

Policy

Procurement

Version 2.1

Adopted by Council at its meeting on 15 September 2022

Division:
Section:
File Reference:
Historical Reference:

Engineering
Contracts
Council Policies/Protocols/Procedures
See Version Control

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1. Policy objective

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.
- To ensure that sustainability underpins all decision making in the procurement of products, services and contractors.

1.1. Definitions

Business located in the Tweed Shire: Means the registered business address of the person, business or enterprise making the offer is within the Tweed Shire Local Government Area.

Neighbouring Local Government Area: Means Gold Coast, Byron, Kyogle, Lismore, Ballina, Richmond Valley or Clarence Valley Local Government Areas.

Offers: Means quotations, tenders, expressions of interest and submissions made under a competitive basis for the provision of goods and services to Council.

1.2. Policy background

This Policy is being developed for the community to outline Council's Policy on ..this should be short and to the point - 2-3 paragraphs at most.

2. Policy

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. There will be a specific reference in the Request for Offer (RFO) 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.

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.

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.

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).

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.

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.

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 protocols.

Sustainable procurement

The objective of Sustainable procurement is to account for the total benefits and costs involved in a purchase utilising a quadruple bottom line approach which considers the following four impacts:

- Economic – whole of life cost and economic impact of the purchase
- Environmental – environmental impact of the production/manufacture, transport, installation, operation, maintenance and disposal of the product or service
- Social – social and ethical implications
- Governance – application of good governance

It is acknowledged that it can be difficult to define sustainability and to measure or compare various sustainability measures (e.g. balancing issues such as maximising recycling versus reducing transport miles etc.). However these concerns should not stop progress on Council improving its focus on sustainability.

Indigenous procurement

Council is committed to working with the Aboriginal and Torres Strait Islander community to increase employment and economic development opportunities in the Tweed Shire. One method for achieving this goal is incorporating Aboriginal and Torres Strait Islander supplier diversity within our organisation.

An Aboriginal and Torres Strait Islander supplier is any business that is 50% or more Indigenous owned.

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 ISO9001:2000.

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

Local preference

Objectives

Strengthening the economy has been identified by the community as a top strategic priority. Council recognises that the consideration of local content contained in offers for supply of goods and services has a positive impact on the local economy.

Local Preference provides a framework to ensure consideration is given to the benefits of sourcing goods and services locally whilst also adhering to Council's best value for money purchasing objective.

Key principles

- a. Purchases not required to close in the tender box:
Council's preference is to source low cost goods or services locally. When purchasing low cost goods and services requiring quotations the purchasing officer must, where possible, request at least one quotation from a business located in the Tweed Shire.
- b. Purchases which are required to close in the tender box:
Local content of a submission which have closed in the box will be considered in the evaluation process. The Local Preference score will be calculated based on the information provided in the Local Preference Schedule. 4.2.3

In assessing Offers, Council and its officers must be reasonably satisfied as to the level of local content stated. It is the responsibility of bidders to provide relevant documentary evidence to establish the veracity of the claimed level of local content. Council retains the right within its sole discretion to accept the veracity of stated local content.

- c. Local Preference will have a minimum mandatory weighting of 10% of the total evaluation criteria and is subject to a maximum cost cap.

Procurement of goods and 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 the threshold set by the NSW Local Government Act.
- **Tenders** - where the total purchase price is likely to exceed the threshold set by the NSW Local Government Act.

Given the legislative requirements for a tender, Council officers should treat any purchases where the estimated cost is close to the threshold, as tenders.

Purchasing delegations

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

Audit of procurement function

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

3. Related legislation

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.

Section 377(1)(i)

Details the general power of the council to delegate to the General Manager or any other person or body (not including another employee of the council) the function of accepting tenders (except where the service being tendered is currently provided by members of staff of the council).

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.

4. Compliance

Refer to the Procurement Protocol.

5. Forms

Refer to the Procurement Protocol.

6. Review period

This policy will be reviewed within 12 months of the election of each new Council or more frequently in the event of any legislative changes or change in circumstances.

7. Useful links

[Tweed Shire Council website](#)

8. Version control

Version #	Summary of changes made	Date changes made
1.0	Originally adopted	15/12/2004
1.1	Recent changes in the Local Government (Tendering) Regulation 1999 (repealed) and the more recent consolidation of all Local Government Regulations into the Local Government (General) Regulations 2005 has necessitated a review and update of the Procurement Policy.	19 /10/2005
1.2	Review following recent Council Elections in 2006.	13/11/2007
1.3	Changes are: <ul style="list-style-type: none"> Enhancement of the section – “Business Ethics” to manage lobbying by contractors and suppliers Enhancement of the section – “Procurement of Goods and Services” A section inserted – “Issue of a Purchase Order”	15/03/2011
1.4	Changes for exhibition following resolution of 13 December 2011.	20/03/2012
1.5	Section included on Local Preference Policy and incorporated into new Policy template.	21/06/2013
1.5	Amended version, post exhibition submitted to Council for adoption.	15/08/2013
1.6	Revision of Local Preference section in response to review findings.	16/07/2015
1.7	Amended to reflect Council's position on the development of the Carmichael Mine in the Galilee Basin, Central Queensland by including requirement for all civil construction tenderers to disclose any direct contractual agreement to construct or operate the mine - Amended by Resolution of Council on 19 April 2018 - Minute No. 171	19/04/2018
1.8	Amended to incorporate additional sustainability preferences. Also updates to Regulation Section 377.	17/04/2019
1.9	Tendering thresholds within Local Govt Amendment Act 2019 (NSW). Plus removal of Business Associations Disclosures when tendering.	24/10/2019
2.0	Definition of “Business located in the Tweed Shire” and change to the prompt for use of mandatory local preference criteria from a value threshold to applying when offer closes in the tender box.	20/08/2021
2.1	Updated and adopted by Council and incorporated into the new policy template	15/09/2022