

## POLICY DOCUMENT

**7.63.15**

<b>Policy Name</b>	<b>Procurement</b>
<b>Policy No.</b>	7.63.15
<b>Version:</b>	1
<b>Strategic Reference:</b>	3.2 A strategically driven, community aware and accountable Council
<b>Responsible Department:</b>	Corporate & Community Services
<b>Policy Adopted:</b>	15 July 2019
<b>Last revised date:</b>	New Policy
<b>Minute reference:</b>	CO 19/117
<b>Next review date:</b>	Council will review this policy annually; following significant change to legislation or aspects included within this policy.
<b>Applicable Legislation:</b>	<p><i>Key legislation, including, but not limited to:</i></p> <p>Local Government Act 1999 (SA)          Independent Commissioner Against Corruption Act, 2012          Competition and Consumer Act 2012          Freedom of Information Act (1991)          Work Health and Safety Act 2012 and Regulations 2012          Ombudsman Act, 1972          Industry Advocate Act 2017</p>
<b>Related Policies:</b>	<p>Caretaker Policy - 9.63.17          Civil Works Policy - 14.63.11          Code of Conduct for Council Employees - 12.63.12          Code of Conduct for Council Members - 9.63.3          Environmental Sustainability Policy – 5.63.11          Fraud and Corruption Prevention Policy – 9.63.21          Internal Control - 7.63.5          National Competition Policy - 7.63.7          Prudential (Project) Management - 9.63.24          Records Management Policy – 13.63.3          Risk Management Policy - 18.63.5          Work Health Safety and Return to Work Policy</p>

## 1. **PURPOSE**

Council is required under Section 49 of the Local Government Act 1999, to prepare and adopt policies on contracts and tenders; and to develop and maintain policies, practices to ensure Council is able to demonstrate achievement of overall key objectives:

- Obtaining value in the expenditure of public money; and
- Providing for ethical and fair treatment of participants, and
- Ensuring probity, accountability and transparency in procurement operations.

This policy provides a framework of broad principles, relating to all expenditure-related Procurement activity, irrespective of value, to achieve the best possible outcome for the Council.

In addition, strategies are identified to ensure Council is able to achieve corporate objectives whilst meeting legislative requirements, to deliver sound outcomes for Council and ratepayers. The policy encompasses the entire Procurement lifecycle, from identification of need through to the end of contract.

All Procurement activities undertaken by or on behalf of Council are required to comply with the policy principles, unless expressly approved otherwise.

This Policy does not cover expenditure or revenue related to asset disposals with the exception of consideration of trade-in opportunities within a formal procurement process; real property acquisitions or disposal, and other non-Procurement expenditure including, but not limited to sponsorships, grants, incentive schemes, funding arrangements, donations, employment contracts and unsolicited proposals.

## 2. **POLICY OBJECTIVES**

This policy is designed to align with Council's strategic direction, particularly in the areas of key Goals in economic growth; accountable governance and leadership; elements and sustainable service delivery.

Council aims to achieve advantageous outcomes in procurement of goods, services and works and by:

- Enhancing value for money through fair, competitive, non-discriminatory processes;
- Promoting the use of resources in an efficient, effective and ethical manner;
- Making decisions with probity, accountability & transparency;
- Advancing and/or working within Council's economic, social and environmental policies;
- Providing reasonable opportunities for competitive local businesses to supply to Council;
- Appropriately managing risk; and
- Ensuring compliance with all relevant legislation.

