

Policy

Procurement 2021



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| Further Document Information and Relationships | |
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| Related Legislation* | <i>Local Government Act 1993, Section 55 of the Act Local Government Amendment Act 2019, the Amendment Local Government (General) Regulation 2021, Part 7 and Section 217 (1) (a2) of the Regulation Tendering Guidelines for NSW Local Government 2009 Government Information (Public Access) Act 2009 State Records Act 1998</i> |
| Related Policies | Please refer to item 5 – References and Associated Documents |
| Related Documents | |

*Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.

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1. Objective

The objective of this policy is to:

- Provide consistency and control over procurement practices;
- Demonstrate accountability to ratepayers;
- Guide ethical behaviour in purchasing;
- Ensure Council's procurement activities to be fair, ethical and transparent;
- Increase the probability of obtaining best value for money in the expenditure of public funds;
- Ensure Compliance with legislations, guidelines and best practice in all of Councils Procurement activities.

2. Council Risks to be Addressed

This Policy is established to create a framework in Procurement that addresses the following risks;

- Compliance with Legislative requirements of Procurement;
- Identified common gaps in processes and practices that expose risks to transparency, accountability and value for money;
- Sensible expenditure of public funds.

3. Scope

This policy applies to all contracting and procurement activities at Council and is binding upon Councillors, Council employees, contractors and consultants while engaged by Council.

It applies to the procurement of all goods and services, including capital works, major plant and equipment, construction and improvement of infrastructure, Information Technology projects, professional services, leasing arrangements, utilities and contract labour services and external goods and services contracts, including panel contracts for the Council regardless of source of funding.

4. Abbreviations and Definitions

| Term | Definition |
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| Act | Local Government Act NSW 1993 (as amended) |

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| Best value | <p>Best value in procurement is about selecting the supply of goods, services and works considering both cost and non-cost factors including:</p> <ul style="list-style-type: none"> • contribution to the advancement of Council's priorities; • non-cost factors such as fitness for purpose, quality, service and support; • cost-related factors including whole-of-life costs and transaction costs associated with acquiring, using, holding, maintaining and disposing of the goods, services or works. |
| Conflict of Interest | <p>Personal or professional relationships where the financial gain or other interests of another party and the outcome of a Council decision may be unfairly influenced or effected. This can be Pecuniary or Non-Pecuniary interest.</p> |
| Commercial in-confidence | <p>Information that, if released, may prejudice the business dealings of a party e.g. prices, discounts, rebates, profits, methodologies and process information.</p> |
| Contract management | <p>The process that ensures both parties to a contract fully meet their respective obligations as efficiently and effectively as possible in order to deliver the business and operational objectives required from the contract and, to provide value for money.</p> |
| Corporate Social Responsibility (CSR) | <p>Corporate Social Responsibility is about taking positive action to demonstrate Council's commitment to the local community and environment on which it impacts.</p> |
| Council staff | <p>Includes full-time and part-time Council staff, and temporary employees, contractors and consultants while engaged by Council.</p> |
| Expressions of Interest (EOI) | <p>An open approach to the market requesting submissions from bidders interested in participating in Council's procurement process. It is used to seek the market and identify potential suppliers capable and interested in delivering the required goods or services. It is usually a first stage of a multi-stage tender process i.e. Selective tendering.</p> |
| Goods and Services Tax (GST) | <p>All monetary values stated in this policy include Goods and Services Tax except where specifically stated otherwise.</p> |
| ICAC | <p>The Independent Commission Against Corruption.</p> |
| Local Content | <p>Goods or services procured from a local supplier identified permanently trading in the Liverpool Plains Shire Council Local Government area.</p> |

