

CODE FOR TENDERS & CONTRACTS

July 2022



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1 Purpose

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

The Act and Regulations require the Council to invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above the Prescribed Amount according to the Act. For purchases under the Prescribed Amount alternate procurement processes will apply.

Financial limits of Council Officers for procurement processes will be in accordance with Councils' approved procurement delegations.

As a measure of accountability and transparency, the Council will make a copy of this Code available for public.

As at the date of Councils' approval of this version of the Code, the Prescribed Amount above which the above processes must be used is \$250,000.

2 Scope

This Code applies to all Derwent Valley Council activities involved with tendering and procurement (excluding Controlled Entities).

In accordance with the Act this policy will be reviewed every four (4) years or prior due to Council requirements.

3 Legislation

Local Government Act 1993

Local Government (General) Regulations 2015

Work Health and Safety Legislation 2012

Electronic Transaction Act 2000

4 Definition

Term	Definition
Building Construction	The Construction and refurbishment of buildings and residential properties, and associated maintenance (services and residential) and professional services (e.g., Architects).
Code	Refers to this Code for Tenders and Contracts which has been developed in accordance with the requirements of the <i>Local Government Act 1993</i> and the <i>Local Government (General) Regulations 2015</i> and subsequent amendments.
Consultant	A person or organisation, external to a Council, engaged under a contract on a temporary basis to provide recommendations or high-level specialist or professional advice to assist decision-making by Council. The consultant will be expected to exercise his or her own skills and judgement independently of the

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Term	Definition
	Council. It is the advisory nature of the work that distinguishes a consultant from a contractor.
Contractor	A person or organisation, external to a Council, engaged under contract for service (other than an employee) to provide specified services to a Council.
Contract	A contract is an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do, or abstain from doing, some act.
Evaluation Panel	A panel establishes to evaluate submitted quotations and tenders often consisting of at least \$100,000.
Expression of Interest (EOI)	An Expression of Interest may be used as a means of exploring the market or to pre-qualify businesses to reduce the cost of tendering by restricting the issue of formal tenders.
Local Business	All businesses operating in the State, which have a permanent office or presence in Tasmania and employ Tasmanian workers.
Multiple-Stage Purchasing	a process which allows for a preliminary assessment of the market to be made in terms of the capabilities of potential suppliers and the goods and services that are available to satisfy the requirement before a final purchasing stage is undertaken.
Open and Effective Competition	Ensuring that the purchasing process is impartial, open and encourages competitive offers.
Procurement	The entire process which all resources are obtained by an entity, including, planning, design, standards determination, specification writing, selection of suppliers, financing, contract administration, disposals, and other related functions.
Probity	Probity is a risk management approach to ensuring procedural integrity.
Probity Advisor	A Probity Adviser provides advice on probity issues before and during the process of tendering and contracting to ensure the process is fair and in accordance with the Councils' guidelines.
Public Tender	A tender where any business that can meet the requirements of the Request for Tender (RFT) has the opportunity to bid.
Purchasing	The acquisition of goods or services.
Quotation	The bid submitted in response to a Request for Quotation (RFQ) from the Council.
Request for Quotation (RFQ)	Either verbal or written request for offers from businesses capable of providing specified work, goods, or service. Request for Quotations (RFQ) are usually advertised.
Request for Tender (RFT)	A document soliciting offers from businesses capable of providing a specified work, goods, or service. Requests for Tender (RFT) are usually advertised
Standing Tender	A tender from 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.
Tender	A proposal, bid or offer that is submitted in response to a Request for Tender (RFT) from the Council.
Tenderer	Contractor, Supplier, or other bidder who is submitting a tender.
Tender Box	The point of lodgement for tenders to ensure that the documentation is kept secure until the tender period closes. The tender box has an opening which allows large envelopes to be lodged but does not permit access to the contents; should be secured in a fixed position; and should be locked with two locks with different keys, maintained by two different Officers.
Tender Review Committee	A committee established to review the process used for all building and construction and goods and services tenders over \$250,000.
The Act	<i>Local Government Act 1993.</i>
The Regulations	<i>Local Government (General) Regulations 2015.</i>
Value For Money	Achieving the desired outcomes at the best possible price.

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Term	Definition
Verbal Quotation	A verbal Request for Quotation (RFQ). A verbal response may be adequate for low value purchases. All verbal responses are to be documented.
Written Quotation	A written Request for Quotation (RFQ) to undertake specific works or supply goods and services.

5 Purchasing Principles

This Code has been developed as a transparent strategy that the Derwent Valley Council will follow in order to comply with the four (4) purchasing principles required in the Act and the Regulations. These principles include;

- Open and effective communication
- Value for money
- Enhancement of Capabilities of local business and industry
- Ethical behaviour and fair dealing

5.1 Open and Effective Competition

Encouraging impartial, open, and effective competition means seeking out opportunities to obtain competitive offers and ensuring that suppliers and the public can have confidence in Council's procurement processes. In practice Derwent Valley Council will:

- Adequately and regularly testing the market by an applicable process (for example, by tender)
- use a transparent purchasing processes to ensure that potential Contractors, suppliers, and the public can have confidence in the outcome;
- maintain procedures that ensure impartial, fair, and equitable consideration is given to all tenders and quotations received by the Council;
- always acting without undue favouritism and avoid bias;
- maintain processes that ensure a prompt and courteous response to all reasonable requests for advice and information from potential or existing suppliers;
- maintain procedures that ensure all potential suppliers are provided with the same information relating to each tender or contract, and are given an equal opportunity to meet the tender requirements;
- treat all suppliers of goods and services consistently and equitably;
- Apply reasonable and consistent Tender Evaluation Criteria for the assessment and consideration of tenders.

Market testing should be undertaken on a regular basis to allow new suppliers the opportunity to compete, encourage existing contractors to improve performance, identify new ways of fulfilling Council's requirements and enable the identification of new and improved products and services.

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5.2 Value for Money

Value for money means weighing up the quality of the goods and/or services offered in a tender or quotation submission and the prospective suppliers' capabilities against the cost of Council's requirements. Value for money does not mean always purchasing the cheapest product or lowest priced goods or services or necessarily accepting the lowest tender or quotation. In practice this means that the Council will weigh up the benefits of each purchase against the costs of that purchase. In doing this the Council will take the following factors into consideration:

- Acceptance of the tender or quotation which represents the most advantageous value for money offer to Council and the Derwent Valley community;
- Value for money factors are identified before calling for tenders and quotations and are reflected in evaluation criteria;
- Where appropriate, the use of weighted evaluation criteria;
- Fitness for purpose;
- Maintenance and running costs over the lifetime of the product;
- The advantages of buying locally, e.g., shorter delivery times, local backup and servicing, and the availability of spare parts;
- The contribution to the achievement of other Council objectives such as industry development and employment creation;
- Quality assurance and perceived level of risk, and
- The capacity of the supplier (e.g., managerial, and technical abilities);
- Disposal value.

