



# CODE FOR TENDERS AND CONTRACTS

## SORELL COUNCIL

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<b>TITLE:</b>	<b>Code for Tenders &amp; Contracts</b>
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# CODE FOR TENDERS AND CONTRACTS

## 1 INTRODUCTION

This Code for Tenders and Contracts (Code) provides a policy framework on purchasing and tendering requirements for Council.

## 2 LEGISLATION

In accordance with Part 16, Division 2A, Section 333A and 333B of the Local Government Act 1993 (Act), Council must comply with this Code when acquiring goods and services.

Detail contained in the Code is consistent with the requirements of the Local Government (General) Regulations 2005 (Regulations), Regulations 23 – 29 inclusive.

## 3 PURPOSE

The Code aims to:

- 3.1 ensure compliance with relevant legislation
- 3.2 enhance value for money through fair, competitive, non-discriminatory procurement
- 3.3 promote the use of resources in an efficient, effective and ethical manner
- 3.4 encourage probity, accountability and transparency in decision making
- 3.5 provide reasonable opportunity for competitive local businesses to supply to Council
- 3.6 minimise the cost to suppliers of participating in the tendering process
- 3.7 allow Council to appropriately manage risk
- 3.8 promote Council's economic, social and environmental plans and policies

## 4 SCOPE

### 4.1 Policy vs. procedures

The Code essentially provides a high level overview of Tender and Contract requirements as they apply to Council. Although some procedural detail associated with Council tender and contract management systems and processes is included in this document.

Consistent with the requirements specified in regulation 28, Council will establish and maintain local level procedures to:

- 4.1.1 ensure all potential service providers are provided with the same information relating to the requirements of an open tender process or contract and are given equal opportunity to meet the requirements
- 4.1.2 that fair and equitable consideration is given to all tenders or quotations received
- 4.1.3 deal honestly with and be equitable in the treatment of all potential service providers
- 4.1.4 ensure a prompt and courteous response to all reasonable requests for advice and information from potential or existing service providers
- 4.1.5 protect commercial in confidence information and
- 4.1.6 review each tender process to ensure that each tender is in accordance with the Regulations and this Code

Council will also establish and maintain procedures for:

- 4.1.7 amending or extending a tender once it has been released
- 4.1.8 opening tenders
- 4.1.9 the consideration of tenders that do not fully conform with the tender requirements
- 4.1.10 handling complaints regarding processes related to the supply of goods or services

Unsuccessful tenderers enquiry:

- 4.1.11 In the first instance, tenderers are to seek resolution through the Manager in charge of the relevant purchasing/tender process. If relevant, tenderers are encouraged to seek a debriefing, if they have not already done so.
- 4.1.12 If tenderers are not satisfied with the response provided by the relevant Manager in charge of the purchasing/tender process, the tenderer is able to write to the General Manager providing copies of all correspondence and other relevant material. The General Manager will take whatever action is considered necessary to deal with the enquiry.

## **4.2 Employees and service providers**

The Code will apply to Council, council employees and agents and any service provider wishing to compete for Council business or provide goods, services or works to Council (including contractors, subcontractors, consultants and suppliers)

Wherever reasonably possible service providers engaged by Council will also apply the Code when seeking Tenders or Quotations from subcontractors and suppliers.

## **5 PROCUREMENT PRINCIPLES**

Council will have regard to the following principles when acquiring goods and services:

### **5.1 Open and Effective Communication**

The Council will ensure that the purchasing process is impartial, open and encourages competitive offers.

In practice this means that Council will:

- 5.1.1 use transparent and open purchasing processes so that service providers and the public are able to have confidence in the outcomes
- 5.1.2 adequately test the market through seeking quotations or via tender as appropriate
- 5.1.3 avoid biased specifications
- 5.1.4 treat all service providers consistently and equitably
- 5.1.5 ensure a prompt and courteous response to all reasonable requests for advice and information from service providers

### **5.2 Value for Money**

The Council will ensure that it is buying at the most competitive price available, but value for money does not mean buying at the lowest price.

In practice this means that Council will consider

- 5.2.1 the contribution the good or service makes to achieving Council's strategic plans or policies
- 5.2.2 the value of the acquisition and potential benefits against the costs of that purchase
- 5.2.3 an assessment of risks associated with the purchase including the preferred procurement method
- 5.2.4 how well goods or services meet needs
- 5.2.5 maintenance and running costs over the lifetime of a product
- 5.2.6 disposal value
- 5.2.7 time constraints
- 5.2.8 the impact of the procurement decision on the local economy, such as through industry development and employment creation
- 5.2.9 the impact of the procurement decision on the environment, such as through minimising

waste and reducing demand for goods and services which have a direct impact on the environment (such as printing, utilities and travel)

5.2.10 the impact of the procurement decision on the society, (social value generated) such as through the elimination of discrimination and the promotion of equal opportunity, training, and other identified social objectives

### **5.3 Enhancement of the capabilities of the local business industry**

The Council will ensure that where local capacity exists it will seek to engage the local market and encourage participation in tender and quotation processes.

