

Flinders Council Policy Manual

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| SUBJECT: <i>CODE OF TENDER AND CONTRACTS POLICY</i> | FILE NO: | ADM/0900, WOR/0300 |
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1.0 Introduction

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

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With this Code Flinders Council aims to achieve the purchasing principles of:

- *open and effective competition;*
- *value for money;*
- *enhancement of the capabilities of local business and industry; and*
- *ethical behaviour and fair dealing.*

~~The *Local Government Act 1993* requires every council to adopt a code relating to tenders and contracts by 1st January 2006.~~

This Code:

- is consistent with the Act and the Regulations; ~~and~~
- ~~includes procedures and guidelines for any prescribed matter;~~
- ~~promotes any prescribed principles; and~~
- ~~is to be reviewed at least once every 4 years.~~

As a measure of accountability and transparency, the General Manager will:

- ~~make a copy of this Code (and any amendments) available for public inspection at the public office during ordinary office hours;~~
- ~~make a copy of this Code (and any amendments) available for purchase at a reasonable charge; and~~
- publish a copy of this Code on Flinders Council's website ~~free of charge.~~

~~The Act and Regulations require Flinders Council policy is required to invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above \$100,000 (excluding GST). [PS Note: the amended regulations increase the threshold for which councils are required to undertake a public tender process from \$100,000 to \$250,000. It is optional as to whether Council wishes to codify this amendment, or whether Council wishes to keep the threshold as \$100,000 or above. If Council leaves the threshold as \$100,000 or above it will still be compliant with the regulations. Please note, this comment is applicable throughout this Code where the threshold applies.] In accordance with the Regulations, Flinders Council will~~

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invite tenders by one of the following means:

- (i) an open tender process; (refer Sections 5.1 through to 5.11);
- (ii) a multiple-use register; or (refer Section 5.12);

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(iii) a multiple-stage tender (refer Section 5.13).

There are circumstances in which Flinders Council is exempt from undertaking the above processes. These circumstances are described in Section 6.

For purchases under the \$100,000 threshold, Flinders Council, in accordance with the Regulations, has decided that a quotation process will be undertaken. Flinders Council may choose to grant an exemption from undertaking a quotation process where the same circumstances exist for that of a tender described in Section 6.

Flinders Council will not split a contract into two or more contracts ~~for the primary which results in purpose of avoiding compliance with which result in~~ the requirement to publicly invite tenders.

2.0 Definitions

Building Construction - the construction and refurbishment of buildings and residential properties, and associated maintenance (services and residential) and professional services (e.g. architects).

Code - refers to this Code for Tenders and Contracts which has been developed in accordance with the requirements of the *Local Government Act 1993* and [The Regulations the *Local Government \(General\) Regulations 2015*](#).

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Consultant - a person or organisation, external to a council, engaged under a contract on a temporary basis to provide recommendations or high level specialist or professional advice to assist decision making by council. The consultant will be expected to exercise his or her own skills and judgement independently of the council. It is the advisory nature of the work that distinguishes a consultant from a contractor.

Contractor - a person or organisation, external to the council, engaged under a contract for service (other than as an employee) to provide specified services to a council.

Contract - a contract is an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do, or abstain from doing, some act.

Expression of Interest (EOI) - an Expression of Interest may be used as a means of exploring the market or to pre-qualify businesses to reduce the cost of tendering by restricting the issue of formal tenders.

~~**Industry Capability Network Tasmania (ICNTAS)** - promotes Tasmanian industry through import replacement and opportunities for participation in major projects, government procurement and commercial developments. For more information go to www.icntas.org.au~~

Local Business - any business operating and/or based in the Furneaux Group.

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Multiple-stage purchasing - a process which allows for a preliminary assessment of the market to be made in terms of the capabilities of potential suppliers and the goods and services that are available to satisfy the requirement, before a final purchasing stage is undertaken.

Procurement - the entire process by which all resources are obtained by an entity, including planning, design, standards determination, specification writing, selection of suppliers, financing, contract administration, disposals and other related functions.

Probity - probity is a risk management approach to ensuring procedural integrity.

Probity Advisor - a Probity Advisor provides advice on probity issues before and during the process of tendering and contracting to ensure the process is fair and in accordance with the Council's guidelines.

Public Tender - a tender where any business that can meet the requirements of the Request for Tender has the opportunity to bid.

Purchasing - the acquisition of goods or services.

Quotation - the bid submitted in response to a Request for Quotation from the Council.

Request for Quotation - either a verbal or written request for offers from businesses capable of providing a specified work, good or service.

Request for Tender - a document soliciting offers from businesses capable of providing a specified work, good or service. Requests for Tender are usually advertised.

Standing Tender - a tender from 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.

Tender - a proposal, bid or offer that is submitted in response to a Request for Tender from the Council.

Tender Box - the point of lodgment for tenders to ensure that the documentation is kept secure until the tender period closes. Generally a tender box: is a box or cabinet with an opening which allows large envelopes to be lodged, but which does not permit access to the contents; should be secured in a fixed position; and should be locked with two locks with different keys, maintained by two different officers.

Tender Review Committee - a committee established to review the process used for all building and construction and goods and services tenders over \$100,000.

Value for Money - achieving the desired outcomes at the best possible price.

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Verbal Quotation - a verbal Request for Quotation. A verbal response may be adequate for low value purchases.

Written Quotation - a written Request for Quotation to undertake specific works or supply goods and services.