5.3 Enhancement of the Capabilities of Local Business and Industry

Without compromising open and effective competition or value for money and wherever local capability exists, Council will provide opportunities for local businesses to compete for Council business. In practice the Derwent Valley Council will:

- Actively seeking quotations from local businesses, particularly from suppliers that have previously requested the opportunity to participate;
- Where possible, design of the Tender Evaluation Criteria to ensure local businesses have the same opportunities as all other respondents to tenders for goods or services required by the Council;
- Where the procurement method is a call for tender, the evaluation criteria, if appropriate to the Council's requirements, includes consideration of the use of workers, subcontractors and suppliers that are based in the Derwent Valley region and Tasmania and that the weighting applied to the criterion is between 10% and 20% of the total weightings applied to the evaluation criteria.
- Always advertise each tender locally when considered appropriate;
- Make tender documentation available on request at the Council office or via website, mail, email, or fax;

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- Ensure that sufficient time is provided to allow local bidders to prepare an adequate response when inviting tenders. As a minimum, tenders will be open for 14 days; and
- Use a Multiple-Stage tenders processes where appropriate, to evaluate responses through a staged process against Tender Evaluation Criteria determined by the Council, to provide more time for businesses to prepare tenders responses.

5.4 Ethical Behaviour and Fair Dealing

This principle means that all purchasing is undertaken in a fair and unbiased way and in the best interests of the Council. All Council purchasing must be carried out legally and ethically. Council will not seek to benefit from supplier practices that are dishonest, unethical, or unsafe.

In practice the Derwent Valley Council will:

- be fully accountable for the tendering practices that it uses and the decisions it makes;
- ensure that decisions are not influenced by self-interest or personal gain (i.e., declining gifts or other personal benefits from suppliers). Anyone with a role in Council purchasing must not solicit or accept offers of gifts or hospitality in return for exercising official duties. Officers should report any attempts to gift during a procurement process to the General Manager or delegate who will maintain a register of declined gifts;
- establish and maintain procedures to deal honestly with, and be equitable in the treatment of, all potential or existing suppliers;
- identify and deal with conflicts of interest. All conflicts of interest must be declared by all staff involved in a procurement exercise. As conflicts can arise during the procurement lifecycle the Council must have procedures to declare conflicts and a process for managing them (including perceived conflicts of interests). Examples of managing a conflict include (but are not limited to):
 - a person being removed from further involvement in the procurement process;
 - the person removing the interest which caused the conflict;
 - restricting the involvement of the person to certain parts of the procurement process not impacted by the conflict; or
 - appointing or engaging a probity adviser to oversee the procurement process.
- maintain confidentiality and security of the bid and other commercial and sensitive information during all stages of a procurement. Individuals responsible for the procurement activities must out in measures to safeguard the security and confidentiality of documents; and
- ensure that all tendering is undertaken in accordance with the Code and Council policies.

6 Ethics and Probity

6.1 Ethics and Conduct – Council Officers

Council Officers, or any other person or entity making a purchase on Councils' behalf, will comply with the following ethical standards of behaviour:

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- 1) the procurement process will be undertaken in accordance with Councils' Procurement Principles;
- 2) actual or potential conflicts of interest will be declared before inviting offers and measures put in place to appropriately manage any actual or potential conflicts of interest, monetary or otherwise;
- 3) accurate records of all dealings in respect to the purchase will be maintained during and after the process;
- 4) declining to accept any payments, gifts, gratuities, entertainment/hospitality, and other benefits offered by a Service Provider for the discharge of official duties;
- 5) avoiding any situation which is, or which may become, or which may be perceived as being a conflict of interest with the person's official duties;
- 6) avoiding any relationship with a Service Provider, financial or otherwise, which could be perceived as unfair or improper influence on their judgement, or which could expose the Council to allegations or perceptions of impropriety or unwarranted preference or unfair dealings or which could represent a breach of legislation; and
- 7) for any person with no legitimate role in the procurement process, not attempting to intervene or exert influence on the outcomes of the procurement process, in particular not communicating or implying any preference for the selection of a particular Service Provider.

Whenever dealing with Service Providers, Council Officers will:

- 1) clearly convey the Councils' requirements in an understandable manner and ensure that all Service Providers are provided with identical information upon which to base their tender or quotation;
- 2) ensure that Service Providers are provided with a specification or other statement of the Councils' requirements, which is sufficient to ensure that the Service Providers are not required to undertake unreasonable unpaid design or other work in order to prepare a tender or quotation;
- 3) ensure that a Service Provider is not provided with any information or clarification of the specification, which is not equally provided to all other Service Providers;
- 4) as far as is practicable, ensure that the specification does not restrict competition, prevent Local Businesses from submitting a tender or quotation or reflect bias to any brand or proprietary system or method of work;
- 5) in so far as possible, ensure that the Specification does not act as a barrier to innovation;
- 6) if any particular Conditions of Participation or Conditions of Tender, or Conditions of Contract apply, advise Service Providers of these when inviting offers;
- 7) advise Service Providers of the Evaluation Criteria, and if applicable the weightings, which will be used to evaluate offers at the time of invitation and ensure that the same criteria are used to evaluate all of the offers received;
- 8) If offers are to be evaluated using weighted criteria, apply the process for tender evaluation set out under the tender practices section of this Code;
- 9) ensure that the conditions of contract are not excessively onerous; and
- 10) not solicit or accept remuneration or other benefit from a Service Provider for the discharge of official duties.

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6.2 Ethics and Conduct – Service Providers

Whenever participating in a Council procurement process in any capacity whatsoever, a Service Provider:

- 1) will ensure they are acquainted with Councils' requirements and all matters relating to the tender or the quotation and the proposed contract;
- 2) will not submit a tender or quotation unless they have the financial, technical, physical, management, resource, and other capabilities to fulfil the Councils' requirements;
- 3) will apply Councils' Purchasing Principles and the standards and ethics required by this Code in its dealings with contractors, subcontractors, suppliers, or agents;
- 4) must not engage in any uncompetitive behaviour or other collusive practices, which deny or reduce legitimate business opportunities to other potential suppliers or Council;
- 5) must at all times act in observance of all laws;
- 6) must not
 - a) engage in acceptance or provision of secret commissions,
 - b) collude with other suppliers, potential or otherwise,
 - c) submit inflated prices to advantage another potential Service Provider,
 - d) enter into improper commercial arrangements with other contractors, subcontractors, suppliers, or agents,
 - e) seek to influence the procurement process by any improper means whatsoever,
 - f) accept incentives to provide contracts or services to other contractors, subcontractors, or agents; and
- 7) must declare any matter or issue which is, or which may lead to, or which could be perceived as, a conflict of interest regarding their participation in a procurement process or a contract to fulfil the Councils' requirements immediately upon the Service Provider becoming aware of the matter or issue.

