

POLICY NO LG07

Code for Tenders and Contracts

DEPARTMENT:	Governance
RESPONSIBLE OFFICER:	General Manager
LINK TO STRATEGIC PLAN:	<p>Maintain financial viability and accountability in budgeting and administration</p> <p>Ensure Council fulfils its legislative and governance responsibilities and its decision making, supported by sustainable policies and procedures</p>
STATUTORY AUTHORITY:	<p>Local Government Act 1993</p> <p>Local Government (General) Regulations 2005</p>
OBJECTIVE:	<p>This Council is committed to a procurement system that will produce the best value for money, quality goods and services to our residents and ratepayers, open and effective competition, enhancement of the capabilities of local business and industry and that treats all tenderers in a timely and fair manner. To help achieve this, the Policy sets out the steps that the Council will follow when procuring and includes legislative compliance with respect to the Code for Tenders and Contracts</p>
POLICY INFORMATION:	<p>Adopted 19 March 2012 – Minute No. 03/12.15.4.069</p> <p>Amended 18 February 2013 – Minute No. 02/13.15.8.63</p> <p>Amended 16 September 2013 – Minute No. 09/13.15.6.263</p> <p>Amended 20 April 2015 – Minute No. 04/15.11.7.90</p> <p>Amended 14 December 2015 – Minute No. 12/15.11.4.318</p> <p>Amended 21 November 2016 – Minute No. 11/16.12.4.254</p> <p>Amended 16 December 2019 – Minute No. 12/19.12.5.294</p> <p>Amended 15 February 2021 – Minute No. 02/21.12.5.35</p>

POLICY

1. APPLICATION

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

With this Code, Council aims to achieve the Tendering principles of:

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

This Code:

- Is consistent with the Act and the Regulations; and
- Includes procedures and guidelines for any prescribed matter.

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 Council's offices during ordinary office hours; and
- Provide a copy of this Code to any interested party free of charge; and
- Publish a copy of this Code on Council's website.

The Act and Regulations require Council to invite Tenders for any Contract it intends to enter into for the supply or provision of goods or services valued at or above the legislated prescribed amount in the Regulations. Council has set its tender threshold at \$100,000 (excluding GST) and all tenders above this amount will be referred to Council for approval.

There are circumstances in which Council is exempt from undertaking the above processes. These circumstances are described in Section 9 of this document.

Adherence to this code provides for minimum acceptable levels of behaviour from those involved in the tender process but does not minimise all areas of potential risk and associated liability.

2. DEFINITIONS

Contractor - a contractor is defined as a person or organization, external to Council, engaged under a contract for service (other than as an employee) to provide specified services to Council. A contractor generally works under the supervision of a Council Manager to provide services which are not readily available in the Council.

Expression of Interest – is a means of identifying potential suppliers or contractors interested in a particular project which may ultimately submit a formal tender or quotation. This allows the Council to shortlist potential suppliers before seeking detailed offers, depending on technical, financial and managerial capacity, thus restricting the issue of formal tenders to those suppliers with demonstrated capacity.

Open/Public Tender – the formal process of publicly inviting offers through an advertisement in a local newspaper to supply goods and services, or purchase surplus items, normally involving specifications and detailed documentation.

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.

Tender – is a formal offer to supply goods or services at a stated cost. A tender may be public (advertised) or selective (bids from selected contractors sought).

Tender Committee – includes Elected members designated by Council to oversee the opening of Tenders and review recommendations of the Tender Evaluation Panel.

Tender Evaluation Panel – is formed of Council Officers for the purpose of reviewing Tenders according to the evaluation criteria and making recommendation to the Tender Committee/Council.

3. GUIDELINES

There are a number of 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 Council utilises based on the total dollar value of the purchase.

In all procurement, Council will allow “local businesses” a preferential procurement advantage of 7.5%. This means that, in considering verbal quotes and written quotes, those of a local business can be accepted if it is no more than 7.5% more than that of a competing quote. For consideration in tenders, this should be factored into that portion of the evaluation of the tender, where price is considered. For the purposes of this Policy, a local business is defined as one which is operating from within the boundaries of the Break O’Day municipality.

