

## 1. Introduction

Council procures a wide range of products and services as part of normal business operations and to provide specific services to ratepayers. Council is committed to ensuring a fair, transparent and accountable process in procuring goods/services on a value for money basis. Council ensure that purchases are made in the best interest of the community and in accordance with Council's Community Plan and legislative requirements.

## 2. Purpose

### 2.1 Purpose

2.1.1 Section 49 of the *Local Government Act 1999*, ("the Act") requires Council to prepare and adopt policies on contracts and tenders including:

- the contracting out of services; and
- competitive tendering and the use of other measures to ensure that services are delivered cost-effectively; and
- the use of local goods and services.

2.1.2 The specific requirements for contract and tender policies pursuant to Section 49 of the Act must:

- Identify circumstances where the Council will call for tenders for the supply of goods, the provision of services or the carrying out of works
- Provide a fair and transparent process for calling tenders and entering into contracts in those circumstances
- Provide for the recording of reasons for entering into contracts other than those resulting from a tender process.

2.1.3 However, this Policy does not cover:

- non-procurement expenditure such as sponsorships, grants, funding arrangements, donations and employment contracts; or
- the disposal of land and other assets owned by the Council; or
- the purchase of land by the Council.

## 3. Objectives

### 3.2 Objectives

Council aims to achieve advantageous procurement outcomes by:

- enhancing value for money through fair, competitive, non-discriminatory procurement;
- promoting the use of resources in an efficient, effective and ethical manner;

- making decisions with probity, accountability and transparency;
- advancing and/or working within Council's economic, social and environmental policies;
- providing reasonable opportunity for competitive local businesses to supply to Council;
- appropriately managing risk; and
- ensuring compliance with all relevant legislation.

## 4. Definitions

### 4.1 In this Policy:

**Annual** refers to a financial year

**Goods** mean goods including consumables, materials, plant, equipment.

**Procurement** includes purchase, finance, operating lease or hire/hire purchase.

**Services** mean services provided by tradespeople, professionals, consultants or utilities.

Reference to a **price** or **cost** means an amount before GST is added (GST Exclusive).

## 5. Principles

### 5.1 Procurement Principles

Council must have regard to the following principles in its acquisition of goods and services:

#### 5.1.1 Value for Money

The Council will undertake efficient and effective procurement activities to ensure value in the expenditure of public money. Value includes price; whole-of-life costs; fit for purpose (technical compliance); and the value of any environmental, social and economic benefits, taking into consideration Council's long term financial plan and strategic direction.

#### 5.1.2 Transparent, Accountable, Fair and Ethical Standards

Council is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations to ensure open and effective competition.

#### 5.1.3 Local Economic Development

To the extent permitted by law, Council will utilise local providers and provide local businesses the opportunity to quote and give preference to goods made locally and suppliers whose activities contribute to local economic development. Council may prefer a local Supplier when:

- a) the supplier operates from or sources Goods or Services (including labour) from within the area of the Council
- b) the supplier supports community not-for-profit organisations within the area of the Council
- c) the supplier offers Goods or Services that are more environmentally responsible than competing offerings
- d) the supplier is financially competitive with other offers

## **5.1.4 Social and Environmental Sustainability**

Council will seek to adopt purchasing practices which align with the principles of environmentally responsible action, conserving natural resources, waste minimisation and recycled and environmentally preferable products, providing leadership to business, industry and the community. A supplier who is to work on “local government land” in performance of their contract must commit to environment protection practices at least as stringent as the Council’s environment protection policy.

Businesses that provide or support social enterprise should also be utilised.

Council is committed to supporting Aboriginal and Torres Strait Islander businesses and promoting the employment of Aboriginal and Torres Strait Islander people, by supporting procurement from Aboriginal and Torres Strait Islander owned businesses.

## **5.1.5 Work, Health and Safety**

Council has an obligation to ensure that all suppliers are compliant with the *Work Health and Safety Act 2012*, as well as being competent in the provision of the goods or services.

A supplier who supplies or deploys labour in performance of their contract must commit to WHS practices at least as stringent as the Council’s WHS policy.

Where a procurement of goods or services has WHS implications for employees, those employees should be consulted prior to the Council going to the market.

## **5.2 Financial and Contractual Delegations**

5.2.1 Under the *Local Government Act 1999 (Section 101)* the Chief Executive Officer (CEO) has delegated authority with respect to expenditure of Council funds, which has been sub-delegated to employees through the sub-delegations document.

5.2.2 Where the value of the procurement exceeds an employee’s financial delegation, approval must be obtained from the relevant Director or Chief Executive Officer before expenditure is committed.

5.2.3 A procurement not having prior budget allocation must be approved by the Chief Executive Officer before expenditure is committed.