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3.0 Purchasing Principles

This Code has been developed in order to have a transparent set of strategies that Flinders Council will follow in order to comply with the four purchasing principles as required in the *Local Government Act 1993*. Below is a brief definition of each principle and what it means in practice to Flinders Council.

3.1 Open and effective competition – ensuring that the purchasing process is impartial, open and encourages competitive offers.

In practice this means that Flinders Council will:

- use transparent and open purchasing processes so that potential contractors, suppliers and the public can have confidence in the outcomes;
- adequately test the market by applicable processes. For example, by open tender or by seeking quotations;
- avoid biased specifications; and
- treat all suppliers consistently and equitably.

3.2 Value for money – achieving the desired outcome at the best possible price.

In practice this means that Flinders Council will weigh up the benefits of each purchase against the costs of that purchase. In doing this Council may take the following factors into consideration:

- fitness for purpose;
- maintenance and running costs over the lifetime of the product;
- the advantages of buying locally, e.g. shorter delivery times, local backup and servicing, and the availability of spare parts;
- the contribution to the achievement of other Council objectives such as industry development and employment creation;
- quality assurance and perceived level of risk;
- the capacity of the supplier (e.g. managerial and technical abilities); and
- disposal value.

3.3 Enhancement of the capabilities of local business and industry – ensuring that local businesses that wish to do business with Flinders Council are given the opportunity to do so.

In practice this means that Flinders Council will:

- actively seek bids from local business, particularly from those which have previously requested the opportunity to quote;
- for purchases less than \$10,000, Council will seek at least one verbal quote from a local business;
- for purchases between \$10,000 and \$100,000, Council will seek at least one written quote from a local business;
- for purchases greater than \$100,000, Council will seek to get at least one tender from a local business; and
- where the market is unfamiliar and capacity is unknown, Council may contact ICNTAS and use BIZTAS, to check local capability.

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3.4 Ethical behaviour and fair dealing - This principle means that all purchasing is undertaken in a fair and unbiased way and in the best interests of Flinders Council.

In practice this means that Flinders Council will:

- be fully accountable for the purchasing practices that Council use and the decisions Council make;
- ensure that decisions are not influenced by self-interest or personal gain (i.e. declining gifts or other personal benefits from suppliers);
- identify and deal with conflicts of interest;
- maintain confidentiality; and
- ensure that all procurement is undertaken in accordance with Flinders Council's policies.

4.0 Ethics and Probity

4.1 Ethics

Flinders Council will observe the following ethical standards when making purchasing transactions:

- all business will be conducted in the best interests of the members of the community, avoiding any situation which may impinge, or might be deemed to impinge, on impartiality;
- all expenditure will be in accordance with the requirements of the Local Government Act 1993;
- all procurement activity will be undertaken without favour or prejudice and will aim to maximise value in all transactions;
- confidentiality will be maintained in all dealings; and
- acceptance of gifts, gratuities or any other benefits which may influence, or might be deemed to influence, equity or impartiality will not be permitted.

4.2 Probity

In order to achieve probity, Flinders Council will consider the following five probity principles throughout all stages of procurement and contracting processes to ensure success in achieving the best value for public money:

- open competitive processes;
- transparency of process;
- identification and resolution of conflicts of interest;
- accountability; and
- monitoring and evaluating performance.

4.3 Purchasing Code of Conduct

The following points make up Flinders Council's Purchasing Code of Conduct. The Council aims to:

- ensure that all potential suppliers are provided with identical information upon which to base tenders and quotations and are given equal opportunity to meet the requirements;
- establish and maintain procedures to ensure that fair and equal consideration is given to all tenders and quotations received;
- promote honesty and equity in the treatment of all suppliers of goods and services;
- provide a prompt and courteous response to all reasonable requests for advice and information from potential or existing suppliers;
- promote fair and open competition and seek value for money for the Council and its local community;
- seek to minimise the cost to suppliers for participation in the procurement process;
- protect commercial-in-confidence information;
- satisfy accountability standards;
- establish processes that avoid situations where private interests of our Council's employees may conflict with public/council duty and provide for the declaration of any conflicts of interest that do arise; and
- provide a clear statement that soliciting or accepting remuneration or other benefit from a supplier for the discharge of official duties is not permitted and may be illegal.

5.0 Making the Purchase

5.1 Procurement overview - processes

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

- (i) plan the purchase (which includes the selection of the most appropriate purchasing method);
- (ii) prepare the relevant documents (e.g. quotation, tender or expression of interest);
- (iii) invite and receive offers;
- (iv) evaluate those offers;
- (v) advise the successful bidder and offer to debrief any unsuccessful bidders; and
- (vi) manage any contract that has been implemented as a result of the procurement.

5.2 Planning the Purchase

During the planning phase of a purchase the following steps may be taken by Flinders Council's staff:

- any relevant approval to undertake a purchase is obtained;
- an estimate of the cost of the good or service is undertaken and available Council funding of such a purchase is confirmed and an appropriate method of purchasing is chosen;
- market research and consultation is undertaken (e.g. what products are available on the market and how many suppliers);

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- the specification is defined and mandatory requirements are identified. The specification will usually be developed in consultation with relevant Council stakeholders (useful resources during this phase may include previous or similar specifications);
- the establishment of an evaluation committee;
- the establishment of evaluation criteria and evaluation methodology (undertaken by evaluation committee);
- the development of a risk assessment and management plan;
- the commencement of a contract management plan; and
- if necessary, the engagement of a probity advisor.

