



CITY OF HOBART

# MINUTES ATTACHMENT

## FINANCE AND GOVERNANCE COMMITTEE MEETING

### OPEN PORTION OF THE MEETING

**TUESDAY, 9 APRIL 2019**

**AT 4:30 PM**

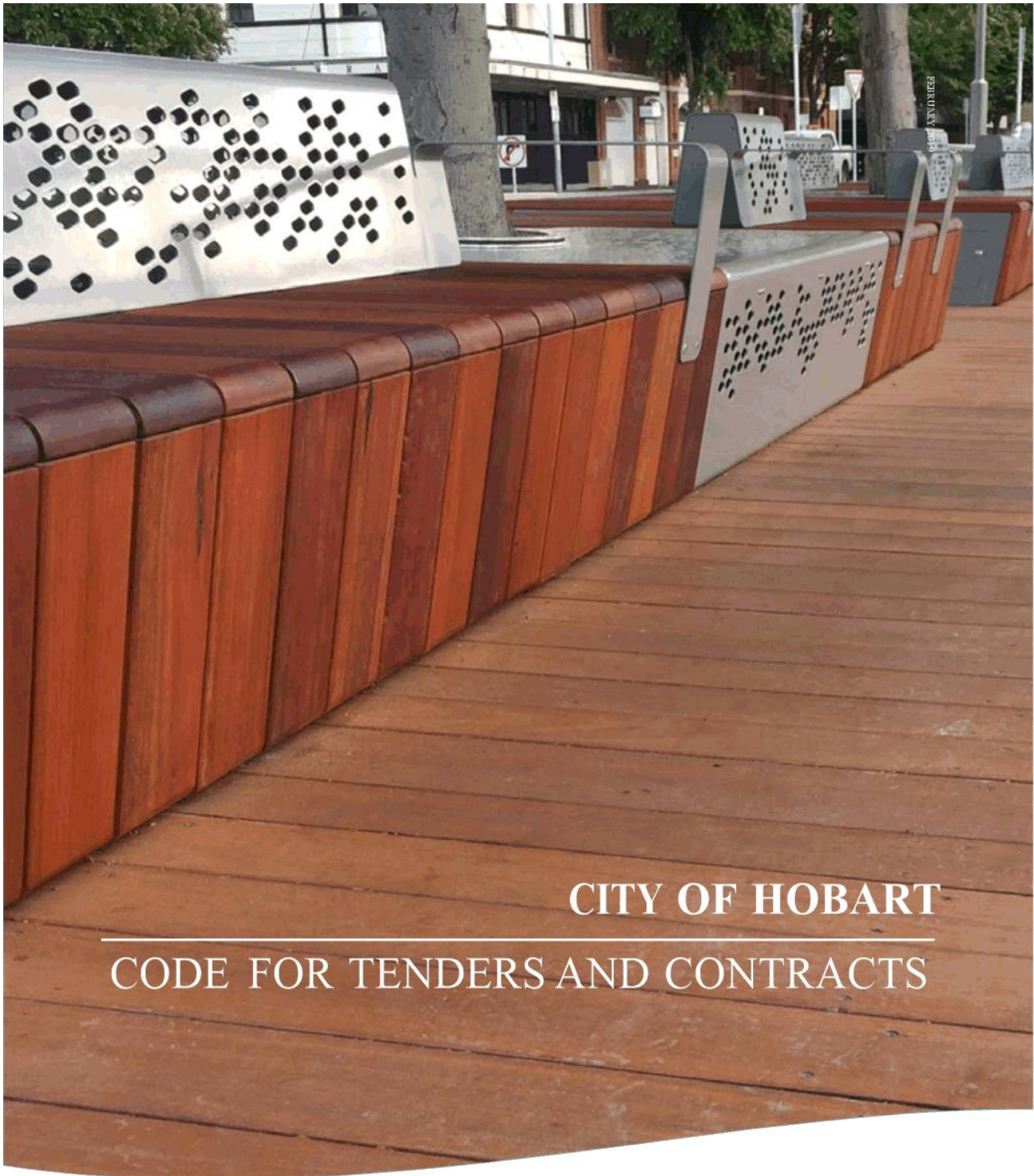
**VENUE: LADY OSBORNE ROOM, TOWN HALL**

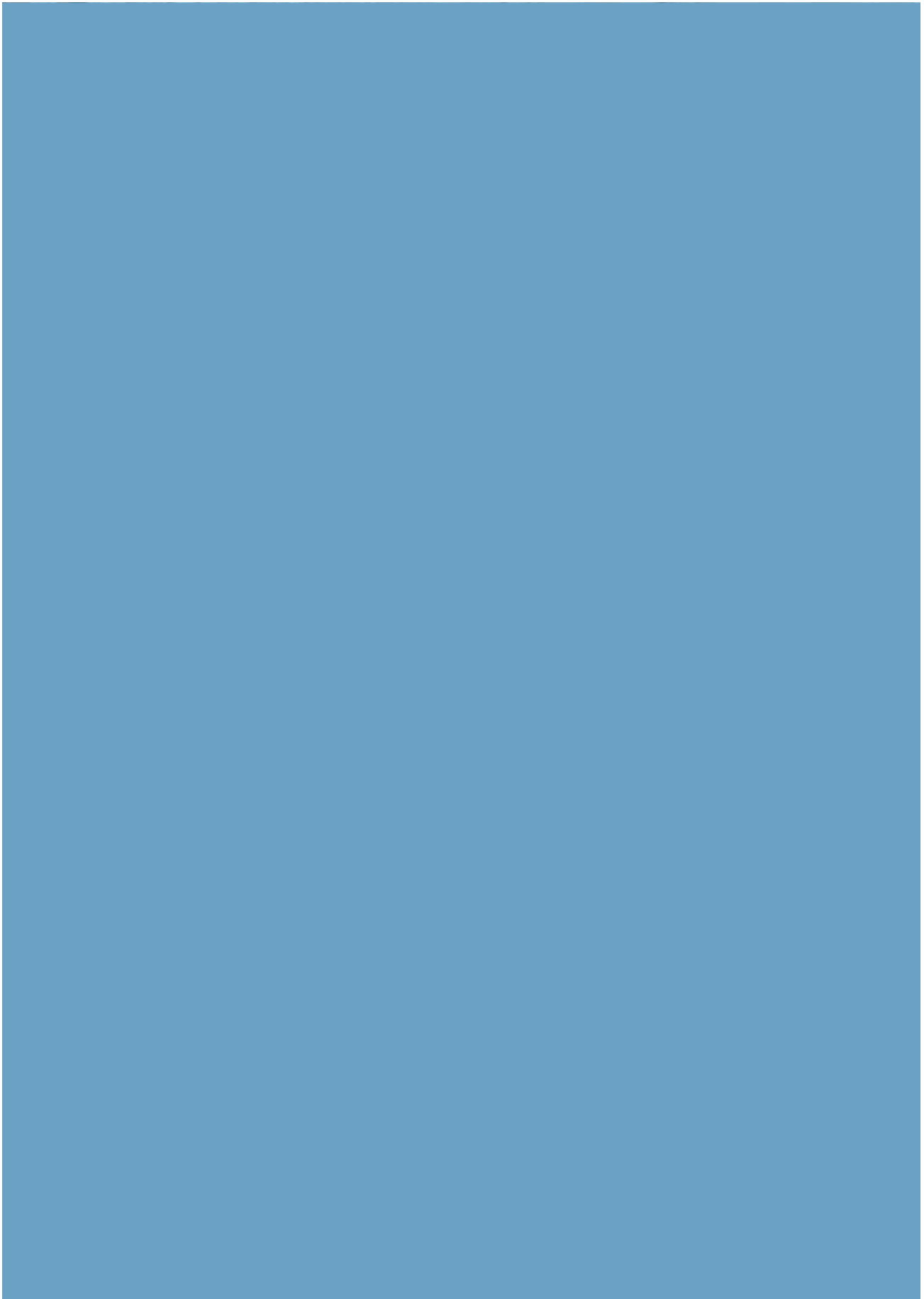
