



SHIRE COUNCIL
Blayney

Procurement of Goods & Services Policy

Policy	3G
Officer Responsible	Director Corporate Services
Last Review Date	14/02/2023

Strategic Policy

Scope

This Procurement of Goods and Services Policy applies to all procurement processes and activities undertaken by Council, including purchasing, ordering, tendering, contracting and disposals. It applies to all types of goods and services but does not apply to real property acquisitions and other non-procurement expenditure, such as sponsorships, donations, and employment contracts.

The Procurement of Goods and Services Policy applies to anyone who undertakes or is involved in procurement activities. This includes Councillors, staff and delegates.

Compliance

The Procurement of Goods and Services Policy, conditions of tender and conditions of contract must be strictly observed at all times. Procurement activities will be periodically audited.

Procurement Procedures and Supporting Documents

The Corporate Services Directorate will develop and maintain procedures, templates, tools and guidelines necessary to give practical effect to the Procurement of Goods and Services Policy.

Fundamental Procurement Principles

All procurement activities will be conducted in accordance with seven fundamental principles.

1. Ethical behaviour, Integrity, Probity and Fair Dealings

Council values the highest ethical and professional standards in its business dealings. Council will ensure the verifiable integrity of its procurement activities through transparent processes. Council will respect the rights of tenderers and contractors, including confidentiality and the expectation to be treated fairly at all stages of the procurement process.

Council must not engage in any practices that aim to give a potential tenderer, service provider or business an advantage over others, nor engage in any form of collusive practice. A Councillor or Council employee with an actual or perceived conflict of interest must address that interest without delay in accordance with Council's Code of Conduct.

The procurement of services should be conducted in a way that imposes as far as practicable the same level of accountability and responsibility on the service provider as would exist if the Council carried out the services itself. In pursuit of ethical behaviour, staff will, for example:

- Disclose to the General Manager any possible conflict of interest; where a potential conflict relates to the General Manager, it will be disclosed to the Council in accordance with the Local Government Act 1993
- Deal with all suppliers in an honest, fair and equitable manner
- Respect all in-confidence information received and not use it for personal gain, or to prejudice fair and open competition
- Not accept money, goods, loans, credits, purchasing incentives, services or prejudiced discounts
- Not use Council's name or purchasing power to make purchases other than for Council use during the procurement of services. In this regard, Staff will ensure that their close associates also do not receive an advantage in relation to a Council procurement.

A tenderer will be immediately excluded from a procurement process where:

- A conflict arises or
- There is inappropriate lobbying of the Council or
- There is a behaviour that might reasonably be regarded as seeking to solicit favourable treatment for the procurement process including by the offering of gifts or benefits.

2. Value for Money

Council seeks to achieve value for money in all its procurement activities. Council will select goods, services and suppliers that represent the best overall value for Council, not necessarily the lowest priced conforming offer.

Value for the community is the core principle underpinning Council's procurement system. This will involve a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement cycle. Value for money is not restricted to price alone. When assessing value for money, consideration shall also be given to:

- The advancement of Council and Local Government priorities
- The non-cost factors such as fitness for purpose, quality, service and support, and sustainability considerations
- The cost related factors including whole-of-life costs and transaction costs associated with acquisition, use, holding, maintenance, and disposal.

3. Open and Effective Competition

Council recognises the commercial and economic benefits of open and effective competition. Council will encourage healthy competition in the markets from which it purchases.

4. Cooperation

Council will approach its procurement dealings in good faith and in a spirit of cooperation. Where appropriate, Council will work proactively with tenderers, contractors and third parties (such as other Councils or peak industry bodies) to improve overall outcomes for the community.

5. Sustainable and Social Procurement

Council is committed to sustainable procurement. Council will support the use of sustainable products, materials, processes and services.

