



# Code for Tenders and Contracts Policy

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<b>Strategic Plan Reference:</b>	2.2 Infrastructure development and service delivery are underpinned by strategic planning to cater  2.4 The organisation has a corporate culture that delivers quality customer service, encourages

### 1. POLICY STATEMENTS

- 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 333A and 333B of the Local Government Act 1993 and Regulations 23 to 29 of the Local Government (General) Regulations 2015.
- 1.2 This Code, in conjunction with Council's Purchasing Policy, aims to:
- ensure compliance with relevant legislation
  - enhance value for money through fair, competitive, non-discriminatory procurement
  - promote the use of resources in an efficient, effective and ethical manner
  - encourage probity, accountability and transparency in decision making
  - provide reasonable opportunity for competitive local businesses to supply to Council
  - minimise the cost to suppliers of participating in the tendering process
  - allow Council to appropriately manage risk
  - promote Council's economic, social and environmental plans and policies

### 2. DEFINITIONS

- 2.1 **Act** is the Local Government Act 1993 (Tasmania).
- 2.2 **Alternative Tender** means a Tender which does not fully satisfy all of the requirements set out in the Tender Package but offers an alternative way of achieving Council's objectives set out in, or reasonably determined from, the Tender Package.
- 2.3 **Conforming Tender** means a Tender which satisfies all of the requirements for Tenders set out in the Tender Package.
- 2.4 **Contract** means the contract for the carrying out of the Work or the supply of Goods and Services to be entered into between Council and the successful Tenderer.
- 2.5 **Council** means the Kingborough Council and its fully controlled body corporate entities (referred to as a single authority in the Regulations).
- 2.6 **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. The National Procurement Network (NPN) is coordinated by the Municipal Association of Victoria (MAV).
- 2.7 **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 or the supply of Goods and Services.
- 2.8 **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.
- 2.9 **Preferred Tenderer** means the Tenderer who, in the opinion of Council, best satisfies the selection criteria.
- 2.10 **Prescribed Amount** means the amount (excluding GST) referred in section 333A of the Act and described in regulation 23 of the Regulations.
- 2.11 **Regulations** are the Local Government (General) Regulations 2015 (Tasmania).

- 2.12 **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 or the supply of Goods and Services.
- 2.13 **Tender Closing** means the time and date specified in the Tender Package by which Tenders must be submitted.
- 2.14 **Tender Opening** means the opening of Tenders under Clause 6.9.
- 2.15 **Tender Package** means the tender package which Council provides to prospective Tenderers under Clause 6.3.
- 2.16 **Tenderer** means any party submitting a Tender to Council in respect of the Work.
- 2.17 **Tender** means a tender submitted to Council in respect of the Work.
- 2.18 **Value** means a genuine pre-estimate of the likely market price (excluding GST) for the goods or services to be purchased over the full commitment or term (including extension options) of a contract arising from the purchasing activity.
- 2.19 **Value for Money** means the combination of the price and qualitative aspects of the supply of goods or services that will provide the most beneficial outcome to Council as outlined in Clause 5.3.
- 2.20 **Work** means the work for the performance of which Council has invited tenders including the provision of goods or services.

### 3. OBJECTIVE

- 3.1 This Code is intended to apply to all tenders advertised publicly by Council, where the Prescribed Amount of \$250,000 is exceeded. At the discretion of the General Manager, Council may apply the Code to other procurements below this threshold.
- 3.2 Council may decide that this Code should not apply to a particular procurement. If so, the conditions of tendering for that tender must contain a clear statement to that effect.
- 3.3 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.
- 3.4 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 will prevail to the extent of the inconsistency.

### 4. SCOPE

- 4.1 This Code is supplemented by Council's Purchasing Policy which defines requirements for procurement of Works, goods and services of any amount.
- 4.2 Council may also determine that tenders should be called in certain circumstances as appropriate, where the estimated value of the purchase is less than the Prescribed Amount (for example, if the procurement is high risk, complex, likely to involve public scrutiny, if the estimate of value is uncertain or if the procurement is in a market that council is not familiar with).