If engaged by the Council to provide goods, services, or works of any nature a Service Provider will:

- 1) act in a polite and courteous manner towards the Councils' employees and agents and towards members of the general public;
- 2) refrain from the use of aggressive or foul language and expressions and not act in an aggressive or threatening manner towards the Councils' employees and agents and towards members of the general public;
- 3) in so far as is reasonably possible apply the standards and ethics required by this Code in its dealings with any contractors, subcontractors, suppliers, or agents;
- 4) put in place and maintain policies, systems and procedures for Workplace Health and Safety Management; Environmental Management; and Quality Assurance, appropriate to the applicable level of complexity and risk associated with performance of the Councils' requirements;
- 5) comply with the provisions of awards and workplace arrangements which have been certified, registered, or approved under relevant industrial relations legislation;
- 6) comply with all applicable legislative, regulatory, and statutory requirements, including Acts of the Commonwealth and State, regulations, by-laws, and proclamations made or

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issued under such Acts and lawful requirements or directions of public and other authorities;

- 7) make payments to employees, subcontractors, suppliers, consultants, and agents in a timely manner; and
- 8) not offer gifts, gratuities, entertainment/hospitality, and other benefits to a Council Officer for the discharge of official duties.

6.3 Breach of the Code

The Council will take all reasonable steps to comply with this Code. The Council will not be liable in any way to a supplier 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, the Council may take disciplinary action, if in its absolute discretion it considers it desirable to do so. If a supplier commits a breach of this Code, the Council may, in its absolute discretion, take action against that supplier.

6.4 Use of Probity Advisors

The Council will engage the service of Probity Advisors where the nature of the tender warrants particular sensitivity to due process. For example, where the Council is seeking tenders for large and complex developments that may involve joint venture proposals, or where the contractual engagement is for extended periods, or other similar projects where the General Manager considers that a Probity Advisor should be engaged.

In certain circumstances, the Council may also engage a Probity Advisor to investigate complaints of a particular nature to provide recommendations to the General Manager.

7 Insurance and Financial Security

7.1 Minimum requirements

It will be a minimum requirement of all suppliers that they must be able to meet the Councils' and all legislated Work Health and Safety (WHS), risk management and insurance requirements. The supplier must be included on Councils' Contractor Register prior to the awarding of any contract. To do so the supplier will provide Council with a copy of their;

- Public Liability Insurance (\$10,000,000)
- Workers Compensation
- Vehicle Insurance
- Personal Cover Insurance (if the supplier is an individual)
- Professional Indemnity insurance (if required)

7.2 Financial Security

If the provision of Financial Security is required in the tender documentation, the following matters are conditions of the tender:

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- The successful tenderer must lodge with the Council a Bank Guarantee or other required Financial Security when required by the Council.

The Financial Security must be:

- in a form and substance wholly satisfactory to the Council;
- without limiting the generality of anything in this clause, expressed to be payable unconditionally on demand to the Council without reference to the Contractor; and
- given by a bank approved by the Council.

The Council has the discretion to approve or disapprove of the form of the Financial Security and of the financial institution or business providing the Financial Security offered.

If the Financial Security is not transferable by delivery, an executed transfer, or such other documentation as is necessary to effect a transfer of the Financial Security, must accompany it. The costs (including all stamp duty or other taxes) of an incidental to the transfer and retransfer, must be borne by the party providing the Financial Security.

7.3 Goods and Services Tax

If the GST has application to the Services, then the following GST provisions are to apply.

All prices or sums provided in the tender response are to show as separate items the:

- sum tendered;
- GST applicable; and
- total amount including the GST amount applicable.

7.4 Tax Invoice

A valid tax invoice must be provided to the Council at the time of the supply of any goods or Services to the Council, or as otherwise required by the Council, and in any case not later than 28 days after providing any goods or Services to the Council to enable the Council to claim any applicable input tax credits in respect of the amount of GST paid or payable by the Council.

8 Complaints

Information regarding the Councils' formal complaint resolution process is set out in the Councils' Customer Service Charter and Complaints Management Policy.

In the first instance, complainants are encouraged to seek resolution by contacting the Council Representative who is managing the tender. If relevant, complainants are encouraged to seek a debriefing, if they have not already done so.

If a complainant is not able to satisfactorily resolve the complaint with the Manager of the tender process, the complainant may write to the General Manager outlining the nature of the complaint, providing copies of all correspondence, documents, and other relevant material. The General Manager will take whatever action is considered necessary to resolve the complaint, alternatively

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put in place a process for the resolution of the complaint or may refer the matter to a statutory review process where appropriate.

8.1 Debriefing Unsuccessful Tenderers

The Council will provide a debriefing interview to any unsuccessful tenderer who requests one. The purpose of the debriefing session is to help unsuccessful tenderers submit more competitive bids in future by identifying ways in which each tenderer's offer could be improved.

Where a Multiple-Stage tender process is used in which expressions of interest are used to shortlist responses, respondents not short-listed may be offered a debriefing interview, in a similar way to unsuccessful tenderers.

9 Reporting

9.1 Procurement at or above the Prescribed Amount

The 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 and separately note those valued at or above the Prescribed Amount. The General Manager will establish and maintain procedures for reporting to the Council circumstances where a public tender or quotation process was not used and reasonably should have been.

Council is required, by the *Local Government (General) Regulations 2015* (Tas), to include the details of purchases made in the applicable financial year in its annual report:

- all contracts awarded which are valued at the prescribed amount or more;
- 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, i.e., pursuant to regulation 27, sub-regulation (a);
- 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 one or more of the circumstances provided for under regulation 27, sub-regulation (i) applied; and
- the details of any contract extensions, where Council was required to resolve by an absolute majority to extend because the contract did not include extension options.

The information included in annual reports will, at a minimum, be sufficient to comply with Division 3 of the *Local Government (General) Regulations 2015* (Tas) [annual reporting requirements in relation to tenders and contracts], which generally includes the following:

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For tenders awarded, contracts and contract extensions entered into:

- a description of the contract;
- the period of the contract;
- the periods of any options for extending the contract;
- the value of the tender awarded or the contract (excluding GST);
- the business name of the successful contractor;
- the business address of the successful contractor.