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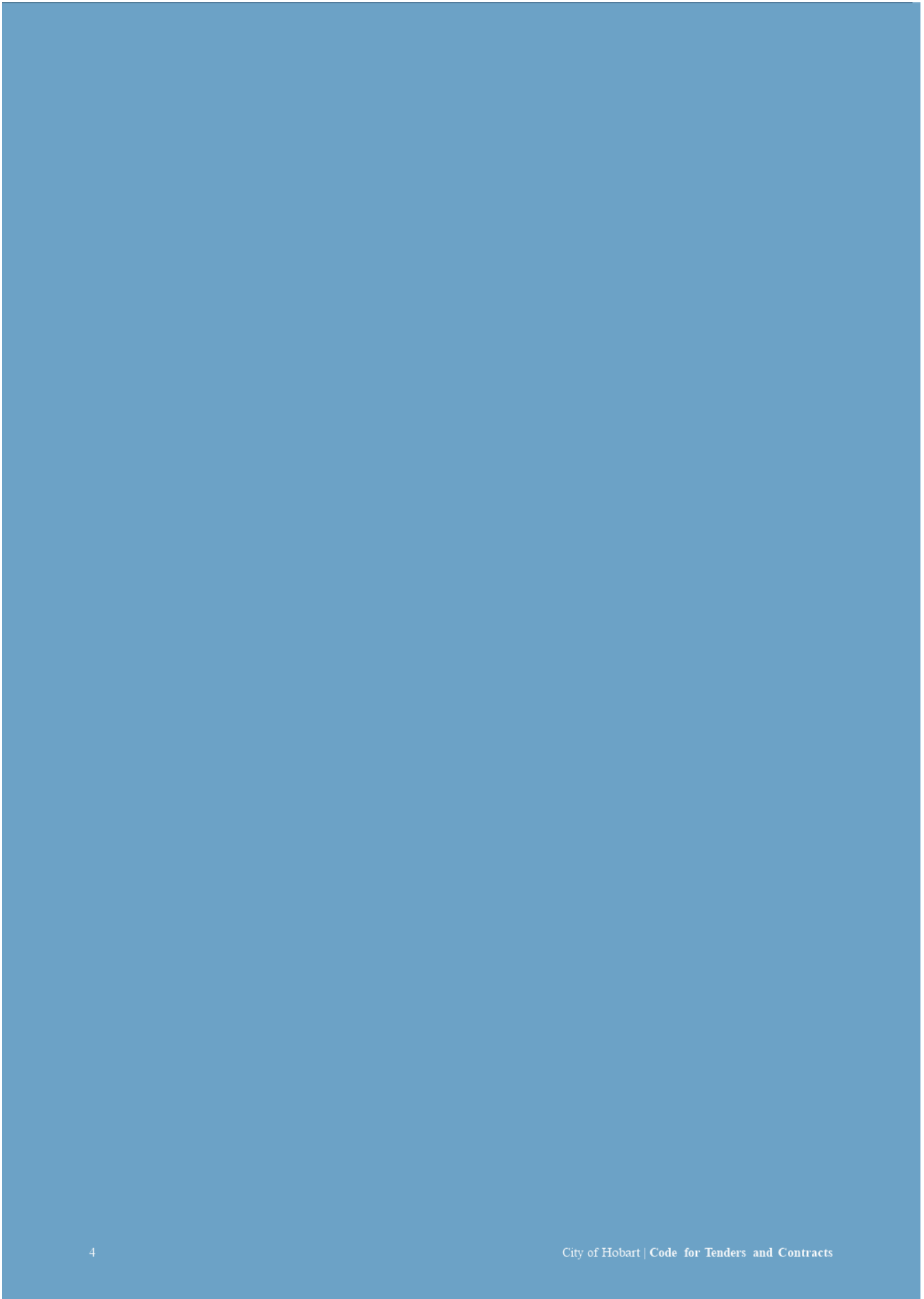
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# 1. INTRODUCTION

