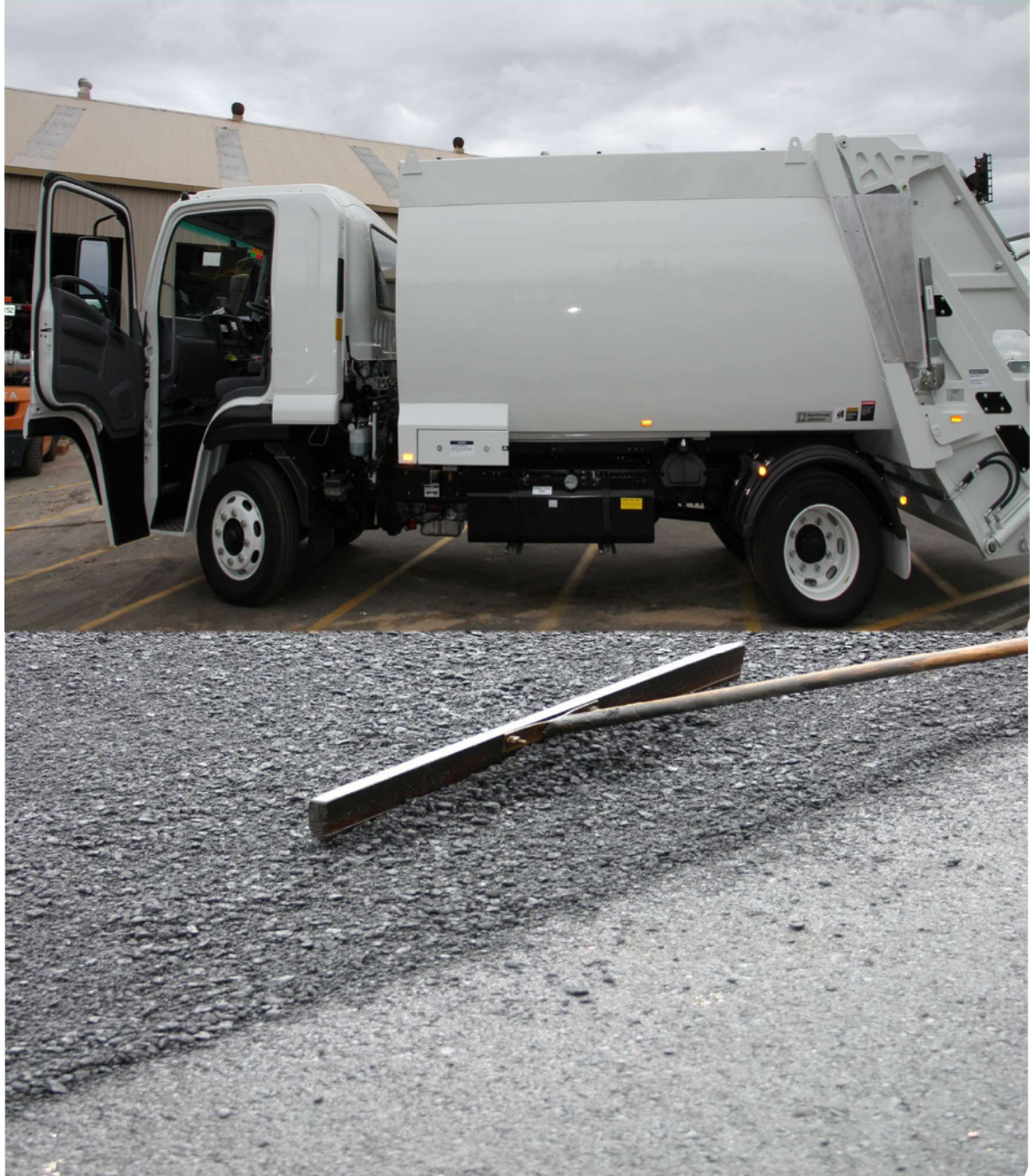




Code for Tenders and Contracts



The City with Spirit

Adopted 25 September 2023

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1 Introduction

The purpose of this Code for Tenders and Contracts ('the Code'), is to provide a policy framework on best practice Tendering and Procurement methods in line with the legislative requirements of the *Local Government Act 1993* ('the Act') and the *Local Government (General) Regulations 2015* (or successor legislation) ('the Regulations').

