



Code for Tenders and Contracts Policy

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Responsible Officer:	Director Governance, Recreation & Property Services
Strategic Plan Reference:	<p>2.2 Infrastructure development and service delivery are underpinned by strategic planning to cater for the needs of a growing population.</p> <p>2.4 The organisation has a corporate culture that delivers quality customer service, encourages innovation and has high standards of accountability.</p>

1. 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 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:
 - 1.2.1 Ensure compliance with relevant legislation.
 - 1.2.2 Enhance value for money through fair, competitive, and non-discriminatory procurement.
 - 1.2.3 Promote the use of resources in an efficient, effective and ethical manner.
 - 1.2.4 Encourage probity, accountability and transparency in decision making.
 - 1.2.5 Provide reasonable opportunity for competitive local businesses to supply to Council.
 - 1.2.6 Minimise the cost to suppliers of participating in the tendering process.
 - 1.2.7 Allow Council to appropriately manage risk.
 - 1.2.8 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 **Chief Executive Officer (CEO)** is the General Manager as appointed by the Kingborough Council pursuant to section 61 of the Act.
- 2.4 **Conforming Tender** means a Tender which satisfies all of the requirements for Tenders set out in the Tender Package.
- 2.5 **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.
- 2.6 **Council** means the Kingborough Council and its fully controlled body corporate entities (referred to as a single authority in the Regulations).
- 2.7 **LGAT** means the Local Government Association Tasmania. The peak body for Local Government in the State.
- 2.8 **Multi Use Register** means a list of suppliers that Council has determined satisfy the conditions for participation and that the Council intends to use more than once.
- 2.9 **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.
- 2.10 **Open Tender** means an invitation to tender by public advertisement, where all interested suppliers may submit a tender response.
- 2.11 **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.

- 2.12 **Preferred Tenderer** means the Tenderer who, in the opinion of Council, best satisfies the selection criteria.
- 2.13 **Prescribed Amount** means the amount (excluding GST) referred to in section 333A of the Act and described in regulation 23 of the Regulations.
- 2.14 **Regulations** are the *Local Government (General) Regulations 2015* (Tasmania).
- 2.15 **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.
- 2.16 **Tender Closing** means the time and date specified in the Tender Package by which Tenders must be submitted.
- 2.17 **Tender Opening** means the opening of Tenders under Clause 6.9.
- 2.18 **Tender Package** means the tender package which Council provides to prospective Tenderers under Clause 6.3.
- 2.19 **Tenderer** means any party submitting a Tender to Council.
- 2.20 **Tender** means a tender submitted to Council.
- 2.21 **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.
- 2.22 **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.
- 2.23 **Work** means the work Council has invited tenders for, including the provision of Goods or Services.

3. OBJECTIVE

- 3.1 The Act states that a public tender should be conducted where an expected spend is above the prescribed limit of \$250,000 (excluding GST). The Regulations state conditions for exemption of this requirement.
- 3.2 This Code is intended to apply to all tenders where the Prescribed Amount of \$250,000 is exceeded. At the discretion of the CEO, Council may apply the Code to other procurements below this threshold.
- 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 providing legislative requirements are met.

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 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 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 Sustainable Procurement

Wherever possible, Council employees and contractors will pursue the following goals and adhere to the specified objectives when purchasing Goods and Services (noting that these impacts should be considered during the entire life cycle of the product, i.e. the production, distribution, usage and end of life stages):

- 5.6.1 Minimise Unnecessary Purchasing – only purchase when a Good or Service is necessary.
- 5.6.2 Minimise Waste – purchase in accordance with avoid, reduce, reuse and recycle strategies.
- 5.6.3 Save Water and Energy – purchase Goods that save energy and/or water.
- 5.6.4 Minimise Pollution – avoid purchasing Goods that pollute soils, air or waterways.
- 5.6.5 Non-Toxic – avoid purchasing hazardous chemicals that may be harmful to human health or ecosystems.
- 5.6.6 Greenhouse Benefits – purchase Goods that reduce greenhouse gas emissions.
- 5.6.7 Biodiversity & Habitat Protection – purchase in accordance with biodiversity and conservation objectives.
- 5.6.8 Value for Money – purchase for best value for money in the long term.

