



Code for Tenders and Contracts

Endorsed by Council on [24 November 2016](#)

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1. INTRODUCTION

1.1. Preface

- 1.1.1. This Code is intended as a guide to the overarching standards of ethics and best practice procurement principles and practices to be applied by Council personnel when dealing with suppliers in seeking Tenders and Quotations. The Code also sets out the ethical behaviour that Council expects Service Providers (including contractors, subcontractors, consultants and suppliers) to demonstrate when doing business with Council.
- 1.1.2. This Code covers the procurement of all goods and services and building/construction and civil works procurement, including the purchase of consulting services and asset maintenance and improvement works. Plant and equipment purchases are also covered by the Code. Property transactions, leasing and disposals are not covered by the Code.

1.2. Purpose of the Code

- 1.2.1. This Code provides a statement of ethics which underline best practices to be applied by Council officers with a role in organising or participating in procurement and Service Providers when offering to provide Council with goods, services or works and when engaged by Council to supply it with goods, services or works.

1.3. Scope of the Code

- 1.3.1. The Code places an obligation of refusal to condone unacceptable or unconscionable conduct on Council and on Service Providers. Therefore, it is intended that the Code will apply to Council, Council's employees and agents and any Service Provider wishing to compete for Council business or provide goods, services or works to Council (including contractors, subcontractors, consultants and suppliers).
- 1.3.2. In so far as is reasonably possible, Service Providers engaged by Council will apply the Code when seeking Tenders or Quotations from subcontractors and suppliers. Additionally, the Code applies to Council Procurement Processes (Tenders and Quotations) for all of Council's Requirements.

1.4. Application of Alternative Standards

- 1.4.1. The Council may, if it deems appropriate, elect to apply the following standards in place of this Code:
- AS 4120-1994 (the Australian Standard Code of Tendering for the Construction Industry); or
 - AS 4121-1994 (the Australian Standard Code of Ethics for the Selection of Consultants).

- 1.4.2. If AS 4120 or AS 4121 is to be applied in place of this Code, the Council officer responsible for coordinating the purchase will ensure that prospective Service Providers are advised at the time Tenders or Quotations are invited.

1.5. Legislative Requirements

- 1.5.1. The Council's specific legislative and regulatory obligations with respect to procurement are set out under:
- a) Section 333A and Section 333B of the *Local Government Act 1993* ("the Act"); and
 - b) Regulations 23-29 of the *Local Government (General) Regulations 2015* ("the Regulations").

1.6. Methods of Procurement

- 1.6.1. In respect to purchases valued at or in excess of the prescribed amount under Section 333A(1) of the *Local Government Act 1993* ("the Prescribed Amount"), Council will undertake the Procurement Processes in accordance with Part 3 Division 1 of the *Local Government (General) Regulations 2015*.
- 1.6.2. In respect of purchases for goods, services or works that are:
- a) valued at less than the Prescribed Amount; and
 - b) available under a Common-use Contract sole supplier arrangement,
- Council may, after having sought a written Quotation from that supplier purchase from that supplier without need to seek further quotes.
- 1.6.3. In respect of purchases for goods, services or works that are:
- a) valued at less than the Prescribed Amount; and
 - b) available under a Common-use Contract panel arrangement,
- Council may enter into a contract after having sought the following number of written Quotations from panel members able to provide the goods, services or works:
- i. Less than \$10,000 (GST exclusive) – Council will only enter into a contract if the value of the goods, services or works has been ascertained and appropriately documented prior to making the purchase.
 - ii. In excess of \$10,000.00 (GST exclusive) and less than \$50,000.00 (GST exclusive), – at least two (2) written Quotations have been sought.

iii. In excess of \$50,000.00 (GST exclusive) but not equal to or exceeding \$250,000.00 (GST exclusive), – at least three (3) written Quotations have been sought.

1.6.4. In respect of purchases for goods, services or works that are not available under a Common-use Contract and valued at or in excess of \$100,000.00 (GST exclusive) but not equal to or exceeding the Prescribed Amount, Council will only enter into a contract where:

- a) at least three (3) written Quotations have been sought in the Approved Form from suitable contractors able to provide the required goods, services or works; or
- b) a request for Quotation in the Approved Form has been posted on Council's e-tendering portal.

1.6.5. In respect of purchases for goods, services or works that are:

- a) not available under a Common-use Contract; and
- b) valued at or in excess of \$50,000.00 (GST exclusive) but not equal to or exceeding \$100,000.00 (GST exclusive),

Council will only enter into a contract where at least three (3) written Quotations have been sought in the Approved Form from suitable contractors able to provide the required goods, services or works.

1.6.6. In respect of purchases for goods, services or works that are valued at or in excess of \$10,000.00 (GST exclusive) and less than \$50,000.00 (GST exclusive),

Council will only enter into a contract where at least two (2) written Quotations have been sought in the Approved Form from suitable contractors able to provide the required goods, services or works.