For contracts awarded as a result of non-application of the public tender process, pursuant to regulation 27, sub-regulation (a) or (i):

- a brief description of the reason for not inviting public tenders;
- a description of the goods or services acquired;
- the value of the goods or services acquired;
- the name of the supplier.

9.2 Emergency Provisions

The 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.

9.3 Contract Extensions

The Council will report in its Annual Report the details of any extension of a contract where the Council agreed to extend a contract by an absolute majority and the pre-existing contract did not specify extensions. Details that will be reported for Clauses 9.1 and 9.3 at a minimum as required under the Regulations are;

- A description of the contract
- The period of the contract
- The periods of any options for extending the contract

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- The value of any tender awarded or, if a tender was not required, the value of the contract excluding GST
- The business name of the successful contractor, and
- The business address of the successful contractor.

9.4 Other Circumstances

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

- Extenuating circumstances
- The remoteness of the locality
- The unavailability of competitive or reliable tenderers, and
- A contract of employment with a person as an employee of the Council.

Details that will be reported for Clauses 9.2 and 9.4 at a minimum as required under the Regulations are;

- A description of the reason for not inviting public tenders
- A description of the goods and or services acquired
- The value of the goods and or services acquired, and
- The name of the supplier.

10 Procurement Overview

The following procurement overview is provided to give a brief outline on the way in which the Council procures routine goods and services:

1. Plan the purchase (which includes the selection of the most appropriate purchasing method);
2. Prepare the relevant documents (e.g., quotation, tender or expression of interest);
3. Invite and receive offers;
4. Evaluate those offers;
5. Advise the successful bidder and offer to debrief any unsuccessful bidders; and
6. Manage any contract that has been implemented as a result of the procurement.

10.1 Tendering and Procurement Thresholds

There are three tendering and procurement thresholds that require different levels of involvement in planning and executing the purchase. The following table refers to the thresholds and summarises what purchasing method the Council utilises based on the total dollar value of the purchase.

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Procurement Value (ex GST)	Minimum Requirement
At or below \$10,000	Purchase order
Between \$10,001 and \$25,000	One (1) written quote
≥ \$25,001 and ≤ \$50,000	2 written quotes and informal
≥ \$50,001 and < \$250,000	3 written quotes and formal RFQ
\$250,000 and above	Public Tender

In addition to the above thresholds for procurement the following pre-requisites apply;

1. A person having Delegated Authority given by the General Manager and documented in the Procurement Procedure
2. There must be a budget allocated item for the purchase
3. There must be money available within the budgeted item for the purchase

The Council will apply the above requirements to the purchase of all goods and services with the exception of the circumstances described under Section 15 Exemptions.

For any of the quoting arrangements noted above, if it is known that only one specialist supplier is available for work or there are specific reasons for wanting to utilise one supplier, then that supplier may be invited to provide a quotation with the permission of the General Manager. The Project Manager will be required to document reasoning and demonstrate that is the procurement process is being undertaken in accordance with the Councils' principles of this Code.

10.2 Calculating the value of the purchase

Price

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

- **single one-off purchase** – the total amount, or estimated amount, of the purchase (excluding GST), or
- **multiple purchases** – the gross value, or the estimated gross value, of the purchases (excluding GST), or
- **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 two or more separate contracts for the primary purpose of avoiding the requirement to publicly invite tenders.

Non-Price Considerations

The 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 the Council that relate to non-price related matters are identified in Section 5.0 Procurement Principles

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10.3 Planning the Purchase

During the planning phase of a purchase the following steps may be taken by Councils' Officers:

- Any relevant approval to undertake a purchase is obtained.
- An estimate of the cost of good or service is undertaken and available Council funding of such a purchase is confirmed, and an appropriate method of purchasing is chosen;
- Market research and consultation is undertaken (e.g., what products are available on the market and how many suppliers);
- Specifications will, where applicable, comply with the relevant sections of the *Work Health and Safety Act 2012* and *Work Health and Safety Regulations 2012*.
- Specifications will, where applicable, comply with *Work Health and Safety Act 2012* Section 22-26.
- The establishment of an Evaluation Committee, where the purchase cost exceeds \$250,000 ex. GST;
- The establishment of Evaluation Criteria and evaluation methodology (undertaken by evaluation committee).
- The development of a Risk Assessment Management Plan.
- The commencement of a Contract Management Plan; and
- If necessary, the engagement of a Probity Advisor.

11 Procurement Types

11.1 Verbal Quotations

Purchasing Documentation

The Council will undertake most purchases below \$10,000 ex. GST based on a purchase order that has a budget allocation and as such there will not be any formal quotation documentation. However, Council may choose to provide suppliers with a written specification and request a written quotation for all but very low-value/low-risk purchases.

Exemption from obtaining verbal quotations

Quotations are not required for one-off purchases using a Council purchase card valued at \$1000 (where the responsible person has the delegated authority to purchase) or less that fall outside the Preferred Supplier Listing where it would not be cost effective to obtain verbal quotations.

The Process as documented in the Tender Procedure and Procurement Procedure for obtaining verbal quotations is to be followed when inviting, receiving, and evaluating quotations.

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11.2 Written Quotations

Purchasing Documentation

The Request for Quotation (RFQ), which may be in letter, fax, or email form, is a document inviting offers from businesses to provide a specified good or service. Councils' quotation documents will include all terms and conditions of quotation, together with a clear description of the goods or services required, and the details of any applicable Council policies. The complexity of the documentation will depend upon the nature and value of the purchase. Generally, the RFQ documentation will consist of:

Conditions of Quotation

The conditions set out the terms under which the Council will receive and evaluate tenders. The conditions will usually include:

- Evaluation Criteria and a brief outline of the evaluation methodology to be used.
- Closing date, time, and place of lodgement.
- Council contact details.
- Pricing requirements (e.g., the price should exclude GST);
- Relevant Council policies and principles.
- Entitlement of unsuccessful bidders to be debriefed; and
- Information on the Councils' complaints process.

Specifications

The specification clearly, accurately, and completely describes the essential requirements of the goods or services being purchased. It is the basis of all offers and is the foundation for the contract. The specifications will usually include the:

- Functional requirements;
- Performance requirements; and
- Technical requirements.

The Process as documented in the Tender Procedure and Procurement Procedure for obtaining written quotations is to be followed when inviting, receiving, and evaluating quotations.