5.7 Conflict of Interest

- 5.7.1 Any party to a Tender, including Tenderers, Councillors and staff, who have a conflict of interest must declare the relevant interests to the Council immediately upon becoming aware of the conflict.

5.8 Collusive Tendering

- 5.8.1 Tenderers must not engage in collusive tendering.
- 5.8.2 Collusive tendering includes but is not limited to, the following practices:
 - 5.8.2.1 Agreements between Tenderers as to who should be the Successful Tenderer;
 - 5.8.2.2 Any meeting of Tenderers prior to the submission of their Tenders that may disadvantage Council;

- 5.8.2.3 Exchange of information between Tenderers about their Tenders prior to awarding of a Contract;
- 5.8.2.4 Agreement between Tenderers for payment of money or securing of reward or benefit for unsuccessful Tenderers by the Successful Tenderer;
- 5.8.2.5 Agreement or collaboration between Tenderers to fix prices or conditions of contract;
- 5.8.2.6 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
- 5.8.2.7 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.

5.9 **Splitting**

- 5.9.1 A Council must not split a procurement into two or more contracts for the primary purpose of avoiding compliance with the requirement to publicly invite tenders.

5.10 **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:

- 5.10.1 An emergency if, in the opinion of the CEO, there is insufficient time to invite tenders for the Goods or Services required in that emergency;
- 5.10.2 A contract for Goods or Services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth;
- 5.10.3 A contract for goods or Services supplied or provided by another Council, a single authority, a joint authority or the Local Government Association of Tasmania;
- 5.10.4 A contract for Goods or Services obtained as a result of a tender process conducted by:
 - 5.10.4.1 Another Council, or
 - 5.10.4.2 A single authority, or
 - 5.10.4.3 A joint authority, or
 - 5.10.4.4 The Local Government Association of Tasmania (see 5.10.11), or
 - 5.10.4.5 Any other local government association in this State or in another State or a Territory, or
 - 5.10.4.6 Any organisation, or entity, established by any other local government association in this State or in another State or a Territory.
- 5.10.5 A contract for Goods or Services in respect of which a Council is exempt under another jurisdiction from the requirement to invite a Tender;
- 5.10.6 A contract for Goods or Services that is entered into at public auction;
- 5.10.7 A contract for insurance entered into through a broker;

- 5.10.8 A contract arising when a Council is directed to acquire Goods or Services due to a claim made under a contract of insurance;
- 5.10.9 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:
 - 5.10.9.1 Extenuating circumstances, or
 - 5.10.9.2 The remoteness of the locality, or
 - 5.10.9.3 The unavailability of competitive or reliable tenderers.
- 5.10.10 A contract of employment with a person as an employee of the Council.
- 5.10.11 Council should consider using the broad range of available LGAT Procurement Standing Contracts/panels for the procurement of goods and services. The use of these arrangements saves Council time and money and assists to reduce risk associated with the procurement process. The arrangements also exempt Council from public tendering for goods or services valued at or in excess of the prescribed amount. The arrangements also assist to minimise cost to suppliers participating in Tender processes.

6. GUIDELINES

There are three main forms of public tender under the Act as follows:

- The open tender;
- The multiple use register; and
- The multiple- stage tender.