1.6.7. In respect of purchases for goods, services or works that are valued at less than \$10,000.00 (GST exclusive), Council will only enter into a contract if the value of the goods, services or works has been ascertained and appropriately documented prior to making the purchase.

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1.7. Non-application of the Public Tender Process

1.7.1. In accordance with section 27 of the *Local Government (General) Regulations 2015*, the requirement for public tendering does not apply for the followings situations:

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;

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- 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;
- 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.

Instances of non-application of the tender process under section a) and i) above, must be included in the Council's Annual Report.

All instances where an exemption from the requirement to seek 3 written quotes, pursuant to the City of Hobart Purchasing Policy and Guidelines, has been granted must be reported to Council on a quarterly basis.

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2. COUNCIL PROCUREMENT PRINCIPLES

2.1. Procurement Principles

- 2.1.1. Council purchasing must be conducted legally and by encouraging fair and open competition between Service Providers seeking to do business with Council. The core objective of any Council Procurement Process is to achieve the required outcomes and obtain value for money.
- 2.1.2. The Council Purchasing Principles below provide Council officers and Service Providers with an overview of the meanings applied to each principle in the context of Council procurement. The sections of this Code covering ethics and conduct sets out in more detail the accepted minimum standards of ethics and behaviours that Council expects Council officers and Service Providers to adhere to when participating in a Procurement Process.

Principle	Description	This means
Value for money	Achieving the desired outcome at the best possible price	<p>Weighing up the benefits of a purchase against the cost. Factors which may be considered when determining value for money include:</p> <ul style="list-style-type: none"> a) fitness for purpose; b) whole-of-life costs over the lifetime of the product, good or service; c) advantages of buying locally (e.g. shorter delivery lead-times, availability of local back-up and servicing and availability of spare parts); d) supplier's capacity and ability, including management and technical capability and physical and financial resources; e) climate change and environmental considerations and energy conservation; f) contribution to achieving Council's policy or strategic objectives; g) social or community benefit; h) risk assessment; i) quality assurance; and j) disposal value.

Principle	Description	This means
Ethical purchasing standards	Acting ethically, being fair and unbiased and complying with the law in all dealings with Service Providers	<p>Applying the following standards of ethics and ethical behaviours when dealing with suppliers:</p> <ul style="list-style-type: none"> k) conducting all business in the best interest of Council, avoiding any situation which may, or which could be deemed to, impinge on impartiality; l) ensuring Council monies are spent effectively and in accordance with Council policies; m) acting without favour or prejudice; n) complying with legal requirements; o) always seeking to maximise the value for money in all transactions; p) maintaining confidentiality at all times in dealings with Service Providers; q) declining gifts, gratuities or any other benefit which may, or could be deemed to, influence equity or impartiality; not disclosing the bid of one Service Provider to any other provider in order to play Service Providers off against one another; and r) avoiding the purchase of Dumped Goods.
Encouraging open and effective competition	Ensuring that the Procurement Process is impartial, open and focussed on encouraging competitive offers	<p>Ensuring an open and effective Procurement Process by:</p> <ul style="list-style-type: none"> s) putting transparent, open purchasing procedures in place; t) ensuring the market is adequately tested by seeking an appropriate number of Quotations or calling for public Tenders; u) avoiding use of biased or proprietary Specifications; v) if requested, de-briefing unsuccessful providers; and w) treating all Service Providers consistently and equitably.
Enhancing opportunities for Local Business	Where local capacity exists, actively seeking to engage the local market and encourage their participation in Tender and Quotation processes.	<ul style="list-style-type: none"> x) actively seeking quotes from Local Businesses; and y) where local capability exists, ensuring that the discretionary elements of Specifications do not prevent Local Businesses from competing. <p>Enhancing opportunities for Local Business does not mean giving preferential treatment to local Service Providers.</p>

2.2. Ethics and Conduct – Council Officers

- 2.2.1. Council officers, or any other person or entity making a purchase on Council's behalf, will comply with the following ethical standards of behaviour:
- a) the Procurement Process will be undertaken in accordance with Council's Procurement Principles;
 - b) actual or potential conflicts of interest will be declared before inviting offers and measures put in place to appropriately manage any actual or potential conflicts of interest, monetary or otherwise;
 - c) accurate records of all dealings in respect to the purchase will be maintained during and after the process;
 - d) declining to accept any payments, gifts, gratuities, entertainment/hospitality and other benefits offered by a Service Provider for the discharge of official duties;
 - e) avoiding any situation which is, or which may become, or which may be perceived as being a conflict of interest with the person's official duties;
 - f) avoiding any relationship with a Service Provider, financial or otherwise, which could be perceived as unfair or improper influence on their judgement, or which could expose Council to allegations or perceptions of impropriety or unwarranted preference or unfair dealings or which could represent a breach of legislation; and
 - g) for any person with no legitimate role in the Procurement Process, not attempting to intervene or exert influence on the outcomes of the Procurement Process, in particular not communicating or implying any preference for the selection of a particular Service Provider.
- 2.2.2. Whenever dealing with Service Providers, Council officers will:
- a) clearly convey the Council's Requirements in an understandable manner and ensure that all Service Providers are provided with identical information upon which to base their Tender or Quotation;
 - b) ensure that Service Providers are provided with a Specification or other statement of the Council's Requirements, which is sufficient to ensure that Service Providers are not required to undertake unreasonable unpaid design or other work in order to prepare a Tender or Quotation;
 - c) ensure that a Service Provider is not provided with any information or clarification of the Specification, which is not equally provided to all other Service Providers;