11.3 Tenders

Purchasing Documentation

The Request for Tender (RFT) is a document inviting offers from businesses to provide a specific good or service. Councils' RFT documentation usually consists of four main parts. These four (4) parts are:

Conditions of Tender

The Conditions of Tender set out the terms under which the Council will receive and evaluate tenders. The conditions will usually include:

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- Evaluation Criteria and a brief outline of the evaluation methodology to be used;
- Closing date, time, and place of lodgement;
- Council contact details;
- Pricing requirements (e.g., the price should exclude GST);
- Relevant Council policies and principles;
- Entitlement of unsuccessful bidders to be debriefed; and
- Information on the Councils' complaints process.

Specification

The specification clearly, accurately, and completely describes the essential requirements of the goods or services being purchased. It is the basis of all offers and is the foundation for the contract. The specifications will usually include the:

- Functional requirements;
- Performance requirements; and
- Technical requirements.

Conditions of Contract

The conditions of contract contain the contractual terms defining the obligations and rights of the parties concerned. Generally, contracts are used for all purchases over \$100,000 ex. GST or where there are material risks involved.

Tender Form

The Tender Form must be completed, signed, and returned by the tenderer. It includes a declaration by the tenderer that:

- the tenderer agrees to the Conditions of Tender;
- the information provided in the tender is accurate and correct; and
- the person signing the form is duly authorised to do so.

The Process as documented in the Tender and Procurement Procedure for tendering is to be followed when inviting, receiving, and evaluating tenders.

11.4 Types of Tenders

Open Tender

An open tender process is an invitation to tender by public advertisement. There are generally no restrictions regarding who can submit a tender; however, tenderers are required to submit all required information and will be evaluated against stated selection criteria.

Consistent with the Regulations (Regulation 24) the 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 Councils' website, making the tender available to all qualified and

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interested bidders. The Council may send tender documentation directly to an identified supplier; however, any documentation will not be provided to a potential tenderer until the tender has been advertised.

The tender advertisement will identify:

- The nature of the goods and or services the Council requires
- The period within which the tender must be lodged (must be at least 14 days after the date on which the notice is published)
- Where the tender must be lodged
- 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:

- The specifications of the goods and or services required
- The duration of the contract, including any extensions that are specified in the contract
- Any mandatory tender specifications and contract conditions
- Objective criteria for evaluating the contract, and
- Reference to the Council Code for tenders and Contracts.

All enquiries and provision of tender documentation will be carried out by Councils' Project Manager.

A tenderer submitting a response in relation to a Council public tender must do so in writing. The tenderer 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 nature of the purchase may require that a tender briefing is conducted. The time and place at which the tender briefing meeting is to be held will be detailed in the tender documentation. The Project Manager must keep minutes of any tender briefing meeting which will be distributed to all tenderers.

The tenderer must demonstrate through the provision of referees and any requested documentation that they are competent in establishing and managing risk management procedures and can follow WHS legislative requirements.

The tender box will not be opened until the time set for the closing of tenders has elapsed. Tenders must be opened in the presence of:

- One member of the Councils' Officers other than the Project Manager; and
- The Project Manager.

Each employee present must sign the Tender Received Form showing the tenderer's names, the service tendered for and the tender price. The total tender sums are disclosed only if it is stated in the tender documentation.

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The Project Manager must record the evaluation and selection process of the successful supplier by utilising Councils' quotation/tender review form and Councils' assessment matrix.

11.5 Multiple-Stage Tenders

A Multiple-Stage Tender process may be used in cases where it is considered appropriate to:

- gain market knowledge and clarify the capability of suppliers (this process will not be used as a substitute for conducting market research)
- obtain industry input into specific proposals
- pre-qualify respondents for the following stage of this type of tender process (to reduce the cost of tendering)
- ensure maximum flexibility is required throughout the procurement process.

Multiple-Stage Tenders will follow the processes set out in the Regulations that the Council is required to follow.

The multiple-stage processes that Council may use are as follows:

- Expressions of Interest (EOI) – an EOI is generally used to shortlist potential suppliers before seeking detailed offers. Suppliers are shortlisted on their technical, managerial, and financial capacity, reducing the cost of tendering by restricting the issue of formal tenders to those suppliers that demonstrated the required capacity.
- Request for proposal – may be used when a project or requirement has been defined, but where an innovative or flexible solution is sought.
- Request for Tender – may be used when a project or requirement has been defined to solicit offers from suppliers capable of providing a specified work, goods, or service.
- Request for information – may be used at the planning stage of a project to assist with defining the project. Council will not issue a request for information to identify or select suppliers.
- Closed tender process – may be used if the initial specification is well defined and an EOI or request for proposal has already been used to shortlist suppliers. Suppliers will be informed in advance that only those short-listed will be requested to tender.

Council is mindful of the following aspects when conducting a Multiple-stage Tender process:

- That a short-listed party cannot be engaged without going through a more detailed second (tender) stage process unless approved by the Council, and
- When using a Request for Information, issues relating to intellectual property and copyright must be clarified prior to using the information provided to prepare the Request for Tender.

When calling for EOI Council will generally follow the advertising requirements outlined in Open tenders.

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The General Manager will ensure that suppliers are provided with the following in order to lodge an EOI:

- Details of the goods or services required
- The criteria for evaluating EOI
- The method for evaluating EOI against the criteria
- Details of any further stages in the tender process, and
- A reference to Councils' Code for Tenders and Contracts.

The General Manager may then send an invitation to tender to those suppliers that expressed an interest in providing the goods or services required and were selected to tender through the EOI evaluation process

11.6 Ongoing Supply Arrangements – Standing Contracts and Multiple use register

11.6.1 Standing Contract

The 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. The way in which a standing contract is established can either be:

- To utilise the open tender process, or
- For Council to assess the suppliers listed in the multiple use register in line with Councils' defined procurement values.

The Council may legitimately purchase directly from a supplier listed on a standing contract panel. The recommended validity period for standing contracts will be stipulated during the Open tender process. The selected tenderers can be used to provide the specific goods or services without calling a further tender during the specified period.

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.

11.6.2 Multiple-Use Register

A Multiple-Use Register is a list, intended for use in more than one procurement process, of prequalified suppliers, who have satisfied the conditions for participation or inclusion on the register. Council may establish a Multi-Use Register of suppliers 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 suppliers that they have been recognised as meeting conditions for participation.

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The Council will invite tenders or quotations for a contract for the supply of goods and or services from all suppliers included on a Multiple-Use Register for a particular category of goods and or services. The Council will invite applications from suppliers 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:

- The nature of the goods and or services the Council requires
- Any identification details associated with the register
- The period within which the application must be lodged
- Where the application must be lodged
- 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:
 - The specifications of the goods and or services required
 - The criteria for evaluating the applications
 - The method of evaluating applications against the criteria
 - Councils' 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 two (2) years.