## 3. **KEY PROCUREMENT PRINCIPLES**

In identifying the strategy and approach to be undertaken for a procurement, consideration must be given to embedding the following key principles across all stages of a procurement process:

### 3.1 **Obtaining value in the expenditure of public money**

*Council will undertake effective and efficient procurement and associated contract management activities to ensure the delivery of value for money with public money being wisely spent. Achieving value for money involves determination of the extent the solution proposed will deliver the best combination of whole of life cost and quality factors. Value for money can be driven through each stage of a procurement process.*

Principles:

- Synergy with Council's long term financial plan and strategic direction and associated Goals.
- Identification of relevant direct and indirect benefits to the community and the City of Port Lincoln.
- Consideration of both financial and non-financial factors associated with the purchase of goods, works or services in a timely and efficient manner – which is commensurate to the nature of the purchase.
- Utilisation of various procurement methods to provide an efficient and effective approach, ensuring appropriate planning time is allowed to minimise rushed decisions.
- Assessment of risk under the following categories – overall due diligence including financial risk; operational risk; work, health and safety risk; legal risk; and reputational risk.

Council will have regard to a range of measures to assist in delivery of a sound outcome:

- Identification of well-defined objectives to assist in the selection of the most appropriate procurement methods. Higher risk acquisitions require a more formal Procurement planning methodology and higher level of management oversight.
- Understanding of the current market – and consideration of available supply opportunities which may exist with third party contract arrangements.
- Maintaining and developing a competitive market.
- Consideration of social inclusion; economic assessment; environmental and/or sustainability initiatives, where beneficial and appropriate.
- Detailed specifications ensure shared understanding of requirements. Reduces risk of uncertainty and high variations.
- Establishing appropriate evaluation criteria such as compliance to the specification and Council's needs, commercial matters, community service obligations, whole-of-life cost (which takes into account all aspects of cost over time including capital, maintenance and support, management, disposal and operating costs) and supplier support.
- Within the evaluation process, negotiating with suppliers to seek clarity with contractual terms and conditions, or delivery/specification ambiguities.
- Ensuring appropriate contract management ongoing to ensure delivery of the specifications for supply meet the quality statements, and be fit for purpose.

### 3.2 **Providing for ethical and fair treatment of participants**

*Council will ensure impartiality, fairness, independence, openness and integrity in all discussions and negotiations. Includes conflict of interest (actual or perceived) obligations and confidentiality.*

Principles:

- Ensuring reasonable access for all suitable and competitive suppliers.
- Ensuring no tenderer is advantaged, or disadvantaged through access to different information.
- Undertaking duties in an ethical, impartial and reasonable manner whilst exercising sound judgement;
- Buying without favouritism or prejudice.

Council will have regard to a range of measures to assist in delivery of a sound outcome:

- Ensuring Council Officers disclose any conflict of interest or personal interest when undertaking a procurement activity.
- Ensuring evaluation criteria and any specific methodology is identified in request documentation, to enable tender of the best solutions to meet the needs of Council.
- Apply the approval evaluation approach in a transparent decision making process.
- Maintain an appropriate audit trail of the full process.

### **3.3 Ensuring probity and integrity**

*Requires the applications of the highest standards of integrity, probity and professional conduct in procurement. Full compliance with Codes of Conduct, compliance with the Fraud and Corruption Policy, and ICAC legislation.*

Principles:

- Ensure conduct in line with the Codes of Conduct.
- Ensure compliance with the Fraud and Corruption Policy.
- Ensure compliance with obligations under the ICAC Act legislation.
- Exercising appropriate levels of delegation and segregation of duties in the decision making process.

Council will have regard to a range of measures to assist in delivery of a sound outcome:

- Maintaining confidentiality across the entire project and beyond, to ensure confidential information is protected accordingly under the terms and conditions of our contract arrangements.
- Not accepting gifts or favours from actual or potential suppliers which could be seen to compromise the integrity of the process.
- Ensuring conflict of interest statements are a standard requirement in procurement. A conflict – whether potential, actual or perceived, should always be divulged, not discovered.
- Ensuring knowledgeable evaluation personnel are selected to minimise uninformed decisions. Expertise of officers needs to be commensurate with the nature and risk profile of the procurement being undertaken.
- Established procedures to ensure ethical practices and be assured.

