

Policy

Procurement

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Procurement

1. OBJECTIVES

The objectives of Tweed Shire's Procurement Policy are as follows:

- To ensure Council at all times complies with the NSW Local Government Act 1993, the NSW Local Government (General) Regulations 2005 and the Tendering Guidelines for NSW Local Government in relation to the procurement of goods and services;
- To clearly define a procurement framework, responsibilities and procedures for guidance to Council;
- To assist Council in achieving the most advantageous price and purchasing conditions;
- To overcome duplication of effort and research throughout the organisation and at the same time ensure co-operation and understanding from contractors and suppliers by consistent and regular procurement practices;
- To ensure that Council's procurement policies, practices and procedures are best practice and meet the highest level of public accountability.

2. LEGAL REQUIREMENTS

The procurement of goods and services by Council must be in accordance with the Legislative framework that is defined in the NSW Local Government Act 1993, the NSW Local Government (General) Regulation 2005 and the Tendering Guidelines for NSW Local Government.

Local Government Act 1993

Section 55

Details the requirements for tendering.

Section 55A

Details the extended operation of Section 55 to council related activities.

Sections 400B to 400N

Details the provisions pertaining to Public Private Partnerships.

Council entering into a Public Private Partnership (PPP) must now comply with the relevant definitions, guidelines, restrictions, procedures and processes.

The Act defines a PPP as an "arrangement between a council and a private person for the purposes of:

- (a) providing public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), or
- (b) delivering services in accordance with the arrangement, or both".

Some arrangements are excluded from the operation of the PPP legislation under Division 7 of Part 13 of the Local Government (General) Regulation 2005.

Local Government (General) Regulation 2005

Clauses 163-179

Details the administration of tenders, including:

- *the prerequisite requirements*
- *submissions*
- *opening of tenders*
- *determinations and*
- *notification of successful tenders.*

Clause 209

Provides for the particular responsibilities of the General Manager

Clause 211

Provides for the authorisation of expenditure

3. HEALTH AND SAFETY

Under Work Health and Safety legislation, Council has a duty to eliminate risks to health and safety as far as reasonably practicable, or where elimination is not reasonably practicable, to minimise these risks. Consequently, purchasing and procurement must take into account health and safety factors as well as cost and quality. Staff who authorise purchases/ procurements must also adhere to the requirements detailed within Council's WHS Procurement and Safe Design Protocol.

4. BUSINESS ETHICS

Council has a Business Ethics Policy which outlines the moral standards which guide the organisation in carrying out its business. It is the morality based structural framework which guides decision making and behaviour by all members of the organisation - in their role.

Council's website contains publicly available information for potential contractors and suppliers in regards to the Business Ethics Policy and Code of Conduct issues relating to conflicts of interest, gifts and hospitality, and equity and honest dealings. For tenders and quotations closing in the tender box there will be a specific reference in the tender / request for quotation (RFQ) documents to the URL containing Council's Business Ethics Policy.

Contractors and Suppliers and the employees of the Contractors and Suppliers are expected to comply with the provisions of the Business Ethics Policy.

The Independent Commission against Corruption advises that the lobbying of Councillors by tenderers, about the outcome of a tender process is normally NOT permissible. Council's tender advertisements will contain a statement that Contractors or Suppliers are not to canvas Councillors or Staff in respect to gaining an advantage over other Contractors or Suppliers for the supply of goods and services to Council.

In all Council contracts, there will be a clause inserted to provide for termination of a contract and the payment of damages, if any contract is entered into as a result of a corrupt act such as bribery or other inducements by the Contractor/Supplier or the Contractor/Supplier employees.

Included in new contracts will be a latent conditions clause, which clearly places the onus on a contractor or supplier to inform the Superintendent of Works of the discovery of a latent condition.

5. PROCUREMENT MANAGEMENT ACTIVITIES

Council's procurement activities must be carried out in accordance with this Procurement Policy, the Procurement Protocol, and other related documents including the Code of Conduct.

Council Officials are obligated to ensure that all of Council activities involving procurement follow accepted standards of behaviour and ethical principles.

5.1 Ethical Behaviour

Council Officers have a responsibility to perform their duties and conduct themselves in a manner, which ensures that they maintain a reputation for fair dealing and that the integrity of the procurement function is beyond reproach.