Procurement Value (excluding GST)	Minimum Requirement
\$5,000 and below	No quote required
Between \$5,000 and \$10,000	Verbal Quotations Where possible, at least three (3) verbal quotations will be obtained, of which we will seek at least one (1) from a local business* (if available).
Between \$10,000 and \$100,000	Written Quotations Where possible, at least three (3) written quotations will be obtained, of which we will seek at least one (1) from a local business* (if available).
\$100,000 and greater	Public Tender <ul style="list-style-type: none"> Tenders will be advertised in the Saturday edition of The Examiner newspaper. Each of our tenders will be advertised on our own website. We will seek at least one (1) tender from a local business (if available)

However, where procurement is undertaken with a value greater than \$50,000 or through an advertised process, and the officer or evaluation panel have determined to progress other than with the cheapest quote/tender, the matter will be referred for review by the Tender Committee. It is noted that the requirement for tender is set at \$250,000 and Council has adopted a lower amount of \$100,000. All values are excluding GST.

4. STANDING ARRANGEMENTS

For the procurement of goods and services that are required on a regular basis, testing of the market may only be required no less than every two (2) years. This may be by quotation as per this policy (eg cleaning products or contracted roadside slashing) or a tender process eg casual plant hire for a register of pre-approved contractors. Any such process should be able to take into account changes to the market (eg

cleaning products reviewed if new products become available) or a new contractor to the municipality being allowed to tender inclusion on the register.

Price may not necessarily be the only factor in any procurement decision but any decision should be justifiable and, if necessary, documented.

Each Council employee has an authorised limit as to procurement expenditure. These limits are reviewed from time to time.

5. PRINCIPLES

- 5.1 To achieve its objective, Council will ensure that the tender process is fair to all parties, and use its best endeavours to demonstrate that fairness to tenderers and potential tenderers. More specifically, it will:
- a) Clearly separate its role as a “purchaser” from that as a “provider” of services;
 - b) Apply the same conditions of tendering to an in-house tenderer as it does to an external tenderer in each tendering process;
 - c) Produce tender documents that clearly specify the Council’s required outcomes to allow tenderers to bid for and price work accurately;
 - d) Package work put to tender in a manner which encourages competition and the best outcome for residents and ratepayers;
 - e) Not participate in, and actively discourage other parties from, improper tendering practices such as collusion, misrepresentation and disclosure of confidential information;
 - f) Require any conflict of interest to be disclosed immediately;
 - g) Have regard to the cost of tendering to tenderers, residents and ratepayers and seek to contain that cost.
- 5.2 Council promotes a policy of supporting local business, ie within the municipal area, in the first instance where the local business is able to supply goods and services which are equivalent value and standard to external sources.

6. MOTOR VEHICLES AND PLANT

Motor Vehicles and Plant may only be purchased where a specific budget has been allocated for their procurement or by a specific decision of Council.

As well as procurement through the quote/tender options identified in the guidelines, Motor Vehicles and Plant may have access to State or Local Government purchasing arrangements with pre-approved tendering processes.

Where a trade-in is potentially part of the procurement process (that is, a vehicle being purchased is replacing an existing vehicle or vehicles are being disposed of to fund a new vehicle):

- At least two (2) quotes must be obtained for purchase/trade-in
- The trade-in value is to be used as the undisclosed reserve in sale by tender process
- Disposal will be to the greater of tendered or traded-in price

7. TENDERING PROCESS

7.1 Specifications Council is committed to delivering quality services to its residents and ratepayers. To ensure clarity and accountability in service delivery, Council will:

- **Develop Clear Specifications:** Specifications will outline the Council's expectations, focusing primarily on outcomes and quality requirements. Where necessary, both input and output requirements may be included.
- **Performance Standards:** Tender documents will require proposals to detail how the tenderer will meet specified performance standards and measure service user satisfaction.
- **Compliance Requirements:** Tenderers must comply with Council's Occupational Health and Safety Policy as part of their proposal.
- **Stakeholder Consultation:** The Council may consult service users and current service providers (both public and private) when developing specifications to ensure all relevant requirements are considered.
- **Asset Disclosure:** Specifications will detail any Council assets available to tenderers and specify the terms, conditions, and costs associated with their use.
- **Confidentiality of Specifications:** Final specifications will remain confidential until formally approved and publicly released by the Council.

- 7.1 Public notice is required under the Act to start a tender process. The Council will advertise in the Public Notice Section of the Saturday edition of The Examiner Newspaper and may advertise in other newspapers or publications where appropriate. The Council will also place information on the tender on its website.