Pursuant to section 333B of the *Local Government Act 1993 (Tas)* (the Act), the City of Hobart (the City) is required to adopt and comply with a Code for Tenders and Contracts (the Code), which must:

- be consistent with the Act
- include any prescribed matter and promote any prescribed principles as set out in the *Local Government (General) Regulations 2015 (Tas)* (the Regulations)
- be reviewed at least every four years

The City's specific legislative and regulatory obligations with respect to procurement are set out under:

- Section 333A and Section 333B of the Act
- Regulations 23–29 of the Regulations.

## 1.1. PURPOSE

The purpose of the Code is to provide a framework for best practice procurement. The Code sets out how the City will meet its legislative obligations in respect to procurement, tendering and contracting.

The Code includes a statement of ethics which underlines best practices to be applied by the city's officers who organise or participate in procurement, and Service Providers when they offer to provide the City with goods, services or works and when they are engaged by the City to supply it with goods, services or works.

## 1.2. SCOPE OF THE CODE

This Code covers the procurement of all goods, services and works for the City of Hobart including building and construction, civil works, plant and equipment and consulting services. These Tender practices do not apply to the following activities:

- design and execution of works of art
- grants or assistance
- donations
- property transactions
- leasing.

The Code applies to the City of Hobart, its employees and agents and any Service Provider wishing to compete for City of Hobart business or provide goods, services or works to the City. This includes contractors, subcontractors, consultants and suppliers.

Insofar as is reasonably possible, Service Providers engaged by the City will apply the Code when seeking Tenders or Quotations from subcontractors and suppliers. The Code applies to all City of Hobart procurement processes including Tenders, requests for quotations, requests for proposals and expressions of interest for all of City's requirements.

This Code should be read in conjunction with the City of Hobart Purchasing Policy.

## 1.3. AVAILABILITY OF THE CODE

A copy of the Code is available free of charge:

- at the Hobart Council Centre,  
16 Elizabeth Street,  
Monday–Friday, 8.15 am – 5.15 pm
- on the City of Hobart website at  
[hobartcity.com.au/purchasingandtenders](http://hobartcity.com.au/purchasingandtenders)



## 2. PROCUREMENT THRESHOLDS

The City of Hobart purchasing thresholds describe when quotations and Tenders are to be sought. Purchases shall not be split into smaller purchases to avoid the requirements of purchasing thresholds.

- All procurement thresholds are GST exclusive. Tenders and quotations will be sought on a GST exclusive basis.
- The City has entered into a range of Contracts with suppliers for goods, services and works. Depending on the type of goods, services and works and the number of available suppliers required to supply them, either a sole supplier arrangement or a Panel arrangement can be in place.
- If the City already has a Contract in place with particular supplier(s) for goods, services or works and they are capable of meeting the City's requirements, the City's officers must procure goods, services or works from those suppliers.

### USING AN EXISTING PROVIDER

\$Value (GST exclusive)	Minimum Number of quotes to be sought
Any value (if the City has already been out to Tender and within scope of current Contract)	Source directly from the sole provider under Contract

### USING AN EXISTING PANEL

\$Value (GST exclusive)	Minimum number of quotes to be sought
Less than <del>\$10,000</del> <u>\$5,000</u>	1 written quote shall be sought from Panel members
<del>\$10,000</del> <u>\$5,000</u> to \$49,999	2 written quotes shall be sought from Panel members
\$50,000 and over	3 written quotes shall be sought from Panel members



#### IF A COUNCIL CONTRACT DOES NOT EXIST

SValue (GST exclusive)	Minimum number of written quotes to be sought
Less than <del>\$10,000</del> <u>\$5,000</u>	1 written quote must be sought
<del>\$10,000</del> <u>\$5,000</u> to \$49,999	2 written quotes must be sought
\$50,000 to \$249,999	3 written quotes must be sought
\$250,000 and over	Public Tender



**2.1. NON-APPLICATION OF THE QUOTATION PROCESS**

Exemptions from the requirement to seek written quotes under the quotation thresholds above can be sought from the Divisional Director but only if an acceptable reason exists as follows:

- a) where, in response to a prior notice, invitation to participate or invitation to Quote or Tender
  - (i) no Quotations / Tenders were submitted
  - (ii) no Quotations / Tenders were submitted that conform to the essential requirements in the documentation
- b) where the goods, services or works can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for the following reasons
  - (i) the requirement is for works of art
  - (ii) the protection of patents, copyrights or other exclusive rights or proprietary information

or

- (iii) due to an absence of market competition for technical reasons

- c) for additional deliveries of goods, services or works by the original supplier that are intended either as replacement parts, extensions or continuing services, where a change of supplier would result in the purchase of goods, services or works that do not meet requirements of interchangeability with existing goods, services or works
  - d) for goods purchased on a commodity market
  - e) where there is an emergency and insufficient time to seek quotes for goods, services or works required in that emergency
  - f) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, liquidation, bankruptcy or receivership and not for routine purchases from regular suppliers
- or
- g) for a joint purchase of goods or services purchased with funds contributed by multiple entities, where the City is one of those entities and does not have express control of the purchasing decision.

**Exemptions**

As outlined in section 9 of this Code all instances where an exemption from the requirement to seek three written quotes has been granted will be reported to the Council on a quarterly basis.