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 Tender process - 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 Unless special circumstances require otherwise, 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.
- 6.2.4 The CEO must invite expressions of interest or a request for proposal from prospective Tenderers by publishing at least once in a daily newspaper circulating in the municipal area a notice specifying:
 - 6.2.4.1 The nature of the Works, goods and services required;

- 6.2.4.2 Where the application is to be lodged;
 - 6.2.4.3 The person from whom more detailed information may be obtained; and
 - 6.2.4.4 Any deadlines for submission of application for inclusion on the register.
- 6.2.5 The CEO must ensure that prospective Tenderers are provided with the following in order to lodge an expression of interest:
 - 6.2.5.1 Details of the goods or services required;
 - 6.2.5.2 The criteria for evaluating expressions of interest or request for proposal;
 - 6.2.5.3 The method of evaluating expressions of interest or request for proposal against the criteria;
 - 6.2.5.4 Details of any further stages in the tender process and the subsequent selection criteria to be used at the next stage; and
 - 6.2.5.5 A reference to Council's Code for Tenders and Contracts.
- 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 or goods or services required;
 - 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; and
 - 6.3.1.8 In addition to a Conforming Tender, Council may allow the submission of an Alternative Tender. Here, Tenderers are encouraged to incorporate maximum innovation, while satisfying commercial and technical objectives.
 - 6.3.2 The Tender Package must include the following documents:
 - 6.3.2.1 Conditions of tendering;
 - 6.3.2.2 Specifications;
 - 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);
 - 6.3.2.6 The tender response schedule; and
 - 6.3.2.7 Drawings, schedules and any other documents as may be required.
 - 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 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 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 may be submitted to Council through approved e - procurement systems.
- 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, at 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, when an event outside a Tenderer's control prevents submission by Tender Closing; or
 - 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 may 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 withdraw the Tender Package and readvertise the Tender if there is significant error or discrepancy in the original.
 - 6.8.2 Council may amend the Tender Package if it discovers a minor error or discrepancy in it.
 - 6.8.3 If Council amends the Tender Package it must:
 - 6.8.3.1 Give an addendum to the Tender Package to all Tenderers;
 - 6.8.3.2 Give Tenderers sufficient time to consider the addendum; and
 - 6.8.3.3 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".
 - 6.8.4 If Council amends the Tender Package it may extend the Tender Closing.
 - 6.8.5 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 the Point of Contact.
 - 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 or supply of goods or services 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 CEO 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.

- 6.11.3 Council may consider an Alternative Tender which meets the requirements set out in the Tender Package for an Alternative Tender provided that a fully Conforming Tender is also submitted.
- 6.11.4 Council may negotiate with the successful Tenderer who submitted the Alternative Tender.
- 6.11.5 Council will take into account any of the following criteria in considering Tenders:
 - 6.11.5.1 The resources of the Tenderer including technical, managerial, physical and financial resources;
 - 6.11.5.2 Proposed methodology and delivery management, including communication with Council representatives;
 - 6.11.5.3 Tenderer's understanding of the Work or goods and services;
 - 6.11.5.4 Price;
 - 6.11.5.5 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.
 - 6.11.5.6 Experience of personnel committed in the Tender;
 - 6.11.5.7 Timeframes committed in the Tender;
 - 6.11.5.8 Quality management;
 - 6.11.5.9 Sustainability and environmental considerations;
 - 6.11.5.10 Local supplier preference;
 - 6.11.5.11 Work health and safety management; and
 - 6.11.5.12 Any other criteria specified in the Tender Package.
- 6.11.6 Council must determine the weighting to be given to the criteria before Tender Opening, in practice, weightings should be determined at the point of developing the Tender Package, prior to going to market. The weightings are to be determined at Council's absolute discretion.
- 6.11.7 The weighting to be given to each of the criteria may vary from Tender to Tender.
- 6.11.8 Council may advise Tenderers of the weightings but is not obliged to do so.
- 6.11.9 During evaluation Council may request additional information from one or more Tenderers for the following purposes:
 - 6.11.9.1 To assess any assumptions, mistakes or omissions made by a Tenderer in preparing their Tender and to rectify any false assumptions mistakes or omissions;

- 6.11.9.2 To clarify a Tenderer's capacity and/or capability to perform the Work;
 - 6.11.9.3 To finalise business details with the preferred tenderer required to form a contract.
- but must not:
- 6.11.9.4 Request such information in order to turn a Non-Conforming Tender into a Conforming Tender; nor;
 - 6.11.9.5 Make substantial changes to specified requirements, where such changes could affect the evaluation outcome, without providing equal opportunity for all Tenderers; nor;
 - 6.11.9.6 Negotiate commercial arrangements with any Tenderer other than the successful or preferred Tenderer.