When advertising the Council will specify:

- a) The nature of the goods or services required;
- b) Any identification details allocated to the contract;
- c) Where the tender is to be lodged;
- d) That tenders will be accepted via facsimile and/or email;
- e) Particulars identifying a person from whom further or detailed information relating to the tender can be obtained; and
- f) The period within which the tender is to be lodged.

- 7.2 Variations to a tender – where Council seeks to amend or extend the closing date for a tender it will advertise the variation/s in the Examiner newspaper and on its website. If tender documents have been issued or a written tender has already been received then the General Manager will ensure the notification of recipients of the tender documentation and any tenderer in writing of the variation/s to the tender.

- 7.3 Expression of Interest – Council may use an “expression of interest” process before it invites tenders. If so, it will advertise publicly the purpose and nature of the contract or project and the date by which it will invite tenders. The aim at the expression of interest stage is not to elicit tenders, but rather to assess the capacity of the respondents to undertake the work or project, and to refine the specifications. The Council will make the evaluation criteria for registration available to all respondents.

Council may invite tenders from some, all or none of the registrants, by the advertised date. If the Council does not invite tenders by that date, it will write to all registrants advising when tenders are to be invited. Respondents who are not invited to tender will be advising in writing. Council will use this list of registrants to invite tenders for the advertised contract or project only.

- 7.4 Invitation to Tender – Council will offer the same tender documents to all those who respond to an invitation to tender. A copy of this Code will be attached to all tender documents.

Council may impose a fee for tender documentation related to the cost of printing the tender documentation. Council will not impose any additional fee for tender documentation unless it refunds the fee to each tenderer who submits a conforming tender. Council will not request a tender deposit. In all cases Council will seek to minimise the cost to suppliers of participating in the tender process.

The tender documents will include the tender evaluation criteria and identify the order of importance accorded to the criteria.

In addition, the Council will ensure that prospective tenderers are provided with all relevant information, including:

- a) Details of the goods or services required;
- b) Details of the duration of the contract, including extensions;
- c) Any mandatory tender specifications and contract conditions; and
- d) A reference to the Council's code of tendering.

If Council gives advice, written or verbal, to a respondent clarifying the meaning of the tender documentation, it will give the same information to all respondents in writing. Council will keep a written record of any such verbal advice. Council will respect the confidentiality of a respondent who discloses information which has commercial or intellectual property value. Council will consider conducting a pre-tender briefing and may determine not to give additional information apart from the briefing.

Tenderers will generally be given a minimum of 21 days from the date on which tenders were invited in which to submit tenders. All tenders must be in writing and in Council's required format, if stated. The submission period is determined by the nature of the tender and Council will advise respondents in writing when it invites tenders if a longer or shorter submission period is to apply.

Late tenders will be treated as a non-conforming tender.

Any proposal that does not conform to the tender conditions may be rejected as non-conforming. The General Manager will ensure the notification of any tenderer of the rejection and the reasons for the rejection.

Council will acknowledge receipt of all tenders in writing.

- 7.5 In-house Tenders – As an employer, Council will assist its staff to become more competitive. As the same time, Council is aware that competition must be fair, and be seen to be fair, to all parties.

Accordingly, Council will treat an in-house tenderer on the same terms as an external tenderer. Council will ensure there is a clear separation between the in-house tenderers and those who have responsibility for evaluating the tenders.

In-house tenders will be prepared on the basis that all direct costs and indirect or overhead costs attributable to the tender are included.

In allocating overhead costs to in-house tenders, a Council will only exclude those costs which it would continue to incur even if all its services were contracted out. The excluded overhead costs are limited to:

- **Governance Costs:** conduct of elections; administrative support for Councillors; Council meetings; making and enforcing local laws; property valuations; making and levying rates and charges; other statutory duties not related to the tender;
- **Strategic Management of Services Costs:** long term planning and supervision of all services, including tendering and contract administration costs;
- **Core Corporate Costs:** administrative support for the governance and strategic management of services functions.

