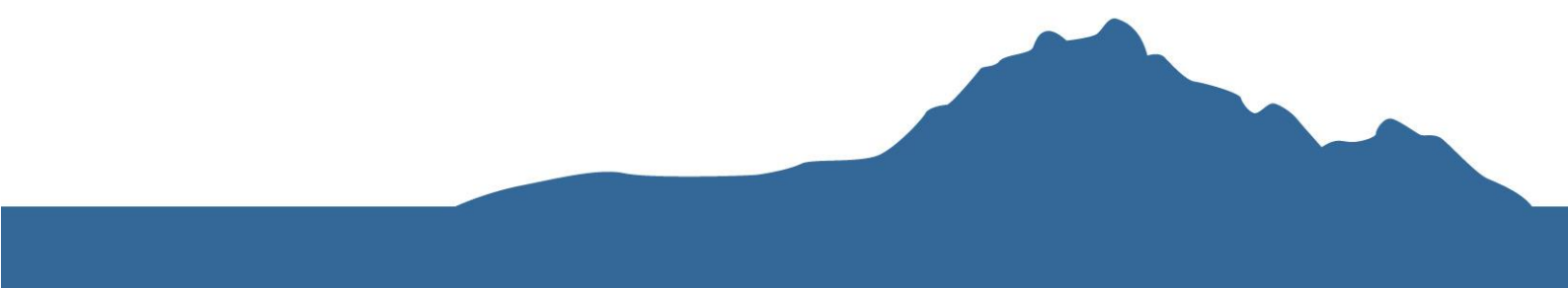




# Code for Tenders and Contracts

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# 1. INTRODUCTION

## 1.1 PURPOSE

The purpose of the Code for Tenders and Contracts (the Code) is to provide a framework for Flinders Council (Council), on best practice tendering and procurement methods in accordance with the requirements of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulations 2015* (the Regulations).

The specific legislative and regulatory obligations with respect to procurement are set out under s333A and s333B of the Act, and r23-29 of the Regulations. The Code must:

- be consistent with the Act; and
- include all matters prescribed by the Regulations; and
- promote all prescribed principles; and
- be reviewed at least every four years.

The Code includes a statement of ethics to be applied by Council officers and its service providers with respect to the purchase of goods and services and the management of tenders and contracts.

## 1.2 SCOPE OF THE CODE

The Code applies to Council's officers, agents and any service providers wishing to make application for Council's business to provide goods and services or undertake works for Council.

The Code covers the procurement of all goods, services and requirements for Council. Tender practices do not apply to the items below:

- grants or assistance;
- donations;
- property transactions; and
- leasing.

The Code aims to:

- ensure compliance with relevant legislation;
- enhance value for money through the use of fair, competitive, non-discriminatory procurement practices;
- promote the use of resources in an efficient, effective and ethical manner;
- encourage probity, accountability and transparency in decision making;
- provide reasonable opportunity for competitive local businesses to supply to Council;
- minimise the cost to tenderers of participating in the tendering process; and
- allow Council to appropriately manage risk.

**Procurement Procedures:**

The code adopted under section 333B of the Act is to–

- (a) promote the following principles:
  - (i) open and effective competition;
  - (ii) value for money;
  - (iii) enhancement of the capabilities of local business and industry;
  - (iv) ethical behaviour and fair dealing; and
- (b) establish and maintain procedures to ensure that all potential suppliers are provided with the same information relating to the requirements of a tender or contract and are given equal opportunity to meet the requirements; and
- (c) establish and maintain procedures to ensure that fair and equal consideration is given to all tenders or quotations received; and
- (d) establish and maintain procedures to deal honestly with, and be equitable in the treatment of, all potential or existing suppliers; and
- (e) establish and maintain procedures to ensure a prompt and courteous response to all reasonable requests for advice and information from potential or existing suppliers; and
- (f) seek to minimise the cost to suppliers of participating in the tendering process; and
- (g) protect commercial-in-confidence information; and
- (h) for contracts valued at under \$250 000 (excluding GST), specify when 3 written quotations are required; and
- (i) establish and maintain procedures for the use of multiple-use registers for contracts valued at under \$250 000 (excluding GST); and
- (j) establish and maintain procedures for reporting by the general manager to the council in relation to the purchase of goods or services in circumstances where a public tender or quotation process is not used; and
- (k) establish and maintain procedures for the review of each tender process to ensure that it is in accordance with these regulations and the code; and
- (l) establish and maintain procedures for the following:
  - (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) the debriefing of unsuccessful tenderers;
  - (v) handling complaints regarding processes related to the supply of goods or services.

**1.3 AVAILABILITY OF THE CODE:**

A copy of the Code is available for public inspection and purchase from Council's office at:

4 Davies Street, Whitemark (at costs depicted in relevant schedule of fees and charges)

or

on Council's Website at: <https://www.flinders.tas.gov.au/policies> free of charge.

## 2. PROCUREMENT THRESHOLDS

Council's purchasing thresholds describe when quotations and tenders are to be sought. Purchases shall not be split into smaller components to avoid the requirements of the purchasing thresholds.

All procurement thresholds are GST exclusive and tenders and quotations are to be sought on a GST exclusive basis.