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| Local Supplier | A business, contractor or industry based in, or employing staff operating from, permanent premises situated within the Liverpool Plains Shire Council LGA boundaries. |
| Probity | A process able to withstand scrutiny achieving both accountability and transparency, providing tenderers with fair, consistent and equal treatment. |
| Request for Tender (RFT) | A request for offer to supply goods/services for which the estimated expenditure exceeds the threshold (inclusive of GST) as contained in the Act. |
| Request for Quote (RFQ) | A request for offer to supply goods/services for which the estimated expenditure is below the threshold as contained in the Act. The number of quotes required is based on the minimum spend threshold (please refer to item 8.5.6) |
| Social procurement | Social procurement uses procurement processes and purchasing power to generate positive social outcomes in addition to the delivery of efficient goods, services and works. |
| Sustainability | Activities that meet the needs of the present without compromising the ability of future generations to meet their needs. |

5. References and Associated Documents

This policy is to be read and implemented in conjunction with:

- Code of Conduct 2020
- Council's Local Preference Purchasing Policy;
- Risk Management Policy;
- Privacy Management Plan;
- WHS Policy
- Gifts & Benefits Policy;
- Fraud and Corruption Prevention Policy;
- Disposal of Surplus Assets Policy;
- Corporate Credit Cards Policy;
- Statement of Business Ethics or Business Ethics Policy (to be written)
- Council's Procurement and Contract Procedure (Guidelines) (in progress)
- Council's Store Management Procedure (Guidelines) (in progress)

6. Policy Statement

6.1 Effective Legislative and Policy Compliance and Control

6.1.1 Ethics and Probity

Council's procurement activities shall be performed with integrity and in a manner able to withstand the closest possible scrutiny. Councillors and Council staff shall at all times

conduct themselves in ways that are, and are seen to be, ethical and of the highest integrity.

6.1.2 Conduct of Councillors and Council Staff

Councillors and Council staff must abide by Liverpool Plains Shire Council's Code of Conduct.

Serious breaches of this Policy may result in an official investigation which could lead to:

- A. in the case of a Councillor, disciplinary action being taken under *Chapter 14 Division 3 Misconduct* of the Act and/or referral to ICAC; and
- B. in the case of an employee, disciplinary action including termination of employment in accordance with the Award, and/or referral to ICAC.

In relation to procurement, Councillors and Council staff shall always conduct themselves in ways that are, and are seen to be, ethical and of the highest integrity and will:

- Treat potential and existing suppliers with equality and fairness;
- Not seek or receive personal gain;
- Maintain confidentiality of commercial in-confidence information such as contract prices and other sensitive information;
- Present the highest standards of professionalism and probity;
- Deal with suppliers in an honest and impartial manner that does not allow conflicts of interest;
- Provide all suppliers and tenderers with the same information and equal opportunity; and
- Be able to account for all decisions and provide feedback to suppliers and tenderers on them.

Council will discontinue all dealings with suppliers who engage in unethical conduct. Staff found not to be acting in accordance with the principles, guidelines and procedures set down in this and other related documents will be subject to the applicable disciplinary processes.

Canvassing of support from Councillors and/or Council Staff at any stage of the tender process will be deemed an unacceptable practice and will result with the prospective contractor being disqualified.

6.1.3 Governance

- **Responsible Financial Management** – staff must consider factors such as the requirement for the good or service, the value for money achieved, whole of life costs and the budgetary limitations that apply when making procurement decisions. Staff must ensure that sufficient funding is available within the properly designated and approved Council budget prior to committing to any purchase.

- **Responsible Record Keeping** – staff must ensure that the level of record keeping pertinent to the transaction is maintained. In determining the appropriate level of records to maintain, consideration will be given to matters such as transparency and the degree of scrutiny the transaction is likely to attract. Records of procurement activities shall be kept and recorded in Council's Electronic Management System.
- **Management of risk through procurement** – staff must ensure that all purchases will protect and enhance Council's ability to manage risk.
- **Supporting Competition** – Council recognises the need to allow suppliers to be able to fairly compete for Council's business, and as such, Council has set parameters around the number and the nature of quotes that staff are to obtain at various price levels.

6.1.4 Compliance

All procurement activities shall be conducted in accordance with the requirements of this policy and all associated procedures, relevant legislation, relevant Australian Standards and the Act.