### **3.4 Accountability and transparency**

*Council will ensure accountability through appropriate delegations and reporting, and adequate management and provision of information for Procurement activities.*

## Principles:

- The CEO is responsible to ensure the overall integrity and accountability of decisions made. The CEO holds authority to issue sub-delegations allocated annually.
- Delegations will only be exercised within the boundaries of their delegations and Council policies and procedures and officers are responsible for purchasing decisions.
- Application of all internal controls and audit processes for all procurement processes.
- Ensuring that goods and services purchased are delivered, in accordance with the purchase order or contract, and used solely for Council business or in accordance with Council policy.
- Ensuring Contract Management is equipped to monitor performance to ensure contractors and suppliers are accountable for delivery of agreed outcomes. Delegations will be provided to position and confirmed annually.
- Exercise of a delegation is confirmation that the appropriate process has been fully complied with, in accord with policy and procedures, and approved processes.

#### 4. **PROCUREMENT PLANNING**

Procurement approaches should be commensurate with the risk and complexity of the requirement, to adopt the best approach to achieve Council objectives. Within the planning, consideration of secondary principles should also be undertaken to best align strategies with Council objectives. In developing planned approaches, the strategic plan and associated Council Goals are to be taken into consideration prior to finalising the strategy.

##### 4.1 **Risk Management**

*To identify risks, minimise uncertainty, and improve risk profiles thereby contributing to the achievement of better value for money.*

## Principles:

- All procurement practices will consider the risks associated with the procurement and the controls and practices will be implemented to minimise Council's risks to acceptable levels.
- Development of a risk management strategy, commensurate with the risk profile of the procurement, to ensure risks are identified and mitigated throughout the life-cycle of the project.

Council will have regard to a range of measures to assist in delivery of a sound outcome:

- Detailed specifications developed to ensure shared understanding of requirements. Reduces risk of uncertainty and high variations.
- To ensure quality of product, consideration of suppliers and manufacturers who are quality endorsed, and accredited to the ISO 9001 Quality Standard or similar lowers the risk of the procurement.
- Establishment of ongoing Contract Management to ensure the lowest risk profile to delivery of a contract, particularly capital works.

#### 4.2 **Simplicity**

*To ensure procurement processes are clear, straightforward, readily implemented and easily monitored. To simplify the sourcing process, Council staff must first consider use of Strategic alliance contract arrangements, which have been negotiated on behalf of local governments in South Australia.*

Council will have regard to a range of measures to assist in delivery of a sound outcome:

- Purchasing from approved contracts or established standing offers which are supported by current contracts and established under a formal market approach.
- Utilisation of strategic collaborative arrangements which have been established in alignment with the key principles of the Act (such as LGA Procurement; National Procurement Network; State Government etc) where considered appropriate. Where use of strategic contract arrangement is cost effective and does not disadvantage local suppliers, preference will be given to use of that agreement to minimise administrative burden to both suppliers and Council.
- Utilising standard terms and conditions; and open and generic specifications
- Streamlining business practices to remove the administrative burden of unnecessary duplication and ad hoc / unplanned procurement.

#### 4.3 **Encouragement of the development of competitive local business and industry**

*Consideration will vary with each procurement, to determine local and/or regional opportunities. Council will endeavour to support Local – where the demonstration of capability/quality capacity and competitiveness is established.*

Council will have regard to a range of measures to assist in delivery of a sound outcome:

- Note that a procurement planned to be in excess of \$1.1m shall require a formal Industry Participation Policy Plan to be developed, to provide a clear statement of the contractor's commitment to optimise the benefits of the contract to the Council economy; and to use local industry, where possible.
- Procurement planning is to consider options in the market awareness to determine possible economic benefit to Council prior to any market approach.
- Where assessment of offers (where price and quality and deliverables for a like outcome is offered) by two or more suppliers are identified as comparable – highest preference is to be given to local Council region suppliers, followed by suppliers located on Eyre Peninsula; then South Australia.
- Consideration should assess possible labour hours; supply input value, and capital benefits - eg the difference between a manufacturing entity providing capital benefits, to a distributor as a supplier, to a service contractor providing labour.
- Planning should consider the ability to create local employment opportunities; enable better contract management through on-site or local communications; assess supply impacts.
- Whilst a weighting can be applied, procurement processes may well utilise economic benefits in methodology which will clearly preference local (eg mobilisation costs; service charges relative to travel time) – without applying a weighting direct on location. Council may apply a locality weighting up to 15% across the various components of economic assessment.