There are three tendering and procurement thresholds that require different levels of involvement in planning and executing the purchase. The following table refers to the thresholds and summarises what purchasing method Flinders Council utilises based on the total dollar value of the purchase.

| Procurement Value | Minimum Requirement |
|---|--|
| \$ 10,000 ^{2,000} and below | Verbal Quotations Where possible, at least three verbal quotations will be obtained, of which Council will seek at least one from a local business (if available). |
| Between \$ 102,000 ^{102,000} and \$ 50400,000 ^{50400,000} | Written quotations Where possible, at least three written quotations will be obtained, of which Council will seek at least one from a local business (if available). |
| <u>Between \$50,000 and \$100,000</u> | Written quotations <u>Written quotations will be sought by advertising in the Island News and on the Flinders Council website.</u> <u>Where possible, at least three written quotations will be obtained, of which Council will seek at least one from a local business (if available).</u> |
| \$100,000 and greater | Public Tender Tenders will be advertised in the Saturday edition of The Examiner newspaper <u>and the next edition of the Island News.</u> Each of the tenders will be advertised on Council's own website Council will seek at least one tender from a local business (if available). |

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Flinders Council will apply the above requirements to the purchase of all goods and services with the exception of certain circumstances. The circumstances in which the above requirements may not be used are described under section 6.0 Exemptions.

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5.3 Purchasing Documentation

5.3.1 Verbal Quotations (for purchases below \$10,000 excluding GST)

Flinders Council will undertake most purchases below \$10 000 on a verbal basis and as such there will not be any formal quotation documentation. However, Flinders Council may choose for all but very low-value / low-risk purchases, to provide suppliers with a written specification and request a written quotation.

5.3.2 Written Quotations (for purchases between \$10,000 and \$100,000 excluding GST)

The Request for Quotation (RFQ) is a document inviting offers from businesses to provide a specified good or service. Council's quotation documents will include all terms and conditions of quotation, together with a clear description of the goods or services required, and the details of any applicable Council policies.

The complexity of the documentation will depend upon the nature and value of the purchase. Generally, the RFQ documentation will consist of:

- **Conditions of Quotation** - the conditions set out the terms under which Flinders Council will receive and evaluate offers. The conditions will usually include:
 - the evaluation criteria and a brief outline of the evaluation methodology to be used;
 - the closing date, time and place of lodgement;
 - the Council's contact details;
 - pricing requirements (e.g. the price should exclude GST);
 - relevant Council policies and principles;
 - the entitlement of unsuccessful bidders to be debriefed; and
 - information about the Council's complaints process.
- **Specification** - The specification clearly, accurately and completely describes the essential requirements of the good or service being purchased. It is the basis of all offers and is the foundation for the contract. The specifications will usually include the:
 - functional requirements;
 - performance requirements; and
 - technical requirements.

5.3.3 Tenders (for purchases greater than \$100,000 excluding GST)

Flinders Council's Request for Tender (RFT) is a document inviting offers from businesses to provide specified goods or services. Flinders Council's Request for Tender documentation usually consists of four main parts. These four parts are:

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- **Conditions of Tender** - The Conditions of Tender set out the terms under which Flinders Council will receive and evaluate tenders. The conditions will usually include:
 - evaluation criteria and a brief outline of the evaluation methodology to be used;
 - closing date, time and place of lodgement;
 - Council contact details;
 - pricing requirements (e.g. the price should exclude GST);
 - relevant Council policies and principles;
 - entitlement of unsuccessful bidders to be debriefed; and
 - information on the Council's complaints process.
- **Specification** - The specification clearly, accurately and completely describes the essential requirements of the goods or service being purchased. It is the basis of all offers and is the foundation for the contract. The specification will usually include:
 - functional requirements;
 - performance requirements; and
 - technical requirements.
- **Conditions of Contract** - The Conditions of Contract contain the contractual terms defining the obligations and rights of the parties concerned. Generally, contracts are used for all purchases over \$100,000, or where there are material risks involved.
- **Tender Form** - The Tender Form must be completed, signed and returned by the tenderer. It includes a declaration by the tenderer that: the tenderer agrees to the Conditions of Tender; the information provided in the tender is accurate and correct; and the person signing the form is duly authorised to do so.

Flinders Council, when preparing the tender documentation we will undertake the following procedures and processes:

- prepare clear and concise tender documentation that include all the terms and conditions of the planned purchase with a clear description of the goods or services required and details of any applicable Council policies;
- prepare tenders that include details of the intended duration of the contract, including any extensions that are applicable to the contract;
- prepare tenders that include details of the evaluation criteria (which are based on the specifications), any weightings to be used in the assessment of bids and the evaluation methodology;
- under no circumstances will Council modify the evaluation criteria or methodology after the request for tender has been released without advising all potential tenderers;
- prepare specifications that do not restrict competition, reflect bias to any brand, or act as a barrier to the consideration of any alternatives;
- provide advice and details of any briefing sessions to be held in relation to the purchase;

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- provide details on the availability of de-briefing sessions for unsuccessful bidders;
- provide details on Council's complaints process and include the contact details of the complaints officer;
- prepare documentation that clearly specifies the Council's contact details (including Contact Officer), closing time, date and place of lodgement;
- prepare documentation that clearly states how and in what circumstances the purchasing documentation can be altered including the length of time given to bidders to prepare their submissions (which is to be at least 14 days from the date on which the tender notice is published);
- provide advice on the treatment of late submissions;
- provide an indication if alternative bids will be considered; and
- where applicable, documentation such as tenders will be cleared by Council's legal advisors and the General Manager before being issued.