6.2 Procurement Principles

6.2.1 Best Value

Council's procurement activities will be carried out on the key objective of fully obtaining Best Value in the expenditure of public funds. Purchase of all goods, services, works and assets should represent the optimum combination of quality, risk, technical expertise, Local and community benefit and timeliness and should be determined on a whole of contract, whole of life basis.

This will be achieved by:

- Planning, developing, implementing and managing procurement strategies that support the coordination and value activities throughout the life cycle;
- Using aggregated contracts and standard offer arrangements where suitable and cost effective to do so and;
- Working with suppliers to create relationships that are professional, productive and transparent.

6.2.2 Open and Fair Competition

All suppliers must be treated fairly in an open and transparent manner and will have access to the same information.

Third parties that have been consulted on, or have been assisting Council with, the development of a project scope or specification must sign a confidentiality agreement and are specifically excluded from participating in the procurement process for that particular project. This is due to the fact that they may have the ability to influence, and are privy to, confidential aspects of the project and/or specification.

6.2.3 Sustainable Procurement

Within the context of purchasing on a value for money basis, Council is committed to adopting a sustainable procurement approach.

In addition, Council recognises the potential impact expenditure has on the environment and where applicable will integrate sustainability, environmental and social issues into procurement process including:

- Waste management;
- Recycling;
- Energy management;
- Emission management;
- Water conservation;
- Green building design; and
- Procurement.

The objectives of taking environmental factors into account are:

- Manage the risks in the broader environment by procuring goods and services that have a lesser impact on the natural environment and human health;
- Provide better value for money on a whole-of-life cycle basis;
- Encourage the development of products and processes that have a positive environmental impact; and
- Encourage recyclability and sustainability.

6.2.4 Corporate Social Responsibility

Corporate Social Responsibility (CSR) is about taking positive action to demonstrate Council's commitment to the local community and environment on which it impacts. This means Council will maximise the benefits of the services it provides across the community and minimise the negative aspects of its activities.

Council integrates CSR into its organisational policies and practices through social procurement, sustainability and diversity.

6.2.5 Social Procurement

Social Procurement generates positive outcomes by building on initiatives already undertaken by Council in enhancing sustainable and strategic procurement practice, further enabling procurement to effectively contribute towards building stronger communities and meeting the social objectives of Council. Council is committed to Social Procurement by:

- Ensuring all procurement practices are sustainable and strategically aligned with the wider Council objectives;
- Achieving greater value for money across the community through the use of effective procurement;
- Ensuring all businesses have the same opportunity to tender for Council contracts;
- Enhancing partnerships with other Councils, suppliers and community stakeholders;
- Building and maintaining a strong community by exploring ways to generate local employment and further strengthening the local economy; and
- Purchasing ethical and fair-trade goods to support equitable, local, national and international trade.

6.2.6 Management of Work Health and Safety

In compliance with all relevant Work Health & Safety legislation Council will consider the impact on the health and safety of staff and the community when procuring goods and services.

6.2.7 Diversity

Promoting equality through procurement can improve competition, best value, the quality of public services, satisfaction among users, and community relations. It should be a consideration in every procurement project and reflect corporate commitment to diversity and equal opportunities wherever possible.

6.2.8 Support of Local Business

Where purchases can be justified within the context of value for money, Council is committed to procuring from local business in accordance with its Local Preference Purchasing Policy.

6.2.9 Risk Management

Consistent strategies for managing risks associated with all procurement processes must be in place.

6.2.10 Probity and Transparency

All Council procurement processes must be conducted in a fair, honest and open manner, with the highest levels of integrity and in the public interest.

6.2.11 Responsible Financial Management

The principle of responsible financial management shall be applied to all procurement activities.

To give effect to this principle, the availability of existing funds within an approved budget, or other source of funds, shall be established prior to the commencement of any procurement action for the supply of goods, services or works.

Council staff must not authorise the expenditure of funds in excess of their financial delegations.

Council funds must be used efficiently and effectively to procure goods, services and works and every attempt must be made to contain the costs of the procurement without compromising any of the procurement principles set out in this policy.