#### 4.4 **Purchasing Australian made products**

*Consideration of the benefits of purchasing goods that are made in Australia form part of any product assessment including:*

- Fit for purpose assessment;
- quality will meet expectations for use and life expectancy;
- equipment, where appropriate, will be compatible with existing equipment;
- encouragement of local industry to develop and utilise best practice technologies;
- availability of a readily available servicing/spare parts without delaying Council's ability to meet service expectations to the community.

#### 4.5 Environmental aspects

Within procurement planning, Council will seek to:

- adopt purchasing practices which conserve natural resources;
- align the Council's procurement activities with principles of ecological sustainability;
- purchase recycled and environmentally preferred products where possible;
- integrate relevant principles of waste minimisation and energy;
- foster the development of products and services which have a low environmental impact;
- provide leadership to business, industry and the community in promoting the use of environmentally sensitive goods and services.

#### 4.6 Work, Health and Safety

*To ensure appropriate consideration of WHS elements, prior to making any decision to purchase, lease, hire plant, equipment, substances or anything that may affect the health, safety or welfare of any person in the workplace, consultation must occur with relevant WHS personnel. WHS obligations are legislative.*

- Section 70 of the Work Health and Safety Act 2012 – identifies “General obligations of person conducting a business undertaking”.
- Section 14 of the Work Health and Safety Act 2012 – “Duties of Manufacturers” who can demonstrate that the plant, equipment or substance is safe and has been tested or examined, complies with prescribed standards and codes and can make available adequate information to ensure safe use, handling, processing, storage, transportation or disposal.
- Procurement of any plant, equipment and substances must be undertaken from manufacturers, suppliers or distributors who are able to demonstrate full compliance with the WHS Act, and in particular, Section 14.
- Procurement evaluation must ensure an appropriately skilled person confirms all WHS assessment, through all stages of a procurement project.
- Council holds a pre-qualification register of contractors who have met WHS requirements. For emergency procurement, utilisation of these contracts can expedite engagement.

## 5. PROCUREMENT METHODS

Generally, open and fair competition is best achieved by undertaking an appropriate tender process so that all interested parties have an opportunity to bid. However, there may be procurements in which a tender process will not necessarily deliver the most advantageous outcome for the Council – in such instances, other market approaches may be more appropriate. The CEO may, having regard to its Procurement Principles and any other factors considered relevant by the CEO, in its absolute discretion determine to utilise any one or more of the procurement methods identified, or an alternative option.

Planning must consider a number of factors, prior to determining an appropriate approach to deliver Council's objectives; commensurate with the risk and complexity of a requirement. When identifying the appropriate market approach to apply, Council will consider a number of factors, including:

- cost of an open market approach versus the value of the acquisition and the potential benefits of open vs selective;
- the total estimated value of the purchase across the life of the engagement– and whether a “new” approach is significant enough to be attractive to induce competition;
- the objectives of the procurement;
- Council's strategic direction may prioritise economic, environmental or social inclusion elements for specific projects;
- the size of the market and the number of competent suppliers, particularly in the local region;
- Council's leverage in the marketplace;
- time constraints and urgency of supply (not including lack of planning);
- the risk profile and associated risks may dictate a specific contractor engagement (particularly where there is a requirement for further supply of a previous product/service)
- Delegation limits taking into consideration accountability, responsibility, operational efficiency.
- Previous experience with suppliers / contractors and the ability of the contracted preferred supplier to deliver goods or services to Council's expectations.
- Compliance with statutory obligations (eg, limited number of contractors with specific trade certification for work).