### Non-Tender Processes for acquisition of goods or services

A purchase order is a formal agreement entered into between Council and the selected service provider. Purchase orders must be approved by the relevant Council officer (in accordance with their relevant delegation – see Instrument of Delegations).

A quotation is an offer from a prospective service provider in response to an invitation issued by Council. A quotation may be verbal or written.

Where a verbal quotation is administered, as per section 2 procurement thresholds, the verbal quotation must be recorded on the purchase order and include supplier contact details and date of verbal quotation. If a written quotation is provided it should be attached to the purchase order.

Where possible, Council will seek to use local business.

### 2.1 PROCUREMENT THRESHOLD TABLE

Purchasing Estimate	Minimum Requirement	Documentation	Minimum Advertising Requirements	Documents Required
Less than \$1,000	Verbal quotation		Nil	Notation of verbal quotation inc. date/time etc
From \$1,000 to \$9,999	Verbal or written quote		Nil	Notation of quote + Purchase Order
From \$10,000 to \$49,999	2 written quotes		Nil	Quote + Purchase Order.
From \$50,000 to \$99,999	3 written quotes		Council Website	Quote + Purchase Order + Contract.
From \$100,000 to \$249,999	Written quotes + panel evaluation. A project panel of at least 3 members must evaluate quotes received. Recommendations must be approved by General Manager		Island News and Council website	Quote + Evaluation + Purchase Order
\$250,000 and over	Public Tender process. Refer to section 7 of the Code.		The Examiner, Island News and Council Website	Full Tender Documents + Contract

## General Manager Discretions

Council will apply the above requirements to all purchase of goods and services except for certain circumstances described under the points **2.2 - Non-application of the quotation process** and **2.3 - Non-application of the tender process**.

The General Manager has discretionary authority for the following:

- to allow for a reduced number of quotes in any particular situation; and/or
- to appoint a sole supplier, or a particular service provider.

The General Manager's authorisation needs to be in writing and filed with the purchase order along with any relevant quote/s and the reasons for non-application of the process.

## 2.2 NON-APPLICATION OF THE QUOTATION PROCESS

Exemptions from the requirement to seek written quotes as prescribed in **2.1 Procurement Thresholds Table** can be sought from the General Manager only if an acceptable reason exists, such as:

- a) where there is an emergency and in the opinion of the General Manager, there is insufficient time to seek quotes for the goods or services required in that emergency;
- b) where it can be established that there is only one supplier of a product or service and there is no appropriate substitute available, or where alternative options are not viable or do not provide value for money;
- c) where, in response to an invitation to quote, no quotations were submitted, or no quotations were submitted that conform to the essential requirements of Council;
- d) for additional deliveries of goods and/or services by the original supplier that are intended either as replacement parts, extensions or continuing services, where a change of supplier would result in the purchase of goods/services that do not meet the requirements of interchangeability with existing goods/services or voids a warranty;
- e) for purchases made under exceptionally advantageous circumstances and conditions that only arise in the very short-term i.e., for non-routine purchases; or
- f) for joint purchase of goods or services where funds are contributed by multiple entities and Council does not have express control of the purchasing decision.

## 2.3 NON-APPLICATION OF THE TENDER PROCESS

In accordance with Part 3, Division 1, s27 of the Local Government (General) Regulations 2015, the requirement for public tendering does not apply for the following circumstances:

- a) where there is an emergency and 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 (LGAT);
- 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 LGAT, 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
  - j) a contract of employment with a person as an employee of the council.

## 3. PROCUREMENT PRINCIPLES

In accordance with r28(a) of the Regulations, the Code promotes the following principles to which Council will have regard when procuring goods and services.

### 3.1 VALUE FOR MONEY

Value for money aims to realise the desired outcome at the best possible price. Factors for consideration when determining value for money include:

- fitness for purpose and how well the good/service meets Council's needs;
- quality assurance;
- contribution to achieving Council's strategic plans or policies;
- risks associated with the procurement;
- whole-of-life costs over the lifetime of a product, good or service (which includes consideration of disposal);
- consider the impact of the procurement decision on the local economy and considerations of the advantages of buying locally (e.g., lead-times and ongoing support);
- environmental considerations and impacts on climate change;
- social or community benefit; and
- supplier's capacity and capability, including management, technical ability, physical ability, and financial resources.

### 3.2 ETHICAL BEHAVIOUR AND FAIR DEALING

Ethical behaviour and fair dealing means acting ethically, being fair and unbiased and complying with the law in all dealings with service providers. Council will apply the following standards when dealing with suppliers:

- Council monies are spent effectively and in accordance with relevant policies;
- acting without favour or prejudice;
- complying with legal requirements;
- always seeking to maximise the value for money in all transactions;
- maintaining confidentiality at all times with Service Providers;



- declining gifts, gratuities or any other benefit which may, or could be deemed to, influence equity or impartiality; and
- not to disclose the bid of a service provider to any other provider in order to play Service Providers off against one another.

### **3.3 ENCOURAGING OPEN AND EFFECTIVE COMMUNICATION**

The procurement of goods and/or services for Council must be an impartial and open process which encourages the making of competitive offers.

