



CODE FOR TENDERS AND CONTRACTS

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1 Introduction

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

This Code is consistent with the Act and the Regulations and includes procedures and guidelines for prescribed matters.

The Act and Regulations require Council to invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above the Prescribed Amount.

This Code also addresses procurements valued at or below the Prescribed Amount.

This Code applies to the Flinders Council and Council's officers with respect to the purchase of goods and services and the management of tenders and contracts.

2 Definitions

In this document the following terms have the following meanings:

Act means the Local Government Act 1993;

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

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.

Consultant means- 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.

Council means the Flinders Council established under s.18 and s.19 of the Act;

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

EOI means 'Expression of Interest';

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

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

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

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

Prescribed Amount means the dollar figure prescribed in r. 23(1) of the Regulations which as at the date of this Code is \$250,000 (excluding GST);

Regulations means the Local Government (General) Regulations 2015;

RFQ means 'Request for Quotation';

RFT means 'Request for Tender'; and

Tender means a proposal, bid or offer that is submitted in response to a Request for Tender from the Council and includes a quotation being either a verbal or written request for offers from businesses capable of providing a specified work, good or service.

TRC means a Tender Review Committee which may be established by the General Manager from time to time comprised of Council officers appointed by the General Manager in relation to new procurement exceeding the Prescribed Amount.

3 Legislation

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

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

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

4 Aims of Code

The aims of this Code are to:

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

5 Scope of Code

5.1 Procurement procedures

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

In accordance with r.28 of the Regulations, this Code:

- a) promotes the principles set out in r.28(a) of the Regulations;
- b) establishes and maintains procedures to ensure all potential service providers are provided with the same information relating to the requirements of a tender or contract and are given equal opportunity to meet those requirements;
- c) establishes and maintains procedures to ensure that fair and equitable consideration is given to all tenders or quotations received;
- d) establishes and maintains procedures to ensure that Council deals honestly with, and is equitable in the treatment of, all potential or existing service providers;
- e) establishes and maintains procedures to ensure that prompt and courteous responses are given to all reasonable requests for advice and information from potential or existing service providers;
- f) seeks to minimise costs to tenderers of participating in the tendering process;
- g) protects commercial in confidence information;
- h) prescribes when 3 written quotations are required for contracts valued at less than the Prescribed Amount;
- i) establishes and maintains procedures for the use of multiple-use registers for contracts valued at less than the Prescribed Amount;
- j) establishes and maintains procedures for reporting by the General Manager to Council in relation to the purchase of goods or services in circumstances where a public tender or quotation process is not used; and
- k) establishes and maintains procedures for the review of each tender process to ensure that each tender process is in accordance with the Regulations and this Code;
- l) establishes and maintains procedures for:
 - (i) amending or extending a tender once it has been released;
 - (ii) opening tenders;
 - (iii) the consideration of tenders that do not fully conform with tender requirements;
 - (iv) debriefing unsuccessful tenderers; and
 - (v) handling complaints regarding processes related to the supply of goods or services.

5.2 Application of Code

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

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

6 Procurement Principles

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

6.1 Open and effective competition

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

In practice this means that Council will:

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

6.2 Value for Money

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

In practice this means that Council will:

- a) assess the contribution that the relevant goods and/or services make towards achieving Council's strategic plans or policies;
- b) weigh the anticipated benefits of a procurement against the costs of that procurement;
- c) perform an assessment of the risks associated with the procurement, including the preferred procurement method;
- d) assess how well the proposed goods and/or services meet Council's needs;
- e) assess the maintenance and running costs over the lifetime of a product;
- f) consider the relevant disposal value;
- g) have regard to any relevant time constraints;
- h) consider the impact of the procurement decision on the local economy, including but not limited to any impacts (both positive and negative) on industrial development and the creation of employment opportunities;
- i) consider the impacts (both positive and negative) of the procurement decision on the environment, taking into account the need to minimise waste and reduce the demand for goods and/or services which have a negative impact on the environment; and
- j) consider the impact of the procurement decision on local society, taking into account the need to eliminate discrimination and promote equal opportunity, training, and other identified social objectives.