### 5. PROCEDURE (POLICY DETAIL)

#### 5.1 General Principles

All parties involved in tenders to which this Code applies must:

- 5.1.1 conduct tendering honestly and fairly to all parties;

- 5.1.2 refrain from inviting or submitting tenders without a firm intention to proceed;
- 5.1.3 apply the same conditions of tendering for each Tenderer and avoid any practice which provides one party an improper advantage over another;
- 5.1.4 ensure all potential suppliers are provided with the same information relating to the requirements of an open tender process or contract and are given equal opportunity to meet the requirements;
- 5.1.5 ensure a prompt and courteous response to all reasonable requests for advice and information from potential or existing suppliers;
- 5.1.6 minimise the cost to suppliers of participating in the tendering process;
- 5.1.7 protect commercial-in-confidence information;
- 5.1.8 provide for the review of each tender process to ensure that each tender is in accordance with the regulations and the code;
- 5.1.9 refrain from all improper practices including collusive tendering; and
- 5.1.10 not undertake canvassing of Councillors or Council employees in relation to a tender.

### 5.2 Open and Effective Communication

The Council will ensure that the purchasing process is impartial, open and encourages competitive offers. In practice this means that Council will:

- 5.2.1 use transparent and open purchasing processes so that suppliers and the public are able to have confidence in the outcomes;
- 5.2.2 ensure suppliers have access to relevant Council procurement documents;
- 5.2.3 adequately test the market through seeking quotations or via tender as appropriate;
- 5.2.4 provide clear specifications;
- 5.2.5 treat all suppliers consistently and equitably; and
- 5.2.6 ensure a prompt and courteous response to all reasonable requests for advice and information from suppliers.

### 5.3 Value for Money

The Council will ensure that it is buying at the most competitive price available, but value for money does not necessarily mean buying at the lowest price. In practice, this means that Council will consider:

- 5.3.1 the contribution the good or service makes to achieving Council's strategic plans or policies;
- 5.3.2 the value of the acquisition and potential benefits against the costs of that purchase;
- 5.3.3 an assessment of risks associated with the purchase including the preferred procurement method;
- 5.3.4 how well the works, goods or services will meet the needs of Council;
- 5.3.5 maintenance and running costs over the lifetime of a product;
- 5.3.6 disposal value;
- 5.3.7 time constraints, including supply chain delays;

- 5.3.8 the impact of the procurement decision on the local economy, such as through industry development and employment creation;
- 5.3.9 the impact of the procurement decision on the environment, such as through minimising waste and reducing demand for goods and services which have a direct impact on the environment (such as printing, utilities and travel); and
- 5.3.10 the impact of the procurement decision on the society, (social value generated) such as through the elimination of discrimination and the promotion of equal opportunity, training, and other identified social objectives.

#### 5.4 Enhancing local business and industry

Council will ensure that where local capacity exists it will seek to engage the local market and encourage participation in tender and quotation processes. In practice this means that Council will:

- 5.4.1 actively seek quotes from local businesses that are able to provide quality Works, goods and or services;
- 5.4.2 where local capability exists, ensure that discretionary elements of specifications do not prevent local business from competing; and
- 5.4.3 not give preferential treatment to local suppliers where it cannot be reasonably justified.

#### 5.5 Ethical Behaviour and Fair Dealing

Council will promote procurement practices that are legal, ethical, fair and unbiased. In practice this means that Council will:

- 5.5.1 comply with legal requirements;
- 5.5.2 conduct all business in the best interests of the Council;
- 5.5.3 treat all suppliers equally;
- 5.5.4 avoid biased specifications;
- 5.5.5 be as effective and efficient as possible when sourcing, ordering and paying for Works, goods and services;
- 5.5.6 expect individuals involved in procurement processes to declare and act upon any conflicts of interest that may be seen to influence impartiality;
- 5.5.7 ensure that any supplier is not provided with information or clarification that is not provided equally to all suppliers;
- 5.5.8 maintain confidentiality at all times in dealing with suppliers;
- 5.5.9 ensure that conditions of contract are not excessively onerous;
- 5.5.10 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; and
- 5.5.11 decline gifts or benefits offered by those involved in the procurement process, particularly from suppliers.