Council will allow a supplier to apply for inclusion on the Multiple-Use Register at any time unless the supplier has made an application in the previous 12 months and the application has not been accepted.

11.6.3 Strategic Alliances

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

Local Government Association of Tasmania (LGAT) through the National Procurement Network

- State Government Contracts and
- any other purchasing group of which Council is a member.

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12 Direct and limited sourcing

Direct sourcing is where Council negotiates with and purchases goods and/or services from or awards a contract to a supplier without calling for tenders or without seeking the required number of quotations. Limited sourcing is where Council invites tenders from a limited number of prospective suppliers instead of calling for tenders or seeks fewer than the minimum number of required quotations.

Direct or limited sourcing must not be used to avoid the usual competitive procurement process. Direct sourcing must only be used for purchases valued at less than \$25 000 or where the circumstances justify it.

Approval for direct and limited sourcing should be granted only when it is in the best interests of Council and the Derwent Valley community and can be shown to achieve acceptable value for the money under the circumstances.

The Council officer requesting approval for direct or limited sourcing must ensure that the purchase is conducted in a way that is consistent with the procurement principles. It is of particular importance that:

- conflicts of interest must be avoided at all times; and
- any request for approval contains enough information to justify the use of a direct or limited submission sourcing process rather than the usual quotation or tender process, including the:
 - research undertaken to justify direct or limited sourcing;
 - evidence of value for money considerations;
 - details of the identified supplier/s; and
 - the estimated total value of the procurement, a budget allocation exists.

The circumstances justifying direct and limited sourcing are as follows:

Purchases valued at \$250 000 or more

Where a public tender process would normally be required Council will only use direct or limited sourcing if one or more of the prescribed situations or circumstances allowed by the *Local Government (General) Regulations 2015* applies.

Purchases valued at \$25 000 or more and less than \$250 000

Where a quotation process would normally be required, direct or limited sourcing may be considered when:

- any of the circumstances applicable to the standing exemptions from the requirement to call for public tenders applies;
- for reasons of extreme urgency brought about by events unforeseen by Council, the goods and/or services could not be obtained in time by calling for quotations; the value for money benefits of changing suppliers or substituting the goods and/or services are uncertain and likely to be outweighed by the cost and risk to Council of managing and/or implementing any change;

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- the purchase relates to goods which are materials for use in maintenance buildings, roads, bridges or any other civic infrastructure or assets and cannot be substituted because they need to be compatible with the adjoining materials and/or the prevailing ground and/or environmental conditions;
- the goods and/or services are required to be purchased from a specific supplier in order to comply with a statutory requirement.

Approval of direct and limited sourcing

Direct or limited sourcing must be approved by the appropriate authority within Council. The following table sets out who can approve direct or limited sourcing according to the threshold value of a purchase:

\$250 000 and over: The General Manager or Council

\$100 000 and less than \$250 000: The General Manager.

Up to \$100 000: The responsible Council Executive Director.

Software licenses

By making available a product to a council the owner of the software licence is providing a service. The service may include maintenance, repairs, and updates. Even though a software licence may amount to a limited grant of rights its provision still amounts to a service. When calculating the value, the total cost over the estimated lifecycle of the software item or package must be considered, including any initial project management and establishment costs, licensing fees and other fees and charges.

Where Council has established an electronic system and after the initial contract period has to renew software licences or upgrade the system, provided that the contract was as a result of a public tender process, direct selection is permitted where there is only one supplier of the software, and the software cannot be replaced by another package or product due to reasons of interoperability and compatibility with Council's existing systems.

Direct and limited sourcing reporting requirements

Instances of direct and limited sourcing are reported to Council as soon as possible after the contract is awarded. The reports to Council will include:

- The reasons for not calling for public tenders or quotations.
- The value or estimated value of the purchase or contract.
- The supplier's name.
- The position title of the Council officer that approved the direct and limited sourcing proposal (Council, General Manager or Director).

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- The contract award date.

13 Administration of Tenders

Council routinely seeks tenders for a range of activities and requirements including consultancy work, construction and maintenance works, and the purchase of goods, equipment, and general services.

Except where the Project Manager has sought and has been granted an exemption from public tendering per Regulation 27, public tenders must be called in accordance with the *Local Government Act 1993* for all projects or purchases with an estimated GST exclusive value equal to or greater than the Prescribed Amount.

Tenders may, at the Project Manager's discretion, be called for any Council project or purchase with an estimated value less than the Prescribed Amount under the Act where the Project Manager determines that:

- 1) use of a formal tender process is required or advisable due to the complexity, importance, or organisational impact of Councils' requirements;
- 2) it is likely or reasonably probable that Council would be exposed to a high level of risk due to the purchase; or
- 3) use of formal Conditions of Contract is required or advisable.

13.1 Tender Records and Record Keeping

A unique identifier will be allocated to all tenders. Once the contract is awarded the unique identifier will provide the unique identifier for the contract. The unique identifier must be referred to on all correspondence and other documentation relating to the tender and the contract.

Appropriate records are to be maintained throughout the duration of a tender process. The Council officer responsible for a particular stage of the procurement process must make and maintain accurate records sufficient to justify the actions taken and decisions made. At a minimum the required procurement records include the following:

Planning the procurement

Market research and pre-procurement and procurement issues and risk analysis.

Specification or statement of requirements.

Cost estimates.

Approved pre-procurement plans and authorisations.

Evaluation criteria, method, and weightings (as applicable).

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Tender evaluation and probity plan (if the purchase is valued at \$250 000 or more).

Procurement documentation

Applicable conditions of tendering or quotation.

Closing date and time.

Copies of addenda and notices.

Internal and external emails and other correspondence exchanged in relation to the procurement process.

Agendas and minutes of meetings and briefings (internal and external).

Receipt of tenders and quotations

Closing time and date.

Date and time of opening the tender box or bids.

Bids received.

Late bids and how they were treated.

Council officers present.

Evaluation

Conflict of interest and confidentiality declarations completed by members of the evaluation committee or anyone else with a role in the procurement process.

Agendas and minutes of meetings of the evaluation committee, including the decisions reached and the reasons.

Copies of correspondence and other communications with prospective suppliers in relation to bid clarifications and qualifications.

If bidders were provided with the opportunity to make presentations, details of the information and material presented and the evaluation committee's findings after the presentation and how it impacted on evaluation of the bid submission.

Tender evaluation report.