With this Code, Council aims to achieve the Tendering principles of:

- open and effective competition;
- value for money;
- enhancement of the capabilities of local business and industry; and
- ethical behaviour and fair dealing.

This Code:

- is consistent with the Act and the Regulations; and
- includes procedures and guidelines for any prescribed matter.

As a measure of accountability and transparency, the General Manager will:

- make a copy of this Code (and any amendments) available for public inspection at Council's offices during ordinary office hours; and
- provide a copy of this Code to any interested party free of charge; and
- publish a copy of this Code on Council's website.

The Act and Regulations require Council to invite Tenders for any Contract it intends to enter into for the supply or provision of goods or services valued at or above the legislated prescribed amount in the Regulations. Council has set its tender threshold at \$100,000. The General Manager is delegated to award tenders up to the value of \$249,999. Tenders above the value of \$250,000 will be referred to Council for approval. In accordance with the Regulations, Council will invite Tenders by one of the following means:

- (i) an open Tender process;
- (ii) a Multiple-Use Register (refer Section 3.7); or
- (iii) a Multiple-Stage Tender (refer Section 3.8).

There are circumstances in which Council is exempt from undertaking the above processes. These circumstances are described in Section 4 of this document.

This Code applies to the Devonport City Council and its management of Tenders and Contracts.

2 Definitions

In this Code the following words have the following meanings:

Code – refers to this Code for Tenders and Contracts which has been developed in accordance with the requirements of the *Local Government Act 1993* and the *Local Government Regulations 2015* and subsequent amendments.

Conditions of Tendering – means the documents referred to in Section 6.

Contractor – a person or organisation, external to Council, engaged under a Contract for services (other than as an employee) to provide specified goods or services.

Contract – a Contract is an obligation, such as an accepted offer, between competent parties with consideration to do some act.

Expression of Interest – a submission to Council either by a publicly advertised invitation process or by direct request.

Multiple-Stage Tender – a process that allows for a staged assessment of the market to be made in terms of the capabilities of potential suppliers and the goods and services that are available to satisfy the requirement, before a final Tender stage is undertaken with selected suppliers.

Multiple-Use Register – a register of suppliers who, in response to an Expression of Interest, meet criteria established by Council in respect of the supply of goods or services.

Procurement – the entire process by which all goods and services are obtained by Council, and includes all planning, design, standards determination, specification writing, selection of suppliers, financing, contract administration, disposals and other related functions.

Probity – is a risk management approach to ensuring procedural integrity.

Probity Advisor – a Probity Advisor is a person who provides advice on Probity issues before, during and after the Tender process and contracting to ensure the process is, or has been, fair and in accordance with legislative and other requirements. Probity Advisors would only be engaged at the General Manager's discretion.

Public Tender Process – a process where any party that can meet the requirements of the Request for Tender has the opportunity to submit a Tender.

Request for Tender – a document inviting offers from interested parties capable of providing specified goods or services valued over the legislated prescribed amount in the Regulations or when determined appropriate by the General Manager.

Tender Planning and Evaluation Committee – a committee established to oversee and manage the process of scoping, evaluating, selecting and managing tenders and related contracts.

Tender – a proposal, bid or offer that is submitted in response to a Request for Tender for goods or services from the Council.

3 Tendering Principles

Council will comply with the following principles when acquiring goods and services:

3.1 Open and effective competition

Ensuring that the tender process is impartial, open and encourages competitive offers.