In practice this means that **Council** will:

- 5.3.1 actively seek quotes from local businesses that are able to provide quality goods and or services
- 5.3.2 where local capability exists, ensure that discretionary elements of specifications do not prevent local business from competing
- 5.3.3 not give preferential treatment to local service providers where it cannot be reasonably justified
- 5.3.4 offer relevant work to Council's preferred suppliers as appropriate

### **5.4 Ethical behaviour and fair dealing**

The Council will promote procurement practice that is legal, ethical, fair and unbiased

In practice this means that **Council** will:

- 5.4.1 comply with legal requirements
- 5.4.2 conduct all business in the best interests of the Council
- 5.4.3 be as effective and efficient as possible when sourcing, ordering and paying for goods and services.
- 5.4.4 expect individuals involved in procurement processes to declare and act upon any conflicts of interest that may be seen to influence impartiality
- 5.4.5 ensure that specifications are clear
- 5.4.6 ensure that any Service Provider is not provided with information or clarification that is not provided equally to all service providers

- 5.4.7 maintain confidentiality at all times in dealing with service providers
- 5.4.8 ensure that conditions of contract are not excessively onerous
- 5.4.9 decline gifts or benefits offered by those involved in the procurement process, particularly from service providers

In practice this means that Council expects **service providers** to

- 5.4.10 ensure that they are well acquainted with Council requirements identified in this Code
- 5.4.11 are familiar with particulars relating to a specific tender and quotation processes including the relevant specifications
- 5.4.12 not submit a tender or quotation unless they have the financial, technical, physical, management resource or other capabilities to fulfil Council's requirements
- 5.4.13 not seek to influence a procurement process by improper means or collude with other service providers
- 5.4.14 declare and act upon any conflicts of interest that may be seen to influence impartiality
- 5.4.15 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
- 5.4.16 not offer gifts or benefits to a Council officer for the discharge of official business

## **5.5 All Councillors and Council staff will abide by the following Sorell Council Policies;**

- 5.5.1 Fraud and corruption prevention policy
- 5.5.2 Gifts and benefits policy
- 5.5.3 Public interest disclosure policy

## **6 PROCUREMENT METHODS**

While open and fair competition may often be best achieved by undertaking a tender process where all interested parties have an opportunity to bid, there are times when this practice will not deliver the most advantageous outcome for the Council. In such instances, other market approaches may be more appropriate.

The Council will, having regard to the procurement principles and any other factors considered relevant by the Council, in its absolute discretion, determine the appropriate method that will be employed to procure goods and services at any particular time.

### **6.1 Non Tender – processes for acquisition of goods and or services**

#### **6.1.1 Direct Purchasing**

This is where Council purchases from a single source, without first obtaining competitive bids.

This method will be used only for low value, low risk goods and services where the Service Provider already has a successful history with the Council.

#### **6.1.2 Purchase Orders**

Purchase Orders usually have limited terms and conditions and detail specific items that are to be purchased.

This method may be used for low value, low risk goods and services and will not be used for non routine, high value and high risk goods and services.

#### **6.1.3 Quotations (Informal)**

This is where Council will only enter into a contract where 2 quotations from suitable service providers able to provide the goods or services have been sought.

Records must be kept of quotations received and quotations approved. If written quotations cannot be obtained Council must keep detailed written records of the oral quotation obtained including details of the commercial terms of the quotation.



This method may be used for low value, low risk goods and services

<b>Procurement Value</b>	<b>Minimum Requirement</b>
\$30,000 and below	<p><b>Direct Purchase – Verbal Quotations</b></p> <p>No formal quotations are required; however, the General Manager may at his discretion obtain verbal quotations, of which at least one will be sought from a local business (if available).</p>

#### **6.1.4 Request for Quotations (RFQ)**

This is a more formal quotation process. Council will enter into a contract where 3 written (including email) quotations from suitable service providers able to provide the goods and or services have been sought. Where less than 3 suitable service providers are reasonably available, records outlining this circumstance will be kept.

Council must keep detailed written records of the quotations obtained including details of the commercial terms of the quotation.

