

CODE OF PRACTICE

Code name	Procurement (including tendering)
Responsible manager(s)	Corporate Manager Governance & Administrative Services
Contact officer(s)	Fleet & Procurement Coordinator
Directorate	General Manager
Approval date	20 January 2021
Community Strategic Plan Objective	Ensure financial sustainability and support the organisation in achieving efficient ongoing operations
Delivery Program link	Provide administrative, technical and trade services to support the organisation
Operational Plan link	Manage fleet and procurement services

This Code covers the following:

1	INTRODUCTION	2
1.1	Purpose	2
1.2	Scope.....	2
1.3	Compliance.....	2
1.4	Objectives.....	3
2	CODE DETAILS – PROCUREMENT REQUIREMENTS	3
2.1	Determining the Need	3
2.2	Fitness for Purpose	3
2.3	Value for Money.....	4
2.4	Social and Sustainable Procurement.....	4
2.5	Method of Procurement.....	4
2.6	Joint Purchasing Arrangements	7
2.7	Mandatory Procurement Reporting.....	7
2.8	Methods of Transaction.....	7
2.9	Contract Management.....	8
2.10	Payment of Invoices/Contractor Claims	8
2.11	Accountability and Transparency	8
2.12	Requirement-specific controls	9
2.13	Procurement must nots	9
3	TENDERING.....	10
3.1	Who has the authority to call tenders?	10
3.2	Who administers the tendering process?.....	10
3.3	What happens when an authorised third party (e.g. consultants, NSW Public Works etc) handles the tender process?.....	10
3.4	What if in-house tenders are involved?	10
3.5	What is involved in calling tenders?.....	10
3.6	Changing a RFT/EOI/RFP during the advertising period.....	13

3.7	Tendering Checklist	14
4	RESPONSIBILITIES	14
4.1	Staff.....	14
4.2	Requests and Concerns.....	14
4.3	Complaints	14
4.4	Consultation	14
5	MONITORING AND REVIEW	14
6	SUPPORTING DOCUMENTS.....	14
7	GOVERNANCE.....	15

1 INTRODUCTION

1.1 Purpose

Expenditure of Public Money is subject to strict legislation, guidelines and policies around the following principles:

- Accountability
- Probity,
- Sustainability,
- Social Consideration,
- Transparency, and
- Value for Money

This Code of Practice (“the Code”) provides practical guidance for adherence to mandatory internal Council policies and legislative requirements in relation to procurement. It also provides clear procurement procedures where tendering is required under Section 55 of the Local Government Act 1993.

1.2 Scope

The Code places emphasis on the planning and offer stages of procurement where key risks should be addressed and provides detailed guidance on identifying the need, development of specifications, selection of appropriate methods of procurement (i.e. Request for Quote or Open Tender) and the use of appropriate document types to ensure adequate terms and conditions for managing commercial risks.

Additionally, a step by step guide to tendering is provided to ensure, where applicable the requirements of Section 55 of the Local Government Act 1993 are met.

1.3 Compliance

The Code outlines a set of lawful and reasonable instructions for procurement consistent with Independent Commission Against Corruption (ICAC) guidance and endorsed by Council’s Executive Leadership Team. The failure of staff to adhere to the Code may lead to investigation and disciplinary action may follow.

Employees must read and familiarise themselves with the Code in conjunction with Council's Procurement Policy. Employees must be aware of other Council documents relating to procurement such as the Sustainable Purchasing Code of Practice and the legislative framework which includes, Section 55 of the Local Government Act 1993, the Local Government (General) Regulation 2005, Office of Local Government (OLG) Circulars and the Tendering Guidelines for New South Wales Local Government.

1.4 Objectives

The objectives of this Code are to:

- Provide a set of mandatory business practices to be followed by all employees undertaking purchasing/procurement/tendering activities on behalf of Council; and
- Ensure compliance with the legislative framework.

The considerations and principles outlined within the Code shall also apply to the disposal of goods other than property.