Council will, when evaluating quotations or tenders, take into consideration the anticipated impact on the environment and show such consideration in their evaluation documentation. To achieve this, Council officers will endeavour to adhere to the following objectives wherever reasonably possible:

- Minimise unnecessary purchasing – only purchase when a product or service is necessary.
- Minimise waste – purchase in accordance with avoid, reduce, reuse and recycle strategies.
- Save water and energy – purchase products that save energy and/or water.
- Minimise pollution – avoid purchasing products that pollute soils, air or waterways.
- Non-Toxic – avoid purchasing hazardous chemicals that may be harmful to human health or ecosystems.
- Greenhouse benefits – purchase products that reduce greenhouse gas emissions.
- Biodiversity & habitat protection – purchase in accordance with biodiversity and conservation objectives.

Council understands the importance of social procurement. Where suitable and practicable, Council will investigate and procure goods and/or services from suppliers such as the following:

- Indigenous Contractors & Suppliers; and
- Australian Disability Enterprises (ADEs).

6. Risk Management

Council will implement systems within its procurement process to identify and manage risks, including, but not limited to Health and Safety risks, fraud prevention and legal compliance.

7. Support for Local Industry

Council recognises the importance of employment growth in the Shire. Council will structure its procurement activities to encourage the development of local employment opportunities

8. Modern Slavery

“Modern slavery” is defined in the Modern Slavery Act 2018 (NSW) as any conduct constituting a modern slavery offence within the meaning of that Act and any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of organisations.

Council will not engage with any vendors that engage in Modern Slavery practices.

RESPONSIBILITIES

Responsibilities for this Policy is as follows:

Councillors and Administrators

The role of Councillors or the Administrator(s) is to provide the strategic direction for this policy and ensure it complies with legislative requirements. When determining a tender, a Council decision should be made in the accordance with the objectives of this policy. The Council will also determine the General Manager’s delegations which will influence how this policy is executed.

General Manager

The General Manager is responsible for determining the appropriate delegations to Council staff to enable them to administer and perform procurement activities in a way that promotes integrity and value for money.

Chief Financial Officer

The Chief Financial Officer is responsible for the implementation of this policy. The Chief Financial Officer will establish internal controls to ensure the execution of this policy is in accordance with its intended outcomes. The Chief Financial Officer is responsible for regularly reviewing this policy and the Procurement Guidelines to ensure they are congruent and ensuring the reporting requirements of this policy are completed. The Chief Financial Officer will provide sound, reliable advice to the Council and General Manager on procurement matters.

Council staff

Council staff must adhere to this policy and the Procurement Guidelines whilst conducting or participating in a procurement activity. Council staff are also to act in accordance with Council’s Code of Conduct and are required to only procure goods and services applicable to their delegated authority for the use of Council. Council staff must ensure that engagement of a supplier is conducted through issuing a formal commitment from Council (or other third parties) by using a Purchase Order or other form of agreement (excluding Credit Card purchases).

Contractors and Suppliers

Suppliers must act in good faith and ethically in accordance with Council’s Code of Conduct when participating in a Council led procurement activity. Code of Conduct and Work Health and Safety provisions extended to when a contractor or supplier is engaged and delivering a service or providing a good on behalf of Council.

POLICY DIRECTIVES

Council shall undertake its procurement of goods and services activities in accordance with the following directives.

1. Statutory Requirements

The Local Government (General) Regulation 2021 is particularly relevant to the tendering process; however, various Acts and Regulations apply to Council's diverse range of procurement activities. The Procurement of Goods and Services Policy is intended to supplement these instruments. Any inconsistency that may arise between the Procurement of Goods and Services Policy and a relevant Act or Regulation, shall be resolved in favour of the Act or Regulation.

Officers shall maintain a working knowledge of the Acts and Regulations applying to the procurement activities they undertake.

2. Conduct of Officers

Officers shall conduct themselves with the utmost integrity and professionalism when undertaking procurement activities. Care shall be taken to ensure the proper management of conflicts of interest and other issues that may affect the integrity of procurement activities. Council's Code of Conduct shall be strictly always observed.

3. Delegations

Officers shall not make procurement decisions outside of their delegated authority. Procurement decisions shall not be divided or restricted, nor any other process engaged in, for the purpose of circumventing delegation limits.

General Application of Delegation Limits to Procurement

Most procurement decisions are subject to delegation limits. Such procurement decisions must be made by an officer with a delegation limit sufficient to cover the value of the procurement exercise. A decision with a value in excess of the General Manager's delegation limit must be made by Council resolution.