All instances where an exemption has been granted from the requirement to seek one or two written quotes for procurements from \$0 to under \$10,000 and from \$10,000 to under \$50,000 respectively, will be reported to the General Manager on a monthly basis.

**2.2. NON-APPLICATION OF THE PUBLIC TENDER PROCESS**

In accordance with section 27 of the Regulations, 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
- 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 one of the following entities
  - (i) another council
  - (ii) a single authority or a joint authority
  - (iii) the Local Government Association of Tasmania
  - (iv) any other local government association in this State or in another State or a Territory
  - (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 one of the following reasons
  - (i) extenuating circumstances
  - (ii) the remoteness of the locality
  - (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 will be included in the City's Annual Report.

### 3. PROCUREMENT PRINCIPLES

The City of Hobart's purchasing will be conducted in line with legislative requirements and in accordance with the following principles:

#### 3.1. VALUE FOR MONEY

Value for money is achieving the desired outcome at the best possible price. Factors which may be considered when determining value for money include:

- fitness for purpose
- whole-of-life costs over the lifetime of the product, good or service
- advantages of buying locally (e.g. shorter delivery lead-times, availability of local back-up and servicing and availability of spare parts)
- supplier's capacity and ability, including management and technical capability and physical and financial resources
- climate change and environmental considerations and energy conservation
- contribution to achieving the City's policy or strategic objectives
- social or community benefit
- risk assessment
- quality assurance
- disposal value.

#### 3.2. ETHICAL BEHAVIOUR AND FAIR DEALING

Ethical behaviour and fair dealing means acting ethically, being fair and unbiased and complying with the law in all dealings with Service Providers. The following standards of ethics and ethical behaviours will be applied when dealing with suppliers:

- ensuring Council monies are spent effectively and in accordance with relevant policies
- acting without favour or prejudice
- complying with legal requirements
- always seeking to maximise the value for money in all transactions
- maintaining confidentiality at all times in dealings with Service Providers
- declining gifts, gratuities or any other benefit which may, or could be deemed to, influence equity or impartiality
- not disclosing the bid of a Service Provider to any other provider in order to play Service Providers off against one another
- avoiding the purchase of Dumped Goods.



### 3.3. ENCOURAGING OPEN AND EFFECTIVE COMPETITION

Encouraging open and effective competition means ensuring that the procurement process is impartial, open and focussed on encouraging competitive offers. Open and effective competition will be encouraged through:

- putting transparent, open purchasing procedures in place
- ensuring the market is adequately tested by seeking an appropriate number of Quotations or calling for public Tenders
- avoiding use of biased or proprietary Specifications
- if requested, de-briefing unsuccessful providers
- treating all Service Providers consistently and equitably.

