



CLARENCE CITY COUNCIL

CODE FOR TENDERS & CONTRACTS



Approved by Council on 5 October 2015



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CODE FOR TENDERS & CONTRACTS

(A copy of this Code is available for public inspection at Council's offices during ordinary office hours. Copies of it are also available for purchase at a reasonable charge or it can be accessed on Council's website at www.ccc.tas.gov.au/codefortenders.)

1 Introduction

The purpose of this Code is to provide details as to the general principles and processes which Clarence City Council will apply and follow in the course of procuring goods and services. This Code and its contents are statutory requirements of the *Local Government Act 1993* ('the Act') and the *Local Government (General) Regulations 2015* ('the Regulations').

Under the Act and Regulations the procurement of goods and services in excess of a prescribed amount must be by:

- (i) an open tender process under which tenders are invited by public advertisement; or
- (ii) employing a multiple-use register (refer 4.2 of this Code); or
- (iii) a multiple-stage tender process. (refer section 4.3 of this Code).

The open tender process must also be used in establishing a standing contract by which one or more suppliers are contracted for a specified period to provide specified goods or services without need for any further tender process during that period.

As at the date of Council's approval of this version of the Code, the Prescribed Amount above which the above processes must be used is \$250,000.00.

(It should be noted that all references in this Code to dollar amounts are GST exclusive.)

There are however circumstances in which Council is exempt from undertaking the above processes. Those circumstances are described in Part 7.

Procurements involving contracts for goods and services of a value below the Prescribed Amount are not subject to the same level of control as for contracts the value of which exceed it. Part 5 of this Code details the processes Council will follow in cases of procurement below the Prescribed Amount.

2 Code Principles

This Code has been developed as a transparent set of guidelines that Council will follow in order to comply with the principles relating to procurement which are required in the Regulations. Those principles which Council will apply across the whole range of its procurement process are the promotion of:

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

3 Code Procedures

In promoting the above principles Council will ensure that the following procedures are followed in the course of any procurement.

3.1 Uniformity of information available to suppliers

When inviting tenders or quotations for the provision of its requirements Council will ensure all potential suppliers are provided with the same information relating to Council's requirements. This will be achieved by ensuring that all persons who wish to be considered as suppliers of the requirements in question are provided with the same common form documentation setting out the terms and conditions of tendering or quoting, the precise nature of Council's requirements and the contractual terms upon which supply is to be made by the successful respondent. This information will always be in writing and will be accompanied by copies of all relevant related documents such as drawings and specifications.

3.2 Amending or extending invitations for tenders or quotations

If, after issuing an invitation for tenders or quotations Council wishes to amend its requirements or vary the terms and conditions of the relevant process in any way, it will provide written details of that amendment to all persons who have requested and been provided with a copy of the relevant information.

In advising an amendment to an invitation Council may also, depending on the nature of the amendment and how long after issue of the invitation the amendment is notified, extend the length of time for suppliers to lodge their response. This extension will also be notified in writing to all persons who have requested and been provided with a copy of the relevant information to ensure that all have an equal opportunity to meet requirements.



Generally the right for Council to amend invitations or extend the time for responses will be set out in the common form conditions which accompany each invitation.

3.3 Giving fair and equal consideration to all responses.

All written invitations for tenders or quotes will set out the terms and conditions upon which responses will be received and assessed by Council. Most importantly, the criteria against which responses to any invitation will be assessed will be set out in detail. All responses will be considered against those criteria on a fair and equal basis.

3.4 Dealing generally with suppliers.

In all dealings with either existing suppliers or with potential suppliers via any new procurement Council officers are expected to act honestly and equitably and to provide prompt and courteous responses to all reasonable requests for advice and information. As a general rule, Council's Customer Service Charter applies to such dealings however officers will be mindful that general response times provided for in the Charter may not be appropriate where potential suppliers need advice or information in time to meet a closing dead-line for responses.

3.5 Protecting commercial-in-confidence information

Council will treat all information provided in a response to an invitation as commercial-in-confidence irrespective of whether or not a respondent specifically claims confidentiality for any response or part of it. This means that all possible precautions will be taken to ensure that response details are kept confidential from other respondents and competitors. This will apply not only during the stages where responses are being received and assessed but at any time afterwards. After the closing date for responses the only information that Council will provide if requested is the number of respondents to any particular invitation and the identity of those respondents.

It should be noted that in recognition of the importance of preserving commercial confidentiality in its tender process, Council meetings where officers report on the outcome of an invitation for tenders and Council makes a decision to award the tender are conducted as closed meetings which themselves attract a further level of statutory protection against disclosure of tender details.