6.12 Evaluation Team

- 6.12.1 An Evaluation Team will be convened for all purchases with a Value above \$100,000. The Evaluation Team may be different for each purchase and will comprise not less than three persons.
- 6.12.2 The Team must have knowledge of both technical and commercial aspects of the purchase;
- 6.12.3 Be from at least two different Council Departments; and
- 6.12.4 The Evaluation Team will prepare a written summary of the evaluation method, criteria, allocated scores and recommended supplier.

6.13 Negotiation, Rejection and Acceptance of Tenders

- 6.13.1 Council is not obliged to accept the lowest priced Conforming or Alternative Tender;
- 6.13.2 Council may accept any Conforming Tender, or any Alternative Tender;
- 6.13.3 Council may negotiate with the successful or preferred Tenderer;
- 6.13.4 Council may reject all Tenders;
- 6.13.5 If Council rejects all Tenders, Council must advise each Tenderer accordingly;
- 6.13.6 If Council rejects all Tenders, Council should re-Tender;
- 6.13.7 Council must not disclose the details of a Tender submitted by any other Tenderer;
- 6.13.8 If Council decides to accept a Tender, Council must accept that Tender in writing stating that the Tender has been accepted and setting out the terms and conditions of that acceptance;
- 6.13.9 After Council has accepted a Tender, Council and the Successful Tenderer must execute a formal contract document within 14 days from the date when the Successful Tenderer received the written acceptance;
- 6.13.10 Upon sending advice to a Successful Tenderer, Council must advise all other Tenderers that their Tenders have been unsuccessful; and
- 6.13.11 The Successful Tenderer will not be entitled to receive any payment due under a Contract until it has executed the formal contract and met any pre-requisites such as the provision of performance bonds or guarantees.

6.14 **Authority to Approve Tenders and Quotations:**

- 6.14.1 Acceptance of tenders and quotations for the purchase of Works, Goods or Services at or above the Prescribed Amount must be approved by Council.
- 6.14.2 The CEO will retain a written record of the reasons if the recommendation from the Evaluation Team is not accepted.

6.15 **Debriefing Unsuccessful Tenderers**

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

6.16 **Multiple-Use Register**

A Multiple-Use Register is a method of pre-qualifying suppliers who have satisfied the conditions for participation for inclusion on the register. The register is primarily for Works and Goods and Services valued at under the prescribed limit of \$250,000 (excluding GST).

- 6.16.1 Council may establish a multiple use register of suppliers who meet criteria established by Council in respect of the supply of particular Works, Goods and Services.
- 6.16.2 The multiple-use register for particular individual categories, may be in place for up to two years.
- 6.16.3 Council will allow prospective applicants to apply for inclusion on a register at any time during the term of the register, unless the prospective applicant has applied within the previous 12 months and has not been accepted.
- 6.16.4 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.
- 6.16.5 To establish such a register, the CEO will invite expressions of interest from prospective applicants by publishing on Council's website and/or at least once in a daily newspaper circulating in the municipal area a notice specifying:
 - 6.16.5.1 A description of the goods and services required;
 - 6.16.5.2 The name and contact details of the person nominated by Council to deal with enquiries or where relevant documents may be obtained; and
 - 6.16.5.3 Any deadlines for submission of application for inclusion on the register.
- 6.16.6 The CEO must ensure that applicants are provided with the following in order to make an application to be on the register:
 - 6.16.6.1 Details of the categories of Works, Goods or Services required;
 - 6.16.6.2 The conditions for participation to be satisfied by applicants;
 - 6.16.6.3 The specific criteria for evaluating applications; and
 - 6.16.6.4 A reference to Council's Code for Tenders and Contracts.
- 6.16.7 The CEO 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.