5.4 Inviting Offers

5.4.1 Verbal Quotations

Flinders Council will follow the following procedures when inviting verbal quotations:

- provide each supplier with the same information and will give each supplier the same amount of time to prepare a quote; and
- seek at least one verbal quotation from a local business (if available).

5.4.2 Written Quotations

Flinders Council will follow the following procedures when inviting written quotations:

- where possible, Council will seek at least three written quotations of which one quotation will be sought from a local business if available;
- in some cases, Council may choose to advertise a quotation if advantageous to do so;
- Council will directly send the invitation to quote to identified businesses (such as businesses that already provide the service and businesses identified during the market research phase);
- exemption from seeking quotations will only be granted by the General Manager in circumstances outlined below under Exemptions;
- Council will issue the request for quotation documentation either by mail, facsimile or by e-mail;
- when issuing a request for quotation to a business, the details of that business being will be recorded. The details recorded include: name of business; address; contact person; e-mail; telephone; and facsimile; and
- the time the Council provides to bidders to respond to the request for quotation will depend largely upon the nature and the complexity of the purchase, but equal time will be given to all businesses requested to quote.

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5.4.3 Tenders

Flinders Council will do the following in respect of inviting tenders:

- for tenders, advertise each tender at a minimum in the Examiner newspaper and on our website at www.flinders.tas.gov.au. The following information will be specified:
 - the nature of the goods or services the Council requires;
 - any identification details allocated to the contract;
 - where the tender is to be lodged;
 - particulars identifying a person from whom more detailed information relating to the tender may be obtained; and
 - the period within which the tender is to be lodged.
- Council tender documentation will available via mail, email, facsimile or from Council's website at www.flinders.tas.gov.au (any electronic or online tendering process undertaken by Council will be in accordance with the requirements of the *Electronic Transactions Act 2000*);
- Council may send tender documentation directly to identified businesses, however, Council will not provide any documentation to any potential tenderer until the tender has been advertised (so as not to give one tenderer an advantage over another);
- Council will endeavour to get a minimum of three bids of which Council will seek at least one from a local business if available;
- In accordance with Council's Purchasing Code of Conduct Council will ensure that all potential suppliers are provided with identical information upon which to base tenders and are given equal opportunity to meet the requirements;
- when inviting tenders Council will ensure that sufficient time has been provided to allow bidders to prepare an adequate response. At a minimum our tenders will be open for 14 days. However, this may increase dependant on whether the requirements are complex, or if it is likely that interested businesses may need to form partnerships/consortiums with other businesses in order to fulfill the requirements of the tender;
- when issuing a request for tender to a business, the details of that business will be recorded. The details recorded include: name of business; address; contact person; e-mail; telephone; and facsimile.
- if for any reason, there is a need to alter the tender documentation once it has been issued, an addendum will be sent to all businesses that have been issued with that documentation; and
- if it is necessary to extend the closing date of the tender the following will be done:
 - all businesses that have been issued with tender documentation will be advised in writing of the change in closing date; and
 - the new closing date will be advertised in all newspapers and websites where the original advertisement was placed.

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5.5 Communication with all potential suppliers and bidders – Contact Officer

In accordance with Flinders Council's Purchasing Code of Conduct and the Purchasing Principles Flinders Council will do the following in respect of communication with all potential suppliers and bidders:

- nominate one contact person for each purchasing activity and clearly specify their name, contact details (including phone number and mailing address) so that tenderers know who to contact for more information (one only for probity reasons);
- the Contact Officer will be the sole point of communication with potential suppliers and bidders and will document any questions asked of them by a potential supplier or bidder and any response given;
- where possible, the Contact Officer will request that questions from potential suppliers and bidders be put in writing (email or facsimile will suffice). Any response from the Contact Officer will also be provided in writing;
- where possible the Contact Officer will limit the provision of information to the clarification of procedural issues; and
- any additional information provided to one prospective tenderer is also provided to everyone else who has requested or received tender documentation.

5.6 Receiving Offers

5.6.1 Verbal and Written Quotations

In receiving quotations, Flinders Council will hold any written or verbal quotation received prior to the closing time in a secure location to maintain confidentiality, to ensure [probity](#) and to protect the individuals involved from claims of unfair practices.

Depending upon the nature and value of the purchase, Flinders Council may from time to time, choose to use a [tender box](#) as a point of lodgement for written quotations, to ensure that the documentation is kept secure until the tender period closes.

All quotations that the Council receives will be clearly marked with the time and date of receipt, and recorded in an appropriate schedule or register.

The Council treats information provided by suppliers as confidential and will not provide this information to unauthorised persons.

For written quotations, Flinders Council will follow the procedures set out in the conditions of quotations for any late quotations and by accepting a late quotation, we will ensure that we are not providing an advantage to that bidder over other bidders.

5.6.2 Tenders

Flinders Council will provide a locked tender box at the designated tender lodgement location. Our tender box will not be opened until the time set for the closing of tenders has elapsed.

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Flinders Council treats information provided by suppliers as confidential and will not provide this information to unauthorised persons.