5.2.4 Under the *Local Government Act 1999 (Section 36)* the Chief Executive Officer may delegate authority with respect to entering into any kind of contract or agreement, to Directors through the sub-delegations document.

## 5.3 Value of the purchase

The value of the purchase will be calculated as follow:

5.3.1 One-off purchase: the total value of the purchase

5.3.2 Multiple purchases: the total value of items/purchases for a particular project.

5.3.3 Ongoing purchases: the annual (cumulative) value of the purchases from the supplier, or the total value over the contract term, whichever is greater.

## 6. Procurement Methods

### 6.1 Procurement methods

6.1.1 When purchasing goods and services there are a number of transaction methods which can be used to select and contract with the supplier. The underlying principle is to balance the transaction costs associated with each transaction method, with risk and probity. Transaction costs are lowest with methods such as credit cards, and higher for methods such as tenders.

6.1.2 Purchases which are low value, low risk or low complexity should be acquired through the more efficient processes of credit cards, direct purchase or panel arrangements.

6.1.3 Purchases which are high value, high risk and/or high complexity should be acquired through the more stringent processes of a tender.

6.1.4 The table below defines when specific transaction methods should be used.

Value	Procurement Method	Contractor Engagement
<b><i>Under 10,000</i></b>	Direct Purchase/Single Quote	Purchase Order*
<b><i>\$10,000-\$100,000</i></b>	3 Quotes/if of benefit a Select or Open Tender	Purchase order* or Contract
<b><i>Over \$100,000</i></b>	Select, Open Tender, Strategic Alliance, Contract, VendorPanel, Procurement Australia, or State Government);	Contract

\*Note Annexure A for exemptions to the requirement for a purchase order.

## 6.2 Purchases under \$10,000

A single quote is acceptable for purchases of this value, and should be from a supplier on Council's Preferred Supplier or Contractor Register where possible. It may be appropriate to obtain more than one quote for some purchases, to ensure value for money.

## 6.3 Quotations – Purchases \$10,000 - \$100,000

- 6.3.1 Use of direct purchases using quotation is an efficient means of procuring goods and services without undertaking a tender process. It also allows for competition by requiring three quotes where the purchase is over \$10,000.
- 6.3.2 Three written quotes must be sought from suppliers. A copy of all quotes requested and received must be retained in the records management system for probity purposes. If it is not possible to request three quotes, purchaser must seek a dispensation as specified in this policy.
- 6.3.3 If Council (or a strategic alliance) has a Panel Contract in place for the supply of goods or services, purchases may be made directly from any of the suppliers on the panel, without the need to obtain quotes or seek tenders (as long as the contract contains a specific price for the items being purchased). Purchasers may choose to obtain quotes from more than one supplier on the panel depending on the value and nature of the purchase.
- 6.3.4 Suppliers should be provided with a written specification for the Goods or Services required. If the specification changes, all suppliers must be notified in writing on the same day.
- 6.3.5 Suppliers should be provided with at least one week to supply a quotation. Where one or more suppliers elects not to provide a quotation, the process will be deemed to be compliant with this policy.
- 6.3.6 Reasons for selecting one quotation over another must be recorded.
- 6.3.7 The successful suppliers must be issued with a purchase order or contract.
- 6.3.8 Unsuccessful suppliers must be notified of the outcome.

## 6.4 Tenders – Purchases over \$100,000

### 6.4.1 Select and Open Tenders

A Tender process must be used when the value of the purchase is greater than \$100,000. Tenders can be open or select tender or a two stage process with an Expression of Interest followed by tender. Council is also able to join tender processes conducted by strategic alliances.

In a select tender, a minimum of 3 independent suppliers must be invited to tender. The reasons why an open tender was not used must be recorded.

In an open tender, the Tender will be publicly advertised on the Tenders SA website at [www.tenders.sa.gov.au](http://www.tenders.sa.gov.au).

Where a tender is likely to be complex or contentious, the Council may engage an independent probity advisor, to monitor and ensure the tender process is adhered to.

## 6.4.2 Request for Tender (RFT)

In a RFT it is important that the tendering conditions are well documented for probity purposes and that the selection criteria have been clearly defined. A RFT includes:

- **Conditions of Tender:** the rules that govern the tender process, and identifies the evaluation criteria for tender assessment.
- **Specification:** describes what is being purchased with sufficient detail and clarity and may include technical specifications or drawings.
- **Tender Response:** provides the Tender form to be submitted and details all of the information that Council will require to make an assessment.
- **Conditions of Contract:** based on standard templates the draft contract is attached to set out the terms and conditions of the contract.

An RFT encourages clarification queries to be obtained during the Open Tender period to ensure a clear understanding of requirements.

## 6.4.3 Evaluation Criteria

Setting the evaluation criteria and weighting each criteria upfront, ensures the decision to select a supplier is objective and fair. Evaluation criteria will usually address compliance with contract terms and conditions, the technical merit of the goods or services offered, the skills of the tenderer to fulfil the specified requirements and an assessment of the risks or constraints associated with each offer.