3.6 Opening of tenders

To assure transparency and fair dealings in the process relating to tenders, tender responses are required to be lodged in hard copy in the tender box in the public reception area of Council's offices before close of tenders. Promptly at the specified time for close of tenders all responses received are removed from the tender box by no less than two Council officers and details of the names of respondents and prices tendered will be formally recorded. Respondents may attend at the opening of tenders to ensure their response is received and recorded. They may ask how many other responses were received and from whom but no other information will be provided about any other tender response.

3.7 Late responses will not be accepted

Under the terms of the Act and the Regulations, late tenders cannot be accepted. There is no scope for Council to accept any tender response that is received after the closing date and time as first advertised or later extended. Council will apply this same rule to quotation responses which are received after the closing date and time as first notified or later extended.

3.8 How non-complying responses will be dealt with

Any formal invitation for tenders or quotations will include requirements as to things respondents must do or information they must provide in responding to the invitation. Required actions or information will generally be identified in the invitation document as being mandatory while other requirements may be discretionary. All requested information relating to the criteria against which responses will be assessed is mandatory information.

Council expects responses to any invitation for tenders or quotation to reflect the degree of care and attention which the respondent would exercise in delivering Council's requirements if its tender or quotation was to be successful.

If a response does not contain specified information required as part of any evaluation criterion applicable to the relevant assessment process, the response will be scored nil in respect of that particular criterion. No notice of the omission or opportunity to rectify it will be given to the respondent.

However where it is apparent on the face of a response document that a calculation error may have occurred in any mandatory information provided, the assessing officer may give the respondent notice by email of the apparent error and request clarification or amendment of it within a specified time limit. Failure on the part of a respondent to do so within the required time limit may result in the entire response being excluded from the assessment process with no further notice.

3.9 Debriefing unsuccessful respondents

Unsuccessful respondents to any invitation for quotations or tenders of a value exceeding \$100,000 may request a debriefing on their response.

A request for a debriefing:

- must be made within 7 days of Council notifying the respondent that its response was not successful,
- must be in writing, and
- must be addressed to the General Manager.

As soon as reasonably practicable but no later than 14 business days after the receipt of a debriefing request Council officers will meet with a representative of the unsuccessful respondent at Council's offices.

Council will be represented at such meetings by at least two Council officers including the officer named in relevant invitation documents as contact officer in respect of the invitation or as superintendent in the case of works contracts.

Debriefing meetings will be strictly limited to discussing as to how the respondent's response was assessed against relevant criteria including instances where the response was felt to have not met or to have fallen short of requirements of any particular criteria. On no account will any other response including the successful response be discussed.

Council will not provide a written debrief to any respondent; either instead of or following a debriefing meeting.

3.10 Complaints procedures

Any complaints regarding processes related to the supply of goods or services to Council including any aspect of any procurement process must be made in writing and addressed to the General Manager. Such complaints will generally be handled in accordance with Council's Customer Service Charter which, amongst other things, prescribes time limits within which complaints must be responded to. Where requested and where necessary to avoid loss of opportunity in a then current tender or quotation assessment process, such complaints will be treated with appropriate priority.

3.11 Review of Tender Process

To ensure effective operation of the Code, the review of each Tender process will be subject to control verifications during the pre-advertisement and pre-decision making periods, and before the Contract is signed. This review is in accordance with standard procedures as established by the General Manager to ensure that each Tender complies with the Regulations and the Code.

Based on criteria and procedures developed by the General Manager, a review may be undertaken at the completion of a Tender- related Contract to evaluate and document the work carried out, or services provided by a Contractor, and evaluate the performance of the Contractor under the Contract with Council. In general terms tender performance evaluation will be assessed as to whether and how the outcomes required were achieved and the conduct, quality and timeliness of the services provided.

3.12 Use of probity advisors

Council will engage the service of a probity advisor where the nature of a 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, or other similar projects where the General Manager considers that a probity advisor should be engaged.

In certain circumstances, Council may also engage a probity advisor to independently investigate complaints of a particular nature against Council in its procurement processes and to provide recommendations to the General Manager in respect of such complaints.

4 Tendering processes for contracts above the Prescribed Amount

As mentioned in the Introduction in Part 1, under the Act and the Regulations purchases of goods and services the value of which is likely to be above the Prescribed Amount must be by:

- (i) an open tender process ;or
- (ii) inviting tenders from registrants on a multiple-use register or
- (iii) a multiple-stage tender process.