Delegation limits apply to procurement decisions that create a financial commitment or a commitment to provide ongoing business opportunities. This includes the approval of requisitions, one-off purchases, one-off contracts, discretionary contract variations, the exercising of contract options and orders against existing period contracts. It also includes the approval of period contracts including standing offer arrangements and pre-qualified supplier panels.

4. Determining the 'Delegations Value' of the Procurement

The relevant value, for delegation purposes, is simply the face value of the purchase or contract (inclusive of GST).

5. Delegations and Contract Variations

Variations fall into two categories, discretionary and non-discretionary. Discretionary variations involve a decision to increase the scope of a contract (for example, by adding extra requirements or product lines) and consequently increase the level of financial commitment. Discretionary variations must be approved by an officer (or Council) with a delegation limit sufficient to cover the value of the variation.

In some instances, a contract price can alter due to the application of pre-agreed terms (for example, a price adjustment formula, a measured quantity clause, a latent condition clause or an expense reimbursement clause). Such alterations are often referred to as variations however, they are non-discretionary in nature. Although they may require some professional skill to calculate or verify, they do not involve a 'decision' to increase the scope of the contract. Nevertheless, to provide for sound administrative governance such non-discretionary variations shall also be subject to delegation limits up to \$250,000 in value. Non-discretionary variations over \$250,000 in value do not need to be approved by Council but must be approved by the General Manager.

Pursuant to the Local Government Act s.55(3)(n)(ii) a delegation limit of \$150,000 will apply to Discretionary variations where Council invites a contract involving the provision of services where those services are, at the time of entering the contract, being provided by employees of the council.

For general reporting and accounting purposes non-discretionary variations shall be recorded and tracked in the same way as other variations.

6. Budget Constraints

All procurement is subject to approved budgets. Procurement of Goods and Services Policy thresholds and delegation limits operate in addition to (not in place of) any budget constraints.

7. Number of Firms to be invited

Council shall invite sufficient offers to provide a reasonable degree of competition for the level of expenditure involved, without creating undue administrative cost for Council or the invitees.

8. Intention to Proceed

Council shall generally not invite offers without a firm intention to proceed with the procurement. Where it is necessary to invite offers on a contingency basis this shall be clearly communicated to participants. Where it is necessary to invite the submission of indicative pricing for estimating or planning purposes this shall be clearly communicated to participants. Where Council intends to consider an existing common-use procurement arrangement along with invited tenders this shall be clearly communicated to participants (see also Common-Use Government Procurement Arrangements).

9. Public Invitations to Tender

All public invitation processes shall be managed in accordance with the relevant elements of the Local Government (General) Regulation 2021, regardless of whether or not the Regulation applies to the contract.

10. Offers

All offers made in response to a public invitation or for a contract greater than \$250,000 in value must be received via a formal tender box process, be it electronic or physical, regardless of whether or not the Local Government (General) Regulation 2021 applies.

11. Late Offers

Late offers received via a formal tender box process shall be handled in accordance with the relevant elements of the Local Government (General) Regulation 2021, regardless of whether or not the Regulation applies to the contract.

Late offers for minor procurement exercises (i.e. not closing via the tender box) may be considered if the approving officer is of the opinion that the circumstances of the offer do not compromise the integrity of the process.

12. General Communications

Wherever practical, communications with suppliers, contractors and tenderers shall be in writing (electronic or hard-copy). Where this is not practical file notes or formal minutes shall be recorded in an appropriate Council system.

13. Unsuccessful Offers

Council shall generally provide feedback to unsuccessful offerors if requested. Where the contract value exceeds \$250,000 at least two Council officers shall participate in the feedback session. Written records shall be made and recorded in an appropriate system.

14. Successful Offers

Successful offers shall be notified by the issue of a Council Purchase Order. Other correspondence may also be issued however a supply will not be binding without the issue of a Council Purchase Order.

15. References

Officers shall not provide written references to suppliers or contractors. Officers may provide verbal references to appropriately identified persons, on issues relating to specific contract performance. File notes shall be made.