## 6.4.4 Release Tender

An open tender should be released to the public and may be formally advertised. The tender period (minimum 21 days) should allow potential respondents sufficient time to respond. Some projects may require detailed information to be provided with a tender briefing or site visits. During the tender period, if circumstances change or additional information is required, all organisations that have sought the RFT documents must be informed.

## 6.4.5 Submitting Tenders

It is Council's preference that Tenders be lodged electronically via Tenders SA. If a physical tender box is used, it must be locked at all times, and physically closed to prevent submissions being lodged after the closing time.

Any tenders received after the closing time will not be considered.

## 6.4.6 Evaluating the Tender

All tenders are accessed via the SA Tenders Portal after the closing date. An evaluation panel will comprise at least 3 people, to assess tenders against a weighted point score system contained in a procurement plan.

The results must be formally documented for probity purposes and placed on file with a copy of the tender. The tender's expertise, experience and financial stability may be validated via reference checks.

## 6.4.7 Recommendation

The evaluation panel will make a written recommendation, which is signed off by the Council appointed Chair of the Tender Evaluation Panel and the recommendation is then to be provided to the Chief Executive Officer for approval.

## 6.4.8 Negotiate final contract terms

Once the recommendation report is approved, the successful tenderer will be advised of the acceptance of their tender, or informed that they are the preferred tenderer, subject to negotiation on any outstanding issues.

## 6.4.9 Execute the contract

Once the terms and conditions have been agreed the contract will be awarded. The contract must be signed by the Chief Executive Officer, in accordance with contractual delegations. All unsuccessful tenderers must be informed of the outcome.

Where practicable and subject to legal advice to the contrary, a transaction should be based on the Council's template form of contract, or a form last published by Standards Australia.

## 6.5 Expressions of Interest (EOI)

An EOI allows Councils to elicit information without any obligation to commit. They are useful where the Council is unsure which suppliers are in the market or the scope/budget for a project or where the Council wishes to obtain some conceptual suggestions. The EOI may form part of a two phase tender process, where EOI respondents may be short-listed for a select tender. Council's intentions for the process must be clearly stated, so industry is not misled.

## 6.6 Panel Contract

Under a panel arrangement a tender is undertaken to select a group of suppliers which provide the services and have the capability to meet the Council's needs. Panel contracts consist of multiple suppliers that can supply Council with goods, works or services on a regular or ad hoc basis. Council can then purchase items directly from that supplier in accordance with the contract rates, without the need to obtain quotes. Panel arrangements may operate for up to 5 years.



## 6.7 Strategic Alliance

6.7.1 A Strategic Alliance allows Council to undertake procurement through contract arrangements already established and administered by other organisations, including, but not limited to:

- LGA Procurement
- Procurement Australia
- State Government contracts
- Other Councils.

6.7.2 The Council may become party to an existing contract if the Council's employees are satisfied the contract is likely to offer the Council better value for money than the Council going direct to the market.

6.7.3 Bulk purchasing activities with other Councils will be negotiated between the Councils where it is identified that collaboration will offer an efficient or better value for money than each Council going direct to the market.

## 6.8 Record-keeping

As per Section 49-2(c), Council must provide for the recording of reasons for entering into contracts other than those resulting from a tender process.

## 6.9 Conflicts of Interest

6.9.1 If a conflict of interest for an employee becomes known during a purchasing process, the Chief Executive Officer must be advised in writing as to the nature of the conflict.

6.9.2 An employee with a conflict of interest must not participate in the purchasing process.

6.9.3 Contractor canvassing of Staff or Elected Members in relation to purchasing activities of the Council is prohibited and must be reported to the Chief Executive Officer. Any occurrences will result in the supplier or contractor being removed from Council's Preferred Supplier or Contractors Register and the offer being removed from consideration.

## 6.10 Contract management and administration

6.10.1 It is important that contracts are managed diligently to maximise the outcomes and minimise risk. An employee must be appointed as the Contract Manager to represent the Council when engaging the supplier.

6.10.2 The Contract Manager must review all invoices, to ensure charges are in accordance with the contract terms and conditions. They must also verify that the percentage of work completed and invoiced is accurate.



6.10.3 The Council must review all contract variations and make an assessment whether they are part of the original contract scope. Variations must be approved in accordance with financial delegations for the total value of the project including the variation. It may be necessary to re-tender the variation, to ensure open and fair competition.

6.10.4 Council requires contractors and consultants engaged to undertake activities on Council's behalf, who work with children and vulnerable people on a regular basis, to comply with Council's requirements.

## 6.11 Risk and Opportunity Management

6.11.1 Council must ensure that appropriate practices and procedures of internal control and risk management are in place for its procurement activities.

