



Code for Tenders and Contracts

Policy No. 3.12

LAST REVIEW

Jan 2018

NEXT REVIEW

Jan 2020

MINUTE REF

C22/1-18

POLICY STATEMENT:

1.1 The purpose of this Code for Tenders and Contracts is to provide a policy framework on best practice tendering and procurement methods in line with the legislative requirements of Section 333B of the *Local Government Act 1993* and Regulation 28 of the *Local Government (General) Regulations 2015*.

This Code, in conjunction with Council’s Purchasing Policy, aims to achieve the purchasing principles of:

- *open and effective competition;*
- *value for money;*
- *enhancement of the capabilities of local business and industry; and*
- *ethical behaviour and fair dealing.*

DEFINITIONS:

“Completion” means the time when Council has considered the Tenders, has concluded any negotiations with Tenderers and has let the Contract or otherwise finished dealing with the Tenders.

“Conforming Tender” means a tender which satisfies all of the requirements for tenders set out in the Tender Package.

“Contract” means the contract for the carrying out of the Work to be entered into between Council and the Successful Tenderer.

“Council” means the Kingborough Council.

“National Procurement Network” means the procurement services offered by local government associations in all states and territories to provide national programs where it is beneficial to combine the purchasing powers of councils Australia-wide.

“Non-Conforming Tender” means a tender which does not satisfy all of the requirements for tenders set out in the Tender Package including (but not limited to) requirements for information about the Tenderer and details of the proposed works.

“Point of Contact” means a person or place where Tenderers may direct enquiries. A Point of Contact may include a monitored online forum for tenders invited through an electronic portal, or may be a member of Council staff.

“Preferred Tenderer” means the Tenderer who, in the opinion of Council, best satisfies the selection criteria.

“Successful Tenderer” means the Tenderer whose tender Council accepts or with whom, after negotiations, Council enters into a contract for the performance of the Work.

“Tender Closing” means the time and date specified in the Tender Package by which tenders must be submitted.

“Tender Opening” means the opening of Tenders under Clause 4.12.

“Tender Package” means the tender package which Council provides to prospective Tenderers under Clause 4.6.

“Tenderer” means any party submitting a tender to Council in respect of the Work.

“Tenders” means all Tenders submitted to Council in respect of the Work.

	<p>“Work” means the work for the performance of which Council has invited tenders including the provision of goods or services.</p>
OBJECTIVE:	<p>2.1 This Code is intended to apply to all tenders advertised publicly by Council. At the discretion of the General Manager, Council may apply the Code to other tenders.</p> <p>2.2 Council may decide that this Code should not apply to a particular tender. If so, the conditions of tendering for that tender must contain a clear statement to that effect.</p> <p>2.3 A Successful Tenderer must apply this Code as if the Successful Tenderer were Council in seeking tenders from prospective subcontractors except to the extent that any provision of the Code cannot be so applied.</p> <p>2.4 If there is any inconsistency between this Code and any conditions of tendering contained in a Tender Package, conditions of tendering contained in the Tender Package shall prevail to the extent of the inconsistency.</p>
SCOPE:	<p>3.1 This policy applies to all Council procurement processes, which includes tenders and request for quotations, where the prescribed amount of \$250,000 is exceeded. This Code is supplemented by Council’s Purchasing Policy which defines requirements for procurement of goods and services of any amount.</p>
GUIDELINES:	<p>4.1 General Principles</p> <p>All parties involved in tenders to which this Code applies must:</p> <ul style="list-style-type: none"> (a) conduct tendering honestly and fairly to all parties; (b) refrain from inviting or submitting tenders without a firm intention to proceed; (c) apply the same conditions of tendering for each Tenderer and avoid any practice which provides one party an improper advantage over another; (d) refrain from all improper practices including collusive tendering; and (e) not undertake canvassing of Councillors or Council employees in relation to a tender. <p>4.2 Ethical Behaviour and Fair Dealing</p> <ul style="list-style-type: none"> (a) All purchasing is to be undertaken in a fair and unbiased way and in the best interests of Council. (b) Council will ensure that decisions are not influenced by self-interest or personal gain on the part of Councillors and staff (for example gifts or other personal benefits from suppliers), and will identify and deal with conflicts of interest. <p>4.3 Conflict of Interest</p> <ul style="list-style-type: none"> (a) Any party to a tender who has a conflict of interest must declare the relevant interests to any other party to the tender who may be adversely affected by the conflict immediately upon becoming aware of the conflict. <p>4.4 Collusive Tendering</p> <ul style="list-style-type: none"> (a) Tenderers must not engage in collusive tendering. (b) Collusive tendering includes but is not limited to, the following practices: <ul style="list-style-type: none"> (i) agreements between Tenderers as to who should be the Successful Tenderer;