- 6.16.8 Suppliers will remain on the Register for the period of the contract subject to:
 - 6.16.8.1 Maintaining the requested insurances and licence registrations for the category of work being performed;
 - 6.16.8.2 Being financially viable; and
 - 6.16.8.3 Having undertaken work for the Council in a proper manner without defects or omissions.
- 6.16.9 The process of establishing the register is not itself a procurement, as a value for money assessment has not been made. Registered providers will not be engaged without Council undertaking market assessment to verify value for money.
- 6.16.10 Verbal and written quotations in accordance with the Council Purchasing Policy are required for procurement at values up to the prescribed amount.
- 6.16.11 Where the expected value of Council requirements for a single procurement is \$250,000 or more (excluding GST) Council will either use an Open Tender process or invite all suitable registered suppliers to tender.
- 6.16.12 Council's internal purchasing approval processes for open tenders will be followed.
- 6.16.13 A formal contract will be signed with the successful tenderers and formal tender processes and guidelines should be followed.
- 6.16.14 The purchases so made under the Multiple-Use Register will be reported under regulation 29 of the Regulations.
- 6.16.15 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, and stationery.
- 6.16.16 Several contractors or one contractor may be selected for any one project, or work may be awarded on a shared basis.
- 6.17 **Multiple-Stage Tenders**
 - 6.17.1 A multiple-stage tender process is a process by which suppliers are evaluated through stages against criteria determined by Council.
 - 6.17.2 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.
 - 6.17.3 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:
 - 6.17.3.1 The best way to meet the Council requirement is unclear;
 - 6.17.3.2 It is considered appropriate to pre-qualify businesses and restrict the issue of formal tenders, to reduce the cost of tendering;
 - 6.17.3.3 There are benefits which cannot be obtained by researching the market through conventional means;
 - 6.17.3.4 The procurement requirement is still developing as a result of technology or detailed design requirements; and
 - 6.17.3.5 Maximum flexibility is required throughout the procurement process.
 - 6.17.4 The multiple-stage processes that Council may use are as follows:

- 6.17.4.1 Stage 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.

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.
- 6.17.4.2 Stage 2 – **Closed tender process** – may be used if an expression of interest or request for proposal has already been used to shortlist suppliers. Suppliers must be informed in advance that only those short-listed will be requested to tender.
- 6.17.5 Council is mindful of the following aspects when conducting a multiple stage tender process:
 - 6.17.5.1 The same mandatory requirements regarding advertising that apply to all public tender processes;
 - 6.17.5.2 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; and
 - 6.17.5.3 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:
 - 6.17.5.3.1 After a Tender by that supplier; or
 - 6.17.5.3.2 A decision by absolute majority of Council to do so.
- 6.18 **Contract Renewals and Extensions**
 - 6.18.1 Council may extend an existing Contract that contains an option to extend, rather than seek new tenders or quotations for the delivery of the goods or services.
 - 6.18.2 Except by a decision of absolute majority of Council to do so, Contracts will only be extended:
 - 6.18.2.1 Where the original Contract provides for such an extension;
 - 6.18.2.2 Following a full evaluation of the performance of the current contractor;
 - 6.18.2.3 Where the principles of open and effective competition are protected;
 - 6.18.2.4 Provided that the original requirements for insurances and licences is still being met by the tenderer; and
 - 6.18.2.5 Since the previous tender, the market and nature of the goods/services are substantially unchanged.
 - 6.18.3 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.
 - 6.18.4 Where goods or services being delivered under a Contract or Tender are required on an ongoing basis and there is no option to extend an existing contract or it has been determined that an extension is not in the best interest of Council, then Council may undertake a new procurement process prior to the completion of the existing delivery arrangement.