2 CODE DETAILS – PROCUREMENT REQUIREMENTS

2.1 Determining the Need

Before undertaking a procurement activity employees must establish a legitimate need for the goods or services in consideration of factors including:

- Council's Delivery Program;
- Approved funding availability; and
- Work Health and Safety directives

2.2 Fitness for Purpose

When specifying the requirement, employees must establish the suitability of goods or services in consideration of factors including:

- Appropriate (not excessive) fit, form and function of any goods;
- Quality (whilst avoiding limiting opportunities to specific brands or organisations);
- Desired outputs (services);
- Likely costs, including whole-of-life factors such as ongoing licencing, maintenance, upgrades and disposal as applicable;
- The cost of money (ie opportunity costs/loan interest);
- Environmental sustainability, ensuring negative impacts on the environment are minimised;
- Social Impact ensuring benefits to society are maximised where possible;
- Work Health and Safety;
- Alternative acquisition arrangements – purchase, lease, rent, joint venture, resource share etc; and
- Taxation impacts.

2.3 Value for Money

Throughout the entire procurement lifecycle the principle of Value for Money must be promoted and maintained. Employees must be able to demonstrate to the public that factors such as the following have been considered:

- The upfront cost of the goods or services;
- Freight costs;
- Through-life support costs (ie maintenance, licensing, updates);
- Intellectual Property; and
- The cost of disposal or any ongoing costs which extend beyond the life of the goods or services.

2.4 Social and Sustainable Procurement

Under the guiding principles for councils at Section 8A of the Local Government Act 1993 Council's decision-making should apply:

- Recognition of diverse local community needs and interests;
- Consideration of social justice principles;
- Consideration of the long term and cumulative effects of actions on future generations;
- Principles of ecologically sustainable development
- Transparency in relation to the above principles so that decision-makers are accountable for decisions and omissions.

Social and sustainability considerations must form part of the determination of need and assessment of value for money. The Sustainable Purchasing Code of Practice should be adhered to when undertaking procurement activities.

2.5 Method of Procurement

Request for Tender (RFT) or Request for Quotation (RFQ) numbers need to be obtained from the Procurement team prior to administering a procurement process which is likely to exceed \$50,000 (incl. GST).

Employees are required to select a method of procurement which promotes and maintains the following principles:

- a) **Ethics and Fair Dealing (Probity)** including avoiding corrupt or dishonest conduct whilst demonstrating that the procurement process was fair and robust. Further, if any pecuniary or non-pecuniary interests exist they must be managed in accordance with the [Model Code of Conduct for Local Councils in NSW](#).
- b) **Open and Effective Competition**, ensuring access to opportunities is maximised for the Public where appropriate and within the bounds of Value for Money, regardless of the geographic location and size of potential quoters/respondents.
- c) **Efficiency**, including consideration of:
 - i) The level of administration required to facilitate the activity;
 - ii) The balance of administrative burden on the target market and the likelihood of success and commercial benefit to prospective quoters/respondents. *EXAMPLE: you wouldn't seek a 10 quotes for a \$50 opportunity;*

iii) The timeliness of solicitation and supply of goods and services.

The correct process for determining an appropriate method of procurement can be summarised into the following steps:

STEP 1 – Check if the requirement can be achieved through non-purchase cost means such as equipment sharing or inhouse service delivery. If not, go to Step 2.

STEP 2 (goods only) – Check if the goods are available for issue in the Store. If not, go to Step 3.

STEP 3 – Check if there are any Council or government panel arrangements under which a procurement activity can be administered. Council currently maintains the following panel arrangements.

- Concrete Supply
- Garden, Hardware, Plumbing, Stormwater and Related Products
- Local Legal Services
- Plant Hire
- Professional Services
- Registered Surveyor Services
- Supply of Bulk Construction Materials (ie roadbase, soil etc)
- Trade Services

Council panels must be used if available unless there is a clear, justifiable rationale for selecting an alternate procurement method such as IP restrictions, speciality of services or significant advantage associated with economy of scale.

Each panel has a set of rules associated with its use which must be followed to ensure we meet obligations to participants (e.g. plant hire must be arranged through Depot Administration staff and Trade Services through the Procurement team). The Procurement team can assist further specific rules for panel use.

Panels are also established on behalf of councils by organisations prescribed under Section 55 of the Local Government Act, including:

- Local Government Procurement
- Procurement Australia

The NSW State Government also establishes panel arrangements available for use by councils.

Council's Procurement team can assist in looking up information on available panels, including the products listed, sources of supply and terms of engagement.

If no suitable panels exist, go to Step 4.

