contract Extensions (cont)

## Grounds for exemption of purchases and contracts valued less than \$250,000

Where the value is less than \$250,000 (excluding GST), the normally required competitive Procurement process must be completed unless one or more of the following applies:

- The required number of quotes were sought and:
  - no responses were submitted;
  - no responses were submitted that conformed to the essential requirements specified in the Procurement documentation; or
  - no Service Providers satisfied the essential requirements.
- Council's Requirements can be supplied only by a particular Service Provider and no reasonable alternative or substitute exists:
  - because the requirement is for works of art;
  - because Council's Requirements are of a specialised nature, which a limited number of suppliers are capable of supplying or carrying out;
  - for the protection of patents, copyrights, or other exclusive rights, or proprietary information; or
  - due to an absence of competition for technical reasons.
- The purchase is for additional supplies by the original Service Provider, or its authorised representative, which were not included in the initial Procurement and where a change of Service Providers:
  - cannot be made for technical reasons, such as requirements of interchangeability or interoperability with existing software, services or installations procured under the initial Procurement, or due to conditions under original licensing requirements or supplier warranties; or
  - a change in Service Provider would cause significant disruption to business continuity or substantial duplication of costs for Council.
- In so far as is strictly necessary where, for reasons of urgency brought about by unforeseeable events, Council's Requirements could not be obtained in time using normal competitive market test.
- Council's Requirements were acquired from an Indigenous Business.



# Contract Extensions (cont)

## Grounds for exemption of purchases and contracts valued less than \$250,000

Approval to directly engage a Service Provider or to seek fewer than the required number of quotes must be approved at the Director level or higher before committing Council to the purchase. The Council Buyer seeking the approval must make and maintain auditable documents and records regarding the request, these must:

- specify the applicable exceptional circumstances and the reasons they apply;
- include the market research completed to establish there is no viable alternative approach;
- include the initial and total purchase value and value for money considerations;
- provide sufficient information to justify the request;
- state the name, Australian Business Number and business address of the proposed Service Provider or Providers;
- disclose any prior dealings between the supplier and the Council officer or officers making the recommendation; and
- include the Council Buyer's declaration that they do not have any Conflict of Interest.

## Reporting where a public tender or quotation process is not used

Instances of non-application of the normally required tender or quotation process will be included in the reports made to Council at all ordinary Council meetings and must be reported soon as possible after a purchase is made or the contract is executed. The information reported will include:

- the purchase or contract value (or estimate);
- the reasons the purchase was made or contract was entered without having the required number of quotes being sought or public tenders invited;
- the date approval was given to engage the supplier or contractor; and
- if applicable, the sub-regulation under regulation 27 of the Regulations relied on for not having invited public tenders.

# Annual reporting in relation to tenders and contracts

Council's annual report will include the following information in respect of contract entered into during the financial year to which the report relates:

- Contracts for the supply or provision of goods or services valued at or exceeding \$250 000 (excluding GST) entered into or extended under regulation 23(5)(b):
  - 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); and
  - the business name and address of the successful contractor.
- Instances where regulation 27(a) and regulation 27(i) were applied:
  - a brief description of the reason for not inviting public tenders;
  - a description of the goods or services acquired;
  - the value of the goods or services acquired; and
  - the business name and address of the supplier or contractor.
- Contracts valued at or exceeding \$100 000, but less than \$250 000 (excluding GST) entered into or extended:
  - a description of the contract;
  - the period of the contract;
  - the periods of any options for extending the contract;
  - the value of the contract (excluding GST); and
  - the business name and address of the successful contractor.

## Enquiries and feedback

Enquiries about Council Procurement and from Service Providers with an interest in competing for Council business should be directed to Council's Procurement and contracts section by email [procurement.enquiries@gcc.tas.gov.au](mailto:procurement.enquiries@gcc.tas.gov.au)

## Procurement complaints

If a Service Provider is concerned the Code may not have been followed, they can make a complaint. Procurement complaints should be made in writing and sent to [gccmail@gcc.tas.gov.au](mailto:gccmail@gcc.tas.gov.au). A complaint should include all of the relevant details and identify the why the complainant believes the Code was not met. Complaints are referred to Council's Director Corporate and Community Services for investigation.