This method may be suitable for simple, largely price based purchases.

Purchasing goods and or services through the **National Procurement Network** (NPN) is an option for Councils. Purchasing through this mechanism involves an RFQ process. Items with a financial value above the prescribed amount may be legitimately purchased through the Network RFQ process. Use of the Network as a purchasing option for Councils is justified under the Regulations. See section 10 - Exemptions, point 10.4.

<b>Procurement Value</b>	<b>Minimum Requirement</b>
Between \$30,001 and \$249,000	<p><b>Written quotations</b></p> <p>The General Manager at his discretion seek at least three written quotations, of which at least one will be sought from a local business (if available).</p>

#### **6.2 Tender - processes for acquisition of goods and or services**

The Act and Regulations require that Council invite Tenders for any Contract it intends to enter into for the supply or provision of goods or services valued at or above a prescribed amount. The prescribed amount is \$250,000 (GST exclusive).

That said, Council may also determine that tenders should be called in certain circumstances as appropriate, where the estimated value of the purchase is less than the prescribed amount.

### 6.2.1 Open Tenders

An open tender process is an invitation to tender by public advertisement. 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 stated selection criteria.

Procurement Value	Minimum Requirement
\$250,000 and greater	<p><b>Public Tender</b></p> <ul style="list-style-type: none"> <li>▪ Council will advertise each tender at a minimum in the Mercury newspaper for a minimum of a two week period. Other advertising may be utilised as required to be run concurrently.</li> <li>▪ Each tender will be advertised on Council’s website</li> <li>▪ Council would ideally like at least one tender from a local business (if available)</li> </ul>

### General Manager - responsibilities

Consistent with the Regulations (Regulation 24) Council will ensure that when open tenders are used as a method of procurement; the General Manager will invite tenders.

The General Manager will advertise the tender locally via the daily newspaper circulating in the municipal area and on via Councils website – making the tender available to all qualified and interested bidders.

The public notice will identify:

- 6.2.1.1 clearly the nature of the goods and or services the Council requires
- 6.2.1.2 the period within which the tender must be lodged (must be at least 14 days after the date on which the notice is published)
- 6.2.1.3 where the tender must be lodged
- 6.2.1.4 details of a person from whom more detailed information relating to the tender may be obtained

The General Manager will ensure that prospective tenderers are provided with details regarding:

- 6.2.1.5 the specifications of the goods and or services required
- 6.2.1.6 the duration of the contract, including any extensions that are specified in the contract
- 6.2.1.7 any mandatory tender specifications and contract conditions
- 6.2.1.8 objective criteria for evaluating the contract and
- 6.2.1.9 must make reference to the Council Code for Tenders and Contracts

### **Service Provider – responsibilities**

A person submitting a response in relation to a Council public tender must do so in writing.

The Service Provider must specify the goods and or services tendered for, provide details of the goods and or services being offered and must lodge the tender within the period specified in the public notice.

The contract is bound by Councils tender conditions or alternatively Councils standard purchase terms and conditions if applicable.

### **6.2.2 Multi Staged Tender**

There are occasions – although usually limited (because the process can be resource intensive), where Council may use a multi stage tender process. Reference is made to this process in the Regulations at Regulation 26.

This tender method will be used by Council to gain knowledge about the market, obtain industry input – where it is unclear what goods and services are available or to shortlist appropriate suppliers before seeking offers.

At each stage in this process, service providers may be culled 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 - responsibilities

As a first stage in this process, the General Manager will request – expressions of interest from prospective tenderers.

The General Manager will advertise the expression of interest locally via the daily newspaper circulating in the municipal area and via Councils website.

The public notice will identify:

- 6.2.2.1 clearly the nature of the goods and or services the Council requires
- 6.2.2.2 contract identification details
- 6.2.2.3 the period within which the expression of interest must be lodged
- 6.2.2.4 where the expression of interest must be lodged
- 6.2.2.5 details of a person from whom more detailed information relating to the expression of interest may be obtained

The General Manager will ensure that prospective tenderers are provided with details regarding:

- 6.2.2.6 the specifications of the goods and or services required
- 6.2.2.7 objective criteria for evaluating the expression of interest
- 6.2.2.8 the method of evaluating expressions of interest against the criteria
- 6.2.2.9 details of any further stages in the tender process
- 6.2.2.10 must make reference to the Council Code for Tenders and Contracts

At the final stage of a Multi Staged Tender process, the General Manager will invite all service providers who have met the criteria determined by the Council, to tender for the supply of goods and or services

If only one service provider meets the criteria determined by Council, the Council may contract with that supplier after

- 6.2.2.11 a tender from that Service Provider or
- 6.2.2.12 a decision by the absolute majority of the council to do so.