- (ii) any meeting of Tenderers prior to the submission of their tenders that may disadvantage Council;
- (iii) exchange of information between Tenderers about their tenders prior to awarding of a contract;
- (iv) agreement between Tenderers for payment of money or securing of reward or benefit for unsuccessful Tenderers by the Successful Tenderer;
- (v) agreement or collaboration between Tenderers to fix prices or conditions of contract;
- (vi) any unlawful or illegitimate agreement between Tenderers before submission of tenders such as fixing a special rate of payment to a third party where the payment of such fees is conditional on the Tenderer being awarded a contract; and
- (vii) any unlawful or illegitimate agreement providing for payment to any third party of money, incentives or other concessions contingent on the success of a tender which do not relate to the provision of bona fide services relevant to that tender.

4.5 Invitations to Tender

- (a) An invitation to tender must set out:
 - (i) a description of the Work;
 - (ii) the time, date and place of Tender Closing;
 - (iii) details of the place from which the Tender Package may be collected; and
 - (iv) the amount of any deposit which the Tenderers are required to pay upon collecting the Tender Package and the terms upon which it will be refunded.
- (b) Tender Closing should be not less than two weeks after the date on which the invitation to tender is first published, unless special circumstances require otherwise.
- (c) The Tender Closing must not be:
 - (i) a weekend or public holiday in Southern Tasmania;
 - (ii) before 2:00 pm; or
 - (iii) between 24 December and 2 January inclusive, unless special circumstances require otherwise.

4.6 Tender Package

- (a) Council must make available to prospective Tenderers a Tender Package which:
 - (i) states the time and date by which Tenders must be submitted, the place at which Tenders must be submitted and any other requirements concerning submission of Tenders;
 - (ii) sets out details of any deposit to be paid by prospective Tenderers to obtain detailed plans or specifications of the intended works, or by Tenderers upon lodgement of tenders, and the circumstances under which a deposit will be refunded;
 - (iii) clearly defines the intended contractual obligations of the parties;
 - (iv) makes reference to Council's Code for Tenders and Contracts;

- (v) provides details of the Work;
- (vi) details information required from Tenderers;
- (vii) nominates a point of contact where Tenderers may direct enquiries, which may include a monitored online forum for tenders invited through an electronic portal;
- (viii) encourages Tenderers to incorporate maximum innovation, while satisfying commercial and technical objectives, by allowing the submission of options in addition to a Conforming Tender; and

(b) The Tender Package must include the following documents:

- (i) conditions of tendering;
- (ii) specification;
- (iii) tender form;
- (iv) conditions of contract or a reference to the form of conditions of contract to be used;
- (v) contract annexures (if applicable); and
- (vi) drawings, schedules and any other documents necessary to satisfy the requirements of Part (a) of this clause.

(c) A copy of this Code must be made available to Tenderers for collection with the Tender Package.

4.7 Form of Contract

- (a) Council must use published standard conditions of contract appropriate to the Work unless circumstances require otherwise.
- (b) Council may amend or use special conditions with standard conditions of contract. If Council does so, Council must clearly identify the amendments or special conditions.

4.8 Tender Enquiries

- (a) Council must nominate a point of contact to deal with Tenderers' enquiries.
- (b) Tenderers may seek further information only through the point of contact nominated by Council.
- (c) The point of contact may necessitate or require that a request for information be made in writing.
- (d) If a Tenderer makes an enquiry, the point of contact must record the time and date of the enquiry, the name of the enquirer and the substance of the discussion.
- (e) Council may conduct a tender briefing meeting.
- (f) Council must inform all Tenderers of the time and place at which the tender briefing meeting is to be held and invite them to attend.
- (g) Council must keep minutes of any tender briefing meeting.
- (h) If Council provides to any Tenderer information which is not contained in the Tender Package, Council must give that information to all Tenderers.