16. Common-Use Government Procurement Arrangements

Where Council does not have its own procurement arrangement for a particular good or service, common-use arrangements (such as, Central West Joint Organisation, Local Government group arrangements, NSW Government arrangements and Commonwealth

Government arrangements) may be used. Where a common-use arrangement exists, tenders from other contractors may be sourced, however the invitation documents must state that a common-use Government procurement arrangement exists for this item and will be considered as part of Council's tender process.

17. Emergency Situations

In some circumstances an urgent purchase may be required to meet Council's obligations regarding safety, asset protection, environmental protection or critical service provision. If such a situation arises **and** there is insufficient time to comply with Procurement of Goods and Services Policy or delegation limits, then the most senior officer available may approve an emergency procurement exercise.

An emergency procurement exercise should comply, to the maximum extent possible, with the policies and procedures that would normally apply.

All emergency procurement exercises (and the circumstances leading to them) shall be documented and reported to the relevant Director.

18. Reporting Obligations

Reporting of Tenders to Council

In accordance with the General Manager's instrument of delegation, any tenders that were not engaged through a prescribed agency and have a value greater than \$250,000 (inclusive of GST) are to be reported to Council.

Statutory Reporting

Council will fulfil its reporting obligations of any procurement activities in accordance with legislative requirements. This includes:

- Reporting of contracts entered above \$50,000 (inclusive of GST) as a part of the Quarterly Budget Review Statement for the corresponding quarter.
- Register of contracts entered above \$150,000 (inclusive of GST) as a part of the Government Information (Public Access) Review Statement 2009.
- Modern Slavery reporting obligations as outlined by the Anti-Slavery commission within Council's Annual report.

Any additional statutory reporting requirements that eventuate after the adoption of this policy will be reported upon as required.

19. Integrity, Dignity and Respect

Council treats all persons with courtesy and respect. Council officials will demonstrate fair and consistent decision-making, ensuring probity at all times.

20. Breaches of this policy

A breach of this policy by a Council Officer will be dealt with in accordance with Council's Code of Conduct Policy. The Code of Conduct Policy articulates the standards of ethical behaviour expected of Council officials and external service providers in their dealings with Council.

Evidence of corrupt and/or unethical conduct by a Council official could lead to (but not limited to):

- Disciplinary action;
- Dismissal;
- Investigation for corruption, inappropriate or unethical conduct; and
- Referral of the matter for criminal investigation.

Evidence of corrupt and/or unethical conduct by a contractor or supplier participating in a procurement activity or engaged to conduct works on behalf of Council could lead to (but not limited to):

- Tender disqualification;
- Contract termination;
- Loss of future work with Council;
- Investigation for corruption, inappropriate or unethical conduct; and
- Referral of the matter for criminal investigation.

21. Complaints Management

Any complaints or grievances about this Policy from internal or external sources need to be submitted in writing and addressed to the General Manager. The complaint/grievance will be reviewed and responded to in line with Council's Complaint Handling Policy and Procedure.

When a possible breach of this policy has been identified, the matter may be dealt with in accordance with Council's Public Interest Disclosures Policy. This includes cases of maladministration, corrupt conduct, serious and substantial waste, violation of government information or criminal activity.

22. Exemptions from Purchase Orders

Council shall develop a list of exemptions from purchase order generation as part of its operational procedures to allow seamless administrative operations. This list may change from time to time based on Council's operational requirements.

23. Related Information

- Legislation, Regulations and Guidelines
- Local Government Act 1993;
- Local Government (General) Regulation 2021;
- Tendering Guidelines for NSW Local Government
- Government Information (Public Access) Act
- Work Health and Safety Act 2011, NSW
- The Modern Slavery Act 2018

- Quarterly Budget Review Guidelines issued by the Office of Local Government
- Government Information (Public Access) Act 2009.
- Relevant ICAC guidelines.
- Council Policies and Procedures
- Council Delegations
- Disposal of Assets Policy
- Procurement Procedure
- Code of Conduct policies
- Statement of Business Ethics
- Work Health and Safety Policy
- Gifts and Benefits Policy
- Corporate Credit Card Policy
- Purchase Card Procedure

End of Policy

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