- d) as far as is practicable, ensure that the Specification does not restrict competition, prevent Local Businesses from submitting a Tender or Quotation or reflect bias to any brand or proprietary system or method of work;
- e) in so far as possible, ensure that the Specification does not act as a barrier to innovation;
- f) if any particular Conditions of Participation or Conditions of Tender, or Conditions of Contract apply, advise Service Providers of these when inviting offers;
- g) advise Service Providers of the evaluation criteria, and if applicable the weightings, which will be used to evaluate offers at the time of invitation and ensure that the same criteria are used to evaluate all of the offers received;
- h) if offers are to be evaluated using weighted criteria, apply the process for Tender evaluation set out under the Tender Practices section of this Code;
- i) ensure that the Conditions of Contract are not excessively onerous; and
- j) not solicit or accept remuneration or other benefit from a Service Provider for the discharge of official duties.

2.3. Ethics and Conduct – Service Providers

2.3.1. Whenever participating in a Council Procurement Process in any capacity whatsoever, a Service Provider:

- a) will ensure they are acquainted with Council's Requirements and all matters relating to the Tender or the Quotation and the proposed contract;
- b) will not submit a Tender or Quotation unless they have the financial, technical, physical, management, resource, ethical and other capabilities to fulfil the Council's Requirements;
- c) will apply Council's Purchasing Principles and the standards and ethics required by this Code in its dealings with contractors, subcontractors, suppliers or agents;
- d) must not engage in any uncompetitive behaviour or other collusive practices, which deny or reduce legitimate business opportunities to other potential suppliers or Council;
- e) must at all times act in observance of all laws;
- f) must not

- (i) engage in acceptance or provision of secret commissions,
 - (ii) collude with other suppliers, potential or otherwise,
 - (iii) submit inflated prices to advantage another potential Service Provider,
 - (iv) enter into improper commercial arrangements with other contractors, subcontractors, suppliers or agents,
 - (v) seek to influence the Procurement Process by any improper means whatsoever,
 - (vi) accept incentives to provide contracts or services to other contractors, subcontractors or agents; and
- g) must declare any matter or issue which is, or which may lead to or which could be perceived as, a conflict of interest regarding their participation in a Procurement Process or a contract to fulfil the Council's Requirements immediately upon the Service Provider becoming aware of the matter or issue.

2.3.2. If engaged by Council to provide goods, services or works of any nature a Service Provider will:

- a) act in a polite and courteous manner towards the Council's employees and agents and towards members of the general public;
- b) refrain from the use of aggressive or foul language and expressions and not act in an aggressive or threatening manner towards Council's employees and agents and towards members of the general public;
- c) in so far as is reasonably possible apply the standards and ethics required by this Code in its dealings with any contractors, subcontractors, suppliers or agents;
- d) put in place and maintain policies, systems and procedures for workplace health and safety management; environmental management; and quality assurance, appropriate to the applicable level of complexity and risk associated with performance of the Council's Requirements;
- e) comply with the provisions of awards and workplace arrangements which have been certified, registered or approved under relevant industrial relations legislation;
- f) comply with all applicable legislative, regulatory and statutory requirements, including Acts of the Commonwealth and State, regulations, by-laws and proclamations made or issued under such

Acts and lawful requirements or directions of public and other authorities;

- g) make payments to employees, subcontractors, suppliers, consultants and agents in a timely manner; and
- h) not offer gifts, gratuities, entertainment/hospitality and other benefits to a Council officer for the discharge of official duties.

2.3.3. Service Providers must not collude to influence the outcomes of a Procurement Process. Collusive behaviour includes, but is not limited to:

- a) agreements between Service Providers as to who should be successful in winning Council's business;
- b) any meeting of Service Providers prior to the submission of their Tender or Quotation that may disadvantage Council;
- c) exchange of information between Service Providers about their Tenders prior to the awarding of the contract or selection of the successful Service Provider;
- d) agreement between Service Providers for payment of money or securing of reward or benefit for unsuccessful Service Providers by the successful Service Provider;
- e) agreement or collaboration between Service Providers to fix prices or Conditions of Contract;
- f) submission of a cover Tender or Quotation or any assistance to another person to submit such a cover Tender or Quotation, that is intended to advantage another Service Provider or disadvantage Council;
- g) any unlawful or illegitimate agreement between Service Providers before submission of Tenders or Quotations such as fixing a special rate of payment to a third party where the payment of such fees is conditional on that Service Provider being awarded a Contract; and
- h) any unlawful or illegitimate agreement providing for payment to any third party of money, incentives or other concessions contingent on the success of a Service Provider which do not relate to the provision of bona fide services relevant to that Tender or Quotation.