6.11.2 Council must ensure that suppliers have sufficient professional indemnity, public liability and personal injury insurance prior to commencement of any project works.

## 7. Dispensation from Policy

Dispensations by the Chief Executive Officer from the procurement processes and requirements outlined in this Policy may be approved as follows:

7.1 Dispensations from this, or other procurement Policies listed in the *Related Policies* section above, may be either general dispensations from specific provisions of procurement Policies, or a single source supply dispensation, including emergency supplies in extenuating circumstances.

7.2 Single source supply dispensations may be considered where at least one of the following reasons applies:

7.2.1 There are only a limited number of suppliers with the capability, experience, and suitability to meet requirements and no alternative exists;

7.2.2 No submissions are received in a procurement process or the submissions received did not meet the specification requirements;

7.2.3 The need for compatibility with existing systems or services;

7.2.4 Obligations under warranty or other contractual arrangements requiring the supply of goods, works or services from a particular supplier;

7.2.5 An absence of competition due to technical reasons, including but not limited to, exclusive licence, proprietary information, or protection of intellectual property;

7.2.6 Value in the procurement process will not be achieved by the prescribed market approach, and there is demonstrated advantage in amending the approach; and

7.2.7 A response to a Council resolution with limited timeframes, or in an emergency situation.

- 7.3 If a procurement is deemed and approved as an emergency supply, in these cases;
  - 7.3.1 Expenditure must be within the employee's delegated financial authority.
  - 7.3.2 Expenditure must be limited to that required to alleviate the emergency situation only.
  - 7.3.3 The employee must ensure that appropriate methods of purchase are resumed as soon as practicable.
- 7.4 All dispensation requests, regardless of their cause, must be made in writing to the Chief Executive Officer and must outline the reasons for the request and any risks which may be involved in the approach. A report outlining the authorised dispensation requests will be reported to Council's Audit & Risk Committee.
- 7.5 Where a funding agreement specifies that Council must follow a prescribed tendering or selection process which differs from that outlined in this Policy, the project funded under that agreement must follow the tendering or selection process outlined in the funding agreement and records of this must be recorded in Council's records management system.

## 8. Prudential requirements

For all Prudential Requirements refer to Council's Prudential Management Policy.

## 9. Document administration and control

Policy title:	Procurement Policy
Policy number:	04.25
Policy type:	Council / Statutory
Responsible officer:	Director Community and Corporate
Committee Review:	Audit & Risk Committee 3 March 2023 [027-2023] Audit & Risk Committee 9 February 2024 [024-2024]
First issued / adopted:	12 November 2013
Review period:	Reviewed within 12 months following the conclusion of a periodic election, inline with legislative changes or by resolution of Council
Last reviewed:	15 February 2022, [032-2022], 21 March 2023 [046-2023]; 20 February 2024 [024-2024]
Next review date:	By November 2027
Current Version:	Version 4
Date revoked:	n/a
Applicable legislation:	Local Government Act 1999, s49 Ombudsman Act 1972 Environmental Protection Act 1993 Competition and Consumer Act 2010 Work Health and Safety Act 2012
Related documents:	Employee Integrity and Behavioural Standards (only applicable if standard is endorsed by Council) Disposal of Land and Assets Policy Public Consultation Policy Credit Card Policy Prudential Management Policy Safe Environments for Children, Young People and Vulnerable Persons Policy, Sub-Delegations Register
Public consultation required / undertaken:	No
Availability	This Policy is available for inspection at the Council office and any person may obtain a copy of this Policy upon payment of the fee fixed by Council in accordance with Council's Fees and Charges adopted each financial year. It is also available on Council's website <a href="http://mtr.sa.gov.au">mtr.sa.gov.au</a> .  Any grievance in relation to this policy or its application should be forwarded in writing to the Chief Executive Officer of the Council.
File reference:	W:\4. Policy Manuals\Current Policy Manual

## **APPENDIX A – Purchases that do not require a purchase order**

Any purchase where there is a valid and current contract in place for the provision of goods, services or construction works.

- Banking Service
- Courier Services
- Credit Card Purchases
- Dial Before You Dig
- Debt Collection
- Emergency Purchases (as defined within Policy)
- Employee Assistance Program Costs
- Food and Beverages (incidental only)
- Insurance Payments
- Labour Hire
- Lease and Rental Payments
- Legal Services
- Licence and Membership Fees
- Media Monitoring
- Medical Treatment and Tests
- Online Services
- Phone Accounts
- Photocopier Services
- Postal Services
- Publishing Charges
- Refunds or reimbursements
- Software licences and maintenance
- Statutory Government Charges
- Subscriptions
- Taxi Fares
- Travel and Accommodation
- Utilities
- Vehicle Registrations
- Vehicle Servicing