6.19 Confidentiality

- 6.19.1 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.
- 6.19.2 Councillors and Council staff must keep confidential any information in relation to a Tender, except where they are expressly permitted under this Code or obliged by law to release that information.
- 6.19.3 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.

6.20 Copyright and Intellectual Property

- 6.20.1 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.
- 6.20.2 Council and its officers shall respect all such claims subject to any requirements of the Tender for the ownership and the material to pass to Council as part of the engagement.

6.21 Procurement Process Complaints

- 6.21.1 Complaints regarding procurement processes are addressed in the same manner as any other complaints, as set out in Council’s Complaints Management Policy. The Complaints Management Policy can be found on Council’s website www.kingborough.tas.gov.au.
- 6.21.2 Complaints under Council’s Public Interest Disclosure Policy are incorporated into the Complaints Management Policy.

6.22 Breach of the Code

- 6.22.1 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.
- 6.22.2 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.
- 6.22.3 If a Councillor breaches this Code, action may be taken under the Councillor Code of Conduct.
- 6.22.4 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:
 - 6.22.4.1 A warning;
 - 6.22.4.2 Reduction in opportunities to tender for work for Council;
 - 6.22.4.3 Refusal by Council to consider any Tender submitted by the Tenderer to Council;
 - 6.22.4.4 Publicising the breach and the identity of the Tenderer; and
 - 6.22.4.5 Reporting the breach to a statutory, professional or other body.

6.23 High Value/High Risk Purchases

- 6.23.1 It is the responsibility of the Director of the relevant area to ensure that consideration is given to minimising risks to Council.

- 6.23.2 Though not a specific requirement of 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.

6.24 Documenting the Procurement

- 6.24.1 As a public authority, Council is subject to external scrutiny and potentially audit.
- 6.24.2 For low value, low risk Works, Goods and Services, records must be kept of quotations received and quotations approved -including details of the commercial terms of the quotation.
- 6.24.3 Records of the procurement must be maintained in Council's electronic records management system, and as a minimum should include:
 - 6.24.3.1 Full details of the Request for Quotation/Tender issued, including specifications;
 - 6.24.3.2 Any addendum issued during the Request for Quotation/tender period including minutes of relevant meetings;
 - 6.24.3.3 Responses received to the Request for Quotation/Tender;
 - 6.24.3.4 Any correspondence between the Council and suppliers;
 - 6.24.3.5 A written Request for Quotation/tender assessment report;
 - 6.24.3.6 Minute to Council for amounts above the Prescribed Amount, or approval by the relevant delegate;
 - 6.24.3.7 Letters to the successful and unsuccessful suppliers; and
 - 6.24.3.8 A copy of signed contracts.

- 6.25 Additional guidelines and procedures for implementation of this Policy are separately maintained as administrative documents.

7. REPORTING

- 7.1 Councils are to report the following in Annual Reports:
 - 7.1.1 Any contracts that are entered into or extended for goods or services valued at or exceeding \$250,000 (excluding GST) in the financial year to which the annual report relates; and
 - 7.1.2 All instances where tenders were exempt because of an emergency; or the decision was made by the absolute majority of Council because of extenuating circumstances, remote locality or unavailability of competitive or reliable tenderers.

8. COMMUNICATION

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

9. LEGISLATION

- 9.1 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.
- 9.2 Note: The Prescribed Amount under the Regulations is currently \$250,000 (excluding GST).
- 9.3 Section 333A of the Act and regulation 27 of the Regulations prescribe situations and contracts where regulations 23 to 26 do not necessarily apply.

- 9.4 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.
- 9.5 Regulation 29 of the Regulations details the reporting requirements in relation to tenders and contracts.

10. RELATED DOCUMENTS

- 10.1 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.
- 10.2 Relevant Australian Standards for contracts and tendering.

11. AUDIENCE

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