For the purpose of this description, a market approach can take the form of a Direct Negotiation; Expression of Interest (EOI) staged approach; a Request (RFx) – being a Request for Tender; Quote; Proposal – with the definition differentiated by the specification style.

Following thorough planning consideration, procurement may undertake one of more of the following.

- Supply contracts currently in place, which have been established for ongoing access by local government within Council.
- Sourcing from established third party agreements such as LGA Procurement, State Government, Procurement Australia, where a formal procurement process has already been undertaken and contract arrangements exist, where a secondary process to seek firm pricing is required.
- Market approach – identified to deliver Council's objectives, in consideration of a number of factors (which may include collaborate approaches with other Councils or like entities).



- Sole source purchase/direct engagement - where there is a single / monopoly supplier or the particular circumstances warrant the involvement of only one potential supplier.
- Quotation - seeking quotations from two or more suppliers
- Expression of Interest – generally the first stage of a multistage approach which has been undertaken to either shortlist companies; or where the market is unknown.
- Selected tender - seeking competitive tenders from a limited number of suppliers on the basis of (eg) location, previous performance, the result of an expression of interest process.
- Open tender - seeking tenders from the market at large through an open invitation process advertisement.
- Joint tender - seeking tenders jointly with another Council or similar entity, ensuring that appropriate procurement processes of all entities are addressed.

## 6. **EMERGENCY PROCUREMENT**

The CEO may authorise procurement activities during an emergency, taking into account Council's procurement objectives, as an exemption to a full procurement process under the following circumstances:

- (i) In the interest of public safety
- (ii) To avoid major expenses from an unplanned event
- (iii) To provide security of Council's assets (eg) invoking the Emergency Response Plan or Business Continuity Plan.

When responding to an Emergency, Procurement activities should be undertaken in the most expedient manner possible, complying with normal policies and guidelines wherever possible.

In the case of an emergency, requirements relating to procurement will be waived in the early initial response phase of an emergency. For expediency, suppliers with current formal contractual arrangements will be given first consideration. Where a purchase is made under this clause, the expenditure will be limited to that required to alleviate the emergency situation only.

## 7. **PROCUREMENT PROCESS**

### **Purchase Orders**

Purchase orders must be issued for the purpose of procuring all goods, services and works associated with all procurement methods, and must be authorised by an officer with the appropriate procurement value and delegation, with the purchase order to be dated and issued at the time of procurement. Any other means of procurement ordering (telephone, email, etc.) is not acceptable with the exception of the following circumstances where it is determined that the issuing of a purchase order is impractical and/or inefficient:

- Purchasing of utility supply services e.g. electricity, water, gas, etc. where the service is provided under a utility supply contract;
- Memberships and subscriptions associated with organisations for which Council is a member or associated with under a formal subsidiary, or recognised within a constitution, or other similar organisational structure, including but not limited to the Local Government Association, Eyre Peninsula Local Government Association;

- Payments made pursuant to a legally binding funding agreement for an identified organisation where Council has resolved to be a formal funding partner, including but not limited to Regional Development Whyalla and Eyre Peninsula;
- Engagement of legal and other consulting services for the purpose of obtaining advice on a particular issue, specialised advice associated with development applications and/or other operational matters of the Council requiring urgent advice provided that an email seeking the services is issued by an officer with the appropriate procurement value and authorisation. Engagement of legal and/or other consulting services associated with a project or legal proceedings where the service is required for either a determined or non-determined period of time requires the issuing of a purchase order to be signed by the CEO;
- Purchasing of training, conferences, travel, meals, accommodation, etc. either online or at the point of sale where it is required that payment be made by credit card; and
- Online purchases for goods and services in accordance with acquisition plans and/or where it is deemed that online purchasing via credit card is the most effective, efficient or the only means of purchase, e.g. police checks.

Payments made by credit card must be made in accordance an approved Acquisition Plan and the Credit Card Policy and Procedure.