Open and effective competition will be encouraged through:

- implementing transparent and open procurement procedures;
- adequate testing of the market by seeking quotations or tenders as appropriate;
- avoiding use of biased specifications;
- treating all service providers consistently and equitably; and
- if requested, de-briefing unsuccessful providers.

### **3.4 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.

## 4. CONDUCT

### 4.1 ETHICS AND CONDUCT – COUNCIL STAFF AND ELECTED MEMBERS

In practice this means that Council will promote procurement practices that are legal, ethical, fair, unbiased and:

- a) comply with legislative requirements;
- 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, and measures are put in place to manage any actual or potential conflicts of interest, monetary or otherwise;
- f) ensure that all specifications are clearly stated;
- g) act in a clear and transparent manner, warranting that information is clearly and consistently disseminated to all parties;
- h) maintain confidentiality of any information submitted with regard to quotation or tender details;
- i) any information or clarification provided to a potential service provider is provided to all other relevant potential service providers;
- j) maintain confidentiality in its dealings with service providers and potential service providers, including the protection of commercial-in-confidence information – except where the law requires Council to do otherwise;
- k) conditions of contract should not be excessively onerous;
- l) decline gifts or benefits offered by those involved in the procurement process; and
- m) Report any contact regarding any current procurement process to the NCO.

### 4.2 ETHICS AND CONDUCT – SERVICE PROVIDERS

Council expects service providers to:

- a) be acquainted with the requirements identified in the 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, the financial, technical, physical, health and safety, management resource, ethical and other relevant capabilities to fulfil Council's requirements;
- d) Ensure that any contact regarding a current procurement process is held with the NCO and no other member of Council; staff or elected members.
- e) disclose any actual or perceived conflicts of interest relevant to a procurement process;
- f) at all times act in observance of all laws;
- g) not offer gifts or benefits to any Council staff or elected member;
- h) must not enter into improper commercial arrangements with contractors, subcontractors, suppliers or agents;
- i) act in a polite and courteous manner towards Council staff, elected members, its agents and the general public;
- j) respect that Council has an obligation to other parties with regard to any information provided;

- k) refrain from the use of aggressive or inappropriate language or expressions; and
- l) put in place and maintain policies, systems, and procedures which are appropriate for the level of risk and complexity for workplace health and safety management, environmental management and quality assurance.

## 5. METHODS OF PROCUREMENT

### 5.1 REQUEST FOR QUOTATION

As outlined in section 2.1 of the Code, the procurement thresholds require quotations for the procurement of goods and services for values less than \$250,000.

There may be occasions where, for a number of reasons, quotation(s) cannot be obtained, or doing so would have no additional benefit to Council. Therefore, exemptions from the requirement to seek written quotations have been outlined in section 2.2 of the Code.

### 5.2 OPEN TENDER

The Council will invite tenders by public advertisement in The Examiner, Island News and on the Council website.

The period within which a tender is to be lodged will be at least 14 days after the date the notice is published in The Examiner.

Applicants must make a tender in writing, specify the goods and/or services tendered for, and conform to the lodgement instructions.

The General Manager will provide applicants with the following in order to make a tender submission:

- details of goods and or services that Council requires;
- methods of tendering available and relevant timeframes;
- details of the duration of the contract, including any extensions that may be applicable;
- the conditions of participation to be met by tenderers;
- the criteria for evaluating tenders;
- the method of evaluating the tenders against the criteria;
- any mandatory tender specifications and contract conditions;
- reference to the Code of Tenders and Contracts; and
- instructions on how to lodge the tender in a manner specified in the 'conditions of tendering'.

### 5.3 MULTI-USE REGISTER

In reference to Regulation 25, Council may establish a Multiple-Use Register of suppliers that are determined by Council to satisfy the conditions of participation for that register for the supply of particular categories of goods and services.

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

In accordance with r28(i) of the Regulations, the Code is required to establish and maintain procedures for the use of Multiple-Use Registers for contracts valued at under the prescribed amount.

Council may call upon the “pre-qualified” contractors for works to be conducted that are not subject to tender and quotation requirements, such as emergency works or works of limited value.

**Note: the Multi-Use Register may also be referred to as the “preferred contractors list”.**

If it is determined that Council will establish such a register The General Manager will invite applications from prospective service providers for inclusion on the register by publishing a notice in The Examiner, the Island News and Council’s website. Council will review any Multiple-Use Register at least every two years.

A public notice, seeking services for the multi-use register, will invite contactors who:

- provide the nature of the goods and/or services Council requires from time to time;
- are qualified to provide the required services;
- hold relevant insurance cover with regard to the tasks to be provided; and
- can meet the period within which the application must be lodged.

The General Manager will provide applicants with the following in order to make an application:

- details of categories of goods or services required;
- the conditions of participation to be met by applicants;
- the criteria for evaluating applications;
- the method of evaluating applications;
- where the applications must be lodged;
- details of a person from whom more detailed information relating to the application may be obtained; and
- a reference to the Council’s Code for Tenders and Contracts.

The General Manager will advise all applicants of the result of their application, including the categories for which they are registered and if applicable, the reasons for any rejection.

All successful applicants will undertake Council’s induction requirements before any works commence. Special attention will be given to OH&S requirements.