In receiving tenders, Flinders Council may reject non-compliant offers (in accordance with the terms of our tender documents) which:

- are lodged after the closing time without a valid reason;
- are not signed where required;
- are incomplete - for example, questions have not been answered, pages are missing, or required documentation has not been attached (for example, insurance certificates);
- do not comply with mandatory conditions of tender; or
- fail to meet mandatory specifications.

When opening Tenders Flinders Council will ensure that tenders are:

- opened in the presence of a minimum of two officers; and
- clearly identified and recorded.

Flinders Council will follow the procedures set out in the conditions of tender for any late tender submissions and by accepting a late tender, Council will ensure that Council are not providing an advantage to that bidder over other bidders.

5.7 Evaluating Offers

5.7.1 Verbal and Written Quotations

Flinders Council when evaluating verbal and written quotations do so with the objective of identifying the offer that best meets our requirements and provides the best value for money. When evaluating quotations Council take into consideration the following aspects of a bid:

- value for money, taking into account estimated life, disposal value and maintenance requirements and costs;
- price;
- compliance with quotation specifications;
- quality, delivery and service;
- the full benefits of sourcing locally;
- the consequences, including possible risks, of entering into a contract where there is one supplier, or a limited number of suppliers, that can provide and maintain the particular product over its lifetime; and
- any relevant Council policies.

5.7.2 Tenders

Flinders Council will evaluate tenders in accordance with the evaluation criteria and methodology specified in the [evaluation plan](#), which was developed prior to offers being invited. Under no circumstances will we modify the evaluation criteria or methodology after the Request for Tender has been released unless all potential tenderers are advised of the change in writing.

In evaluating tenders Council will undertake the following steps:

- **Evaluate compliance** - Screen all offers to ensure that they are complete and comply with all mandatory evaluation criteria. Offers which do not meet all mandatory criteria may be excluded from further evaluation. Non-compliant offers include those that:
 - were lodged after the closing time;
 - are not signed where required;
 - are incomplete - for example, questions have not been answered, pages are missing, or required documentation has not been attached (for example, insurance certificates);
 - do not comply with mandatory conditions of tender; or
 - fail to meet mandatory specifications.
- **Clarify offers** - It may be necessary to seek clarification from a tenderer if an offer is unclear. Clarification does not mean that tenderers can revise their original offer. Any clarification sought should be documented.
- **Evaluate qualitative / non-cost criteria** - this stage involves a detailed analysis of each offer against the non-cost or qualitative evaluation criteria and weightings specified in the evaluation plan (the supplier must demonstrate that they meet the evaluation criteria, not just assert it).
- **Shortlist offers** - This step is only used for complex purchases in order to eliminate offers that are clearly not competitive. However, during this process, eliminated offers are not yet totally rejected, and may be re-visited later in the evaluation process.
- **Requests for Tenderers to make a formal presentation** - If appropriate, and tenderers have been forewarned in the Conditions of Tender, tenderers may be requested to make a formal presentation to the evaluation committee, clarifying their tender and providing the opportunity for the committee to ask questions. Under these circumstances, the tenderer will be directed to not introduce new or revised information. All information, questions and answers will be formally recorded by the Council.
- **Calculate value for money and compare offers** - The aim of our Council's comparative evaluation process is to determine which offer best meets all the requirements of the specification and offers the best value for money. The major factors which Flinders Council take into consideration when evaluating value for money are:
 - the quality of the proposed good or service, that is, how well it meets the specified requirements; vs.
 - whole of life costs; vs.
 - risk, that is, the capacity of the tenderer to deliver the goods or services, as specified, on-time and on-budget.

- **Select preferred tenderer** – when selecting the offer that represents the best value for money for Council and where two or more firms are ranked equally following the value for money assessment, Council will give preference to a Tasmanian business over an Interstate or overseas businesses. In selecting a preferred tenderer for a high risk/high value or complex process, Flinders Council will often undertake a due diligence investigation to ensure that the tenderer has the capacity and stability to fulfil all of the requirements of the contract.
- **Write the evaluation report** - on completion of the evaluation process Flinders Council will document the selection of a successful tenderer in an Evaluation Report to be submitted to the relevant approval authority (e.g. Tender Review Committee and/or General Manager). Council's evaluation reports include:
 - a comprehensive record of the evaluation method, the rationale used to select the preferred supplier, and whether it is recommended that negotiations should be undertaken, and on what basis; and
 - reasons for overlooking lower priced tenders.

Tender Review Committee

A Tender Review Committee may be established by Council to review the purchase/lease of all goods and services over \$100,000 (excluding GST), prior to the awarding of contracts, to ensure that Council's procurement policies are adhered to.

The Tender Review Committee will usually consist of up to four members which include a Chairperson, Secretary and two persons who are knowledgeable of Council's procurement policies.

Where Council decides that the establishment of an Tender Review Committee is necessary to evaluate tenders, the Chairman of that Evaluation Committee may be required to present a submission to the Tender Review Committee which may include the Evaluation Report and Probity Adviser's Report (if relevant), for its endorsement of the tender and evaluation process.

The Tender Review Committee will usually review and consider the following aspects of a tender:

- the tender and evaluation process adopted;
- the final tender evaluation report, signed by the Tender Evaluation Panel;
- critical dates (e.g. when the contract is to start, when the current contract is due to expire, critical project milestones, expenditure constraints [e.g. funds only available this financial year] etc.);
- any other relevant issues or information, such as a Probity Adviser's report; and
- a certification by the officer responsible for managing the tender process, verifying conformity with relevant Council policies and guidelines.