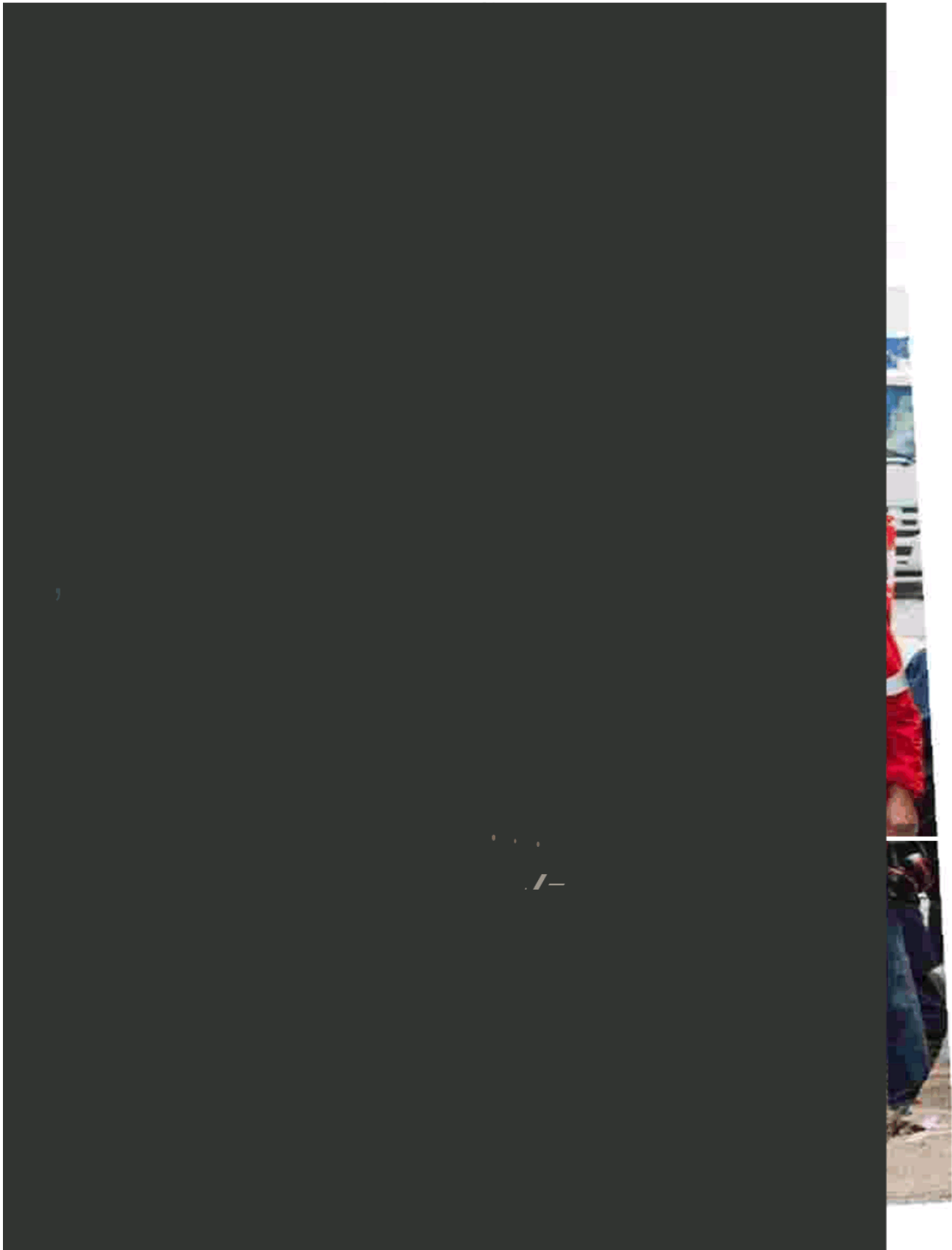
### 3.4. ENHANCEMENT OF THE CAPABILITIES OF LOCAL BUSINESS AND INDUSTRY

Enhancement of the capabilities of local business and industry means where local capacity exists, actively seeking to engage the local market and encourage their participation in Tender and Quotation processes, through:

- actively seeking quotes from local businesses and industry
- where local capability exists, ensuring that the discretionary elements of Specifications do not prevent local businesses and industry from competing.

Enhancing opportunities for local business and industry does not mean giving preferential treatment to local Service Providers.





## 4. CONDUCT

### 4.1. ETHICS AND CONDUCT – CITY OF HOBART OFFICERS

The City's officers, or any other person or entity making a purchase on the City's behalf, will comply with the following ethical standards of behaviour:

- the Procurement Process will be undertaken in accordance with City's Procurement Principles
  - 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
  - accurate records of all dealings in respect to the purchase will be maintained during and after the process
  - declining to accept any payments, gifts, gratuities, entertainment/hospitality and other benefits offered by a Service Provider for the discharge of official duties
  - 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 and declaring any conflicts of interest
  - 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 the City to allegations or perceptions of impropriety or unwarranted preference or unfair dealings or which could represent a breach of legislation
  - for any person, 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.
- Whenever dealing with Service Providers, the City's officers will:
- clearly convey the City'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
  - ensure that a Service Provider is not provided with any information or clarification of the Specification or other Tender or Quotation document, which is not equally provided to all other Service Providers
  - seek to minimise the cost to suppliers of participating in the Tender process
  - ensure that Service Providers are provided with a Specification or other statement of the City'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
  - ensure that the Conditions of Contract are not excessively onerous on Service Providers
  - as far as is practicable, ensure that the Specification does not restrict competition, prevent local businesses and industry from submitting a Tender or Quotation or reflect bias either towards or against any brand or proprietary system or method of work
  - in so far as possible, ensure that the Specification does not act as a barrier to innovation
  - if any particular Conditions of Participation, Conditions of Tender, or Conditions of Contract apply, advise Service Providers of these when inviting offers



- 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
- if offers are to be evaluated using weighted criteria, apply the procedure for Tender evaluation set out under the Tender Practices section of this Code
- not solicit or accept remuneration or other benefit from a Service Provider for the discharge of official duties.