4.9 Tender Briefing Meetings

- (a) A tender briefing meeting may be conducted for prospective Tenderers and such meetings shall be minuted. The minutes must be forwarded to all prospective Tenderers and become part of the tender documents.

4.10 Submission of Tenders

- (a) Tenders must be delivered to the place named in the Tender Package to arrive not later than the time specified in the Tender Package.
- (b) Tenders must not be submitted to Council by facsimile or by email.
- (c) Electronic Tenders must be submitted in the manner and in the form specified in the Tender Package.
- (d) Where the Tender Package provides for submission of hard copy tenders, each tender must be enclosed in a sealed envelope clearly marked "Tender" with Council's tender reference number and description of the tender.
- (e) Council may, in its absolute discretion, accept a tender received after Tender Closing or delay Tender Closing where:
 - (i) submission of hard copy tenders is provided for, it was posted at such a time that it should have been received by Council by Tender Closing; or
 - (ii) electronic tenders are required or permitted, an event outside a Tenderer's control prevents submission by Tender Closing; and
 - (iii) consideration of the late Tender or delaying the Tender Closing would not provide an unfair advantage or disadvantage to any party submitting a Tender.
- (f) A tender must not be submitted unless that Tenderer has the capacity and capability to carry out the Work.
- (g) Tenderers must sign a declaration that they have read and understood the Code for Tenders and Contracts and certify that they have complied with the provisions of the Code.
- (h) Council must reject any tender which is not submitted in accordance with this clause and will record the date and time that it was received.

4.11 Amendment of Tender Package

- (a) Council may amend the Tender Package if it discovers a significant error or discrepancy in it.
- (b) If Council amends the Tender Package it must:
 - (i) give an addendum to the Tender Package to all Tenderers;
 - (ii) give Tenderers sufficient time to consider the addendum; and
 - (iii) permit any Tenderer who has already submitted a tender to submit an addendum, complying with the requirements of Clause 4.10 and clearly marked "Tender Addendum".
- (c) If Council amends the Tender Package it may extend the Tender Closing.
- (d) Each Tenderer must, not later than Tender Closing, acknowledge in writing receipt of the addendum given by Council.

4.12 Tender Opening

- (a) Tender Opening will not be held in public.
- (b) Tenders must be opened in the presence of two members of Council's staff other than the person named as, or responsible for monitoring, the point of contact nominated by Council to receive Tenderers' enquiries.
- (c) Council will ensure that records of received tender, as opened are captured. The records must include sufficient details to uniquely identify each opened Tender and may be in electronic or hard copy form.
- (d) Council must keep a copy of all records until after completion of all Work.

4.13 Tender Review Committee

- (a) A Tender Review Committee may be established by the General Manager to review all tenders prior to the awarding of contracts to ensure that Council's procurement policies are adhered to.
- (b) The Tender Review Committee may review but not be limited to consideration of the following aspects of a tender:
 - (i) the tender and evaluation process adopted;
 - (ii) the final tender evaluation report;
 - (iii) any other relevant issues or information.

4.14 Consideration of Tenders

- (a) Subject to this Code Council must consider all Conforming Tenders.
- (b) Council must not consider a Non-Conforming Tender unless it is submitted as an alternative to and accompanying a Conforming Tender.
- (c) Council may consider a Non-Conforming Tender submitted in accordance with Part (b) of this clause; may negotiate with the Tenderer who submitted it; and may accept the Non-Conforming Tender or any variation of it negotiated with the Tenderer.
- (d) Council may take into account the following criteria in considering Tenders:
 - (i) the resources of the Tenderer including technical, managerial, physical and financial resources;
 - (ii) proposed methodology;
 - (iii) Tenderer's understanding of the task;
 - (iv) price;
 - (v) Tenderer's past experience and performance history including:
 - time management;
 - standard of work or product;
 - management and quality of site personnel;
 - co-ordination of service providers, consultants and suppliers;
 - after delivery service;
 - conformance with the specification;
 - occupational health and safety; and
 - employee relations;
 - (vi) experience of key personnel;
 - (vii) time for completion;
 - (viii) quality assurance;
 - (ix) work health and safety;
 - (x) compliance with this Code; and
 - (xi) any other criteria specified in the Tender Package.
- (e) Council must determine the weighting to be given to the criteria before Tender Opening, and the weightings are to be determined at Council's absolute discretion.