6.2.12 Relationship Management

Council is committed to developing constructive long-term relationships with suppliers. It is important that Council identifies its key suppliers so that its efforts are focused to best effect. Such areas may include:

- Size of spend across Council;
- Criticality of goods and services, to the delivery of Council's services;
and
- Availability of substitutes.

6.2.13 Communication

External communication is very important in ensuring a healthy interest from potential suppliers and partners to Council. Council's website will be kept up to date and provide:

- A list of existing and forthcoming contract opportunities projected over a number of years.
- Guidelines for doing business with Council.
- Standard documentation used in the procurement process; and
- Links to other relevant sites.

6.2.14 Build and Maintain Supply Relationships

Council recognises that in order to achieve continuous value, a strategic assessment of the appropriate 'channel to market' should be undertaken, whether to go to market on its own, participate in regional or sector aggregated projects or panels, access State Government panel agreements, or other means. Council will consider supply arrangements that deliver the best value in terms of time, expertise, cost, and outcome.

6.2.15 Developing and Managing Suppliers

Developing and managing suppliers is essential to achieving a competitive market capable of delivering Council's services and works requirements.

Council needs to interact with the market and its suppliers in particular to understand their views and what enables and encourages diverse parts of the market to bid for work with Council. At the same time Council will ensure that its relationship with strategic suppliers is mutually productive and that goals are shared. Council aims to develop relationships with suppliers that create mutually advantageous, flexible and long-term relations based on the quality of performance and financial savings.

6.2.16 Supply Market Development

A wide range of suppliers should be encouraged to compete for Council work. The focus for new work need not always be with the larger more familiar businesses.

Other types of organisations offering business diversity include:

- Local businesses
- Green suppliers
- Small to medium sized enterprises (SMEs)
- Social enterprises
- Ethnic and minority business
- Voluntary and community organisations

Whenever practicable, however, Council must give effective and substantial preference to contracts for the purchase of goods, machinery or material manufactured or produced in Australia or New Zealand.

6.2.17 Performance Measures and Continuous Improvement

Appropriate performance measures are to be established and reporting systems will be used to monitor performance and compliance with procurement policies, procedures and controls.

Internal service standards will be agreed within Council and performance against these targets will be measured and reviewed regularly to support continuous improvement. The performance measurements developed will be used to:

- Highlight trend and exceptions where necessary to enhance performance.
- Improve the internal efficiency of the procurement process and where relevant the performance of suppliers.
- Facilitate programs to drive improvement in procurement to eliminate waste and inefficiencies across key spend categories.

6.3 Procurement Conduct

6.3.1 Standards of Behaviours and Ethical Principles

Councils should adapt these standards of behaviour and ethical principles and likewise require their suppliers and contractors to behave in accordance with them at all times. These standards are consistent with the requirements for the effective and efficient conduct of Councils under the Act.

Honesty and Fairness

Council must conduct tendering, procurement and business relationships with honesty, fairness and probity at all levels. Confidential and Commercial-in-confidence information must not be disclosed.

Accountability and Transparency

Council must ensure that the process for awarding contracts is open, clear, fully documented and defensible.

Consistency

Council must ensure consistency in all stages of the tendering process;

- Conditions of tendering must be the same for each tenderer on any tender;
- All requirements must be clearly specified in the tender documents and criteria for evaluation be clearly indicated;
- All potential tenderers should be given the same information;
- And the evaluation of tenders must be based on the conditions of tendering and selection criteria as defined in the tender documents.

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| <i>No conflict of interest</i> | Council staff/official with a potential conflict of interest will declare and address that interest as soon as the conflict is known to that party |
| <i>Rule of Law</i> | Council must comply with all legal obligations. These include the provisions of the Act and the Regulations. |
| <i>No anti-competitive practices</i> | Council must not engage in practices that are anti-competitive or engage in any form of collusive practice. |
| <i>No Improper advantage</i> | Council must not engage in practices that aim to give a potential tenderer an advantage over the others, unless such advantage stems from an adopted Council procurement policy such as a Local Preference Policy. |
| <i>Intention to proceed</i> | Council must not invite or submit tenders without a firm intention and capacity to proceed with a contract. |
| <i>Co-operation</i> | Council must encourage business relationships based on open and effective communication, respect and trust and adopt a non-adversarial approach to dispute resolution. |

6.3.2 Gifts and Hospitality

Offers of bribes, commissions or other irregular approaches from organisations or individuals (no matter how flimsy the evidence available), must be promptly brought to the attention of the General Manager.