Council will allow a prospective applicant to apply for inclusion on a multi-use register at any time unless the applicant has applied within the previous 12 months and has not been accepted.

## 5.4 MULTIPLE STAGE TENDER

Council may invite tenders for a contract for the supply of goods or services using a multi-stage tender process, where service providers are evaluated through stages against criteria determined by Council. This process is resource intensive and therefore only used on rare occasions.

The multi-stage tender method is typically used 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 the first stage of the multiple-stage tender process the General Manager may invite expressions of interest (EOI) by publishing a notice in The Examiner, the Island News and Council's website.

The public notice will identify:

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

The General Manager shall provide applicants with the following in order to make an application:

- details of categories of goods or services required;
- the conditions of participation to be met by applicants;
- the criteria for evaluating EOI's;
- the method of evaluating EOI's against the criteria;
- details of any further stages in the tender process; and
- a reference to the Code for Tenders and Contracts.

At the final stage of a multiple-stage tender process, the General Manager may invite all service providers who have met the criteria, determined by Council, to tender for the supply of the relevant goods and/or services. The criteria used at each stage of the multiple-stage tender process must be consistent.

In accordance with r26(6) of the Regulations, if only one supplier meets the criteria determined by Council at the first stage, Council may contract with that supplier after:

- a tender by that supplier; or
- a decision by absolute majority of the Council to do so.

## 5.5 STANDING CONTRACT

In accordance with r23(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. Council refers to a standing contract arrangement with a single tenderer or multiple tenders as a panel arrangement.

When purchasing from a panel, Council will seek written quotations in line with its procurement thresholds set out in section 2.1 of the Code.

Where occasions arise, that quotations cannot be obtained from the panel, exemptions from the requirement to seek written quotations can be sought as outlined in section 2.2 of the Code.

Service providers listed on a panel will be selected following an evaluation process. Council may legitimately purchase directly from service providers listed on a standing contract.

## 5.6 USE OF OTHER CONTRACTS

Pursuant to r27, Tasmanian local governments may access contracts for goods or services obtained as a result of a tender process conducted by an entity established by another State's local government association or a tender process conducted by LGAT. Councils may also access contracts for goods or services supplied or provided by LGAT.

Where this applies, Council may purchase through these contracts/panel arrangements – standing contracts/panel contracts (avoiding the requirement to tender), for purchases at any amount including above the prescribed limit.

Similar contractual arrangements established and administered by State Government may also be used by Councils.

## 5.7 ENGAGING A THIRD PARTY TO MANAGE A PROCUREMENT PROCESS

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

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

# 6. TENDERING PRACTICES

The purpose of these tender practices is to ensure Council's tenders are conducted in a fair, equitable and uniform manner. These tender practices apply to all procurements where a public tender is required and at Council's discretion, will be applied to a quotation process.

## 6.1 ADMINISTRATION OF TENDER

Council routinely seeks tenders for a range of activities including construction work, maintenance works and consulting works, and the purchase of goods and services. Public tender processes are conducted by Council's officers.

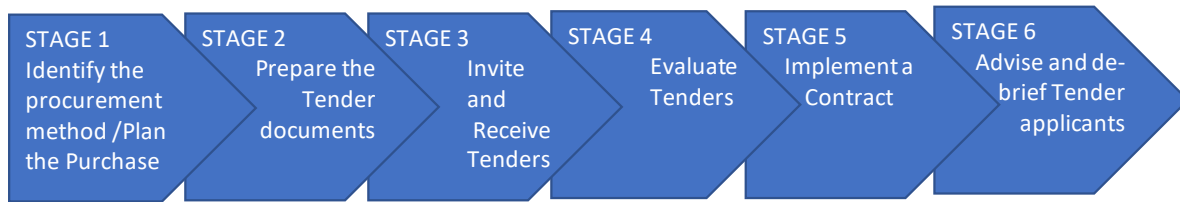
All projects with a value equal to or greater than \$250,000 (excluding GST) must call for a public tender. This value has been set in accordance with the prescribed amount as per *the Act* at the date the Code was adopted by Council. Certain situations are provided for the non-application of the public tender process, as outlined in Section 2.2 of the Code.

Tenders may, at Council's discretion be called for any project / purchase below the Prescribed Amount, where:

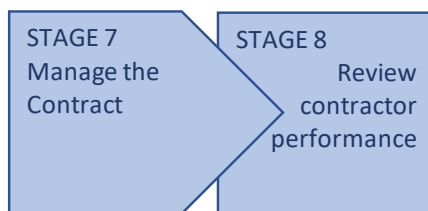
- A formal tender process is required to deal with the complexity, and/or importance of the purchase;
- There is a high probability of risk associated with the purchase; and
- Use of formal Conditions of Contract are advisable or required.

## 7. TENDER PROCESS

Council outlines its Tender process in a series of stages. Stage 1 to 6 of the diagram below identifies the steps in Council's Tender process:



Stage 7 and 8 of the diagram below identifies Council's Contract Management steps which follow the stages of the tender process. The stages below do not form part of the Code and are provided for information purposes only.