Service providers responsibilities as covered by clause 6.2.1

## **6.3 Ongoing Supply Arrangements - Goods and Services**

### **6.3.1 Standing Contract**

A Council, through an open tender process, may establish a standing contract in which a single tenderer or multiple tenderers may be contracted for a specified period to provide specified goods or services during that period without the need for a further tender process. Reference is made to this process in the Regulations at Regulation 23.

Service providers listed on a standing contract panel will be selected following an evaluation process.

Council may legitimately purchase directly from a service provider listed on a standing contract panel.

Council may implement its own standing contract arrangements or may make use of goods and or services panels that have been negotiated for example for Tasmanian Councils via LGAT as a member of the National Procurement Network or via similar arrangements through State Government.

### **6.3.2 Multiple Use Register**

A multiple use register is a list, intended for use in more than one procurement process, of pre qualified providers, who have satisfied the conditions for participation or inclusion on the register. Reference is made to the multi use register process in the Regulations at Regulation 25.

Council may establish a multi use register of service providers who meet criteria established by the Council in respect to the supply of particular categories of goods and services.

Inclusion on a multi use register provides certainty for potential service providers that they have been recognised as meeting conditions for participation.

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.

### **General Manager - responsibilities**

As per Regulation 28, Council will establish and maintain procedures for the use of multiple use registers for contracts valued at under the current prescribed amount, excluding GST.

Essential procedural requirements include that, the Council will invite applications from service providers for inclusion on a multiple use register by advertising locally via the daily newspaper circulating in the municipal area and via Councils website.

The public notice will identify:

- 6.3.2.1 clearly the nature of the goods and or services the Council requires
- 6.3.2.2 any identification details associated with the register
- 6.3.2.3 the period within which the application must be lodged
- 6.3.2.4 where the application must be lodged
- 6.3.2.5 details of a person from whom more detailed information relating to the multiple use register may be obtained

The General Manager will ensure that applicants are provided with information regarding:

- 6.3.2.6 the specifications of the goods and or services required
- 6.3.2.7 the criteria for evaluating the applications
- 6.3.2.8 the method of evaluating applications against the criteria
- 6.3.2.9 must make reference to the Council Code for Tenders and Contracts

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

If Council rejects the application, the General Manager will advise the applicant of the reasons for rejection.

If Council accepts the application the General Manager will advise the applicant of the category their application will be included in on the multiple use register.

The multiple use register will be reviewed by Council at least every 2 years.

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 12 months and the application has not been accepted.

### **6.3.3 Strategic Alliances**

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

- 6.3.3.1 LGAT through the National Procurement Network
- 6.3.3.2 State Government Contracts and
- 6.3.3.3 any other purchasing group of which Council is a member

## **7 CALCULATING THE VALUE OF A PURCHASE**

### **7.1 Price**

The dollar value of the purchase may be calculated as follows:

- 7.1.1 **single one-off purchase** – the total amount, or estimated amount, of the purchase (excluding GST)
- 7.1.2 **multiple purchases** – the gross value, or the estimated gross value, of the purchases (excluding GST); or
- 7.1.3 **ongoing purchases over a period of time** – the annual gross value, or the estimated annual gross value, of the purchases (excluding GST).

As per Regulation 23, Council will not split a single procurement activity into 2 or more separate contracts for the primary purpose of avoiding the requirement to publicly invite tenders.

### **7.2 Non price considerations**

Council will ensure that it is buying at the most competitive price available, but quantifying the value of a purchase does not simply mean buying at the lowest price. Specific issues that will be taken into account by Council that relate to non price related matters are identified in the Principles section at 5.2.

## **8 GOODS AND SERVICES TAX (GST)**

All procurement thresholds are GST exclusive

Tenders and quotations must be sought on a GST exclusive basis.

## **9 EXTENSION OF CONTRACTS ENTERED INTO**

Consistent with Regulation 23, Council may extend a contract entered into:

- 9.1 as specified in the contract or
- 9.2 if the contract does not specify extensions, by an absolute majority.

## 10 EXEMPTIONS

The Regulations identify circumstances where Council is not required to issue a public tender process.