(It should be noted that these processes are in contrast to situations where Council invites quotations. Quotations are invited in various ways where the amount of the supply is likely to be below the Prescribed Amount. An explanation of Councils quotations processes appears in Part 5.)

What follows is a description of each of the prescribed processes for tendering and how they will be applied by Council.

4.1 Open tender

An open tender is where tenders are invited by public notice.

To comply with the minimum requirement of the Regulations Council will generally advertise an invitation for tenders by a single insertion in the public notices section of the Mercury newspaper appearing on a Wednesday or a Saturday. Depending on the value or specialized nature of a particular requirement Council may choose to advertise an open tender more than once and sometimes in a national newspaper such as The Australian. For the purposes of informing the general public, tender where appropriate will also be listed on Council's social media outlets.

4.2 Inviting tenders from registrants on Council's multiple use register ("MUR")

In cases where the value of Council's requirements exceeds the Prescribed Amount, the Regulations allow a council, to invite tenders from registrants on its MUR rather than by a public notice in a newspaper.

Where a particular requirement falls within a specific category of works or services within the MUR Council will send a copy of its invitation for tenders to all contractors which are registered within that particular category.

An explanation of how the MUR works and how suppliers may apply to be registered on it appears on Council's web-site at www.ccc.tas.gov.au/codefortenders.

4.3 Multiple-stage tenders

Multiple-stage tenders are generally reserved for very specialized procurement requirements and are not commonly used by Council. They comprise a two-stage process by which, in the first stage, expressions of interest are invited by public notice from potential suppliers. From those expressions of interest a short-list of preferred suppliers is decided on and then, as the second stage of the process, formal invitations to tender for Council's requirements are extended to those short-listed respondents.

A more detailed explanation of the multiple-stage tender process and how it works appears in regulation 26 of the Regulations. In using this process Council is obliged to and will comply with the process prescribed by that regulation.

5 Procurement processes for contracts below the Prescribed Amount

While the tender processes for the procurement of goods and services where the value of supply contracts are likely to be above the Prescribed Amount are regulated in the ways detailed in Part 4, Council is able to determine its own internal processes for procurements of a value below the Prescribed Amount provided such processes comply with the general principles and requirements of the Act and the Regulations.

What follows is an outline of the procurement processes which Council will (with the exception of formally approved preferred supplier arrangements) implement in cases where the value of a contract for goods or services is not likely to exceed the Prescribed Amount and where 3 written quotes are required and how the MUR may be used as an alternative. Those processes are divided into categories depending on the likely value of the relevant purchase.

Purchases between \$15,000 and \$100,000 (GST Exclusive)

- At least 3 written quotes are required to be sought. Such quotes can be obtained by direct contact with the supplier and/or through using Council's Multiple-Use Register.

Purchases between \$100,000 and \$250,000 (GST Exclusive)

- Written quotes are to be sought either by the invitation of responses from all registrants within the relevant category of the Council Multiple-use Register or by public advertisement (through available print and electronic and social media) in circumstances where the skills, services or product sought is not sufficiently covered by registrants in the Multiple-Use Register or where the use of the Multiple-Use Register will not provide sufficient market contestability for the product or services sought; and
- Advertisements are to specifically invite quotations (ie invitation for quotations and **not** tenders);

6 Use of the MUR for contracts valued at under the Prescribed Amount.

With the exception of purchases of goods and services for less than \$15,000 Council requires goods or services (including works) which fall within a current category of Council's MUR all registrants within the relevant category will be invited to provide a quotation to provide the required goods or services (including works).

7 Exemptions from tender or quotation processes

The Act states that in certain prescribed situations or prescribed contracts the requirements to call tenders by way of open tender, use of the MUR or by multi-stage tender do not apply. Those situations and contracts which are set out in regulation 27 of the Regulations are:

- (a)** an emergency, if, in the opinion of the general manager, there is insufficient time to invite tenders for the goods or services required in that emergency;
- (b)** a contract for goods or services supplied or provided by, or obtained through, an agency of a State or of 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 –
 - (i)** another council; or
 - (ii)** a single authority or a joint authority; or
 - (iii)** the Local Government Association of Tasmania; or
 - (iv)** any other local government association in this State or in another State or a Territory; or
 - (v)** any organisation, or entity, established by any other local government association in this State or in another State or a 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;

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- (i)** a contract for goods or services, if the council resolves by absolute majority and states the reasons for the decision, being that a satisfactory result would not be achieved by inviting tenders because of –
 - (i)** extenuating circumstances; or
 - (ii)** the remoteness of the locality; or
 - (iii)** the unavailability of competitive or reliable tenderers;
 - (j)** a contract of employment with a person as an employee of the council.