- (f) The weighting to be given to each of the criteria may vary from tender to tender.
- (g) Council may advise Tenderers of the weightings but shall not be obliged to do so.
- (h) During evaluation Council may request additional information from and/or negotiate with one or more Tenderers to:
 - (i) assess any assumptions made by a Tenderer in preparing their Tender and to rectify any false assumptions;
 - (ii) clarify a Tenderer's capacity and/or capability to perform the Work; and
 - (iii) improve the value for money for Council by identifying cost reductions or service improvements; or
 - (iv) finalise commercial details required to form a contract;
 - (v) but must not request such information or negotiate in order to turn a Non-Conforming Tender into a Conforming Tender; nor;
 - (vi) negotiate substantial changes to specified requirements, where such changes could affect the evaluation outcome, without providing equal opportunity for all Tenderers.

4.15 Negotiation, Rejection and Acceptance of Tenders

- (a) Council is not obliged to accept any tender.
- (b) Council is not obliged to accept the lowest Conforming Tender.
- (c) Council may accept any Conforming Tender or any Non-Conforming Tender submitted in accordance with Clause 4.10 and Clause 4.14.
- (d) Council may reject all Tenders.
- (e) If Council rejects all Tenders Council must advise each Tenderer accordingly.
- (f) If Council rejects all Tenders, Council may invite further tenders.
- (g) If Council does not accept any tender Council may negotiate with the Preferred Tenderer and, after exhausting negotiations with the Preferred Tenderer, with other Tenderers in order of preference from most to least preferred.
- (h) In the course of negotiation with a Tenderer, Council must not disclose the details of a tender submitted by any other Tenderer.
- (i) If Council decides to accept a tender or a subsequent offer, Council must accept that tender or subsequent offer in writing to the Successful Tenderer stating that the tender or subsequent offer has been accepted and setting out the terms of that acceptance. Council must then send the Successful Tenderer a formal contract for execution.
- (j) After Council has accepted a tender or subsequent offer, Council and the Successful Tenderer must execute a formal contract document in the form specified in the Tender Package (with any necessary amendments) within 14 days from the date when the Successful Tenderer received the letter under Clause (i).
- (k) Upon sending advice to a Successful Tenderer in accordance with Part (i) of this clause, Council must advise all other Tenderers that their tenders have been unsuccessful.
- (l) The Successful Tenderer shall not be entitled to receive any payment for carrying out the Work until it has executed a formal contract document.

4.16 National Procurement Network (NPN)

- (a) Council may, where there is financial benefit, use the National Procurement Network for the provisions of goods and services. The use of a contract under NPN exempts Council from public tendering for goods or services valued at or excess of the prescribed amount.
- (b) Exemption from public tendering when using NPN is provided by Regulation 27(d) of the *Local Government (General) Regulations 2015*.

4.17 Common-use Contract Register

- (a) Council may utilise a Common Use Contract Register process to establish a register of suppliers for the supply of goods, materials or services that may be utilised by Council for a period of time of up to 3 years.
- (b) If it is determined that Council will establish such a register, the General Manager will invite expressions of interest from prospective applicants for inclusion on the register by publishing at least once in a daily newspaper circulating in the municipal area a notice specifying –
 - (i) a description of the goods and services required;
 - (ii) the name and contact details of the person nominated by Council to deal with enquiries or where relevant documents may be obtained; and
 - (iii) any deadlines for submission of application for inclusion on the register.
- (c) The General Manager must ensure that applicants are provided with the following in order to make an application:
 - (i) details of the categories of goods or services required;
 - (ii) the conditions for participation to be satisfied by applicants;
 - (iii) the criteria for evaluating applications; and
 - (iv) a reference to Council's Code for Tenders and Contracts.
- (d) Tenders or invitations for registration may be called on a periodic basis and there is no guarantee as to the actual value or quantity of goods, materials or services to be purchased. Schedules of rates are obtained through the open tender process and selected contractors are invited, when required, to supply goods or services at the rates agreed in their tender submission.
- (e) This type of contract is primarily used for supply of goods, materials or services such as plant hire, supply of road-making materials, pit construction, minor pipe works, stationery, etc. Several contractors or one contractor may be selected for any one project, or work may be awarded on a shared basis.
- (f) Council will maintain a Register of Contractors.