On completion of its evaluation, the Tender Review Committee will report to the Chairperson of the Evaluation Committee and convey their findings.

5.8 Notification of successful and unsuccessful bidders

Once the preferred bidder is selected and all relevant Council approvals to proceed with the purchase have been granted, Flinders Council shall write and (in most cases) telephone the preferred provider to notify them that they have been successful. After the preferred bidder has been notified, Flinders Council will notify all unsuccessful bidders in writing of their non-selection.

Flinders Council will advise the unsuccessful bidders in writing of:

- the tender outcome, including the contract number and title;
- the successful contractor;
- the term of the contract; and
- the total contract price for the term of the contract.

Details of tenders awarded will be displayed on Council's public notice board and on Council's web site for a period of not less than fourteen days.

All unsuccessful bidders will be offered a debriefing session.

5.9 Debriefing unsuccessful bidders

The purpose of the debriefing session is to help unsuccessful tenderers submit more competitive bids in future by identifying ways in which the tenderer's offer could be improved.

Flinders Council will provide a debriefing interview to any unsuccessful bidder who requests one. At this interview the unsuccessful bidder will be briefed as follows:

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

During this interview, the following will not happen:

- comparisons between the unsuccessful tenderer's offer and the winning, or any other, offer; or
- 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 Tender Evaluation Committee.

Flinders Council will document the proceedings at each debriefing interview including:

- who attended (from the agency and from the business concerned);
- the information provided to the unsuccessful tenderer;
- any issues arising;

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- the details of any information that was requested, but not disclosed due to commercial-in-confidence considerations; and
- any likely future complaints, and recommendations for further action.

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

5.10 Contract Management

A contract defines the rights and obligations of both parties once the tender is awarded. A contract is established when an offer is made and accepted. A contract ~~comprises all relevant information- will be~~ provided to ~~and by~~ the business which has made the successful offer. This includes:

- the conditions of tender;
- the specifications, including any plans and other attachments;
- the successful offer; and
- the conditions of contract.

A draft copy of the conditions of contract will usually be included in Council's original request for tender package.

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

- test the understandings and assumptions made by tenderers in determining their costs;
- clarify and rectify any false assumptions; and
- achieve operational refinements and enhancements that may result in cost reductions.

The outcomes of these negotiations will be reflected in the final contract and once completed and agreed, the formal contract is then signed by both parties.

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

5.11 Standing tenders

From time to time Flinders Council may utilise a standing tender in which one or more tenderers are contracted through an open tender process to provide specified goods or services over a period of time without the need for a further tender process.

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The way in which a standing tender is established is the same as for an open tender process where the specification and description of the tender describe the intent of the standing contract and the conditions of its use.

5.12 Multiple-use register

From time to time Flinders Council may utilise a multiple-use register process to establish a register of suppliers that Council has determined satisfy the conditions for participation in that register, and that Council intends to use more than once.

If it is determined that Flinders Council will establish such a register, the General Manager will invite expressions of interest from prospective applicants for inclusion on a register by publishing at least once in a daily newspaper circulating in the municipal area a notice specifying –

- a description of the goods and services, or categories thereof, for which the register may be used;
- the name and address of the council and other information necessary to contract the entity and obtain all relevant documents relating to the register;
- *the person from whom more detailed information may be obtained;* and
- any deadlines for submission of application for inclusion on the register.

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

- details of the categories of goods or services required;
- the criteria for evaluating applications;
- the method of evaluating applications against the criteria; and
- the conditions for participation to be satisfied by suppliers and the methods that the council will use to verify a supplier's satisfaction of the conditions. *PS Note: this is an additional requirement which is not required by the Regulations;*
- a reference to the Council's Code for Tenders and Contracts.

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The General Manager will advise all prospective tenderers of the results of their application including all categories for which they are registered and the reasons for rejection or inclusion on the register as soon as practicable.

When Flinders Council wishes to use the register, the General Manager will invite all successful applicants that are registered for the relevant category to tender for the provision of the required good or service.

Council will review any established register at least once every 2 years.

Council will allow a prospective applicant to apply for inclusion on a register of tenderers at any time, unless the perspective tenderer –

- (a) has applied within the previous 12 months; and
- (b) has not been accepted.

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The following table outlines the differences between a standing tender and a multiple-use register:

| Standing Tender | Multiple-use register |
|---|--|
| <ul style="list-style-type: none"> • Outcome of a procurement process • Can purchase directly from a panelist • Panelists selected following evaluation • Size is set at conclusion of process • Indicative or set price • Operates for a finite period • Re-opens at conclusion of period | <ul style="list-style-type: none"> • Part of a procurement process • Basis for select tendering • Conditions for participation stated • Cannot limit size • No pricing • Can operate indefinitely • Open continuously or annually |

5.13 Multiple-stage tenders

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

- gain market knowledge and clarify the capability of suppliers (however, it will not be used as a substitute for conducting market research);
- shortlist qualified tenderers; and
- obtain industry input.

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

- the best way to meet the requirement is unclear;
- it is considered appropriate to pre-qualify businesses and restrict the issue of formal tenders (to reduce the cost of tendering);
- there are benefits which cannot be obtained by researching the market through conventional means; and
- maximum flexibility is required throughout the procurement process.