### 7.1 STAGE 1 - PLANNING THE PROCUREMENT

#### Actions required prior to preparing a Request for Tender (RFT):

- Establish the objectives of the purchase and prepare specifications which will clearly convey Council's requirements to service providers;
- Identify the correct purchasing method by:
  - determining if Council's workforce has the capacity and capability of fulfilling the requirements;
  - determining if there is already an appropriate contract in place;
  - determining if there is a need for an updated or new contract;
  - valuing the purchase and complying with the purchasing threshold requirements as per section 2.1 of the Code;
  - confirming sufficient funds are available in Council's budget;
  - confirming the tender has been approved by the appropriate delegate;
  - establishing the evaluation committee, their roles and responsibilities;
  - defining the evaluation criteria and weightings (if applicable) to be used to evaluate the tenders, and selecting the successful service provider;
  - considering any conflicts of interest (actual or perceived) in the procurement process; and
  - defining any mandatory conditions of participation or compliance criteria, to be met by the potential service provider.
- Verify that the appropriate Council delegate has approved undertaking the purchase.

### Calculating the Value of a Purchase

The value of a contract must be estimated prior to seeking tenders or quotations and the contract value must:

- not be under-estimated in order to avoid the requirement to seek tenders or quotations;
- not be split into multiple smaller purchases in order to avoid the requirement to seek tenders or quotations and must include relevant contingency allowances where applicable.

The duration of the contract period must be based on the best fit of Council's business, operational and risk management requirements. A shorter contract period must not be selected (to keep the value below \$250,000), in order to avoid the requirement to seek tenders.

### Competitive Neutrality

Council only accepts tenders from other Local Government Authorities, Government bodies or public sector suppliers where, to the extent possible, the price reflects the full commercial cost. Written confirmation from such body, will need to be provided, stating that the price has been calculated on full commercial cost basis under competitive neutrality conditions. Where written confirmation cannot be provided to confirm competitive neutrality, then the tender shall be declined.

### Use of Experts or Probity Advisors

Council will engage the services of probity advisors and external experts where the nature of the tender warrants it. Such conditions would apply to but are not limited to complex requirements, high risk or cost, or the duration of the contract is for an extended period.

## 7.2 STAGE 2 - PREPARE THE TENDER DOCUMENTS

Appropriate records are to be maintained throughout the duration of a tender process.

### Conditions of Tendering

The Request for Tender (RFT) must include conditions of tendering and set out the terms under which a tender will be accepted for evaluation. These include at a minimum:

- a unique identifier allocated to the RFT, to be referred to in all correspondence;
- the place for lodgement of tenders;
- the closing time and place;
- specific lodgement requirements including information to be submitted with a tender;
- a single Nominated Council Officer (NCO), to direct enquiries concerning the RFT;
- the procedure for responding to enquiries and amending or clarifying the RFT;
- any other matters relating to the RFT process, including details of pre-tender briefings;
- mandatory conditions of participation or compliance criteria;
- evaluation criteria and weighting methods for selecting the preferred tenderer; and
- reference to the Code for Tenders and Contracts.



### **Specification**

A complete specification, which describes the extent of the requirements and particulars of manner or method of performing the requirements, must be provided for each RFT.

Specifications must allow participation by local service providers wherever local capacity exists and must not restrict competition to be biased towards a particular service provider.

Minimum specifications include:

- a description of Council's requirements, which is sufficient to ensure that the service provider is not required to undertake an unreasonable amount of work and effort to submit a tender;
- legislative and mandatory requirements, fitness for purpose and quality standards; and
- health and safety and environmental management requirements.

### **Conditions of Contract**

Service providers must be provided with the terms and conditions that the successful tenderer will be required to agree to. The RFT must therefore contain:

- Conditions of contract setting out the contractual terms defining the obligations and rights of the parties to a contract; and
- reference to the Australian Standard conditions of contract, or other conditions of contract applicable to the RFT.

## **7.3 STAGE 3 - INVITING AND RECEIVING TENDERS**

### **Inviting Tenders**

Council will invite tenders by public advertisement in The Examiner, Island News and on the Council's website.

Applicants must submit a tender in writing, specify the goods and/or services tendered for, and conform to the lodgement instructions.

At minimum, Council will provide:

- A description of Council's requirements;
- The Closing date and time;
- Instructions on how to obtain the tender documents;
- Details of any payments a tenderer must make for the documents; and
- The times and dates of pre-tender meetings (if applicable).

### **Tender Closing**

All tenders will be allocated a closing time. The period with which a tender is to be lodged will be at least 14 days after the date the notice is published in The Examiner.

The Council may amend the closing time for tenders by issuing a written notice to all parties in receipt of the RFT, via Council's Website.

### **Requests for Advice and Information**

Council will nominate an officer as representative to deal with RFT enquiries. All enquiries about the RFT must only be directed to the NCO as determined per 7.2.

Council reserves the right not to respond to any requests for clarification or additional information, if requested after the closing date.

Additional information and/or clarifications will be provided to all interested parties to maintain equality to all tenderers.

### **Amending or Extending a Tender**

Council reserves the right to amend any documents comprising the RFT or provide clarification of any matter relating to the RFT prior to the closing time.

Council will ensure that sufficient time has been provided to allow bidders to prepare an adequate response. At a minimum, tenders will be open for 14 days, however, this may increase dependant on the requirements complexities.