With regard to gifts and hospitality, Councillors and Council staff must comply with Council's '*Gifts and Benefits Policy*'. This policy forbids Council representatives involved in corporate purchasing, procurement, contract evaluation, EOI evaluation, and tender evaluation from accepting any form of gift, benefit or hospitality (of more than a token or nominal value) from suppliers or potential suppliers. Written declarations from Council representatives are required as part of the evaluation process.

6.3.3 Disclosure of Information

Unless required by legislation, commercial in-confidence information received by Council must not be disclosed and is to be stored in a secure environment pending lawful destruction in accordance with the State Records Act 1988.

Councillors and Council staff are to protect, by refusing to release or discuss, the following:

- Allocated Council budgets for proposed tenders;
- Information disclosed by organisations in tenders, quotation or during tender negotiations;
- All information that is commercial in-confidence information; and

- Pre-contract information including, but not limited to, information provided in quotes and tenders or subsequently provided in pre-contract negotiations.

Discussion with potential suppliers during tender evaluations should not go beyond the extent necessary to resolve doubt on what is being offered by that supplier.

6.4 Procurement Options

Council's standard options for purchasing goods, services and works shall be by some or all of the following methods:

- Petty cash (for small-value items);
- Credit card;
- Purchase order following a quotation process from suppliers for goods or services that represent best value for money under directed quotation thresholds;
- Under contract following a tender process;
- Using established contract by prescribed entities under the Act; Local Government Procurement and Procurement Australasia, aggregated purchasing arrangements with Joint Organisations or other councils, purchases under the NSW Government Prequalification Scheme or other approved purchasing scheme.
- Other arrangements authorised by Council or the General Manager if required under abnormal circumstances such as emergencies.

Council may, at the General Manager's discretion and based on the complexity and cost of the project, conduct single stage or multi-stage tenders.

A multi-stage tender process will commence with an Expression of Interest stage followed by a tender process involving the organisations selected during the registration of interest stage.

6.5 Procurement Method and Thresholds

The five Procurement process covered under this policy and the criteria for determination are as follows;

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| 6.5.1 In-House Services | Where LPSC provides the same or similar services |
| 6.5.2 Store | Where LPSC Store stocks the same or similar items |

6.5.3 Existing/Established Contract

Where an existing /established contract is made available through Prescribed entities; LGP, Procurement Australia, NSW Procure Point, available through Joint Organisation (where LPSC has participated), and LPSC established Period Contracts.

6.5.4 Quotation

Where the value of work, goods or services is under the threshold of \$250,000 including GST.

6.5.5 Tendering

Where the value of work, good or services is at the threshold of \$250,000 and over including GST. The Regulation specifies the requirements for the three different tendering methods;

- Open tendering;
- Selective tendering by which invitations to tender are made after public advertisement for expressions of interest; or
- Selective tendering by which recognised contractors listed by the Council are invited to tender.

6.5.6 Quotation Threshold

Purchase of goods and services with a ***value up to the threshold** contained in the Act may be undertaken using the procurement by quotation method. Below details the minimum number of quotations required based on the estimated value of the goods or services to be procured;

| Estimated value of Goods or Services inclusive of GST | Minimum requirements |
|--|---|
| \$0.00 to \$1,000 | Minimum of one (1) verbal quote; petty cash may be used for the purchase for up to \$100; From \$101 to \$1,000 credit cards may be used for these purchases. |
| \$1,001 to \$5,000 | Minimum of two (2) written quotations based on Quotation process. |
| \$5,001 to \$50,000 | Minimum of three (3) written quotations based on Quotation process. Or direct purchase using a prescribed agency contract. |
| \$50,001 to \$150,000 | Minimum of three (3) written quotations based on Quotation process. Or three (3) written quotation using a prescribed agency contract. |