6.3 Enhancement of the capabilities of local business and industry

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

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

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

6.4 Ethical behaviour and fair dealing

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

In practice this means that Council will:

- a) comply with all applicable legislative requirements, including the Act, the Regulations and this Code;
- b) conduct all business in the best interests of the Council;
- c) establish, maintain and document all tender and quotation procedures;
- d) be as effective and efficient as possible when sourcing, ordering and paying for goods and/or services;
- e) expect individuals involved in procurement processes to disclose any actual or perceived conflicts of interest;
- f) ensure that all specifications are clearly stated;
- g) ensure that any information or clarification provided to a potential service provider is also provided to all other relevant potential service providers;
- h) maintain confidentiality in its dealings with service providers and potential service providers, including the protection of commercial-in-confidence information;
- i) ensure that conditions of contract are not excessively onerous; and
- j) decline gifts or benefits offered by those involved in the procurement process, particularly from existing or potential service providers.

Expectations of service providers

6.4.2 Expectations of service providers

Council expects service providers to:

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

issued under such Acts and lawful requirements or directions of public and other authorities; and

- g) not offer gifts or benefits to any Council officer.

7 Procurement Methods

7.1 Overview of procurement requirements

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

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

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

Procurement Value	Minimum Requirement
\$3,000 and below	Minor Purchases Minor purchases relate to individually small purchases of goods, services, small appliances or equipment, stationary and other aspects where there is a known supplier. Wherever possible Council will seek to use local businesses (if available).
Between \$1000 and \$10,000	Purchase Orders Purchase orders relate generally to purchases of general goods and services that do not fall under the Minor Purchase category and where for practical reasons generally only one quotation is obtained. In doing so the rationale for doing so shall be recorded.
Between \$10,000 and \$50,000	Written Quotations Where possible, at least two written quotations will be obtained, of which Council will seek at least one from a local business (if available). Where for practical reasons only one quotation is obtained the rationale for doing so shall be recorded.
Between \$50,000 and \$100,000	Written Quotations As a minimum requirement written quotations will be sought by advertising in the Island News and on the Flinders Council website. Where possible, at least three written quotations will be obtained, of which Council will seek at least one from a local business (if available).
\$100,000 and greater	Public Tender As a minimum requirement tenders will be advertised in an edition of The Examiner newspaper and the next edition of the Island News. 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).

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 the Exemptions Section.

7.2 Procurement by Public Tender

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

7.2.1 Tender Procedures

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

7.2.2 Open Tenders

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

General Manager – open tender responsibilities

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

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

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

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

Service Provider – open tender responsibilities

In accordance with r.24(4) of the Regulation's, a person or entity making a tender must:

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

7.2.3 Multiple Stage Tenders

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

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

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

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

General Manager – Multiple-stage tender responsibilities

In accordance with r.26(3) of the Regulations, as the first stage of a multiple-stage tender process the General Manager will invite EOI's from prospective tenderers by causing to be published at least once in a daily newspaper circulating in the municipal area and such notice will specify:

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

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

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

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

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

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

Service Provider – multiple-stage tender responsibilities

A person or entity making an EOI must:

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

7.2.4 Tender Review Committee – Review of Tender Processes

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

Subject to its terms of reference, the TRC may:

- a) review each tender process to ensure compliance with the Act, the Regulations and this Code;
- b) perform reviews prior to advertising tenders and again prior to awarding a contract to a successful tenderer; and

- c) review and consider aspects of a tender including but not limited to the tender and evaluation process adopted, the final tender evaluation report and any other issue or information it considers relevant.

7.2.5 Extension of contracts entered into by tender

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

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

7.3 Standing contracts

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

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

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

7.4 Multiple-Use Register

7.4.1 Introduction

A multiple-use register is a list of suppliers who have satisfied the conditions for participation or inclusion on the register and are pre-qualified to supply certain goods and/or services to Council. Pursuant to r.25(1) of the Regulations, Council may establish a multiple-use register of service providers who meet criteria established by Council in respect to the supply of particular categories of goods and/or services.

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

7.4.2 Procedural requirements

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

In accordance with r.25(2) of the Regulations, Council will invite applications from suppliers for inclusion on a multiple-use register by publishing on Council's website and at least once in a daily newspaper circulating in the municipal area a notice specifying:

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

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

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

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

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

In accordance with r.25(6) of the Regulations, If Council accepts an application the General Manager will advise the applicant of the category for which the application is to be included on the multiple-use register.

In accordance with r.25(8) of the Regulations, each of Council's multiple-use registers will be reviewed by Council at least once every two (2) years.

In accordance with r.25(9) of the Regulations, Council will allow a service provider to apply for inclusion on the multiple use register at any time unless the service provider has made an application in the previous twelve (12) months and the application has not been accepted.