STEP 4 - If none of the above three steps are suitable, the Employee must select an appropriate method of procurement in adherence to the following mandatory thresholds and treatments:

NOTE: ALL THRESHOLDS ARE GST INCLUSIVE.

Individual Procurement less than \$5,000

Where purchases below this threshold are made consideration must be given to the administrative cost of procurement and achieving overall value for money however there is no formal requirement to seek more than one (1) quotation.

Individual Procurement between \$5,000 and Less than \$50,000 or between a value of 5,000 and Less than \$25,000 for consultants/professional services)

A greater level of competitiveness is required as the value of the purchase increases. At least three (3) written quotes should be sought. An assessment of risk should be conducted to determine the level of detail required in the request for quote. The Procurement team may be able to assist with suitable templates and advice.

Individual Procurement between \$50,000 and less than \$250,000 or between a value of more than \$25,000 and less than \$250,000 for consultants/professional services

Requires three (3) written quotes assessed by a minimum two (2) person panel or a formal request for quote (RFQ) process. An RFQ number needs to be obtained from the Fleet and Procurement section who are responsible for monitoring and issuing RFQ's.

Procurement activities with a value of more than \$250,000

Section 55 of the Local Government mandates that tendering is required above this threshold unless a relevant Government contract or existing Council panel arrangement can be utilised or there is a valid reason for exemption under the Act (refer Sect 55(3)).

Additionally tendering should be undertaken (unless a valid exemption exists) when:

- Regardless of the number of individual contracts or instalments for similar services are likely to be raised with a particular supplier, the aggregate value is likely to exceed \$250,000 (incl. GST) over two or more years; or
- Where the procurement of goods or services or disposal of council goods may be considered to carry increased risk and a normal quotation process would not provide adequate evaluation rigour; or
- an assessment of quotations indicates that the best value offer exceeds this amount. **Note ALL offers must be declined and the quotation process cancelled at this point.**

A Council resolution is required when tendering is undertaken or where exemption is being sought.

Tenders do not have to be called for the purchase or sale of land (refer Section 55(3)(d) LG Act).

Purchase or sale by public auction (refer Section 55(3)(f) LG Act) can be used instead of the tender process where best value for money can be achieved (i.e. where the cost of administering the tender process is relatively high in relation to the buy/disposal price).

The tendering checklist (available through the Procurement team) must be completed and filed within the procurement audit trail.

STEP 5 - If none of the above steps are possible, employees must contact the Procurement team for advice.

Options that may exist include:

For RFQ processes, where three or more quotations would not uphold the principles contained within the Code or Council's Procurement Policy submission must be made to the relevant Director, detailing the reasons. A submission template such as Sole Source Justification Memo can be provided by Council's Procurement team.

For tendering processes, where an appropriate Council or Government panel is not available, exemption must be sought through resolution of Council. The Procurement team can assist in documenting the rationale and seeking resolution.

An assessment of risk should be conducted to determine the most suitable purchasing method. The Procurement team may be able to assist with suitable templates for RFQ's and advice.

2.6 Joint Purchasing Arrangements

Where it is proposed that Council join other agencies in undertaking activities (ie for greater economy of scale) Chapter 2.6 of the OLG Tendering Guidelines describes this process.

2.7 Mandatory Procurement Reporting

Under Section 27 of the Government Information (Public Access) (GIPA) Act all contracts of \$150,000 (incl GST) or more must be recorded on Council's public register. This includes long standing agreements which may creep over the threshold over time or the aggregate value of multiple, similar contracts issued to a particular supplier over time, which may be perceived as a single requirement or project.

Council's Procurement team manages the reporting of contracts und the GIPA Act and can provide employees with a form to complete.

2.8 Methods of Transaction

For goods with a contract value of less than \$1,000.00 (incl. GST) the purchase transaction can be made using the following methods:

- Credit Card (The Purchasing Card Use Code of Practice applies);
- Paper Requisition; or
- Purchase Order

Transactions for delivery of services, regardless of value must be made by way of Purchase Order.

Note: Paper requisitions are subject to strict business rules which are outlined on the cover of Requisition Books. Staff must be inducted to the business rules upon collection of the book.