2.4. Breach of the Code

- 2.4.1. Council will take all reasonable steps to comply with the ethics and principles set out under this Code. However, Council will not be liable in any way to a Service Provider or any person for any breach of this Code.
- 2.4.2. If any employee of the Council, or a body controlled by the Council, breaches this Code Council may take disciplinary action if, in its absolute discretion, it considers it desirable to do so.
- 2.4.3. If a Service Provider commits a breach of this Code, Council may, in its absolute discretion, take action against that Service Provider. Action may include, but not be limited to:
- a) giving a warning to the Service Provider;
 - b) a reduction in future opportunities for that Service Provider to bid (i.e. submit Tenders or Quotations);
 - c) Council refusing to consider any Tender or Quotation submitted by that Service Provider;
 - d) publication of the breach and identification of the Service Provider;
 - e) reporting of the breach to a statutory, professional or other relevant body;
 - f) termination or suspension of the Service Provider's engagement; and/or
 - g) legal action against the Service Provider.

2.5. Confidentiality

- 2.5.1. The confidentiality obligations of Council and Service Providers will be stated in the Conditions of Tendering and Conditions of Contract.

2.6. Dumped Goods

- 2.6.1. Dumped Goods can harm Australian businesses and can hinder the establishment of an Australian industry for the goods. Dumped Goods and goods that are under investigation by the Australian Customs and Border Protection Service as suspected of being Dumped Goods can be identified by checking the Australian Customs and Border Protection Service website.
- 2.6.2. Where Council identifies or suspects that a Tender includes Dumped Goods, the Tender may be rejected.

2.7. Ethical Standards

2.7.1. The Council has agreed to only support and /or contract companies, institutions and organisations that refuse to support or profit from practices which abuse the fundamental human rights of asylum seekers. A company that is not abusive is one which:

- a) Has zero tolerance for child abuse, in policy and practice;
- b) Respect people's fundamental rights to freedom from arbitrary and indefinite detention;
- c) Does not treat people in a cruel, inhumane or degrading manner; and
- d) Commits to transparency and independent monitoring to ensure these principles are upheld.

When submitting a Tender or Quotation Service Providers are required to complete a declaration that they or their company's holdings do not provide services to Detention Centres.

2.8. Debriefing Unsuccessful Service Providers

2.8.1. Unsuccessful Service Providers will be provided with an opportunity for a debriefing to assist them to improve their ability to successfully bid for future Council requirements.

2.8.2. Debriefings are offered in order to promote continual improvement of submissions provided to the Council by prospective Service Providers. This is achieved by offering unsuccessful Service Providers with a learning opportunity as to their capabilities relative to the Council's Requirements and expectations and by identification of where opportunities for improvement exist.

2.8.3. The debriefing process is not to be used as a means of contesting the outcomes of a Procurement Process, and will not be used as a means of exploring the merits of other Service Providers' submissions with an unsuccessful Service Provider.

2.9. Procurement Complaints

2.9.1. A complaint about procurement can be communicated to Council via the process for making a complaint contained in Council's Customer Service Charter, which may be obtained via Council's website (www.hobartcity.com.au)

2.10. Reporting

2.10.1. Where in a financial year, a contract, for the supply or provision of goods or services valued at or exceeding the Prescribed Amount is, entered into, or extended under regulation 23(5)(b) of the Regulations, Council's annual report for that financial year will include the following information:

- a) a description of the contract;
- b) the period of the contract;
- c) the periods of any options for extending the contract;
- d) the value of any tender awarded or, if a tender was not required, the value of the contract (excluding GST);
- e) the business name of the successful contractor;
- f) the business address of the successful contractor; and
- g) any other prescribed matter.

2.10.2. Where approval has been given for non-application of the Tender process in accordance with regulation 27(a) and (i) of the Regulations, Council's annual report will include the following information:

- a) a brief description of the reason for not inviting public tenders;
- b) a description of the goods or services acquired;;
- c) the value of the goods or services acquired; ; and
- d) the name of the contractor.

2.10.3. Where in a financial year, a contract, for the supply or provision of goods or services valued at or exceeding \$100,000.00 (excluding GST) but less than the Prescribed Amount is, entered into, or extended, Council's annual report for that financial year will include the following information:

- a) a description of the contract;
- b) the period of the contract;
- c) the periods of any options for extending the contract;
- d) the value of the contract (excluding GST);
- e) the business name of the successful contractor;
- f) the business address of the successful contractor; and
- g) any other prescribed matter.

2.10.4. For purchases with a value equal to or exceeding the value where three written Quotations are required, the number of instances of non-application of the requirement to obtain three written Quotations according to reason will be reported to the General Manager. Such reporting will be undertaken in the course of Council's routine financial reporting activities.