Negotiations

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Tender Review Committee and General Manager's approval to proceed with negotiations (if the procurement is valued at \$250 000 or more).

Manager's or Director's approval to proceed with negotiations (if the procurement is valued at less than \$250 000).

Letters and other correspondence exchanged at all stages of the negotiation process.

On finalisation of negotiations, letters exchanged detailing and agreeing the outcomes of the negotiation process.

Tender or quotation award

Internal memo seeking approval to award the tender or quotation.

Signed letter of acceptance or engagement.

Purchase order (if required by internal accounts payable procedure).

13.2 Document Registration and Storage

All documentation relating to a quotation or tender will be stored in Councils' document management system. Supplied hard copies will be stored in an appropriate location. All quotations/tenders that Council receives will be clearly marked with the time and date of receipt. Offers received as an electronic document to the Project Managers email address will be recorded in the same method as offers received in the post.

13.3 Tender Information

All tenderers will be provided with the same information concerning the Scope of Works and the Formal Instrument of Agreement during the tender submission period.

Any corrections that need to be made to a tender prior to submission are to be clearly made, initialled, and dated.

If a tenderer finds that the requirements of the tender documentation are not clear or discovers discrepancies in the documentation, the tenderer is to notify the Council as soon as possible. The Council may advise all other tenderers accordingly in the form of an addendum if a formal response is considered necessary in relation to that inquiry.

If the Council needs to make an alteration to the tender documentation, the alteration will be made by an addendum to the tender documentation and forwarded to all prospective tenderers.

As far as reasonably practicable, the Council and the Councils' representative will treat all tenders as commercial-in-confidence. Tenderers are to advise of any specific arrangements in this regard.

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All tenders are to become property of the Council after the closing date for the tender.

In consideration of submitting a tender response, tenderers agree that the Council or the Councils' Representative may contact any person that has been recommended by the tenderer as a referee in the tender response. Tenderers are to advise the Council if they have any specific requirements in relation to referees that are nominated for this purpose.

Tenderers may be contacted during the tender assessment period to provide clarification in relation to the tender. The tenderer will be required to provide any information in the timeframe specified by the Council.

In consideration of submitting a tender response, tenderers agree to provide the Council with a license to copy, reproduce, use, modify and adapt any of the information provided to the Council in the tender response, and agree the Council may provide copies of the documentation (in electronic or hardcopy format) to its agents for the purposes of assessing the tender responses.

The tenderer must ensure that all commercial-in-confidence, confidentiality and privacy issues and responsibilities are properly addressed in the tender response.

13.4 Form of Tender

Tenderers are to ensure that all required documentation is forwarded with the completed tender response to the Council by the tender closing date.

If for any reason it is necessary to extend or amend the tender closing time or date, all tenderers that are recorded as respondents to the tender will be advised of the extended or amended time or date.

The tender submitted by the tenderer must not contain a condition that it is subject to the tenderer obtaining financial or any other approvals or consents to lodge the tender.

The Formal Instrument of Agreement forms part of the tender documentation. The tenderer is to be familiar with the provisions of that Agreement and take them into account when submitting the tender response. If awarded the tender, the tenderer will be required to complete the Agreement with the Council in its present form, unless otherwise agreed by the Council.

13.5 Submitting the Tender

The tenderer is to sign each copy of the submitted tender. If a tender is to be submitted by a joint venture or partnership, then the tender is to:

- be signed by all the parties submitting the tender
- Include details of a nominated single representative authorised to act on behalf of all the parties to the tender.

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Tenderers must ensure that, as a result of lodging a tender, no conflict of interest arises involving the tenderer.

The closing time for the lodgement of tenders is 4pm on the tender closing date unless otherwise specified within the tender documents.

Tenders will be opened publicly shortly after this time by Council Officers, unless otherwise specified in the tender documentation. Details of the tenders will be formally recorded and filed.

Late tenders will not be accepted.

All tenders received will be acknowledged by the Council after the closing time for the receipt of tenders.

13.6 Withdrawal of Tender

The tenderer must not withdraw a tender submitted to the Council prior to formal notification from the Council that the tender has been formally considered by the Council and a decision in relation to the tender has been made.

All tenders are to remain current and valid for acceptance by the Council for a period of 90 days from the closing date of the tenders.

13.7 No Reimbursement for the costs of tendering

The tenderer is not entitled to be reimbursed for any expense incurred in the preparation and submission of tenders.

13.8 Alternative tenders

Council may consider any tender which meets the Councils' requirements in an alternative and practical manner provided that it meets the totality of those requirements.

Alternative tenders may relate to the functional, performance and technical aspects of the requirements or to opportunities for more advantageous commercial arrangements.

Council may either consider Alternative tenders on their merits or reject Alternative tenders without consideration at its discretion

14 Tender Evaluation Criteria and Methodology

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14.1 Tender Steering Committee

The use of a Tender Steering Committee will be on a need's basis, taking into account the scale and complexity of the particular project. The Committee will also be used to support the Councils' Project Management frameworks and specified project outcomes.

The committee will include persons with relevant background and experience required for the particular project and may include external consultants to provide expert input.

14.2 Evaluation Criteria

Where the procurement method is a call for tender, the evaluation criteria, if appropriate to the Council's requirements, includes consideration of the use of workers, subcontractors and suppliers that are based in the Derwent Valley region and Tasmania and that the weighting applied to the criterion is between 10% and 20% of the total weightings applied to the evaluation criteria.

Unless otherwise specified in the tender documentation, the following Tender Evaluation Criteria will be used as the basis of Tender Evaluation Criteria by the Council in the assessment of tenders submitted to the Council:

- Cost of goods or services;
- Experience, capability, and resources of the tenderer to best meet the tender requirements;
- Quality of goods or services;
- Provision of services to best meet the tender requirements;
- Work health and safety requirements; and
- Provision of required insurance policies, and financial security, where required.

Tenderers must ensure that they meet the Conditions of Tendering when submitting a tender response.

The Tender Evaluation Criteria is set out and forms part of these Conditions of Tendering. All Evaluation Criteria is to be addressed in the tender response.

14.3 Evaluation Methodology

In evaluating tenders, the Council will take into account whether the Conditions of Tendering have been complied with by respondents and will take into account the responses by tenderers to the Tender Evaluation Criteria specified in the tender.

Weightings determined by the Council will be applied against each criterion to assess all complying tenders.

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At the discretion of the Council or the Councils' Representative, the weightings that apply to the evaluation criterion may, or may not, be disclosed to tenderers during the tender process.

The tender evaluation process will be documented.