4.18 Multiple-use Register

- (a) Council may utilise a multiple-use register process to establish a register of suppliers that Council has determined satisfy the conditions for participation in that register, and that Council intends to use more than once.
- (b) If it is determined that Council will establish such a register, the General Manager must invite expressions of interest from prospective applicants for inclusion on the register by publishing a notice at least once in a daily newspaper circulating in the municipal area.
- (c) The General Manager must ensure that applicants are provided with the following in order to make an application:

- (i) details of the categories of goods or services required;
 - (ii) the conditions for participation to be satisfied by applicants;
 - (iii) the criteria for evaluating applications;
 - (iv) The method of evaluating applications against the criteria
 - (v) a reference to Council's Code for Tenders and Contracts.
- (d) The General Manager must advise all applicants of the results of their application including the categories for which they are registered and if applicable, the reasons for any rejection, as soon as practicable.
 - (e) When Council wishes to use the register, the General Manager will invite all successful applicants that are registered for the relevant category to tender for the provision of the required good or service.
 - (f) Council will review any established register at least once every 2 years.
 - (g) Council will allow a prospective applicant to apply for inclusion on a register of tenderers at any time, unless the prospective applicant has applied within the previous 12 months and has not been accepted.

4.19 Multiple-stage Tenders

- (a) A multiple-stage tender process is a process by which suppliers are evaluated through stages against criteria determined by Council.
- (b) Council may utilise a multiple-stage tendering process to:
 - (i) gain market knowledge and clarify the capability of suppliers (however, it will not be used as a substitute for conducting market research);
 - (ii) shortlist qualified tenderers; and
 - (iii) obtain industry input.
- (c) A multiple-stage purchasing process may be more costly and time-consuming for both suppliers and for Council, and as such this process will only be used where:
 - (i) the best way to meet the requirement is unclear;
 - (ii) it is considered appropriate to pre-qualify businesses and restrict the issue of formal tenders, to reduce the cost of tendering;
 - (iii) there are benefits which cannot be obtained by researching the market through conventional means; and
 - (iv) maximum flexibility is required throughout the procurement process.
- (d) The multiple-stage processes that Council may use are as follows:
 - (i) Expression of interest - an expression or registration of interest may be 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 with demonstrated capacity.
 - (ii) Request for proposal – may be used when a project or requirement has been defined, but where an innovative or flexible solution is sought.
 - (iii) Request for tender - may be used when a project requirement has been defined to solicit offers from businesses capable of providing a specified work, good or service.
 - (iv) 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.

- (v) Closed tender process – may be used if the initial specification is well defined and an expression of interest 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.
- (e) Council is mindful of the following aspects when conducting a multiple-stage tender process:
 - (i) the same mandatory requirements regarding advertising that apply to a public tender process;
 - (ii) that a short-listed party cannot be engaged without going through a more detailed second (tender) stage process, unless approved by an absolute majority of Council; and
 - (iii) 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.
- (f) The General Manager must invite expressions of interest from prospective tenderers by publishing at least once in a daily newspaper circulating in the municipal area a notice specifying:
 - (i) the nature of the goods and services required;
 - (ii) where the application is to be lodged;
 - (iii) the person from whom more detailed information may be obtained; and
 - (iv) any deadlines for submission of application for inclusion on the register.
- (g) The General Manager must ensure that prospective tenderers are provided with the following in order to lodge an expression of interest:
 - (i) details of the goods or services required;
 - (ii) the criteria for evaluating expressions of interest;
 - (iii) the method of evaluating expressions of interest against the criteria;
 - (iv) details of any further stages in the tender process; and
 - (v) a reference to Council's Code for Tenders and Contracts.
- (h) At the final stage of a multiple-stage tender, the General Manager must send an invitation to all suppliers who have met the criteria determined by Council, to tender for the supply of goods or services.
 - (i) If only one supplier meets the criteria determined by Council at the first stage of a multiple-stage tender, Council may contract with that supplier:
 - (ii) after a tender by that supplier;
 - (iii) or a decision by absolute majority of Council to do so.