2.11. Calculating the Value of a Purchase

- 2.11.1. The value of a contract must be estimated prior to seeking Tenders or Quotations and the contract value must not be underestimated in order to avoid the requirement to seek Tenders or Quotations.
- 2.11.2. The duration of a contract (including standing offers for the supply of goods, service and works, or any combination thereof) must be based on the contract period that best fits Council's business, operational and risk management requirements. A shorter contract period must not be selected in order to avoid the requirement to seek Tenders.
- 2.11.3. A purchase must not be split into multiple smaller purchases in order to avoid the requirement to seek Tenders or Quotations.
- 2.11.4. Where relevant, provisional sums, prime cost items, allowances for contingency sums and the like are to be included in the estimated value of a purchase.

2.12. Authority to Award Contracts

- 2.12.1. The authority to award Tenders and Quotations, and enter into contracts, will be in accordance with the approved Delegate under the financial delegations set out in Council's Delegation Register.

2.13. Goods and Services Tax (GST)

- 2.13.1. All procurement thresholds are GST exclusive.
- 2.13.2. Tenders and Quotations shall be sought on a GST exclusive basis.

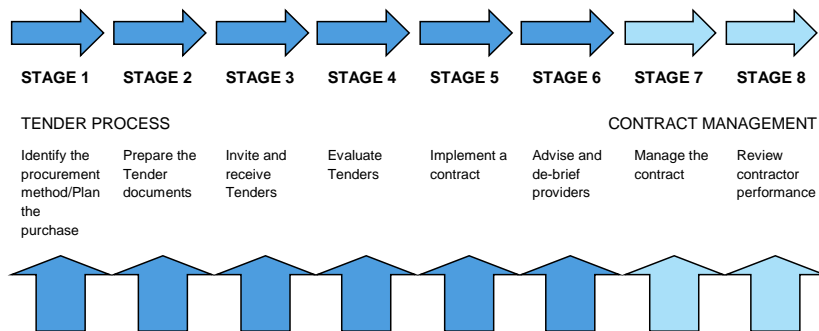
3. TENDER PRACTICES

3.1. Tender Practices – Scope and Purpose

- 3.1.1. These Tender practices must be applied to all procurements where a public Tender is required. These Tender practices may, at Council's discretion, be applied to a Quotation process.
- 3.1.2. The purpose of these Tender practices is to ensure all Council Tenders are conducted in a fair and uniform manner.
- 3.1.3. In the event of any inconsistency between these Tender practices and the Conditions of Tendering issued in respect to a Tender process, the Conditions of Tendering will prevail.

3.2. Tender Process Outline

- 3.2.1. Stages 1-6 (inclusive) of the following diagram identify the steps in the Council Tender process:



CONTINUALLY IMPROVE PROCESSES, PROCEDURES AND DOCUMENTATION BY FEEDING BACK THE LESSONS LEARNED OUT OF A TENDER PROCESS INTO THE NEXT TENDER PROCESS OR OTHER SIMILAR TENDER PROCESSES

3.3. Conduct and Ethics

- 3.3.1. Generally, the Council Purchasing Principles will apply.

3.4. Exclusions

- 3.4.1. These Tender practices do not apply to the following activities:
 - a) design and execution of works of art;
 - b) grants of assistance;
 - c) donations
 - d) property transactions;

- e) leasing; and
- f) disposals, other than the sale of Council plant by way of trade-in at the time of seeking Tenders for replacement items.

3.5. Administration of Tenders

- 3.5.1. Council routinely seeks Tenders for a range of activities and requirements including consultancy work, construction and maintenance works, and the purchase of goods, equipment and general services. It is a mandatory requirement that Council's public Tendering framework is administered by the Council's Financial Services Division.
- 3.5.2. Public tender processes may be conducted on Council's behalf by Council's Financial Services Division or by procurement staff located in the Project Delivery Unit in Council's City Infrastructure Division.
- 3.5.3. Except where the Delegate has sought and has been granted an exemption from public tendering per regulation 27 of the Regulations , public Tenders must be called in accordance with the *Local Government Act 1993* for all projects or purchases with an estimated GST exclusive value equal to or greater than the Prescribed Amount.
- 3.5.4. Tenders may, at the Delegate's discretion, be called for any Council project or purchase with an estimated value less than the prescribed amount under the Act where the Delegate determines that:
 - a) use of a formal Tender process is required or advisable due to the complexity, importance or organisational impact of Council's Requirements;
 - b) it is likely or reasonably probable that Council would be exposed to a high level of risk due to the purchase; or
 - c) use of formal Conditions of Contract are required or advisable.

3.6. Administration of Quotations

- 3.6.1. It is a mandatory requirement that Council's procurement and Quotation frameworks are administered by the Council's Financial Services Division.
- 3.6.2. All Quotations being sought for the supply or provision of goods or services valued at or exceeding \$100,000.00 (excluding GST) but less than the Prescribed Amount must be issued with a unique identifier by Central Procurement, prior to the Quotation being sought.
- 3.6.3. The Financial Services Division or procurement staff located in the Project Delivery Unit in Council's City Infrastructure Division may administer Quotation processes on behalf of other Council Divisions if the

Delegate determines that the requirement is of a complex or high risk nature, or if engagement under a formal contract is required.