In practice this means that Council will:

- use transparent and open tender processes so that service providers and the public are able to have confidence in the outcomes;
- test the market by pre-determined and clear unbiased specifications and processes;
- establish and maintain procedures to ensure that fair and equitable consideration is given to all tenders received;
- establish and maintain procedures to ensure a prompt and courteous responses to all reasonable requests for advice and information from potential or existing tenderers;
- establish and maintain procedures to ensure that all potential tenderers are provided with the same information relating to each tender, and are given an equal opportunity to meet the tender requirements;
- treat all suppliers of goods and services consistently and equitably;
- endeavour not to amend the terms of a tender during the period that the tender is open, however, if it is necessary for Council to make an alteration to the terms of a tender, the alteration will be made by addendum and forwarded to prospective tenderers. In order to do this, Council will record details of all parties provided with tender documentation;
- apply reasonable and uniform tender evaluation criteria for the assessment and consideration of tenders. Unless otherwise specified in the tender documentation, the following tender evaluation criteria will be used as the basis of tender evaluation criteria in the assessment of tenders:
 - o Cost of goods or services;
 - o Experience, capability and resources of the tenderer to best meet the tender requirements;
 - o Quality systems in place and compliance with statutory requirements if relevant;
 - o Provision of services to best meet the tender requirements;
 - o Workplace health and safety requirements (including requirements of relevant Acts, Regulations, Standards, Codes of Practice and Council policies and procedures; and
 - o Evidence of required insurance policies, and financial security, where required.
 - o Wherever applicable in tenders, include in the evaluation criteria that Council will consider the acceptance of alternative tenders provided that they achieve the outcomes specified in the tender invitation.

3.2 Value for money

Achieving the required outcome at the best possible price.

In practice, this means that Council will consider:

- the value of the acquisition and potential benefits against the costs of that purchase;
- an assessment of risks associated with the purchase
- how well goods or services meet needs;
- lifecycle costs of a product;
- disposal value;
- time constraints;
- the impact of the procurement decision on the local economy, such as through industry development and employment creation;
- 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).

3.3 Enhancement of the capabilities of local business and industry

Ensuring that local businesses that wish to do business with Council are given the opportunity to do so.

In practice this means that Council will:

- wherever possible, develop the tender evaluation criteria to ensure local businesses have the same opportunities as all other respondents to tender for goods or services;
- at a minimum, always advertise each tender locally in a newspaper circulating in the area and when considered appropriate, advertisement nationally will occur;
- make tender documentation available on request at Council offices or via mail or email;
- ensure that sufficient time has been provided to allow prospective tenderers to prepare an adequate response when inviting tenders. At a minimum, tenders will be open for a period not less than 14 days.

3.4 Ethical behaviour and fair dealing

Ensuring all purchasing is undertaken in a fair and unbiased way and in the best interests of Council.

In practice, this means that Council will:

- be fully accountable for the tendering practices that it uses and the decisions it makes;
- ensure that decisions are not influenced by self-interest or personal gain;
- establish and maintain procedures to deal honestly with, and be equitable in the treatment of, all potential or existing suppliers;
- identify and deal with any conflicts of interest identified; and
- ensure that all tendering is undertaken in accordance with this Code and Council policies.

3.5 Environmental and sustainability considerations

Consideration of the potential environmental impact of the product or services to be purchased and the long-term sustainability impacts of the purchase.

In practice this means that Council may:

- undertake an assessment of the project's life cycle costs of the purchase with a view to minimising the use of energy, fuel and like inputs; and
- consider the source of the materials incorporated in the purchase and favour products that are produced using sustainable or recycled resources.

4 Tenders

4.1 Open Tender

Council will utilise the procedures in the Regulations and this Code for conducting its tenders process. Council utilises TenderLink which is an electronic lodgement system for receiving tenders. All tenderers should register with TenderLink to be able to access and submit tenders. Tenders, once received, will be recorded in Council's electronic records management system.

4.2 Standing Tenders

From time-to-time Council may utilise a standing tender in which one or more tenderers are contracted through an open tender process to provide specified goods or services over a period of time without the need for a further tender process.

The way in which a standing tender is established is the same as for an open tender process where the specification and description of the tender describe the intent of the standing contract and the conditions of its use.

Evaluation of standing tenders will be undertaken in the same manner as ordinary tenders.

4.3 Multiple-Use Register

From time-to-time Council may utilise a Multiple-Use Register process to establish a register of suppliers that Council may use more than once. Council's policy is that the Multiple-Use Register will be divided into three main value categories namely:

1. Category 1 - small scale supply of goods and services valued at less than \$50,000 (excluding GST).
2. Category 2 – supply of goods and services of large scale or specific professional consultancies usually in excess of \$50,000 (excluding GST) but less than the prescribed amount in the Regulations.
3. Category 3 – supply of goods and services in excess of the prescribed limits in the Regulations.