In practice this means that Council expects suppliers to:

- 5.5.12 ensure that they are well acquainted with Council requirements identified in this Code and additional related policies;
- 5.5.13 are familiar with particulars relating to a specific tender and quotation processes including the relevant specifications;

- 5.5.14 not submit a tender or quotation unless they have the financial, technical, physical, management resource or other capabilities to fulfil Council's requirements;
  - 5.5.15 not seek to influence a procurement process by improper means or collude with other suppliers;
  - 5.5.16 declare and act upon any conflicts of interest that may be seen to influence impartiality;
  - 5.5.17 comply with all applicable legislative, regulatory and statutory requirements, including Acts of the Commonwealth and State, regulations, by laws and proclamations made or issued under such Acts and lawful requirements or directions of public and other authorities; and
  - 5.5.18 not offer gifts or benefits to a Council officer for the discharge of official business.
- 5.6 Conflict of Interest
- 5.6.1 Any party to a Tender, including Tenderers, Councillors and staff, who has a conflict of interest must declare the relevant interests to the Council immediately upon becoming aware of the conflict.
- 5.7 Collusive Tendering
- 5.7.1 Tenderers must not engage in collusive tendering.
  - 5.7.2 Collusive tendering includes but is not limited to, the following practices:
    - 5.7.2.1 agreements between Tenderers as to who should be the Successful Tenderer;
    - 5.7.2.2 any meeting of Tenderers prior to the submission of their Tenders that may disadvantage Council;
    - 5.7.2.3 exchange of information between Tenderers about their Tenders prior to awarding of a Contract;
    - 5.7.2.4 agreement between Tenderers for payment of money or securing of reward or benefit for unsuccessful Tenderers by the Successful Tenderer;
    - 5.7.2.5 agreement or collaboration between Tenderers to fix prices or conditions of contract;
    - 5.7.2.6 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
    - 5.7.2.7 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.
- 5.8 Exemptions from the Requirements to Tender
- The Regulations identify circumstances where council is not required to issue a public tender process. The exemption circumstances identified in Regulation 27 – Non Application of the Public Tender Process are:
- 5.8.1 an emergency if, in the opinion of the General Manager, there is insufficient time to invite tenders for the goods or services required in that emergency;
  - 5.8.2 a contract for goods or services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth;

- 5.8.3 a contract for goods or services supplied or provided by another council, a single authority, a joint authority or the Local Government Association of Tasmania;
- 5.8.4 a contract for goods or services obtained as a result of a tender process conducted by:
  - 5.8.4.1 another council, or
  - 5.8.4.2 a single authority, or
  - 5.8.4.3 a joint authority, or
  - 5.8.4.4 the Local Government Association of Tasmania, or
  - 5.8.4.5 any other local government association in this State or in another State or a Territory, or
  - 5.8.4.6 any organisation, or entity, established by any other local government association in this State or in another State or a Territory.
- 5.8.5 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/MAV exempts Council from public tendering for goods or services valued at or excess of the prescribed amount;
- 5.8.6 a contract for goods or services in respect of which a council is exempted under another Act from the requirement to invite a tender;
- 5.8.7 a contract for goods or services that is entered into at public auction
- 5.8.8 a contract for insurance entered into through a broker;
- 5.8.9 a contract arising when a council is directed to acquire goods or services due to a claim made under a contract of insurance;
- 5.8.10 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:
  - 5.8.10.1 extenuating circumstances, or
  - 5.8.10.2 the remoteness of the locality, or
  - 5.8.10.3 the unavailability of competitive or reliable tenderers.
- 5.8.11 a contract of employment with a person as an employee of the Council.

## 6. GUIDELINES

### 6.1 Open Tenders

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

### 6.2 Invitations to Tender

#### 6.2.1 An invitation to tender must set out:

- 6.2.1.1 a description of the Work;
- 6.2.1.2 the time, date and place of Tender Closing;
- 6.2.1.3 details of the place from which the Tender Package may be collected; and
- 6.2.1.4 the name and phone number of the Point of Contact for the tender.