3.7. Competitive Neutrality

- 3.7.1. Council will only accept Tenders from other Local Government Authorities, Government bodies or public sector suppliers where, to the extent possible, the price reflects the full commercial cost.
- 3.7.2. Before considering a Tender submitted by or on behalf of another Local Government Authority or a Government body or a public sector supplier, written confirmation that the price has been calculated on a full commercial cost basis under competitive neutrality conditions will be obtained.
- 3.7.3. If competitive neutrality cannot be confirmed, or the Local Government Authority, Government body or public sector supplier fails to provide satisfactory written confirmation as to the competitive neutrality of their Tender, the Tender shall be declined.

3.8. Tender Records

- 3.8.1. A unique identifier will be allocated to all Tenders. Once the contract is awarded the unique identifier will provide the unique identifier for the contract. The unique identifier must be referred to on all correspondence and other documentation relating to the Tender and the contract.
- 3.8.2. Appropriate records are to be maintained throughout the duration of a Tender process.

3.9. Planning the Purchase

- 3.9.1. The following actions are required prior to preparing the RFT:
 - a) verifying that the appropriate Delegate has approved undertaking the purchase;
 - b) establishing the objectives of the purchase and preparing the Specification, which will clearly convey Council's Requirements to Service Providers;
 - c) identifying the correct purchasing method, including:
 - i. determining if Council's own workforce has the capability to fulfil the Council's Requirements;
 - ii. determining if there is an appropriate common use contract; and
 - iii. determining if there is a need for a whole of Council contract arrangement;

- d) valuing the purchase and, at a minimum, complying with the purchasing thresholds set out under this Code;
- e) confirming sufficient funds are available;
- f) the Tender has been approved by the appropriate Director;
- g) establishing the evaluation committee, their roles and responsibilities;
- h) defining any mandatory Conditions of Participation or compliance criteria that a potential provider will be required to meet in order to have their Tender considered; and
- i) defining the evaluation criteria (and weightings if applicable) which will be used to evaluate Tenders and select the successful Service Providers(s).

3.10. Preparing the RFT

3.10.1. Conditions of Tendering

3.10.1.1. The RFT must include Conditions of Tendering, setting out the terms under which a Tender will be accepted for evaluation, including at a minimum:

- a) a unique identifier number;
- b) the place for lodgement of Tenders;
- c) lodgement instructions;
- d) the Closing Time and place;
- e) specific lodgement requirements, including the information to be submitted with a Tender;
- f) a single nominated contact officer, to which all enquiries concerning the RFT must be submitted;
- g) the procedure for responding to enquiries and amending or clarifying the RFT documents;
- h) any other matters relating to the RFT process, including details of pre-tender briefings and conferences and site inspections;
- i) mandatory Conditions of Participation or compliance criteria applicable to the RFT;
- j) evaluation criteria and weightings and the method of selecting the Preferred Tenderer; and

- k) reference to the applicable code of conduct (i.e. this Code for Tenders and Contracts or the alternative Code applicable to the RFT).

3.10.2. Specification

3.10.2.1. A complete Specification, which describes the extent of the requirements and particulars of the manner or method of the performance of Council's Requirements, must be provided for each RFT.

3.10.2.2. The Specification must, at a minimum include:

- a) a description of Council's Requirements, which is sufficient to ensure that a Service Provider is not required to undertake an unreasonable amount of design work or other effort in preparing and lodging a Tender;
- b) mandatory requirements and minimum fitness for purpose and quality standards; and
- c) health and safety and environmental management requirements.

3.10.2.3. The Specification must allow participation by local Service Providers wherever local capacity exists and must not restrict competition to be biased towards a particular brand or Service Provider.

3.10.3. Conditions of Contract

3.10.3.1. Service Providers must be provided with or advised of the terms and conditions of the contract that a successful tenderer will be required to agree to.

3.10.3.2. The RFT will include either:

- a) the Conditions of Contract or other document setting out the contractual terms defining the obligations and rights of the parties to a contract; or
- b) reference to the Australian Standard conditions of contract, or other Conditions of Contract, applicable to the RFT.

3.10.3.3. Any Annexures, schedules or exhibits to the Conditions of Contract must also be issued with the RFT.

3.10.4. Tender Forms

3.10.4.1. At a minimum, Service Providers must be provided with a properly structured Tender form, on which to make their Tender.