If it is determined that such a register is to be established, Council will invite Expressions of Interest from prospective suppliers for inclusion on the register.

All prospective suppliers who have sought to be included on the register will be advised of the results of their submission.

Based on established evaluation criteria, Council may accept or reject a submission for inclusion on the Multiple-Use Register. If a submission is rejected, Council will advise the reasons for that rejection as soon as practicable.

Council will allow any supplier to apply for inclusion on an established Multiple-Use Register at any time unless the supplier has made an application within the previous twelve months that has not been accepted. Applicants will be assessed on the original evaluation criteria for that register.

For all Category 2 and 3 goods and services, Council will invite all successful applicants that are registered (unless this is not practical in the circumstances) to quote for the provision of the required goods and services.

All successful applicants that are registered in the Multi Use Register for the relevant category of those goods and services will be invited.

Council will review each Multiple-Use Register and readvertise its invitation for service providers and suppliers to be included on Council's Multi Use Registers at least once every two years.

4.4 Multiple-Stage Tenders

A multiple-stage tender process may be used from time to time in cases where it is considered appropriate to:

- gain market knowledge and clarify the capability of potential contractors;
- obtain industry input into specific proposals which are proposed from time to time; and
- pre-qualify respondents for the following stage of this type of tender process.

Multiple-stage tenders will follow the processes set out in the Regulations that Council is required to follow. The main stages in the process are:

4.4.1 Expression of Interest

An expression of interest (sometimes called a registration of interest) will be used to shortlist potential suppliers before the formal tender stage is commenced. Suppliers will be short-listed based on the evaluation criteria set out in the expression of interest. This will be based on the principles of open and effective competition and value for money as set out in sections 3.1 and 3.2 of this Code. Evaluation will also include such matters as the experience, capability, resources, technical, managerial and financial capacity of respondents, and the methodology that will be implemented to best achieve the contract requirements. Other specific evaluation criteria may be included in the tender documentation when applicable.

By proceeding through this initial Expression of Interest stage, opportunities for the reduction in the overall costs of the tendering process may be achieved because this first stage will limit the "Request for Tender" to those respondents who have been assessed as best meeting the evaluation criteria.

4.4.2 Request for Tender

At the completion of stage one, (expression of interest phase), short-listed respondents will be formally invited to tender.

4.5 Strategic Alliances

Rather than traditional tendering processes, Council may choose to procure goods and or services through contract arrangements already established and administered by other organisations, including:

- Local Government Association of Tasmania (LGAT) through the National Procurement Network
- State Government Contracts and
- any other purchasing group of which Council is a member.

5 Exemptions

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:

- (a) an emergency if there is insufficient time to invite tenders for the goods or services required to adequately respond to the emergency;
- (b) a contract for goods or services supplied or provided by, or obtained through, an agency of a State or the Commonwealth;
- (c) 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;
- (d) a contract for goods or services obtained as a result of a tender process conducted by another council, a single authority, a joint authority, the Local Government Association of Tasmania, or any other local government association in this State or in another State or Territory;
- (e) a contract for goods or services in respect of which a Council is exempted under another Act from the requirement to invite a tender;
- (f) a contract for goods or services that is entered into at public auction;
- (g) a contract for insurance entered into through a broker;
- (h) a contract arising when a Council is directed to acquire goods or services due to a claim made under a contract of insurance;
- (i) a contract for goods or services if the Council resolves by absolute majority and states the reasons for the decision, that a satisfactory result would not be achieved by inviting tenders because of –
 - (i) extenuating circumstances; or
 - (ii) remoteness of the locality; or
 - (iii) the unavailability of competitive or reliable tenderers; or
- (j) a contract of employment with a person as an employee of the Council.

The General Manager will authorise non use of the public tender process in accordance with the exemption directions identified above.

When Council relies on the exemption outlined in (i) (i) above, the General Manager is to ensure documentation regarding the assessment of the reasonableness of amounts payable under the contract is maintained and considered as part of the decision making process.