For goods and services with a contract value of \$1,000.00 (incl. GST) or greater the purchase transaction can be made using the following methods:

- Credit Card (The Purchasing Card Use Code of Practice applies); or
- Purchase Order

2.9 Contract Management

Employees must thoroughly consider risk when selecting terms to apply to contracts. Council's Procurement team can assist with appropriate documentation examples and templates. High risk contracts may require assistance from a legal service provider.

Contracts must be pro-actively managed to ensure the agreed terms are not inadvertently varied. Any concession or omission agreed to by any member of Council can be construed as a permanent variation to the contract. Additionally, if a scheduled contract review exercise is not completed and there is no communication relating to performance, elements of performance management (ie payment reduction) may become no longer enforceable.

Termination/cancelling contracts may come with considerable legal risk. Advice should be sought from the Procurement team and, where appropriate legal service providers before notifying the contractor of intent to terminate.

2.10 Payment of Invoices/Contractor Claims

Council's standard payment term is 30 days from the date of invoice or receipt of goods or services (whichever is the latter).

Payment should not be certified until the goods and services are received (exceptions include courses, conferences, travel bookings, insurance premiums and the like, where it is generally accepted that payment must be in advance).

Payment should not be approved if there are any concerns regarding quality of the goods and services received, or any other possible breach of contract until such concerns are resolved.

Disputed accounts and contract retentions must still be accounted for via Council's Accounts Payable team so that appropriate amounts are provided for within the cost reports, only the payment is to be withheld until any outstanding matters are resolved.

2.11 Accountability and Transparency

Employees must treat every procurement activity, regardless of value as though it will be reviewed for public scrutiny. For this reason, the following accountability and transparency measures are mandated by this Code:

- All commitments and expenditure must be within approved budget.
- Appropriate supporting documentation for all decisions and actions should be retained on central records files, within accounts payable and within the main computerised financial systems.
- Documentation supporting procurement decisions should be kept for at least 7 years. If any other requirements suggest a longer time period then that longer time period should be adhered to.

Purchasing activities will be audited from time to time to ensure compliance with the Code.

Delegated staff must fully assist any inquiries by the General Manager, Responsible Accounting Officer, External Audit, Internal Audit and Procurement team.

2.12 Requirement-specific controls

a) Tools

Other than small, low value manual implements under \$100, tools must be purchased through Council's Store. Tool issues will be recorded.

b) Small Plant

Purchase of small plant items (chainsaws, mowers, brush cutters, small generators etc.) must be coordinated through Council's Store.

c) Personal Protective Equipment (PPE)

The purchase of all items of PPE must be arranged through the Store. This will ensure that all PPE complies with Australian Standards, WH&S Regulations and the requirements of any relevant Statutory Authority. In urgent or emergency cases, purchase of PPE may be arranged by telephone, through the Store.

d) Information Technology

Computer hardware and software purchases, or any other connected or related equipment require consultation with the Information Technology Coordinator.

e) Machinery and Vehicles

All machinery and vehicle purchases are to be coordinated by Council's Fleet Management team.

2.13 Procurement must nots

Employees must not:

- Breach the Code.
- Authorise liabilities or expenditure outside of their delegated authority. This includes exceeding the financial threshold associated with the delegation.
- Operate outside their normal duties and functional areas.
- Split requirements or orders for the purpose of avoiding legislative requirements and other mandatory procurement practices (i.e. breaking up invoices so they fall under the delegation limit of procurement threshold).
- Select a procurement method outside of the directions listed within the Code unless otherwise authorised by the relevant Director or the General Manager.
- Undertake procurement activities where an actual or perceived pecuniary or non-pecuniary interest exists unless permitted by their Director or the General Manager under strict controls and under advice from Council's Internal Probity Adviser.
- Accept gifts, money, in kind payments or personal favours from existing or prospective suppliers.
- Commit to expenditure where the principle for Value for Money cannot be upheld.
- Neglect the responsibility of Council to minimise negative impact on the environment (ie engaging contractors to undertake works without a Review of Environmental Factors or purchasing vehicles with high emissions).
- Neglect to consider the social impact of a procurement proposal (ie inadvertently selecting goods manufactured with child labour or procuring goods or services which may cause offence to particular cohorts within society).
- Fail to consider Work Health and Safety risks and associated laws and directives (e.g. engaging plant operators without appropriate licensing and Safe Work Method Statements).