5.2 Fair and Honest Dealing

Council Officers must ensure that prospective contractors and suppliers are afforded equal opportunity to tender/quote for all goods and services required. Impartiality should be maintained at all times so that no action is taken which could evoke criticism of the Council. It is important that Council Officers protect the commercial interests of all existing and potential contractors or suppliers. Disclosures must not be made, other than in the course of official Council business, of information supplied by means of the tender or quotation process.

Confidentiality of commercially sensitive material such as prices, discounts, rebates, profits, manufacturing and product information or other matters which come to notice in the course of official duties, must be maintained at all times in accordance with this Policy, Council's Code of Conduct and the requirements of the Government Information (Public Access) Act 2009 (GIPAA).

5.3 Market Research

Council encourages its officers to research the market to identify new sources of supply for goods/services required by Council.

5.4 Conflict of Interest

Council Officers are advised to avoid situations where private interests conflict with their Council procurement duties. This conflict extends to business undertakings by way of contract or purchase agreement with members of the Officer's family or with an organisation in which the Officer has a material interest. Officers finding themselves in this situation are required to disclose the details to their Director.

Private interests can be of two types: pecuniary or non-pecuniary

Council's Code of Conduct Clauses 7.5 to 7.20 describe what a pecuniary or non-pecuniary conflict of interest is and how Officers should manage either of the two interests.

5.5 Sustainable Procurement

Sustainable procurement refers to the purchase of goods or services that have a lesser impact on human health and / or the environment when compared with competing products or services that serve the same purpose.

Officers making decisions on the procurement of goods and services must consider relevant sustainability criteria associated with the goods or services. For example:

- The environmental performance of prospective contractors or suppliers.
- The suitability of competing products that may have a reduced impact on human health and / or the natural environment.
- The environmental performance of a requested product, such as:
 - Energy and/ or water efficiency rating
 - Fuel efficiency
 - Durability
 - Recycled content
 - Toxicity
 - Origin of any components made from wood (e.g. paper purchases)
 - End of life disposal / ability to be reused or recycled

5.6 Quality Assurance

Quality is an integral and core element in the provision of all goods, services and works. Council encourages contractors and suppliers to have quality assurance accreditation under AS/NZS IS09001:1994 and for manufacturers AS/NZS IS09002:1994.

At the discretion of the actioning council officer, Quality Assurance may be a mandatory condition of the procurement of a good or service.

5.7 Value for Money

Council bases procurement decisions on the principle of 'value for money' over the life cycle of products rather than the 'lowest cost'.

Officers responsible for the procurement of goods and services must evaluate the following issues in determining the appropriate contractor or supplier of goods and services.

Officers are to ensure the following:

- contractors or suppliers have equal opportunity to clarify what is being sought
- all documentation to suppliers is clear and concise and that it does not contain inconsistencies
- the performance of prospective contractors or suppliers is investigated to ensure that they could provide a service or product that is value for money
- communicating with contractors/suppliers on their performance and encouraging improvement

6. PROCUREMENT PREFERENCE

Council through the provisions of this Policy aims to encourage the development, promotion and growth of business and industry within the Shire boundaries.

In the event of a valuation being equal, Council prefers to purchase Australian made products and services and to purchase them locally.

7. PROCUREMENT OF GOODS SERVICES

Council Officers are to ensure that they adhere to the provisions of the supporting Procurement Protocol which manage the purchasing of goods and services.

The tendering and quotation administrative processes are contained in two segments:

- **Quotations** - where the total purchase price does not exceed \$150,000, inclusive of GST.
- **Tenders** - where the total purchase price is likely to exceed \$150,000, inclusive of GST.

Given the legislative requirements for a tender, Council officers should treat any purchases where the estimated cost is close to \$150,000 (incl. GST) as tenders.

8. PURCHASING DELEGATIONS

Appropriate council officers are able to sign/approve Purchase Requisitions and official Council Orders within the financial limitations as delegated by the General Manager.

9. AUDIT OF PROCUREMENT FUNCTION

An audit of procurement activities will be included in Council's Yearly Internal Audit Plan.