8 Monetary value of procurement

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

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

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

As per r.23(4) of the Regulations, Council will not 'split' a single procurement activity into two (2) or more separate contracts for the primary purpose of avoiding the requirement to publicly invite tenders.

9 Exemptions

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

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

- 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 another council, a single authority, a joint authority, the Local Government Association of Tasmania, any other local government association in the State of Tasmania or in another

- State or a Territory, or any organisation, or entity, established by any other local government association in the State of Tasmania or in another State or a Territory;
- e) a contract for goods or services in respect of which a council is exempted under another Act from the requirement to invite a tender;
 - f) a contract for goods or services that is entered into at public auction;
 - g) a contract for insurance entered into through a broker;
 - h) a contract arising when a council is directed to acquire goods or services due to a claim made under a contract of insurance;
 - i) a contract for goods or services if the Council resolves by absolute majority and states the reasons for the decision, that a satisfactory result would not be achieved by inviting tenders because of:
 - (i) extenuating circumstances; or
 - (ii) the remoteness of the locality; or
 - (iii) the unavailability of competitive or reliable tenderers; and
 - (iv) a contract of employment with a person as an employee of the council.

Without limiting the scope of the above may be applied for one or more of the following reasons:

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

10 Reporting Obligations

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

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

10.1 Annual Report

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

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

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

10.2 Reporting by General Manager

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

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

11 General Matters

11.1 Availability of Code

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

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

11.2 Delegation

Pursuant to the powers in s.22 of the Act, Council may delegate to the General Manager the power to enter into contracts for the procurement of goods and/or services. Further, Council may authorise the General Manager to make sub-delegations.

A copy of all relevant delegations and sub-delegations are recorded in Council's delegations register.

11.3 Goods and Services Tax (GST)

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

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

11.4 Work Health and Safety

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

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

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

11.5 Disputes

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

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

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

11.6 Evaluation Report

Any procurement following a tender shall follow a tender evaluation report which will document the selection of a successful tenderer to be submitted to the relevant approval authority (e.g. Tender Review Committee and/or General Manager). Council's evaluation reports include but are not limited to the following:

- a) a comprehensive record of the evaluation method
- b) the rationale used to select the preferred supplier, and
- c) whether it is recommended that negotiations should be undertaken, and on what basis; and
- d) reasons for overlooking lower priced tenders.

11.7 Review of Code

In accordance with s.333B(2)(d) of the Act, Council will review the contents of this Code at least once every 4 years.

Appendix A - Tender Procedures

(Regulation 28 (I))

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

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 to fulfil 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:

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

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

Tender Box

Council will provide a locked tender box at the designated tender lodgement location. The tender box will not be opened until the time set for the closing of tenders has elapsed. When opening Tenders, Council will ensure that tenders are:

- a) opened in the presence of a minimum of two authorised officers that are not associated with the preparation or future evaluation of the tender; and
- b) clearly identified and recorded.
- c) sent to the appropriate officer for evaluation.

Council staff will arrange for each tenderer to be provided with an acknowledgement that the tender has been received.

Email

Tenders received by email shall be saved in a separate drive on Council's server and an acknowledgement sent by return email. Tenders shall be

- a) clearly identified and recorded.
- b) sent to the appropriate officer for evaluation.

Late Tenders

All tenders received after the set closing time and date shall be clearly identified and recorded with the date and time of receipt. Council staff will arrange for each tenderer to be provided with an acknowledgement that the tender has been received and at the date and time that it was received. The tender shall be sent to the appropriate officer for recording.

Late tenders received would ordinarily not be considered but may at the absolute discretion of Council be set aside for potential later consideration. In potentially doing so Council will ensure that Council are not providing an advantage to that bidder over other bidders.

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

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 Council 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 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:

- a) were lodged after the closing time;
- b) are not signed where required;
- c) are incomplete - for example, questions have not been answered, pages are missing, or required documentation has not been attached (for example, insurance certificates);
- d) do not comply with mandatory conditions of tender; or
- e) fail to meet mandatory specifications.

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 all things being equal the tender is deemed to be of potential consideration compared with others received and
- c) if the costs and delays in retendering are considered significant to warrant the consideration.

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

(iv) Tender Debrief Unsuccessful Tenderers (reg.28(l)(iv))

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.

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

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

During this interview, the following will not happen:

- 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 Tender Evaluation Committee. 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 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.

(v) Handling of complaints Tender Debrief (reg.28(l)(v))

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 can 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:

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