3.11. Inviting and Receiving Tenders

- 3.11.1. The Invitation to Tender must be in the form of a public advertisement, which at a minimum provides:
- a) a description of the Council's Requirements;
 - b) the Closing Time;
 - c) instructions on how to obtain the Tender documents;
 - d) details of Tender deposits or other payments tenderers are required to make in order to obtain the Tender documents (if applicable); and
 - e) the times and dates for pre-tender meetings (if applicable).
- 3.11.2. At a minimum, the Invitation to Tender will be placed in the Tenders section of the Wednesday or Saturday edition of the Hobart Mercury and will be posted on the internet.
- 3.11.3. All Tenders will be allocated with a Closing Time, specifying the time and date by which Tenders must be submitted. The Closing Time must be included in the Conditions of Tendering and the Invitation to Tender.
- 3.11.4. Tenderers will be provided with sufficient time between issuing of the Invitation to Tender and the closing date in which to prepare their Tenders.
- 3.11.5. Unless Council's operational needs require otherwise, submission of Tenders will not be required:
- a) before 2.00pm;
 - b) on a Monday or any day immediately after a day which is a declared statutory public holiday in Tasmania; or
 - c) between the dates of 24 December to 2 January (inclusive).
- 3.11.6. Council may amend the Closing Time for Tenders by issuance of a written notice to all parties in receipt of the RFT.
- 3.11.7. Council will nominate a Council officer or other representative (the "contact person") to deal with RFT enquiries. All enquiries about a RFT must be directed to the contact person.

- 3.11.8. Information not included in the RFT documents, which is provided to a potential tenderer, will be equally provided to all other potential tenderers.
- 3.11.9. Details of potential tenderers issued with the RFT documents must be recorded in an appropriate manner.
- 3.11.10. Clear instructions on how to lodge a Tender will be provided in the Conditions of Tendering.
- 3.11.11. A tenderer must comply with the lodgement instructions given in the Conditions of Tendering. The Council may reject any Tender which is not lodged in accordance with the lodgement instructions, without consideration.
- 3.11.12. Any Tender received after the Closing Time for Tenders will not be considered unless the Council is of the opinion, and the Council's decision shall be final, binding and not open to dispute, that:
 - a) the cause of the lateness was beyond the tenderer's control:
 - b) consideration of the late Tender would not provide an unfair advantage to the tenderer submitting the late Tender; and
 - c) consideration of the late Tender would not compromise the Tender process.
- 3.11.13. Council reserves the right to amend any of the documents comprising an RFT or provide clarification of any matter relating to a RFT prior to the Closing Time.
- 3.11.14. If a RFT is amended or clarification of a RFT matter, other than clarification of the RFT process, is required, Council will issue a notice of addendum via the internet.
- 3.11.15. Tenderers will be provided with sufficient time to allow for incorporation of the requirements of any addenda issued in their Tender submission.
- 3.11.16. Council may allow tenderers, which have already submitted a Tender, to lodge an amendment to their Tender, provided that any such amendment is lodged in accordance with the Conditions of Tendering prior to the Closing Time.
- 3.11.17. A tenderer must acknowledge receipt of any addenda issued during the Tender period with its Tender submission, failure to acknowledge receipt of addenda will be grounds for rejection of Tender.
- 3.11.18. The opening of Tenders will not be public.
- 3.11.19. Council will provide the facility for lodgement of Tenders via the internet.
- 3.11.20. Tender submissions will not be opened until the time set for the closing of Tenders has elapsed.

- 3.11.21. Tender submissions will be opened in the presence of at least three Council officers and the Tender submissions received will be clearly identified and recorded upon opening.
- 3.11.22. If a tenderer is provided with the opportunity to correct unintentional errors of form between the opening of submissions and nomination of a Preferred Tenderer, the same opportunity to correct unintentional errors will be provided to all other tenderers.
- 3.11.23. A tenderer may withdraw its Tender at any time prior to acceptance of the Tender, by providing Council with written notification.
- 3.11.24. A Tender must remain valid for the period of time required by the Conditions of Tendering.

3.12. Tender Evaluation

- 3.12.1. Unless the Conditions of Tendering expressly state an alternative method, Tender evaluation will be carried out in accordance with the principles and practices set out in this Code.
- 3.12.2. A Tender will be initially be assessed for conformance, a conforming tender will be taken to mean a Tender which:
 - a) is lodged by the Closing Time and in compliance with the requirements of the Conditions of Tendering; and
 - b) meets the mandatory requirements of the Specification.
- 3.12.3. Council will consider any conforming Tender on its merits.
- 3.12.4. Council may reject, as a non-conforming Tender, any Tender which:
 - a) is not submitted in conformance with the Conditions of Tendering;
 - b) is incomplete or which contains insufficient information to allow Council to carry out a valid evaluation in accordance with the procedure for evaluating Tenders set out in this Code; or
 - c) contains provisions not permitted or required by this Code, the Conditions of Tendering, Conditions of Contract, Specification and/or other documents issued by Council in respect to a Tender for tendering purposes.
- 3.12.5. Council reserves the right to exclude any Tender from evaluation which, in the Council's judgement, is excessively low or high in price so as to have an effect on the relativity of other Tenders.
- 3.12.6. Tenders will be evaluated with the aim of determining the Tender submission which offers the best value for money outcomes to Council.
- 3.12.7. When assessing value for money, Council may:

- a) in addition to price, take into account any non-price criteria that it considers relevant to the successful performance of Council's Requirements and achievement of the Council's desired commercial and other outcomes, including but not necessarily limited to the Council Purchasing Principles; and
 - b) apply a weighting to the price and non-price criteria.
- 3.12.8. The evaluation criteria and weightings must be determined before finalising the RFT and must be disclosed to tenderers in the Conditions of Tendering.
- 3.12.9. Selection and manner of application of the evaluation criteria and weightings will be at the sole discretion of Council. Council will not be liable to any tenderer for the application, or non-application, of any evaluation criterion or weighting.
- 3.12.10. During the evaluation process, Council may request additional information from any tenderer in order to clarify matters in doubt or not made clear by the Tender submission. However, a tenderer will not be provided with the opportunity to revise or amend its Tender price or submit additional information in order to make a non-conforming Tender into a conforming tender.