4.20 Contract Renewals and Extensions

- (a) Where goods or services being delivered under a contract or tender are required on an ongoing basis, Council may undertake a new procurement process prior to the completion of the existing delivery arrangement.
- (b) Council may extend an existing contract, rather than seek new tenders or quotations for the delivery of the goods or services.
- (c) Except by a decision of absolute majority of Council to do so, contracts will only be extended:
 - (i) where the original contract provides for such an extension;

- (ii) following a full evaluation of the performance of the current contractor;
- (iii) where the principles of open and effective competition are protected;
- (iv) since the previous tender, the market and nature of the goods/services are substantially unchanged.

4.21 Confidentiality

- (a) Council and Tenderers must keep information that they receive from each other in the course of the tender process confidential, except where they are expressly permitted under this Code or obliged by law to release that information.
- (b) Councillors and Council staff must keep confidential any information that they are given or access in relation to a tender, except where they are expressly permitted under this Code or obliged by law to release that information.
- (c) If any Tenderer provides to Council additional documents marked "confidential", Council must return such documents to the Tenderer who provided them as soon as practicable.

4.22 Debriefing Unsuccessful Tenderers

- (a) Unsuccessful Tenderers may request a debriefing to assist them in understanding how they may improve their submissions for future Council tenders.
- (b) Debriefings are limited to discussion of the strengths and weaknesses of the Tenderer's submission relative to Council's requirements.
- (c) Unsuccessful Tenderer briefings must not be used to discuss other Tenderer's submissions, nor to contest the outcome of a tender evaluation.

4.23 Procurement Process Complaints

- (a) Complaints regarding procurement processes are addressed in the same manner as any other complaints, as set out in Council's Customer Service Charter. The Customer Service Charter can be found on Council's website www.kingborough.tas.gov.au under Council>Policies.
- (b) Complaints under Council's Public Interest Disclosure Policy are incorporated into the Customer Service Charter.

4.24 Breach of the Code

- (a) Council must take all reasonable steps to comply with this Code and ensure that all other parties comply with it. However, Council shall not be liable in any way to a Tenderer or any other person for any breach of this Code.
- (b) If an employee of Council or a body controlled by Council breaches this Code, Council may take disciplinary action if, in its absolute discretion, it considers it desirable to do so.
- (c) If a Councillor breaches this Code, action may be taken under the Councillor Code of Conduct.
- (d) If a Tenderer commits a breach of this Code, Council may, in its absolute discretion, take action against the Tenderer including but not limited to:
 - (i) a warning;
 - (ii) reduction in opportunities to tender for work for Council;
 - (iii) refusal by Council to consider any tender submitted by the Tenderer to Council;

	<p>(iv) publicising the breach and the identity of the Tenderer; and</p> <p>(v) reporting the breach to a statutory, professional or other body.</p>
COMMUNICATION:	5. This Policy will be published on Council's internet and intranet sites.
LEGISLATION:	<p>6.1 Section 333A of the <i>Local Government Act 1993</i></p> <p>6.2 <i>Local Government (General) Regulations 2015</i></p>
RELATED DOCUMENTS:	<p>Council's Purchasing Policy (Policy No. 3.7) sits alongside this Code and sets out requirements for purchasing goods and services of any value, including legislated matters relating to purchases below the prescribed amount.</p> <p>Relevant Australian Standards for contracts and tendering</p>
AUDIENCE:	<p>The Code for Tenders and Contracts Policy applies to Councillors, all staff employed by the Kingborough Council and Council contractors.</p> <p>The policy is publicly accessible via Council's website.</p>