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

- **Expression of interest** - an expression of interest (sometimes called a registration of interest) is generally used to shortlist potential suppliers before seeking detailed offers. Suppliers are short listed on their technical, managerial and financial capacity, reducing the cost of tendering by restricting the issue of formal tenders to those suppliers with demonstrated capacity.

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- **Request for proposal** – may be used by Council when a project or requirement has been defined, but where an innovative or flexible solution is sought.
- **Request for Tender**- may be used by Council when a project requirement has been defined to solicit offers from businesses capable of providing a specified work, good or service.
- **Request for information** – may be used at the planning stage of a project to assist with defining the project. Council will not issue a request for information to identify or select suppliers.
- **Closed tender process** – may be used if the initial specification is well defined and an expression of interest or request for proposal has already been used to shortlist suppliers. Suppliers will be informed in advance that only those short-listed will be requested to tender.

Flinders Council is mindful of the following aspects when conducting a multiple-stage tender process:

- the same mandatory requirements regarding advertising and seeking at least one bid from a local business, that apply to a public tender process;
- that a short-listed party cannot be engaged without going through a more detailed second (tender) stage process unless approved by an absolute majority of Council; and
- when using a Request for Information, issues relating to intellectual property and copyright must be clarified prior to using the information provided to prepare the Request for Tender.

5.14 Process

The General Manager will invite expressions of interest, and use the list of suppliers who lodge an application as the basis for inviting potential suppliers to submit tenders.

The General Manager is to publish at least once in a daily newspaper circulating in the municipal area a notice requesting any interested supplier to submit an expression of its interest to supply the good or service required. The notice is to specify:

- the nature of the goods or services the Council requires;
- any identification details allocated to the contract;
- where the expression of interest is to be lodged;
- particulars identifying a person from whom more detailed information relating to the tender may be obtained;
- the period within which the expression of interest is to be lodged.

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

- details of the goods or services required;
- the criteria for evaluating expressions of interest;
- the method of evaluating expressions of interest against the criteria;
- details of any further stages in the tender process; and
- a reference to Council's Code for Tenders and Contracts.

The General Manager will then send an invitation to tender to all of the suppliers that expressed an interest in providing the good or service required unless it has stated specifically in the notice that the Council may limit the suppliers that it will invite to participate.

Provided that the notice requesting expressions of interest states specifically that Council may limit the suppliers Council will invite to participate and the relevant requirements and evaluation criteria have been specified in the notice or associated documentation, the General Manager in determining the suppliers that will be invited to tender may:

- in assessing the technical ability, assess the extent to which an application meets the technical performance specifications of the procurement; and
- limit the number of businesses that it invites to tender, based on its rating of applications, provided that the largest number of potential suppliers selected, is consistent with an efficient tender process.

The General Manager will:

- ensure that the evaluation criteria that is used to make a decision at the first stage of the process (expression of interest), is consistent with the criteria to be used for the second (tender) stage; and
- not directly engage a short-listed party without going through a more detailed second (tender) stage process unless approved by an absolute majority of Council.

6.0 Exemptions

The ~~Local Government (General) Regulations~~ Regulations 2015 provide that Councils must publicly invite tenders for the purchase of goods and services with a value in excess of ~~\$100,000~~ \$250,000. However, Flinders Council has resolved to use the discretion available to it and set the amount at \$100,000.

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Flinders Council is committed to:

- encouraging open and effective competition between suppliers with the objective of obtaining value for money; and
- enhancing opportunities for local business.

As per the Regulations, Flinders Council may not issue a tender or use a quotation process where the goods and services sought relate to:

- (a) an emergency if, in the opinion of the General Manager, there is insufficient time to invite tenders for the goods or services required in that emergency;
- (b) a contract for goods or services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth;
- (c) a contract for goods or services supplied or provided by another council, a single authority, a joint authority or the Local Government Association of Tasmania;
- (d) a contract for goods or services obtained as a result of a tender process conducted by –
 - (i) another council; or
 - (ii) a single authority or a joint authority; or
 - (iii) the Local Government Association of Tasmania; or
 - (iv) any other local government association in this State or in another State or a Territory; or
 - (v) any organisation, or entity, established by any other local government association in this State or in another State or a Territory;
- ~~(d)~~(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;
- ~~(e)~~(f) a contract for goods or services that is entered into at public auction;
- ~~(f)~~(g) a contract for insurance entered into through a broker;
- ~~(g)~~(h) a contract arising when a Council is directed to acquire goods or services due to a claim made under a contract of insurance;
- ~~(h)~~(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) remoteness of the locality; or
 - (iii) the unavailability of competitive or reliable tenderers;
- ~~(i)~~(j) a contract of employment with a person as an employee of the council.

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Point ~~(h)~~(i) above may be applied for one or more of the following reasons:

- where it can be established that there is only one supplier of a particular product or service and there is no appropriate substitute available, or where alternative options are not viable or do not provide value for money;
- where the original product or service has been selected through an open tender process and the request for exemption relates to the proposed purchase of an upgrade or addition to the existing system, and there are limited supply options;

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- the product is being trialed to assist in the evaluation of its performance prior to a large scale purchase for which open tenders will be called;
- to assist in the development of a new product in conjunction with a private sector business;
- where the cost to Council and to suppliers would outweigh the value for money benefits of calling public tenders;
- projects of genuine urgency (e.g. in the case of a natural disaster or similar emergency circumstances); or
- other exceptional circumstances, where conclusive justification of the request is provided.