- 6.2.2 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;
- 6.2.3 The Tender Closing must not be:
  - 6.2.3.1 a weekend or public holiday in Southern Tasmania; or
  - 6.2.3.2 between 23 December and 20 January inclusive, unless special circumstances require otherwise.
- 6.3 Tender Package
  - 6.3.1 Council must make available to prospective Tenderers a Tender Package which:
    - 6.3.1.1 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;
    - 6.3.1.2 clearly defines the intended contractual obligations of the parties;
    - 6.3.1.3 makes reference to Council's Code for Tenders and Contracts;
    - 6.3.1.4 provides details of the Work;
    - 6.3.1.5 details information required from Tenderers;
    - 6.3.1.6 sets out the criteria that will be used to determine whether Tenders are conforming and the basis on which Alternative Tenders will be considered;
    - 6.3.1.7 nominates a Point of Contact where Tenderers may direct enquiries, which may include a monitored online forum for tenders invited through an electronic portal;
    - 6.3.1.8 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
  - 6.3.2 The Tender Package must include the following documents:
    - 6.3.2.1 conditions of tendering;
    - 6.3.2.2 specification;
    - 6.3.2.3 tender form;
    - 6.3.2.4 conditions of contract or a reference to the form of conditions of contract to be used;
    - 6.3.2.5 contract annexures (if applicable); and
    - 6.3.2.6 drawings, schedules and any other documents necessary to satisfy the requirements of 6.3.1 of this clause.
  - 6.3.3 A copy of this Code must be made available to Tenderers.
- 6.4 Form of Contract
  - 6.4.1 Council must use published standard conditions of contract appropriate to the Work or the supply of Goods and Services unless circumstances require otherwise.
  - 6.4.2 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.

- 6.5 Tender Enquiries
  - 6.5.1 Council must nominate a Point of Contact to deal with Tenderers' enquiries.
  - 6.5.2 Tenderers may seek further information only through the point of contact nominated by Council.
  - 6.5.3 The Point of Contact may necessitate or require that a request for information be made in writing.
  - 6.5.4 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.
  - 6.5.5 If Council provides to any Tenderer information which is not contained in the Tender Package, Council must give that information to all Tenderers.
- 6.6 Tender Briefing Meetings
  - 6.6.1 Council may conduct a tender briefing meeting.
  - 6.6.2 Council must inform all prospective Tenderers of the time and place at which the tender briefing meeting is to be held. This may be achieved by including the information in the Tender Package, or by publishing the information through an electronic tendering portal, or through another means of contacting prospective Tenderers.
  - 6.6.3 Council must keep minutes of any tender briefing meeting. The minutes must be made available to all prospective Tenderers and become part of the tender documents.
- 6.7 Submission of Tenders
  - 6.7.1 Tenders must be lodged electronically or delivered to the place named in the Tender Package to arrive not later than the time specified in the Tender Package.
  - 6.7.2 Tenders must not be submitted to Council by facsimile or by email.
  - 6.7.3 Electronic Tendering is Council's preferred method of accepting tenders and must be submitted in the manner and in the form specified in the Tender Package.
  - 6.7.4 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.
  - 6.7.5 Council may, in its absolute discretion, accept a Tender received after Tender Closing or delay Tender Closing where:
    - 6.7.5.1 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
    - 6.7.5.2 electronic tenders are required or permitted, an event outside a Tenderer's control prevents submission by Tender Closing;and in addition to 6.7.5.1 and 6.7.5.2
    - 6.7.5.3 consideration of the late Tender or delaying the Tender Closing would not provide an unfair advantage or disadvantage to any party submitting a Tender.
  - 6.7.6 A Tender should not be submitted unless that Tenderer has the capacity and capability to carry out the Work.
  - 6.7.7 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.