Council may allow tenderers, which have already submitted a tender, to lodge an amendment to their tender, in accordance with the conditions of tendering, provided that the amendment occurs prior to the closing time.

If the RFT is amended or clarified, the Council will issue a notice via Council's website.

### **Receiving and Lodgement of Tenders**

The conditions of tendering will include clear instructions on how to lodge a tender.

A tenderer must comply with the lodgement instructions, and Council reserves the right to reject any tender which is not lodged in accordance with the lodgement instructions.

### **Late Tenders**

Any tender received after the closing time will not under normal circumstances be considered. Should Council decide to accept or reject a late tender, that decision shall be final, binding and not open to dispute, that:

- the cause of lateness was beyond the tenderer's reasonable control;
- consideration of the late tender would not provide an unfair advantage to the tenderer submitting the late tender; and
- consideration of the late tender would not compromise the tender process.

### **Opening Tenders**

Council will provide a facility for the lodgement of tenders via a locked tender box or email (to the designated Council contact officer).

Tender submissions via a locked box will not be opened until the closing time has elapsed.

Email submissions shall be held confidentially by the designated contact person (files unopened) until the closing time has elapsed.

Opening of tenders will not be public. All tenders will be clearly identified and recorded, in the presence of at least two authorised Council officers that are not associated with the preparation or future evaluation of the tender.

### **Confidentiality and Commercial-in-confidence**

Any of the documents, information or other materials provided to tenderers by Council, or on behalf of Council, in connection to an RFT, remain the property of the Council and may only be used by the tenderer to the extent required to prepare their tender.

Documents supplied by Council must not be published or disclosed by the tenderer.

The successful tenderer's name and tender value may become part of Council's public reporting.

Council may disclose the successful tenderer's name to unsuccessful Tenderers.  
All submitted Tenders become the property of Council.

## 7.4 STAGE 4 - TENDER EVALUATION

Principles and practices of the tender evaluation are set out in the Code. Council will evaluate tenders in accordance with the evaluation criteria and methodology developed prior to offers being invited.

### Conforming and Non-conforming Tenders

A Conforming Tender is deemed to be:

- lodged by the closing time; and
- meets the mandatory conditions of tendering.

Non-Conforming Tenders include those:

- lodged after the closing time; or
- not submitted in accordance with the conditions of tendering; or
- incomplete or that contains insufficient information to allow Council to carry out a valid evaluation.

Notwithstanding that a tender may be non-compliant it may still be considered:

- a) by way of seeking clarification from a tenderer if an offer is unclear. Such clarification does not mean that tenderers can revise their original offer. Any clarification sought should be documented;
- b) if the tender is deemed to be of potential consideration compared with others received; and
- c) if the costs and delays in retendering are considered sufficient to warrant the consideration.

The reasons and rationale for any non-conforming tender being considered will be documented.

Council reserves the right to exclude any tender from evaluation which in the Council's judgement is excessively low or high in price – relative to the other tenders.

### Tender Evaluation Committee (TEC)

A TEC will be established for each tender process.

A TEC will consist of a minimum of three Council officers:

- a chairperson;
- at least two persons additional to the chair, one of which is the Council delegate; and
- an independent advisor and/or probity advisor if required (for high value or complex contracts).

### Confidentiality

Tender evaluations must remain strictly confidential. All contact with suppliers must be confirmed in writing through the chairperson of the TEC. Members of the TEC will not discuss the tender evaluation with anyone outside the TEC. The Chair of the TEC may obtain advice from specialists to assist in the tender evaluation process.

### **Evaluation Method**

Tenders will be evaluated with the aim to determine which tender submission provides Council with the best value for money.

When assessing value for money Council may consider:

- non-price criteria that it considers relevant to the successful performance of Council's requirements, and adherence to the purchasing principles; and
- apply weightings to the price and non-price criteria.

Selection and application of the evaluation criteria and weightings is at the sole discretion of Council. Evaluation criteria and weightings will apply equally to all tenderers and be determined before finalising the RFT and disclosed in the RFT conditions of tendering.

During the evaluation process, Council may request additional information from any tenderer in order to clarify unclear matters relating to the submission. However, the tenderer will not be allowed to revise or amend their tender price, submit additional material or information in order to make a non-conforming tender into a conforming tender.

### **Evaluation Report**

A tender evaluation report must be prepared to document the selection of a successful tenderer to be submitted to the relevant approval authority:

- a) TEC to recommend final choice of successful tenderer; and
- b) General Manager for review and submission to Council for final approval.

Council's evaluation reports include but are not limited to the following:

- a) a comprehensive record of the evaluation;
- b) the rationale used to select the successful tenderer, including scorings on criteria and weightings applied;
- c) whether it is recommended that negotiations should be undertaken, and on what basis; and
- d) reasons for overlooking lower priced tenders, or closely matched tenders.

### **Tender Negotiations**

Council reserves the right to negotiate with the tenderer during the evaluation process, in order to:

- assess the tenderers understanding of Council's requirements, and test any assumptions made by the tenderer in determining their price;
- clarify matters relating to the tenderer's capability to fulfil Councils requirements;
- achieve cost reductions or service improvements with the preferred tenderer; and
- finalise the commercial terms required to form a contract.