\$150,001 up to the Threshold Minimum of three (3) quotations using prescribed agency contracts or Tender (depending on the complexity of the project)

***Where the actual expenditure cannot be determined with certainty and the estimated expenditure is close to but under the \$250,000 threshold inclusive of GST, tenders MUST be invited.**

Section 6.5.6 does not apply in the following cases:

- Purchase or sale of land;
- Lease or license of land for a term less than 5 years;
- Purchase or sale at public auction;
- Other arrangements authorised by Council or the General Manager as a result of abnormal or extenuating circumstances such as emergencies, remoteness of locality or the unavailability of competitive or reliable quotes.

6.5.7 Public Advertising

All request for quotations (RFQ) must be done through LPSC Vendor Panel portal. This will utilise contracts from prescribed agencies, Enterprise panel contracts established by Council and Joint Organisations and Public Marketplace which covers the local suppliers.

Request for tenders (RFT) are to be invited by public notice and in accordance with any provisions prescribed under the Local Government (General) Regulations 2021.

6.6 Emergency Purchases

An emergency is a situation that poses an immediate risk to health, life, property or environment. Most emergencies require urgent intervention to prevent a worsening of the situation.

All genuine emergency procurement activities must be approved by the General Manager up to approved financial delegation considering the total cumulative value of the procurement. The purchase will be actioned by the relevant officer and copy of the approval and all pertinent documents must be processed and uploaded in Council's electronic data management system. The procurement activity must be included in the Contract Register in compliance with GIPA requirements.

6.7 Standard Purchase Order Terms and Conditions

Purchase Order Terms and Conditions will be used when no formal contract is in place and must not be altered. They will be identified on RFQ documents as the conditions that will apply to the purchase.

6.8 Procurement Delegations

Delegations define the limitations within which Council staff are permitted to work. Delegation of procurement authority allows specified Council staff to approve certain purchases, quotation, tender and contractual processes without prior referral to

Council. This enables Council to conduct procurement activities in an efficient and timely manner whilst maintaining transparency and integrity.

6.8.1 Council Staff

Council shall maintain a documented scheme of procurement delegations, identifying Council staff authorised to make such procurement commitments in respect of goods, services and works on behalf of Council and their respective delegations contained in financial delegation policies:

- Acceptance of tenders
- Acceptance of quotes
- Contract term extensions (within authorised budget)
- Contract amendment (non-financial)
- Contract amendment (financial)
- Credit card purchases
- Procedural exceptions

The General Manager has the ability to set appropriate levels of delegation to Directors, Managers and staff for purchasing and entering into contracts.

6.8.2 General Manager

The General Manager is authorised to approve purchases up to the threshold contained in the Act.

6.8.3 Decisions Reserved for Council

Commitments and processes which must be approved by Council are:

- All purchases exceeding the threshold contained in the Act; and
- Contract variations on the above-mentioned contracts that seek to increase the total contract sum (including provisional amounts) by more than 15%.

6.9 Disposal

Disposal is the final stage of the procurement life cycle. Assets that are no longer required by Council, or do not represent good value to maintain are identified for disposal.

Council will promote a recycle, re-use and recover initiative for Council goods. Council equipment, fleet items, store inventory, materials, by-products from construction and maintenance activities and other items should be re-used or disposed.

The 'disposal' must achieve the best value for money such that Council obtains the best possible return for goods it sells. In addition to price the disposal process is to include consideration of the Council's Social, Economic, Environmental and WHS Policy objectives.

The disposal method must promote fair and effective competition to the greatest extent possible, and disposals should be conducted in an ethical manner.

7. Dispute Resolution

All Council contracts shall incorporate dispute management and alternative dispute resolution provisions to minimise the chance of disputes getting out of hand and leading to legal action.