- 6.7.8 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.
- 6.8 Amendment of Tender Package
  - 6.8.1 Council may amend the Tender Package if it discovers a significant error or discrepancy in it.
  - 6.8.2 If Council amends the Tender Package it must:
    - 6.8.2.1 give an addendum to the Tender Package to all Tenderers;
    - 6.8.2.2 give Tenderers sufficient time to consider the addendum; and
    - 6.8.2.3 permit any Tenderer who has already submitted a Tender to submit an addendum, complying with the requirements of Clause 6.7 and clearly marked "Tender Addendum".
  - 6.8.3 If Council amends the Tender Package it may extend the Tender Closing.
  - 6.8.4 Each Tenderer must, not later than Tender Closing, acknowledge in writing receipt of the addendum given by Council.
- 6.9 Tender Opening
  - 6.9.1 Tender Opening will not be held in public.
  - 6.9.2 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.
  - 6.9.3 Council will ensure that records of received Tenders, 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.
  - 6.9.4 Council must keep a copy of all records until after completion of all Work and in accordance with its obligations under the Archives Act 1983.
- 6.10 Tender Review Committee
  - 6.10.1 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.
  - 6.10.2 The Tender Review Committee may review but not be limited to consideration of the following aspects of a tender:
    - 6.10.2.1 the tender and evaluation process adopted;
    - 6.10.2.2 the final tender evaluation report;
    - 6.10.2.3 the extent of compliance with this Code; and
    - 6.10.2.4 any other relevant issues or information.
- 6.11 Consideration of Tenders
  - 6.11.1 Subject to this Code, Council must consider all Conforming Tenders.
  - 6.11.2 Council must not consider a Non-Conforming Tender unless it meets the requirements set out in the Tender Package for an Alternative Tender and a fully Conforming Tender is also submitted.

- 6.11.3 Council may consider an Alternative Tender which meets the requirements set out in the Tender Package for an Alternative Tender; may negotiate with the Tenderer who submitted it; and may accept the Alternative Tender or any variation of it negotiated with the Tenderer, provided that a fully Conforming Tender is also submitted.
- 6.11.4 Council will take into account any of the following criteria in considering Tenders:
- 6.11.4.1 the resources of the Tenderer including technical, managerial, physical and financial resources;
  - 6.11.4.2 proposed methodology and delivery management, including communication with Council representatives;
  - 6.11.4.3 Tenderer's understanding of the Work;
  - 6.11.4.4 price;
  - 6.11.4.5 Tenderer's past experience and performance history including:
    - time for delivery of work, goods and/or services;
    - quality of work, goods and/or services;
    - management of delivery, including communication with the customer;
    - co-ordination of service providers, consultants and suppliers;
    - rectification of defects and after delivery service;
    - conformance with specified requirements;
    - work health and safety; and
    - employee relations;
  - 6.11.4.6 experience of personnel committed in the Tender;
  - 6.11.4.7 timeframes committed in the Tender;
  - 6.11.4.8 quality management;
  - 6.11.4.9 work health and safety management;
  - 6.11.4.10 compliance with this Code; and
  - 6.11.4.11 any other criteria specified in the Tender Package.
- 6.11.5 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.
- 6.11.6 The weighting to be given to each of the criteria may vary from tender to tender.
- 6.11.7 Council may advise Tenderers of the weightings but is not obliged to do so.
- 6.11.8 During evaluation Council may request additional information from and/or negotiate with one or more Tenderers for one or more of the following purposes:
- 6.11.8.1 to assess any assumptions made by a Tenderer in preparing their Tender and to rectify any false assumptions;
  - 6.11.8.2 to clarify a Tenderer's capacity and/or capability to perform the Work;
  - 6.11.8.3 to improve the Value for Money for Council by identifying cost reductions or service improvements; or
  - 6.11.8.4 to finalise commercial details required to form a contract.

but must not:

- 6.11.8.5 request such information or negotiate in order to turn a Non-Conforming Tender into a Conforming Tender; nor;
- 6.11.8.6 negotiate substantial changes to specified requirements, where such changes could affect the evaluation outcome, without providing equal opportunity for all Tenderers.