Council will refrain from negotiations that substantially modify the Council's requirements or would lead to a non-conforming tender becoming a conforming tender.

The outcomes of tender negotiations will be reflected in the final contract documentation. During negotiations with a tenderer, Council will not disclose the details of any other tender submission.

## 7.5 STAGE 5 - ESTABLISH A CONTRACT

The authority to award tenders and quotations and enter contracts, will be in accordance with the approved delegation under the financial delegations set out in Council's Instrument of Delegation.

### **Tender Rejection and Acceptance**

Council is not obliged to accept the lowest priced tender or any tender.

Council may reject all tenders. If Council rejects all tenders, it will advise all tenderers in writing.

Tenderers shall be provided with the opportunity to receive feedback on their submission and provided with the appropriate contact person and detail (see 7.6).

Council may accept a conforming tender and may consider accepting a non-conforming tender (see Conforming and Non-Conforming Tenders in section 7.4 of this document).

The outcome of the tender process will be advised to all tenderers in writing.

### **Contract Extension**

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

- if the contract conditions provide for an extension of contract; and
- by a decision of Council made by absolute majority.

### **Contract Variation**

A variation to a contract could include, but is not limited to, a change in scope and type of Councils requirements, quality standard, service level, delivery times, timeframes, personnel and price.

All contract variations must be approved by the appropriate delegate in line with their financial delegation and generally must:

- not exceed budget unless a budget variation has been approved;
- not materially alter the specifications of the goods and or services tendered for; and
- not exceed 10% of the contract price and less than \$250,000 in value for large projects.

In the case of large projects with variations greater than \$250,000 in value, Council approval will be required.

If a variation to a Contract is greater than \$5,000, an exemption from the requirement to quote should be sought from the General Manager.

## 7.6 STAGE 6 - ADVISING AND DEBRIEFING SUCCESSFUL AND UNSUCCESSFUL SERVICE PROVIDERS

### **Tender Debrief Unsuccessful Tenderers (r28(l)(iv)):**

The purpose of the debriefing session is to help unsuccessful tenderers improve their ability to successfully bid for future Council requirements.

The debriefing process is not to be used as a means of contesting the outcomes of a procurement process, but instead, promote continual improvement of submissions.

Council will provide a debriefing interview to any unsuccessful bidder who requests one.

Briefings will include:

- a) how their offer performed with respect to the evaluation criteria; and
- b) strengths as well as weaknesses of their offer.

Briefings will not include:

- a) comparisons between the unsuccessful tenderer's offer and the winning or any other offer; or
- b) the debriefing interview being used to justify the selection of the successful tenderer.

The Council's debriefing team will include at least one member from the TEC. Council will document the proceedings at each debriefing interview including:

- a) who attended (from the agency and from the business concerned);
- b) the information provided to the unsuccessful tenderer;
- c) any issues arising;
- d) the details of any information that was requested, but not disclosed due to commercial-in-confidence considerations; and
- e) any likely future complaints, and recommendations for further action.

Where a multiple stage purchasing process is used (for example where EOIs are used to short-list tenderers), tenderers not short-listed may be offered a debriefing interview, in a similar way to unsuccessful tenderers.

## 8. COMPLIANCE AND REVIEW

### 8.1 REVIEW OF TENDER PROCESS

Following completion of the tender evaluation process, a report is to be prepared for the appropriate delegates to review the tender process, accept or reject tenders and make a recommendation.

Periodic reviews of procurement and tender process controls will be conducted by Councils Finance and Procurement Officers, to ensure improvement and management of procedures.

### 8.2 PROCUREMENT COMPLAINTS

A complaint about procurement can be communicated to Council via the process for making a complaint contained in Councils Customer Service Charter located on Council's website.

The Procurement Officer should first attempt to find a resolution to the procurement complaint, in consultation with the General Manager. If the complaint relates to a public tender, then the chairperson of the TEC should also be consulted in relation to the complaint.

### 8.3 BREACH OF THE CODE

Council will comply with the Code and its legislative obligations, as well as sections 7 & 8 that do not form part of the Code.

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

If a service provider commits a breach of the Code, Council may take action against that service provider, if in its absolute discretion, it decides to do so.

Action may include but is not limited to:

- providing a warning to the service provider;
- restricting or reducing future opportunities for that service provider to bid for Council work;
- refusal to consider any tender or quotation submitted by that service provider;
- reporting of the breach to a statutory, professional or other relevant body; and
- termination or suspension of the service provider's engagement with Council.

# 9. REPORTING

## 9.1 ANNUAL REPORTING

Council's Annual Report for the financial year will include a range of information relating to the procurement of goods and services for the situations as described below. Council is obliged to report at a minimum on a series of procurement matters, linked to 72 (1) of *the Act*.

Where in a financial year, a contract, for the supply or provision of goods or services is equal or greater than the prescribed amount, as per Regulation 23(5)(b) of the Regulations, Council will disclose:

- a description of the contract;
- the period of the contract;
- the periods of any options for extending the contract;
- the value of any tender awarded or, if a tender was not required, the value of the contract (excluding GST);
- the business name of the successful contractor;
- the business address of the successful contractor; and
- any other prescribed matters.

Where approval has been given for non-application of the tender process, in accordance with regulation 27(a) and (i) of the Regulations, Council will disclose:

- 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 name of the supplier.