3 TENDERING

3.1 Who has the authority to call tenders?

Council can resolve to call tenders. Staff with delegated authority can similarly determine the need to call tenders.

3.2 Who administers the tendering process?

The delegated employee within the division of Council responsible for the delivery of the service or supply of goods, is responsible for administering the tender process. Council's Procurement team must be advised of the proposed tender by the delegated tender administrator and can provide the following service and advice:

- Allocation of tender/contract number from the Contract Register;
- Arrange for the opening of tenders on the appropriate date;
- Advice on standard documents and conditions;
- Advice on procedures for tendering;
- Probity advice; and
- Contract reporting under the GIPA Act.

3.3 What happens when an authorised third party (e.g. consultants, NSW Public Works etc) handles the tender process?

Any procurement activities undertaken by third parties on our behalf must be in accordance with the Local Government (General) Regulations 2005. It is important, that there is compliance with the provisions of the Regulations in regard to the acceptance of tenders sought through an authorised third party. Other issues to be noted are:

- Contract details are to be kept in the Council Contract Register.
- The Contract Number may be one issued by a third party but this should be cross-referenced to a Council Number in the Council register.
- The third party's Tender Box may be used. A notice should still be displayed in the Council office with a list of tenderers in alphabetical order as per the Regulation.
- Tenders that exceed the limitations of the Act are to be reported to Council in accordance with this Code.

3.4 What if in-house tenders are involved?

Chapter 2.5 of the Tendering Guidelines for New South Wales Local Government adequately describes the process of handling in-house tenders.

3.5 What is involved in calling tenders?

STEP 1 - Decide on whether to call open tenders (Local Government (General) Regulation 2005 REG 167) or to use the selective tendering method (REGs 168, 169). Open tenders involve inviting tenders by public advertisement. This is the method that would normally be used as it allows anyone to tender. Selective tendering can be done in three ways:

a) Advertise for Expressions of Interest from persons interested in tendering for a specific contract. Note that only a brief description of the specific work, goods etc. need be given and only indicative prices should be sought at this stage. Council may then invite tenders from a shortlist of Council approved applicants. This method can take longer but it ensures that only persons who have the capacity to carry out the contract are invited to submit a tender price. It can also avoid wasting the time of persons who Council knows cannot meet the requirements of the contract. Some examples of where this form of tendering may be advantageous include:

- land development;
- engagement of architects and other specialist consultants.

b) Advertise for Expressions of Interest from persons interested in tendering for contracts of a specific kind. This is like (a) above except that it involves more than one specific contract. Refer Reg 169.

c) Utilise a list of selected contractors prepared by another Public Authority (REG 169(8)). These lists, when established, must have been applicable to our Council area.

STEP 2 – Develop the Request documentation (i.e. RFT) in accordance with REG 170 and an appropriate Tender Evaluation Plan (TEP) which details the evaluation methodology and any weightings.

The Tendering Guidelines for New South Wales Local Government (Chapter 3.2) requires a tender review or evaluation panel for each tendering process. This may include the appointment of an independent member and or probity adviser. The role of the tender panel is spelt out in Chapter 3.15 of the Guidelines.

The evaluation criteria should be established by the delegated employee conducting the Request for Tender, in consultation with Council personnel holding an appropriate level of subject matter expertise and it should be endorsed by each member of the Tender Evaluation Board (TEB). The TEB should be made up of suitably qualified personnel, free from conflict(s) of interest (perceived or otherwise) and be identified within the Tender Evaluation Plan.

Council's Procurement team has a suite of templates available for use.

STEP 3 – Arrange for advertisement of the tender in accordance with REG 167. Council's Procurement and Communications teams can assist with advertisement templates and publishing.

The advertising period must be at least 21 days although can be extended and shortened under certain circumstances in accordance with REGs 171 and 172. Note the need to advise all persons that have received tender documents or have been invited to submit tenders. ***Note also the need to record the reasons and the name of the staff member authorising the extended or shortened period. This can be authorised by the staff member managing the Tender.***

Where a mandatory site visit is required as part of the tender process, it is suggested that the advertising period be extended to a minimum of 28 days. The site visit should then be held no less than 14 days before close of tenders to allow sufficient time for tenderers to prepare tender submissions.

STEP 4 – Manage communication with prospective tenderers (including where there are variations to the tender) in a manner that is fair and provides all registered parties with the same information and opportunity.