### 6.12 Negotiation, Rejection and Acceptance of Tenders

- 6.12.1 Council is not obliged to accept any tender;
- 6.12.2 Council is not obliged to accept the lowest priced Conforming or Alternative Tender;
- 6.12.3 Council may accept any Conforming Tender, any Non-Conforming Tender, or any Alternative Tender in accordance with Clause 6.7 and Clause 6.11;
- 6.12.4 Council may reject all Tenders;
- 6.12.5 If Council rejects all Tenders, Council must advise each Tenderer accordingly;
- 6.12.6 If Council rejects all Tenders, Council may invite further tenders;
- 6.12.7 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;
- 6.12.8 In the course of negotiation with a Tenderer, Council must not disclose the details of a Tender submitted by any other Tenderer;
- 6.12.9 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;
- 6.12.10 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 written acceptance under Clause 6.12.9;
- 6.12.11 Upon sending advice to a Successful Tenderer in accordance with Clause 6.12.9, Council must advise all other Tenderers that their Tenders have been unsuccessful; and
- 6.12.12 The Successful Tenderer will not be entitled to receive any payment due under a Contract until it has executed the formal contract document in accordance with Clause 6.12.10 and met any pre-requisites such as the provision of performance bonds or guarantees.

### 6.13 Multiple-Use Register

A Multi-Use Register is a method of pre-qualifying suppliers who have satisfied the conditions for participation for inclusion on the register. It should not be seen as an alternative method of procurement in its own right. The obligation to undertake an open tender (Prescribed Amount above \$250,000), or to obtain a minimum of three written quotations/submissions (Prescribed Amount between \$100,000 and \$250,000), must be completed prior to the formation of the multi-use register.

- 6.13.1 Council may utilise a Multiple-Use 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 two (2) years.
- 6.13.2 If it is determined that Council will establish such a register, the General Manager will invite expressions of interest or tenders from prospective applicants for inclusion on the

register by publishing on Council's electronic tender web site and/or at least once in a daily newspaper circulating in the municipal area a notice specifying:

- 6.13.2.1 a description of the goods and services required;
- 6.13.2.2 the name and contact details of the person nominated by Council to deal with enquiries or where relevant documents may be obtained; and
- 6.13.2.3 any deadlines for submission of application for inclusion on the register.

6.14 The General Manager must ensure that applicants are provided with the following in order to make an application:

- 6.14.1 details of the categories of goods or services required;
  - 6.14.1.1 the conditions for participation to be satisfied by applicants;
  - 6.14.1.2 the criteria for evaluating applications; and
  - 6.14.1.3 a reference to Council's Code for Tenders and Contracts.
- 6.14.2 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.
- 6.14.3 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.
- 6.14.4 When Council wishes to use the register, the General Manager will invite all successful applicants that are registered for the relevant category to respond to the request for the provision of the required goods or service.
- 6.14.5 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, mowing, roadside tree maintenance, stationery, etc. Several contractors or one contractor may be selected for any one project, or work may be awarded on a shared basis.
- 6.14.6 Council will maintain a Register of Contractors and Suppliers.
- 6.14.7 Tenderers will remain on the Register of Contractors and Suppliers for the period of the contract subject to:-
  - 6.14.7.1 maintaining the requested insurances and licence registrations for the category of work being performed;
  - 6.14.7.2 being financially viable; and
  - 6.14.7.3 having undertaken work for the Council in a proper workmanlike manner without defects or omissions.
- 6.14.8 Council will allow a prospective applicant to apply for inclusion on a register of Contractors and Suppliers at any time during the term of the Multi-use Register, unless the prospective applicant has applied within the previous 12 months and has not been accepted.
- 6.14.9 For all procurements where the value of the supply of goods or services under a Multi-Use Register in a twelve month period from all suppliers is likely to exceed the Prescribed Amount, the following will apply:
  - 6.14.9.1 An open tender process will be undertaken;