These exemptions relate to tenders above the prescribed amount. Below the prescribed amount, non-use of the full tender process may be approved by the General Manager in circumstances where it is operationally beneficial to do so.

6 Engaging a Third Party to Manage a Procurement Process

Council may engage third parties to manage the procurement process for individual projects. The use of a third party as an agent or consultant to advise on, arrange or manage a procurement process does not exempt Council from complying with Council procurement policies and procedures.

Should Council engage a third party to manage a procurement process, it will be ensured that material is included in the contractual arrangements with the third party that requires the third party to comply with Council procurement policy and procedures.

7 Tender Planning and Evaluation Committee

A Tender Planning and Evaluation Committee will be formed to oversee and manage processes for the, evaluation, selection and management of tenders and related contracts, prior to tender documents being finalised. A Committee will be formed for every tender with the composition of the Committee to be approved by the General Manager.

Tender Planning and Evaluation Committees will include persons with relevant background and experience required for the particular project and may include external consultants to provide expert input. Tender Planning and Evaluation Committees will usually consist of three members with the relevant experience and knowledge of this Code, the contents of the tender and of the available budget for the project.

All Tender Planning and Evaluation Committee meetings will have an agenda item regarding declarations/conflicts of interest.

If a conflict of interest is identified and/or perceived, full disclosure is to be made to the General Manager who will then determine whether the conflict of interest would likely influence the tender outcome. The General Manager may remove a person from the Committee if deemed necessary.

Outcomes of all Tender Planning and Evaluation Committee meetings will be formally minuted and these minutes are to form the basis of the Tender Report to Council for projects over the legislated prescribed amount in the Regulations or to the General Manager for projects under the legislated prescribed amount.

The Tender Planning and Evaluation Committee will review and consider the following aspects of a tender:

- the tender and evaluation process adopted;
- critical dates (e.g. when the contract is to start, when the current contract is due to expire, critical project milestones, expenditure constraints etc.);
- a certification by the officer responsible for managing the tender process, verifying conformity with relevant Council policies and guidelines; and
- any other relevant issues or information, such as a Probity Advisor's report.

When references checks are undertaken, a set of questions will be developed by the Tender Planning and Evaluation Committee and utilised when conducting the checks. The results will be compiled by the Tender Planning and Evaluation Committee as part of the overall Tender Report.



The Australian Standard Code of Tendering AS 4120-1994 and this Code underpins the way in which Council will manage its tender processes.

8 Conditions of Tendering

The Conditions of Tendering form the basis on which prospective Tenderers are to submit their Tender. The procedures for these matters, if not already covered by this Code, are to be set out in the Conditions of Tendering and Form of Tender which generally forms Part 2 of the Tender.

The Conditions of Tendering will include the following: -

- details of the goods or services required;
- details of the duration of the contract, including any extensions that are specified in the contract;
- the criteria for evaluating tenders;
- the method of evaluating tenders against the evaluation criteria;
- any mandatory tender specifications and contract conditions; and
- a reference to Council's Code for Tenders and Contracts.

The Conditions of Tendering may be changed or modified from time to time to give effect to this Code's requirements, the requirements of the Act and Regulations, and to reflect any necessary operational changes and requirements that are necessary.

Any changes to the Conditions of Tendering are to be consistent and in accordance with this Code, the Act and Regulations.

9 Use of Probity Advisors

Council will engage the service of Probity Advisors where the nature of the tender warrants particular sensitivity to due process. For example, where Council is seeking tenders for large and complex developments that may involve joint venture proposals, or where the contractual engagement is for extended periods.



10 Acceptance of Tenders

Late tenders may not be accepted.

A tender that does not comply with the Conditions of Tendering may be rejected and excluded from Council's tender evaluation process.

Any tender provided that does not fully comply with the mandatory evaluation criteria set out in the tender will be regarded as non-conforming and will not be considered or evaluated further.

All tenders conforming with the mandatory requirements will be further assessed as to compliance with other evaluation criteria and where they do not meet these other criteria, may be excluded from further evaluation.