The delegated employee is required to record the details of all prospective tenders who receive the RFT documentation to ensure any subsequent information is distributed fairly.

STEP 5 – Record and open the tenders in accordance with REG 175. At least three delegated employees must attend the opening. Each employee must complete and sign a probity declaration prior to viewing any of the tenders. If there are any actual or perceived conflicts of interest they must be managed in accordance with the [Model Code of Conduct for Local Councils in NSW](#).

Tenderers and other members of the Public may attend the tender opening and may be informed, on request of the receipt of a particular tenderer and the number of submissions received.

Tenders should close at 2pm on Wednesdays. Tenders should be received as an electronic submission via Council's online tendering portal where possible.

The Regulation provides for submission of tenders in hardcopy or non-secure electronic submissions. The process for these scenarios must comply with the Regulation and be factored into the Conditions of Tender.

A list, specifying the names of tenderers in alphabetical order must be displayed in a place where it can be readily seen by members of the public. The Procurement team can provide details of this location (currently on the notice board in the foyer of Council's Moruya Admin Building).

Late tenders must not be accepted unless allowance can be made under REG 177(4) or 177(5).

STEP 6 – Undertake any necessary post tender clarification. Tenders may be varied through post tender clarification in certain circumstances in accordance with REG 176. Those circumstances are:

- a tenderer providing the council with further information by way of explanation or clarification; and
- correcting a mistake or anomaly.
- variation may be made:
 - at the request of the council, or
 - with the consent of the council at the request of the tenderer, but only if, in the circumstances, it appears to the council reasonable to allow the tenderer to provide the information or correct the mistake or anomaly.

If a variation is allowed, the option must also be afforded to other tenderers (where applicable).

STEP 7 – Evaluate the tender submissions in accordance with the TEP and evaluation criteria or methodology communicated in the RFT/EOI/RFP. It is critical that the stated method is followed to avoid claims of breach of process contract by unsuccessful tenderers.

The evaluation scoring and rationale should be documented and filed.

Council can resolve to not accept any of the tenders (REG 178) and must then do one of the following:

- Postpone or cancel the proposal for the contract.
- Invite fresh tenders based on the same or different details.
- Invite applications on a selective tender basis.
- Enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender.
- Carry out the requirements of the proposed contract itself.
- If Council resolves to enter to into negotiations, the resolution must state the following:
 - Council's reasons for declining to invite fresh tenders or applications.
 - Council's reasons for determining to enter into negotiations with the person.

Council must not use any negotiations to trade off one tenderer's price against other tenderers' prices in order to obtain lower prices.

Council must be able to demonstrate that careful consideration has been given regarding the perception of unfair conduct. If changes to the scope of the proposed contract were made, this may have led to more interest from other prospective bidders who may have found the RFT/EOI/RFP suitable to respond to.

STEP 8 – Prepare a report for Council resolution detailing the recommendation. The Procurement team can provide a suitable template. The report must be accompanied by a confidential attachment which details the comparative analysis of tenders.

STEP 9 – Notify unsuccessful tenderers. As soon as practical after entering into a contract or Council resolution cancelling a tender process the unsuccessful tenderers must be notified in writing. **Note: the date of Council resolving to enter into a contract is often considered the date the agreement is entered into.**

Council's Procurement team can provide a template for a letter of decline.

STEP 10 – Establish the contract. With consideration to the method of contract execution outlined in the tender documentation the successful tenderer must be informed in writing. This may be simply, via a letter of acceptance or by way of formal instrument of agreement.

Council's Procurement team can provide a template for a letter of acceptance or instrument of agreement.

STEP 11 – Update Council's Contract Register to meet legislative reporting requirements under the Government Information (Public Access) Act 2009. The delegated employee must complete and return a Contract Registration form. Council's Procurement team can provide an up to date version of this form for you to complete.

3.6 Changing a RFT/EOI/RFP during the advertising period.

Any amendment to the tender documents should be issued by way of Addenda. An Addendum template can be provided by the Procurement team.

Any addenda must be distributed to tenderers who have received the Request for Tender and those who seek the documentation subsequent to the revision.

If the amendments are significant and are issued close to the closing date, consideration should be given to extending the closing date to allow tenderers further time to review their pricing.