Where an exemption has been granted on the basis of point (a) and (h) above, Flinders Council's Annual Report will record the following details:

- (i) a brief description of the reason for not inviting public tenders;
- (ii) a description of the goods or services acquired;
- (iii) the value of the goods or services acquired; and
- (iv) the name of the supplier.

7.0 Complaints Process

Tasmanian Councils are provided with broad competency powers under the *Local Government Act 1993* to carry out the role of providing services to their communities.

The *Local Government Act 1993* also includes accountability measures under which Councils can be held responsible to their communities for their actions and decisions.

The resolution of complaints against Flinders Council is a responsibility of our Council. Information regarding Council's formal complaint resolution process is available in Council's Customer Service Charter.

In the first instance, complainants are encouraged to seek resolution through the manager in charge of Council's purchasing/tender process. If relevant, complainants are encouraged to seek a debriefing, if they have not already done so.

If a complainant is not satisfied with the response of Council's Manager in charge of the purchasing/tender process, the complainant is able to write to the General Manager providing copies of all correspondence and other relevant material. Council's General Manager will take whatever action is considered necessary to resolve the complaint. In certain circumstances, our Council may employ a Probity Auditor to investigate the complaint.

Flinders Council will maintain the following for any complaint made against Council in relation to a procurement activity:

- the date the complaint was made;

- the complainant's details (e.g., business name, contact details);
- a brief description of the complaint;
- action in progress (including dates actions are taken);
- the outcome (including whether the complaint was resolved or whether it was referred to another body for further review); and
- the response time.

8.0 Contract Renewals and Extensions

8.1 Contract Renewals

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

8.2 Contract extension

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

Contracts will only be extended:

- by an absolute majority of Council;
- following a full evaluation of the performance of the current contractor; and
- where the principles of open and effective competition are protected.

As a general rule, Council will not extend contracts if:

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

9.0 Disposals

Disposals are to be conducted so that the best return to Flinders Council is achieved. Disposal of land will be made in accordance with Division 1 of Part 12 of the *Local Government Act 1993*.

Flinders Council will only dispose of items that cannot be reused or recycled and with no commercial use or appreciable market value by dumping them at approved refuse sites or by destruction.

9.1 Disposals less than \$1,000

Council will dispose of items with a disposal value of less than \$1,000 at the discretion of the General Manager.

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9.2 Disposals greater than \$1,000

Council shall dispose of items with an estimated disposal value in excess of \$1,000 by way of tender, public auction, or trade-in and in any event an advertisement will be placed in the Island News-

When disposing items by tender Council may choose to advertise the item for disposal in specialist newspapers or journals, or in the appropriate classified section of the local newspaper (e.g., boats and marine if disposing of a boat), if these are more likely to attract appropriate interest.

10. Reporting

10.1 Annual Report

Our Council will publish in its Annual Report in relation to all contracts for the supply or provision of goods and services valued at or above \$100,000 (excluding GST), awarded or entered in the financial year, including extensions granted:

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

Where an exemption has been granted from a tender process [refer Section 6 point (a) and (h)], Council will report in our Council's Annual Report the following details:

- 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.

[PS Note: the Regulations now prescribe two categories for annual reporting requirements in relation to tenders and contracts. The change to the Regulations creates a category for annual reporting for the supply or provision of goods or services valued at or exceeding \$250,000 (ex GST), and another category for annual reporting for the supply or provision of goods or services valued at or exceeding \$100,000 (ex GST) but less than \$250,000. However, the current 10.1. above, is still compliant with the Regulations and therefore it is up to Flinders Council as to whether the amendment to the Flinders Council Policy Manual is made.]

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10.2 Reporting to Council

The General Manager will report at each Council meeting any instance, since the previous meeting, where a purchase of a good or service is made where a public tender or quotation process is not used.

11.0 Common Use Contracts

Where the Department of Treasury and Finance has established whole-of-Government contracts for the supply of goods or services to agencies and other authorised organisations, Council may choose to utilise the following whole-of-Government contracts:

| Contract | Title |
|-----------------|---|
| C106 | Cartage - Interstate Provision of express freight services throughout Australia. This contract provides government users with competitive rates for the following delivery services - next flight, overnight, 2 day economy, 3 day off-peak, prepaid satchels and international document and parcel freight. |
| C141 | Computer Software - Microsoft The contract is for the supply of Microsoft licenses through Open Government program (no minimum order size) and Enterprise Agreement program (minimum 250 licenses). |
| C150 | Computer Hardware and related Services Provision of computer hardware and related services via a manufacturer/reseller network. |
| P450 | Petroleum Products Provision of motor spirit and automotive diesel either in bulk or via a fuel card/reseller network, fuel oil, heating oil and kerosene. |
| V672 | Vehicles Provision of a comprehensive range of passenger and light commercial vehicles. |
| V675 | Vehicles Hire and Drive This contract covers the rental of passenger vehicles in Tasmania and throughout Australia |

Information on these contracts is available from the Department of Treasury and Finance's website at www.purchasing.tas.gov.au.

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Related Legislation, Regulations and Policies

Local Government Act 1993

Local Government (General) Regulations 2015

Responsibilities

The responsibility for ensuring that this policy is adhered to rests with all staff involved in the procurement of goods and services, particularly Management.