- 6.14.9.2 Council's internal purchasing approval processes for open tenders will be followed;
  - 6.14.9.3 A formal contract will be signed with the successful tenderers; and
  - 6.14.9.4 The purchases so made under the Multi-Use Register will be reported under Regulation 29 of the Local Government (General) Regulations 2015.
- 6.15 Multiple-stage Tenders
- 6.15.1 A multiple-stage tender process is a process by which suppliers are evaluated through stages against criteria determined by Council.
  - 6.15.2 Council will utilise a multiple-stage tendering process to shortlist qualified tenderers through an open tender process. Subsequent assessment will be based on a closed tender approach to those parties who have been shortlisted and will have different selection criteria to the initial stage.
  - 6.15.3 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:
    - 6.15.3.1 the best way to meet the requirement is unclear;
    - 6.15.3.2 it is considered appropriate to pre-qualify businesses and restrict the issue of formal tenders, to reduce the cost of tendering;
    - 6.15.3.3 there are benefits which cannot be obtained by researching the market through conventional means;
    - 6.15.3.4 the procurement requirement is still developing as a result of technology or detailed design requirements; and
    - 6.15.3.5 maximum flexibility is required throughout the procurement process.
  - 6.15.4 The multiple-stage processes that Council may use are as follows:
    - 6.15.4.1 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.  
  
Alternatively, a request for proposal – may be used when a project or requirement has been defined, but where an innovative or flexible solution is sought.
    - 6.15.4.2 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.
  - 6.15.5 Council is mindful of the following aspects when conducting a multiple stage tender process:
    - 6.15.5.1 the same mandatory requirements regarding advertising that apply to a public tender process;
    - 6.15.5.2 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;

- 6.15.6 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:
  - 6.15.6.1 the nature of the Works, goods and services required;
  - 6.15.6.2 where the application is to be lodged;
  - 6.15.6.3 the person from whom more detailed information may be obtained; and
  - 6.15.6.4 any deadlines for submission of application for inclusion on the register.
- 6.15.7 The General Manager must ensure that prospective Tenderers are provided with the following in order to lodge an expression of interest:
  - 6.15.7.1 details of the goods or services required;
  - 6.15.7.2 the criteria for evaluating expressions of interest;
  - 6.15.7.3 the method of evaluating expressions of interest against the criteria;
  - 6.15.7.4 details of any further stages in the tender process and the subsequent selection criteria to be used at the next stage (usually price); and
  - 6.15.7.5 a reference to Council's Code for Tenders and Contracts.
- 6.15.8 At the final stage of a multiple-stage tender, the General Manager must send an invitation to all short-listed suppliers who have met the criteria determined by Council, to tender for the supply of goods or services.

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:

  - 6.15.8.1 after a tender by that supplier; or
  - 6.15.8.2 a decision by absolute majority of Council to do so.
- 6.16 Contract Renewals and Extensions
  - 6.16.1 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.
  - 6.16.2 Council may extend an existing Contract that contains an option, rather than seek new tenders or quotations for the delivery of the goods or services.
  - 6.16.3 When drafting a contract that contains a provision for an additional term consideration should be given as to how any adjustments to price (rise and fall) are to be made. CPI adjustments though common, are not always the best method and other approaches, such as tying increases to national wage increases for high labour content supply contracts may be more appropriate.
  - 6.16.4 Except by a decision of absolute majority of Council to do so, Contracts will only be extended:
    - 6.16.4.1 where the original Contract provides for such an extension;
    - 6.16.4.2 following a full evaluation of the performance of the current contractor;
    - 6.16.4.3 where the principles of open and effective competition are protected;
    - 6.16.4.4 provided that the original requirements for insurances and licences is still being met by the tenderer; and

6.16.4.5 since the previous tender, the market and nature of the goods/services are substantially unchanged.

### 6.17 Confidentiality

6.17.1 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.

6.17.2 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.

6.17.3 If any Tenderer provides to Council additional documents marked “confidential”, Council must use best efforts to avoid any confidential information being made available to persons not involved in evaluation of Tenders.

### 6.18 Copyright and Intellectual Property

6.18.1 Tenderers may wish to claim certain rights and ownership of intellectual property contained within their tender submissions, including trade secrets, designs, materials, documents and methods of working.

6.18.2 Council and its officers shall respect all such claims subject of course to any requirements of the tender for the ownership and the material to pass to Council as part of the engagement.

### 6.19 Debriefing Unsuccessful Tenderers

6.19.1 Unsuccessful Tenderers may request a debriefing to assist them in understanding how they may improve their submissions for future Council tenders.