14.4 Tender Negotiations

During the evaluation process, Council reserves the right to negotiate with a tenderer or tenderers in order to:

- a) assess a tenderer's understanding of the Councils' requirements, test any assumptions made by a tenderer in determining their tender prices(s) and rectify any false assumptions;
- b) obtain clarification of matters in relation to the tenderer's capability to fulfil the Councils' requirements;
- c) enhance the commercial benefit to Council by achieving cost reductions or service improvements; and
- d) finalise the commercial terms required to form a contract.

Council will not enter into negotiations which result in substantial modification to the Councils' requirements, or which would lead to a nonconforming tender becoming a conforming tender.

The outcomes of tender negotiations will be reflected in the final contract documentation.

In the course of negotiations with a tenderer, Council will not disclose the details of any other tender submissions.

15 Review of Tender Process

To ensure effective operation of the Code, the review of each tender process will be subject to control verifications during the pre-advertisement and pre-decision-making periods, and before the Contract is signed, to ensure that each tender is in accordance with the Regulations and the Code.

Based on criteria and Council procedures developed, a review may be undertaken at the completion of a tender- related Contract to evaluate and document the work carried out, or services provided by a Contractor, and evaluate the performance of the Contractor under the Contract with the Council.

16 Exemptions

The Act states that in certain prescribed situations or prescribed contracts the requirements to call tenders by way of open tender, use of the Multiple-Use Register or by multistage tender do not apply.

Those situations and contracts which are set out in Regulation 27 are:

- (a) an emergency, if, in the opinion of the General Manager, there is insufficient time to invite tenders for the goods or services required in that emergency;

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- (b) a contract for goods or services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth;
- (c) a contract for goods or services supplied or provided by another Council, a single authority, a joint authority, or the Local Government Association of Tasmania;
- (d) a contract for goods or services obtained as a result of a tender process conducted by –
 - a. another Council; or
 - b. a single authority or a joint authority; or
 - c. the Local Government Association of Tasmania; or
 - d. any other local government association in this State or in another State or a Territory; or
 - e. any organisation, or entity, established by any other local government association in this State or in another State or a Territory;
- (e) a contract for goods or services in respect of which a Council is exempted under another Act from the requirement to invite a tender;
- (f) a contract for goods or services that is entered into at public auction;
- (g) a contract for insurance entered into through a broker;
- (h) a contract arising when a Council is directed to acquire goods or services due to a claim made under a contract of insurance; a contract for goods or services, if the Council resolves by absolute majority and states the reasons for the decision, being that a satisfactory result would not be achieved by inviting tenders because of –
 - a. extenuating circumstances; or
 - b. the remoteness of the locality; or
 - c. the unavailability of competitive or reliable tenderers;
- (i) a contract of employment with a person as an employee of the Council.

17 Contracts

17.1 Contract Management

A contract defines the rights and obligations of both parties once the quotation/tender has been awarded. A contract is established when an offer is made and accepted. A contract comprises all relevant information provided to and by the supplier that has made the successful offer. This includes:

- The conditions of quotation/tender
- The specifications including any plans and other attachments
- The successful offer, and
- The conditions of contract.

A copy of the conditions of contract may be included in Councils' original request for quotation/tender package.

The Conditions of Contract contain the contractual terms defining the obligations and rights of the parties concerned. Generally, contracts are used for all purchases with a value of \$100,000 or above, or where there are material risks involved.

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For complex of high value purchases, it may be necessary for Council to enter into negotiations prior to finalising the contract in consultation with Councils' legal advisors. The purpose of these negotiations is to:

- Test the understanding and assumptions made by the suppliers in determining their costs
- Clarify and rectify any false assumptions, and
- Achieve operational refinements and enhancements that may result in cost reductions.

The outcomes of these negotiations will be included in the final contract and once completed and agreed, both parties then sign the formal contract. A formal Contract Management Plans is not required for all contracts, but Council may develop Contract Management Plans for contracts that involve large dollar amounts, complex technical requirements, or when the Contract Manager is responsible for managing a large number of contracts simultaneously. There are limitations on the amount of work which can be added or deleted without affecting the schedule of rates

17.2 Contract Renewal

In most cases, where the goods or services being delivered under the contract are required on an ongoing basis, Council will undertake a new procurement process (tender/quotation) prior to the completion of the existing contract.

17.3 Contract Extensions

In some circumstances, it may be desirable for Council to extend an existing contract, rather than seek new tenders or quotations for the delivery of the goods or services. Contracts will only be extended:

- Following a full evaluation of the performance of the current contractor, which may include:
 - Evidence that the supplier had a strong understanding of the Council;
 - The continued competitiveness of contract rates, and confirmed ongoing contract rates;
 - The performance of the contractor over the lifetime of the contract thus far;
 - The costs to transition a new provider; and
 - Confirming there are no conflicts of interest in the arrangements in place.

Where the principles of open and effective competition are protected. As a general rule, Council will not extend contracts if:

- The original contract does not allow an extension; and/or
- Since the previous tender, the market has changed substantially; or the nature of the goods/services required has substantially changed.
- By an absolute majority of the Council;

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17.4 Common use contracts

Where the Department of Treasury and Finance has established whole-of Government contracts for the supply of goods or services to agencies and other authorised organisations, the Council may choose to utilise these contracts.

18 Disposals

Disposals are to be conducted so that the best return to Council is achieved. Disposal of land will be made in accordance with Division 1 of Part 12 of the *Local Government Act 1993*.

18.1 Disposals Less Than \$10,000

The Council will dispose of items with a disposal value of less than \$10,000 at the discretion of the General Manager. The Council will only dispose of items that cannot be reused or recycled and with no commercial use or appreciable market value by dumping them at approved refuse sites or by destruction.

In the case of vehicles, the Council may under special circumstances, and at the discretion of the General Manager, advertise for disposal of the vehicle for sale or trade-in. The decision to offer the sale vehicles will be taken where it is considered the financial benefit/return represents best value to the Council.

18.2 Disposals Greater Than \$10,000

The Council will dispose of items with an estimated disposal value in excess of \$10,000 by way of tender, public auction, or trade-in to the extent practicable. When disposing items by tender, Council may choose to advertise the item for disposal in specialist newspapers or journals, or in the appropriate classified section of the local newspaper (e.g., boats and marine if disposing of a boat), if these are more likely to attract appropriate interest.

19 Related Documents

DVC-PRO-023 Tender Procedure

DVC-PRO-023.1 Conditions of Tender

DVC-PRO-023.2 Form of Tender

DVC-PRO-024 Procurement Procedure

DVC-ENG-00X-Tender Scope and Specifications (depending on which specifications are applicable)