### **Standing Purchase Orders**

Standing purchase orders are only to be used for the procurement of goods and services in the event that a valid procurement supply contract and specification for goods and/or services exists that is established as part of an authorised procurement method under this Policy.

All standing orders must be authorised by the CEO and maybe approved for specified timeframes, with the timeframe not exceeding 12 months.

### **Reimbursements**

Reimbursements of expenses is deemed to be high risk form of procurement and therefore is not an authorised procurement process under this Policy. The Petty Cash system or other approved payment method is to be used in lieu of reimbursements. If reimbursement of expenses is deemed to be the only method available then authorisation must be obtained before the purchase to be reimbursed is made and the appropriate assessment is undertaken.

An exemption is provided under Clause 6 Emergency Procurement of this Policy, to allow for purchases to be made by a means whereby an officer is to be reimbursed.

## **8. APPROVALS / DELEGATIONS**

### **Procurement value**

For the purpose of determining value, the potential value of a contract across the full term of the contract is to be utilised. A perpetual contract is to be valued across a 4 year period. Figures quoted are GST exclusive.

It is an offence under the financial delegations for an officer to break down a purchase for the purpose of avoiding a specific delegation threshold. Cumulative spend which has, or is likely to exceed the threshold, for ongoing supply of like materials, goods, services or works is subject to the need for a formal market approach to establish the arrangements ongoing prior to standing orders being established.

**Procurement approval**

- The CEO will determine appropriate procurement thresholds for inclusion in delegation instruments, which will be reviewed on an annual basis or as required. Approval to undertake a procurement with a whole of life potential value exceeding the value threshold must present an Acquisition Plan for authorisation by their Business Manager; or where considered a higher risk procurement, a Business Manager may endorse the approach for the CEO's consideration and approval prior to release.  
Note that no approach can be undertaken without the required approval, and supporting documentation being endorsed.
- All procurement considered to be high risk, irrespective of the value, requires an Acquisition Plan and Risk Assessment and Risk Management Plan to be developed.
- All plant and equipment acquisitions must ensure all WHS obligations are satisfied prior to a market approach.
- The Acquisition Plan will address the process to be undertaken from identification of the need through to the selection of market approach, evaluation methodology and recommendation to establish a contract, including any specific delegation for recommendation and/or contract establishment approval.

**Financial approval**

- Financial approval can only be authorised by an officer holding financial delegation to the position, under section 137 of the Act.
- Approval to undertake a procurement requires confirmation that budget funds are available and uncommitted within the appropriate budget line. Expenditure outside of the adopted budget requires the formal approval of the Council. (*Note: Section 44 of the Local Government Act 1999, does not allow the Council to delegate the power to approve expenditure of money on works, services or operations of the council not contained in a budget adopted by the council*).
- Creation of a purchase order exceeding delegated authority requires authorisation from an officer holding appropriate delegation authority across the budget line, prior to any purchase being made.
- Segregation of duties across the procurement process, to ensure that multiple levels of approval are undertaken, confirming the appropriate process has been followed, principles delivered and the outcome is of sound value to Council.

**Contract approval**

- Delegated authority for execution of Contracts under section 36 of the Act is a formal instrument of delegation of the CEO, which may also be sub-delegated to Business Managers under section 37(b) of the Act. Delegations are to be established with restrictions to the appropriate cost centres, to be defined within the delegations.
- Only officers holding Contract approval delegation are able to commit Council to expenditure.

**Contract Variations**

- A contract variation which is more than 10% in excess of the original value, or which pushes the value into the higher threshold – must be authorised by the CEO prior to acceptance.

**9. POLICY RESTRICTIONS / LIMITATIONS**

The Local Government Act 1999 (SA) is particularly relevant to the procurement process, however, various other acts and regulations apply to council's diverse range of Procurement activities. This policy is intended to supplement these instruments. Any inconsistency that may arise between this policy and a relevant act or regulation shall be resolved in favour of the act or regulations.

**10. PROCEDURES**

This policy is to be supported by a Procurement Procedures Manual and a range of template documentation.