Where in a financial year, a contract is entered into, or extended, for the supply or provision of goods or services which is equal or greater than \$100,000 (excluding GST) but less than \$250,000 (excluding GST), Council will disclose:

- 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);
- the business name of the successful contractor; and
- any other prescribed matter.



## 9.2 REPORTING TO THE COUNCIL AND THE GENERAL MANAGER

For purchases with a value requiring 3 written quotations as per the purchasing thresholds, the number of instances of non-application of the requirement to obtain 3 written quotations according to reason, must be reported to the Council on a quarterly basis.

For purchases with a value requiring 2 written quotations as per the purchasing thresholds, the number of instances of non-application of the requirement to obtain 2 written quotations according to reason, must be reported to the General Manager.

Such reports will include the following details of each procurement:

- the reason for the non-application of the process;
- a brief description, and approximate value of the goods or services acquired; and
- the name of the service provider.

# 10. REVIEW OF THE CODE

This F2 - Code for Tenders and Contracts will be reviewed at least every 4 years, unless a change occurs that requires Council to amend its Code of Tenders and Contracts.

### History of Review

ADOPTED BY COUNCIL: 16 July 2009  
 AMENDED BY COUNCIL: 18 June 2015  
 AMENDED BY COUNCIL: 17 August 2017  
 AMENDED BY COUNCIL: 16 November 2021

MINUTE NO: 263.07.09  
 MINUTE NO: 05.01.2016  
 MINUTE NO: 204.08.2017  
 MINUTE NO: 227.11.2021

# 11. DEFINITIONS

TERM	DEFINITION
ACT	<i>The Local Government Act 1993.</i>
Conditions of Tendering	The terms and conditions under which Council will seek, receive, and evaluate tenders and quotations.
Closing Time	The closing time and date for tenders or quotations stated in the conditions of participation or conditions of tendering.
Code	The Code for Tenders and Contracts.
Conditions of Contract	The terms and conditions that a service provider will be required to substantially agree to if the tender or quotation is accepted.
Contract	A formal agreement entered into between Council and the successful tenderer for the performance of Council's requirements.
Council	Means the Flinders Council established under s.18 and s.19 of <i>the Act</i> .
Council Officer	Council Officer means an employee, contractor, or consultant of Council.
Council's requirements	The goods, equipment, services or works required by Council under an RFT or request for quotation.
Delegate	The Council Committee or Officer authorised to expend funds to the value of Council's requirements under the current version of Council's Instrument of Delegation.
Expression of Interest (EOI)	The initial transactional documents shared by the buyer and supplier during the early stages of the procurement process.
GST	Goods and Services Tax pursuant to the <i>Tax System (Goods and Services Tax) Act 1999</i> .
Independent Advisor	Advisor is external to Council i.e., a non-Council employee. Audit panel delegates can be used.
Invitation to Tender	The advertisement or other written advice issued by Council in order to seek tenders.
Local Business	Suppliers whose principal place of business is located within the Flinders Council Municipal Area.

Multiple-Use Register	A register of suppliers who meet criteria established by Council in respect of the supply of particular categories of goods and services.
NCO	Nominated Council Officer as per 7.2 of the Code.
Panel	A panel of providers established as a result of open tender, each of whom signs a contract with Council.
Preferred Tenderer	The tenderer selected by Council as best satisfying Council's requirements.
Prescribed Amount	Means the dollar figure prescribed in r23(1) of the Regulations which as at the date of the Code is \$250,000 (excluding GST).
Probity Advisor	Advisor is external to Council i.e., a non-Council employee, and has experience of contract law.
Procurement Principles	The procurement principles prescribed under r28(a) of the Regulations.
Procurement Process	The process whereby the Council seeks to engage a service provider to provide Council with goods, equipment, services or construction or building works.
Purchase Order	A formal agreement entered into between Council and the service provider for the performance of Council's requirements.
Quotation	An offer from a prospective service provider in response to an invitation issued by Council to a selected number of prospective suppliers.
Regulations	The Local Government (General) Regulations 2015.
Request for Tender (RFT)	The documents inviting tenderers to offer to deliver Council's requirements by submitting a tender in accordance with the conditions of tendering.
Service Provider	Any contractors, subcontractors, consultants tendering, or seeking to tender, in a procurement process, and where the context permits can include the reference "tenderer".
Specification	The documents prepared for the purpose of describing the extent and the manner of performance of Councils requirements. These may include general requirements, directions, schedules, programs and drawings, and any other

relevant documents included with the RFT, EOI or request for quotation.

Standing Contract	A contract in which a single tenderer or multiple tenderers may be contracted for a specified period to provide specified goods or services during that period without the need for a further tender process.
TEC	Tender Evaluation Committee
Tender	An offer from a prospective service provider in response to an open and public invitation to tender by Council, whereby no limit is placed on the potential number of offers.
Tenderer	A prospective service provider, providing a response to an open and public invitation to tender by Council.

## 12. RELATED DOCUMENTS

- a) Council's Instrument of Delegation
- b) *Local Government Act 1993*
- c) S-G14-P Corporate Credit Card Policy
- d) Local Government (General) Regulations 2015