Tenders that do not comply with other evaluation criteria in the following circumstances will be excluded:

- if the variation is of a nature that cannot be met by a simple request for information or clarification or where this further information is sought and not provided; or
- does not respond directly to the purpose or suggests alternative solutions to that sought in the tender and has not been allowed for in the evaluation criteria meaning that other prospective tenderers have not been given the opportunity to consider.

The tender assessment report will provide for the:

- results of each tender submission against the evaluation criteria established; and
- advice and recommendations concerning the acceptance or rejection of tenders based on the evaluation undertaken.

Any decision by Council to award a tender to a tenderer other than the recommended tenderer will need to be supported by written reasons. This may be in the form of the Council Resolution or appropriate documentation by the General Manager.

11 Debriefing unsuccessful tenderers

Council will provide a debriefing interview to any unsuccessful tenderer who requests one. The purpose of the debriefing session is to help unsuccessful tenderers submit more competitive bids in future by identifying ways in which each tenderer's offer could be improved.

At the interview, discussions will centre on how the unsuccessful tender performed with respect to the evaluation criteria.

During this interview, the following will NOT happen:

- comparisons between the unsuccessful tenderer's offer and the successful, or any other, offer unless this information has been included in an open Council Agenda; or
- the debriefing interview being used to justify the selection of the successful tenderer.

The debriefing will include at least one member from the Tender Planning and Evaluation Committee.

Council will document the proceedings of each debriefing interview in writing, including:

- attendees;
- the information provided to the unsuccessful tenderer;
- any issues arising;
- the details of any information that was requested, but not disclosed due to commercial in confidence or other considerations; and
- any other issues.

Where a multiple-stage tender process is used in which expressions of interest are used to shortlist, respondents not short-listed may be offered a debriefing interview, in a similar way to unsuccessful tenderers.



12 Complaints Process

Councils are provided with broad competency powers under the Act to carry out their functions and powers and to procure works or services.

The Act also includes accountability measures under which Councils can be held responsible for their actions and decisions taken when carrying out their functions and exercising their powers.

Information regarding Council's formal complaint resolution process is set out in Council's Complaint Handling Policy.

In the first instance, complainants are encouraged to seek resolution of their complaint by contacting the Council representative who managed the tender to which the complaint relates.

If a complainant is not able to satisfactorily resolve the issues of concern with the Council directly, complainants may make disclosures of 'improper conduct' by public officers and public bodies (Council) in accordance with the *Public Interest Disclosures Act 2002*. Such disclosures can be made directly to the Ombudsman or the Integrity Commission (refer to details below).

Clause 6.3 of the Public Interest Disclosures Model Procedures Manual deals specifically with Contractors, and Clause 6.1 details the right to make a disclosure. Further information on making of disclosures is located on Council's website - [http://www.devonport.tas.gov.au/Council/Council-Policies - Public Interest Disclosures Act](http://www.devonport.tas.gov.au/Council/Council-Policies-Public-Interest-Disclosures-Act).

Contact details:

The Ombudsman, GPO Box 960, Hobart TAS 7001 www.ombudsman.tas.gov.au

Tasmanian Integrity Commission, GPO Box 822, Hobart TAS 7001 www.integrity.tas.gov.au

13 Reporting Procedures

Council is obliged to report at a minimum on a series of procurement matters.

Council will report in its Annual Report details of any contract entered into during the year for the supply or provision of goods and or services valued at or above the legislated prescribed amount in the Regulations.

Contract Extension:

Council will report in its Annual Report, the details of any extension of a contract where Council agreed to extend a contract by an absolute majority and the pre-existing contract did not specify extensions.



Details that will be reported at a minimum are:

1. A description of the contract;
2. The period of the contract;
3. The periods of any options for extending the contract;
4. The value of any tender awarded, or if a tender was not required, the value of the contract excluding GST;
5. The business name of the successful contractor; and
6. The business address of the successful contractor.

Council will report in its Annual Report, the details of all instances where non application of the public tender process has been applied.

14 Review of Tender Process

The General Manager, or an Executive Manager authorised to do so by the General Manager, will ensure the effective operation of the Code by ensuring each Tender process will be subject to control verifications during the pre-advertisement and pre-decision making periods, and before any contract is signed.

15 Review of Code

Council will formally review this Code at least every four years.