Chapter 3.9 of the Tendering Guidelines for New South Wales Local Government provides further information on communication with Tenderers.

3.7 Tendering Checklist

The Procurement team can provide Council's Tendering Checklist. **Auditing requirements stipulate the checklist must be completed, signed and filed with the procurement audit trail.**

4 RESPONSIBILITIES

4.1 Staff

All employees with purchasing delegations will be responsible for ensuring that this Code is implemented appropriately within their work area. Where the term 'Staff' is used in this document, it refers to staff with purchasing delegations or staff informing purchasing decisions.

Responsibility	Who
Adhere to the Code during procurement activities (including tendering).	Staff

4.2 Requests and Concerns

Requests and concerns received from the community regarding this Code will be recorded on Council's Customer Service Request (CSR) or records system and handled in accordance with council's Customer Service policy. They will be used to help determine follow up actions and to analyse the history of requests and concerns.

4.3 Complaints

Complaints received regarding this Code will be lodged with the Public Officer and handled in accordance with Council's Complaints Policy.

4.4 Consultation

The Code was developed with input sought from across the organisation and, more recently, in its reviewed and merged form (Procurement and Tendering codes) from within the Governance and Administration Division.

5 MONITORING AND REVIEW

This Code may be reviewed and updated as necessary when legislation or policy requires it; or Council's functions, structure or activities change; or when technological advances or new systems change the way that Council manages procurement.

6 SUPPORTING DOCUMENTS

The following documents support this Code of Practice:

Name	Link
Tendering Checklist	Attached

7 GOVERNANCE

Related legislation and policies

Name	Link
Tendering Guidelines for New South Wales Local Government	https://www.olg.nsw.gov.au/wp-content/uploads/Tendering-Guidelines-for-NSW-Local-Government-2009.pdf
Council's Procurement Policy	http://intranet.esc.nsw.gov.au/portals/0/documents/procurement/Procurement_Policy.pdf
Purchase Card use Code of Practice	http://intranet.esc.nsw.gov.au/portals/0/documents/procurement/PurchaseCarduseCodeofPractice.pdf
Local Government (General) Regulation 2005	https://www.legislation.nsw.gov.au/view/html/inforce/currant/sl-2005-0487#pt.7
Section 55 of the Local Government Act 1993	https://www.legislation.nsw.gov.au/view/html/inforce/currant/act-1993-030#ch.6-pt.3-div.1

Definitions

Word/ Term/ Abbreviation	Definition
Accountability	Responsibility for actions and decisions.
Audit trail	All documentation relating to decision-making within a procurement process.
Corrupt conduct	Corrupt conduct, as defined in the Independent Commission Against Corruption Act 1988 ("the ICAC Act"), is deliberate or intentional wrongdoing, not negligence or a mistake. It has to involve or affect a NSW public official or public sector organisation.
Pecuniary interest/ Non-pecuniary interest	Refer Part 4 of the Model Code of Conduct for Local Councils in NSW
Probity	Integrity and honesty in relation to procurement decisions.
Process contract	A type of contract form by an organisation running a tender process and associated prospective and actual bidders committing the tendering organisation to the process for handling and evaluation of offers stated in the request documentation.
Source selection	The outcome of a RFQ or tender process in relation to the bidder selected to be awarded a contract
Request for Tender (RFT)	For the purpose of the Code Request for Tender (RFT)/Expression of Interest (EOI)/Request for Proposal shall mean the same and are usually associated with contracts formed under the requirements of Section 55 of the Local Government Act 1993.
Value for Money	An outcome that provides best value consideration of of cost, fitness for purpose, operability, quality, safety, social impact, supportability and sustainability.

Change history

Version	Approval date	Approved by	Min No	File No	Change
1	20/01/2021	ELT	N/A	File No	Procurement COP & Tendering COP combined and revised

Internal use

Responsible officer	General Manager			Approved by	ELT
Min no	N/A	Report no	N/A	Effective date	21/01/2021
File No	File No	Review date	September 2024	Pages	17

Tendering Checklist

RFx No.		Est. Value (incl. GST)		Tendering Officer	
Description of Goods or Services				Final contract value (incl. GST) to be completed post-award.	