3.13. Alternative Tenders

- 3.13.1. Council may consider any Tender which meets the Council's Requirements in an alternative and practical manner provided that it meets the totality of those requirements (i.e. Council may consider an "Alternative Tender").
- 3.13.2. Alternative Tenders may relate to the functional, performance and technical aspects of the requirements or to opportunities for more advantageous commercial arrangements.
- 3.13.3. Council may either consider Alternative Tenders on their merits or reject Alternative Tenders without consideration at its discretion.

3.14. Tender Rejection and Acceptance

- 3.14.1. Council is not obliged to accept the lowest or any Tender.
- 3.14.2. Council may reject all Tenders.
- 3.14.3. Council may accept a conforming or Alternative Tender.
- 3.14.4. If the Council rejects all Tenders, it will advise all tenderers accordingly in writing.

- 3.14.5. Council will advise all tenderers of the outcome of the Tender process in writing. Unsuccessful tenderers will also be provided with the name of the successful tenderer.
- 3.14.6. The requirements for acceptance of Tender and contract formation will be specified in the RFT.

3.15. Tender Negotiations

- 3.15.1. During the evaluation process, Council reserves the right to negotiate with a tenderer or tenderers in order to:
 - a) assess a tenderer's understanding of the Council's Requirements, test any assumptions made by a tenderer in determining their Tender prices(s) and rectify any false assumptions;
 - b) obtain clarification of matters in relation to the tenderer's capability to fulfil the Council's Requirements;
 - c) enhance the commercial benefit to Council by achieving cost reductions or service improvements; and
 - d) finalise the commercial terms required to form a contract.
- 3.15.2. Council will not enter into negotiations which result in substantial modification to the Council's Requirements or which would lead to a non-conforming Tender becoming a conforming tender.
- 3.15.3. The outcomes of Tender negotiations will be reflected in the final contract documentation.
- 3.15.4. In the course of negotiations with a tenderer, Council will not disclose the details of any other Tender submissions.

3.16. Glossary of Terms

Term	Definition
Alternative Tender or Quotation	A Tender or Quotation which meets all of the Council's Requirements, but in a manner different to that specified.
Approved Form	The process and format approved by Central Procurement for seeking Quotations.
Central Procurement	Located in the Financial Services Division responsible for providing centre-led guidance and compliance in relation to Council's procurement framework.
Closing Time	The closing time and date for Tenders or Quotations stated in the Conditions of Participation or Conditions of Tendering.
Common-use Contract	A whole-of-Council contract approved by Central Procurement and implemented as a result of a public tender process.
Conditions of Contract	The terms and conditions that a Service Provider will be required to agree to if their Tender or Quotation is accepted.
Conditions of Participation / Conditions of Tendering	The terms and conditions under which Council will seek receive and evaluate Tenders and Quotations.
Council	Hobart City Council including, where the context permits or requires, its employees and agents.
Council's Requirements	The goods, equipment, services or works required by Council under a RFT.
Delegate	The Council Committee or officer authorised to expend funds to the value of the Council's Requirements under the current version of the Council's Delegations Register.
Dumped Goods	Goods from overseas, imported into Australia at less than their normal value.
Invitation to Tender	The advertisement or other written advice issued by Council in order to seek Tenders.

Local Businesses	Includes suppliers with a permanent established business location in the Hobart Municipality, operating in the southern region of the state with a permanent office or presence in southern Tasmania or based in Tasmania with a permanent business presence in the state mainly employing Tasmanian workers.
Preferred Tenderer	The tenderer adjudged by Council as best satisfying the Council's Requirements.
Procurement Process	The process whereby Council seeks to engage a Service Provider to provide Council with goods, equipment, services or construction or building works.
Quotation	An offer from a prospective Service Provider in response to an Invitation issued by Council to a selected number of prospective suppliers.
Request for Tender (RFT)	The documents upon which tenderers are to Tender.
Service Provider	Any contractors, subcontractors, consultants participating, or seeking to participate, in a Procurement Process, and where the context so permits includes a reference to the "tenderer".
Specification	The documents prepared for the purpose of describing the extent and the manner of the performance of Council's Requirements, including preliminary and general requirements, directions, schedules, programs and drawings and other documents included with or referenced in a RFT.
Tender	An offer from a prospective Service Provider in response to an open and public Invitation to Tender by Council, whereby no limit is placed on the potential number of offers.