6.19.2 Debriefings are limited to discussion of the strengths and weaknesses of the Tenderer’s submission relative to Council’s requirements.

6.19.3 Unsuccessful Tenderer briefings must not be used to discuss other Tenderer’s submissions, nor to contest the outcome of a tender evaluation.

### 6.20 Procurement Process Complaints

6.20.1 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](http://www.kingborough.tas.gov.au) under Council>Policies.

6.20.2 Complaints under Council’s Public Interest Disclosure Policy are incorporated into the Customer Service Charter.

### 6.21 Breach of the Code

6.21.1 Council must take all reasonable steps to comply with this Code and ensure that all other parties comply with it. However, Council will not be liable in any way to a Tenderer or any other person for any breach of this Code.

6.21.2 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.

6.21.3 If a Councillor breaches this Code, action may be taken under the Councillor Code of Conduct.

6.21.4 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:

- 6.21.4.1 a warning;
  - 6.21.4.2 reduction in opportunities to tender for work for Council;
  - 6.21.4.3 refusal by Council to consider any Tender submitted by the Tenderer to Council;
  - 6.21.4.4 publicising the breach and the identity of the Tenderer; and
  - 6.21.4.5 reporting the breach to a statutory, professional or other body.
- 6.22 High Value/High Risk Purchases
- 6.22.1 Though not a specific requirement of the either the Act or Regulations, a project plan and risk assessment should be prepared for purchases exceeding one million dollars (\$1,000,000) in value.
  - 6.22.2 It is the responsibility of the Director of the relevant area to ensure that consideration is given to minimising risks to Council.
- 6.23 Documenting the Procurement
- 6.23.1 As a public authority, Council is subject to external scrutiny and potentially audit.
  - 6.23.2 For low value, low risk Works, goods and services, records must be kept of quotations received and quotations approved. If written quotations cannot be obtained, Council must keep detailed written records of the oral quotation obtained, including details of the commercial terms of the quotation.
  - 6.23.3 Records of the procurement must be maintained in Council's electronic records management system, and as a minimum should include:-
    - 6.23.3.1 Full details of the tender issued, including specifications;
    - 6.23.3.2 Any addendum issued during the tender period including minutes of tender meetings;
    - 6.23.3.3 Responses received to the tender;
    - 6.23.3.4 Any correspondence between the Council and Tenderers;
    - 6.23.3.5 A written tender assessment report;
    - 6.23.3.6 Minute to Council for amounts above the Prescribed Amount, or approval by the relevant delegate;
    - 6.23.3.7 Letters to the successful and unsuccessful tenderers; and
    - 6.23.3.8 A copy of the signed contract.
- 6.24 Guidelines and procedures for implementation of this Policy are separately maintained as administrative documents.

## **7. COMMUNICATION**

- 7.1 This Policy will be published on Council's internet and intranet sites.

## **8. LEGISLATION**

- 8.1 Section 333A of the Local Government Act 1993 and Regulations 23 to 26 of the Local Government (General) Regulations 2015 determine the manner in which purchasing activities must generally be conducted where the value of a contract exceeds a Prescribed Amount.
- 8.2 Note: The Prescribed Amount under the 2015 Regulations is currently \$250,000 (excluding GST).

- 8.3 Section 333A of the Act and Regulation 27 of the Regulations prescribe situations and contracts where Regulations 23 to 26 do not necessarily apply.
- 8.4 Section 333B of the Act and Regulation 28 of the Regulations require Council to adopt a Code for Tenders and Contracts and define the requirements for that Code.
- 8.5 Regulation 29 of the Regulations details the reporting requirements in relation to tenders and contracts.

### **9. RELATED DOCUMENTS**

- 9.1 Council's Purchasing Policy (Policy No. 3.7) sits alongside this Code and sets out requirements for purchasing Works, goods and services of any value, including legislated matters relating to purchases below the prescribed amount.
- 9.2 Relevant Australian Standards for contracts and tendering.

### **10. AUDIENCE**

- 10.1 This Policy is intended for Council Employees, Councillors, Tenderers and external parties.
- 10.2 The policy is accessible via Council's public website and internal intranet.