Critical audit trail steps:

		Yes	No	N/A
1	Request for Quotation/Tender or Expression of Interest number has been provided by the Procurement Section Email: .procurement@esc.nsw.gov.au to request an RFx number.	<input type="checkbox"/>	<input type="checkbox"/>	
2	Email: Records Tasks for an ECM file to be created.	<input type="checkbox"/>	<input type="checkbox"/>	
3	Where an Open Tender has not been selected, (e.g., Select Tender), has a memo describing the proposed method and reasons been recorded on file.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Tender Evaluation Plan (TEP) (in accordance with Council's endorsed format) developed and approved by relevant Divisional or Corporate Manager.	<input type="checkbox"/>	<input type="checkbox"/>	
5	Tender documents have been endorsed by relevant Divisional or Corporate Manager prior to release.	<input type="checkbox"/>	<input type="checkbox"/>	
6	Copy of advertisement for tenders is on file.	<input type="checkbox"/>	<input type="checkbox"/>	
7	Copy of any other invitation to bid is on file (e.g. emails sending copies of RFT documentation). Note: it is acceptable to send copies of the RFT, inviting specific suppliers to bid however the advertising requirements of Local Government (General) Regulations 2005 – REG 167 must also apply.	<input type="checkbox"/>	<input type="checkbox"/>	
8	Copy of all documents provided to tenderers on file. Note: this refers to all documentation communicated to tenderers prior to the closing date for submissions (e.g. RFT, addenda, hard copies for viewing, Minutes of pre-tender briefing etc).	<input type="checkbox"/>	<input type="checkbox"/>	
9	Individual 'Probity Declaration' forms signed by all members of the Tender Evaluation Board and registered to the file.	<input type="checkbox"/>	<input type="checkbox"/>	
10	Written records of all communications between tenderers and Council staff on file (including records of advertising, attendance and information provided at any briefing sessions).	<input type="checkbox"/>	<input type="checkbox"/>	
11	Evidence any changes to the RFT communicated to all tenderers or potential tenderers and that no tenderer or potential tenderer was disadvantaged on file (e.g. Tenderlink Addenda notification summary, emailed or posted Addenda etc).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	Records of any variation to closing date (including reasons and identity of who made the decision). A file note or memo would be considered a suitable format for recording this variation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Evidence Council took all reasonable steps to inform tenderers or potential tenderers of the later closing date. (e.g. Tenderlink Addenda notification summary, emailed or posted Addenda etc).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	Records of tender opening carried out in accordance with Local Government (General) Regulation – REG 175 (three persons present/members of public able to attend). Note: for hard copy tenders a 'Register of Tender Submissions' form must be completed and signed by all staff present for the opening. For Tenderlink submissions, the 'Submissions Made' form must be completed and signed by all staff present.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	List of tenders received (as per REG 175), stating the business name of all tenderers, displayed on the noticeboard in Council's Moruya Admin Building foyer and saved to the appropriate ECM file.	<input type="checkbox"/>	<input type="checkbox"/>	
16	Documented tender assessment matrix completed as per the Tender Evaluation Plan.	<input type="checkbox"/>	<input type="checkbox"/>	
17	Records of all post-tender clarification communication filed to the appropriate EASE/ECM file.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18	Report to Council using endorsed templates (Briefing Report, Council Report, Confidential Attachment etc).	<input type="checkbox"/>	<input type="checkbox"/>	
19	Evidence contract entered by Council is in accordance with the tender. <i>Note: This is created via Letter of Acceptance, referring to the provisions of the Request for Tender/Conditions of Contract or the issue of formal Contract Documentation containing this information.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
20	Where Council enters into negotiations with one or more unsuccessful tenderers, Council Report and subsequent resolution includes reasons for that decision, including the choice of tenders with whom it negotiates.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	Evidence Council advised all unsuccessful tenderers of outcome and details of tender are published on Council's internet site. (REG 179).	<input type="checkbox"/>	<input type="checkbox"/>	
22	Purchase order raised and approved in TechnologyOne prior to commencement of work or delivery of goods under the contract.	<input type="checkbox"/>	<input type="checkbox"/>	

DECLARATION: The tendering activity for which this checklist applies has been carried out in accordance with the Council's Procurement (including tendering) Code of Practice. Where a deviation from the process outlined above has occurred, adequate explanation has been documented accordingly on Council's appropriate file for the procurement activity.

Signature of Tendering Officer

Date