- 7.6 Tender evaluation – Council will establish a Tender Committee and Tender Evaluation Panel. The Tender Committee will consist of at least two (2) elected members, appointed by Council, The Tender Evaluation Panel will consist of management/staff appropriate to the consideration of each specific tender. As a matter of good practice, where there is an in-house tender, at least one member of the Panel will be a person who is independent of Council and who has expertise relevant to the tender. The tender evaluation report will disclose the names of the panel members. No member of a panel will be involved in preparing the in-house tender, be responsible for direct supervision of the in-house tenderer if it is successful, or have any interest in an external tender.

The Committee will officially open the Tenders. The Panel will evaluate tenders according to the tender evaluation criteria which may or may not be outlined in the tender documentation.

The Panel will provide a written tender evaluation report on its reasoning behind awarding/recommending a particular tender, to the Committee and consider any recommendations of the Committee

- 7.7 Award of contract – Council may negotiate with tenderers to determine the award of the contract but must have regard to the scope of the invitation to tender at all times. Council will not trade the process of one tenderer against that of another tenderer. Council will exhaust negotiations with one tenderer before beginning negotiations with another tenderer.

The decision to award a contract will be made by Council or its delegated officer. If there is an in-house tender, the written report on the award of the contract prepared by the tender evaluation panel will be presented to meeting of Council. Council will award the contract on the basis of the best quality and value for money for the community, keeping in mind the recommendations of the Panel and Committee, based on the criteria for evaluation.

Council will promptly notify the successful tenderer by telephone and in writing, and unsuccessful tenderers will be notified in writing. It will advise them of:

- The successful contractor
- The tender outcome, although tender price will not generally be disclosed due to Commercial in Confidence considerations.
- The reasons for the award of the contract

Unsuccessful tenderers may request feedback on their tender, if desired, including, but not limited to, general advice on price competitiveness

- 7.8 Multiple-stage tenders and Multiple-use registers – Council does not generally utilise multiple-staged tenders or multiple-use registers. If Council chooses to use a multiple-stage tender or a multiple-use register, Council will comply with the requirements of Local Government (General) Regulations 2015 on each and every occasion of that use.

8. STRATEGIC ALLIANCES

Rather than traditional tendering processes, Council may choose to procure goods and or services through contract arrangements already established and administered by other organisations, including:

- Local Government Association of Tasmania (LGAT) through the National Procurement Network;
- State Government Contracts; and
- Any other purchasing group of which Council is a member.

9. COMPLAINTS PROCESS

Council will deal promptly with any complaints about its tendering process. Each complaint will be recorded in writing and the complainant given an opportunity to discuss his or her complaint with the General Manager or a delegated senior officer.

10. EXEMPTIONS

The *Local Government (General) Regulations 2015* provide that Councils must publicly invite tenders for the purchase of goods and services with a value in excess of \$250,000 (excluding GST). Council has set its tender threshold at \$100,000 (excluding GST) and all tenders above this amount will be referred to Council for approval.

There are circumstances in which Council is exempt from undertaking the above processes.

Council may choose not to 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 in respect of which the Council is exempted under another Act from the requirement to invite a tender;
- e) A contract for goods or services that is entered into at public auction;
- f) A contract for insurance entered into through a broker;
- g) A contract arising when the Council is directed to acquire goods or services due to a claim made under a contract of insurance;
- h) 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
 - j) Remoteness of the locality; or
 - k) The unavailability of competitive or reliable tenderers;
- l) A contract of employment with a person as an employee of the Council.

11. REPORTING

- 11.1 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) A description of the contract;
 - b) The period of the contract;
 - c) The periods of any options for extending the contract;
 - d) The value of any tender awarded or, if a tender was not required, the value of the contract ex. GST;
 - e) The business name of the successful contractor; and
 - f) The business address of the successful contractor.
- 11.2 Where an exemption has been granted from a tender process the following details will be reported in Council's Annual Report:
- a) A brief description of the reason for not inviting public tenders;
 - b) A description of the goods or services acquired;
 - c) The value of the goods or services acquired; and
 - d) The name of the supplier.

12. CONFIDENTIALITY

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

13. 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.

14. RELATED DOCUMENTS

- Contractor Handbook
- Australian Standards on Contracts
- Grievance Policy
- Customer Service Charter
- Vehicle Policy
- Disposal of Assets Policy
- Official Purchase Orders procedure

15. MONITORING AND REVIEW

The Policy will be reviewed every three (3) years in line with the Council's Policy Framework or earlier in the event of major changes to legislation or related policies, procedures or if deemed necessary by the General Manager.