The exemption circumstances identified in Regulation 27 – Non application of the public tender process are:

- 10.1 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
- 10.2 a contract for goods or services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth
- 10.3 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
- 10.4 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 or any other local government association in this State or in another State or a Territory or any organisation, or entity, established by any other local government association in this State or in another State or a Territory.
- 10.5 a contract for goods or services in respect of which a council is exempted under another Act from the requirement to invite a tender
- 10.6 a contract for goods or services that is entered into at public auction
- 10.7 a contract for insurance entered into through a broker
- 10.8 a contract arising when a council is directed to acquire goods or services due to a claim made under a contract of insurance
- 10.9 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–
  - 10.9.1 extenuating circumstances or
  - 10.9.2 the remoteness of the locality or
  - 10.9.3 the unavailability of competitive or reliable tenderers
  - 10.9.4 a contract of employment with a person as an employee of the council



## **General Manager - responsibilities**

The General Manager will authorise non use of the public tender process in accordance with the exemption directions identified above.

### **11 ENGAGING A THIRD PARTY TO MANAGE A PROCUREMENT PROCESS**

Council may engage third parties to manage the procurement process for individual projects. The use of a third party as an agent or consultant to advise on, arrange or manage a procurement process does not exempt Council from complying with Council procurement policy and procedures.

Should Council engage a third party to manage a procurement process, it will be ensured that material is included in the contractual arrangements with the third party that requires the third party to comply with Council procurement policy and procedures.

### **12 REPORTING PROCEDURES**

Council is obliged to report at a minimum on a series of procurement matters.

#### **12.1 Procurement at or above the prescribed amount**

As per Regulation 23, Council will report in its Annual Report details of any contract for the supply or provision of goods and or services valued at or above the currently legislated prescribed amount of \$250,000.

Council may also at its absolute discretion report detail of instances of procurement below the prescribed amount identified in the Regulations.

#### **12.2 Contract Extension**

As per Regulation 23, Council will report in its Annual Report, the details of any extension of a contract, where Council agreed to extend a contract by an absolute majority and the pre existing contract did not specify extensions.

Detail that will be reported for 12.1 and 12.2 at a minimum as required under the Regulations is:

12.2.1 a description of the contract

12.2.2 the period of the contract

12.2.3 the periods of any options for extending the contract

12.2.4 the value of any tender awarded, or if a tender was not required, the value of the contract excluding GST

12.2.5 the business name of the successful contractor

12.2.6 the business address of the successful contractor

### **12.3 Emergency Provision**

As per Regulation 27 Council will report in its Annual Report, the details of all instances where non application of the public tender process has been applied as a result of an emergency, where in the opinion of the General Manager, there was insufficient time to invite tenders for the goods and services required in that emergency.

### **12.4 Other Circumstances**

As per Regulation 27 Council will report in its Annual Report, the details of all instances where non application of the public tender process has been applied because Council agreed by absolute majority, that a satisfactory result would not have been achieved if tenders were invited because of

12.4.1 extenuating circumstances

12.4.2 the remoteness of the locality

12.4.3 the unavailability of competitive or reliable tenderers

12.4.4 a contract of employment with a person as an employee of the Council

Detail that will be reported for 12.3 and 12.4 at a minimum as required under the Regulations is:

12.4.5 a description of the reason for not inviting public tenders

12.4.6 a description of the goods and or services acquired

12.4.7 the value of the goods and or services acquired

12.4.8 the name of the supplier.

In addition to ensuring the above reporting occurs, as per Regulation 28, the General Manager will establish and maintain procedures for reporting to Council circumstances where a public tender or quotation process was not used and reasonably should have been.

## **13 WORK HEALTH AND SAFETY**

Council's Work Health and Safety (WHS) Management Plan and as specified in the tender or quotation document.

## **14 REVIEW OF THE CODE**

Consistent with the requirements identified in Section 333B of the Act, Council will formally review this Code at least every 4 years.

The Code may be modified on an as needs basis from time to time by Council to reflect changed operational requirements.

## **15 BREACH OF THE CODE**

Council will take all reasonable steps to comply with this Code.

Council will not be liable in any way to a Service Provider or any person for a breach of this Code.

If any employee of the Council, or a body controlled by the Council breaches this Code, Council may take disciplinary action, if in its absolute discretion it considers it desirable to do so.

If a Service Provider commits a breach of this Code, Council may, in its absolute discretion, take action against that Service Provider.

## **16 ACCOUNTABILITY**

Consistent with Section 333B of the Act, as a measure of accountability and transparency, the General Manger will:

- 16.1 make a copy of this Code and any amendments, available for public inspection at the Council's offices during ordinary office hours and
- 16.2 make copies of this Code available for purchase at reasonable charge and
- 16.3 publish a copy of the Code on the Council's internet site – free of charge.