#### **4.2. ETHICS AND CONDUCT – SERVICE PROVIDERS**

Whenever participating in a City of Hobart procurement process in any capacity, a Service Provider:

- will ensure they are acquainted with the City's Requirements and all matters relating to the Tender or the Quotation and the proposed contract
- will not submit a Tender or Quotation unless they have the financial, technical, physical, management, resource, ethical and other capabilities to fulfil the City's requirements
- will apply City's Procurement Principles and the standards and ethics required by this Code in its dealings with contractors, subcontractors, suppliers and agents
- must not engage in any uncompetitive behaviour or other collusive practices, which deny or reduce legitimate business opportunities to other potential suppliers or the City
- must at all times act in observance of all laws
- must not engage in acceptance or provision of secret commissions
- must not collude with other suppliers, potential or otherwise
- must not submit inflated prices to advantage another potential Service Provider
- must not enter into improper commercial arrangements with other contractors, subcontractors, suppliers or agents
- must not attempt to contact the city's officers not nominated as contact person to deal with enquiries
- must not seek to influence the procurement process by any improper means whatsoever
- must not accept incentives to provide contracts or services to other contractors, subcontractors or agents

- 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 City's requirements immediately upon the Service Provider becoming aware of the matter or issue.

If engaged by the City to provide goods, services or works of any nature a Service Provider will:

- act in a polite and courteous manner towards the City's officers and agents and towards members of the general public
- refrain from the use of aggressive or inappropriate language and expressions and not act in an aggressive or threatening manner towards the city's officers, agents and members of the general public
- insofar as is reasonably possible apply the standards and ethics required by this Code in its dealings with any contractors, subcontractors, suppliers or agents
- 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 City's requirements
- comply with the provisions of awards and workplace arrangements which have been certified, registered or approved under relevant industrial relations legislation
- 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
- make payments to employees, subcontractors, suppliers, consultants and agents in a timely manner
- not offer gifts, gratuities, entertainment/hospitality and other benefits to a City of Hobart officer for the discharge of official duties.

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

- agreements between Service Providers as to who should be successful in winning City of Hobart's business
- any meeting of Service Providers prior to the submission of their Tender or Quotation that may disadvantage the City
- agreement between Service Providers for payment of money or securing of reward or benefit for unsuccessful Service Providers by the successful Service Provider
- agreement or collaboration between Service Providers to fix prices or Conditions of Contract
- 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 the City
- any unlawful 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
- any unlawful 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.

## 5. METHODS OF PROCUREMENT

### 5.1. REQUEST FOR QUOTATION

When the City procures goods, services or works under its tendering threshold of \$250 000 or seeks quotations from Panel arrangements established through a Standing Contract, the City will request quotations in line with its procurement thresholds outlined in section 2 of this Code.

There may be occasions where, for a number of reasons, quotation(s) cannot be obtained / sought or where doing so would have no additional benefit to the City or the market.

Therefore, exemptions from the requirement to seek written quotes under the thresholds can be sought from the Divisional Director if the reason for doing so satisfies one of the grounds outlined in section 2 of this Code – non-application of the quotation process.

### 5.2. OPEN TENDER

The City will invite Tenders by publishing a notice in the Mercury newspaper and its online Tendering portal.

The General Manager will ensure that applicants are provided with the following in order to make a Tender:

- details of the goods or services required
- details of the duration of the contract, including any extensions that are specified in the contract
- the conditions of participation to be met by applicants
- the criteria for evaluating Tenders
- the method of evaluating Tenders against the criteria
- any mandatory Tender specifications and contract conditions
- a reference to the City's Code for Tenders and Contracts
- applicants must lodge the tender in the manner specified in the conditions of tendering.

The period within which a Tender is to be lodged will be a period ending at least 14 days after the date on which the notice is published.

Applicants must make a Tender in writing, specify the goods or services Tendered for and lodge the Tender within the period specified in the notice.

**5.3. MULTIPLE-USE REGISTER**

The City may establish a Multiple-Use Register of suppliers that are determined by the City to satisfy the conditions of participation for that register for the supply of particular categories of goods or services.

If it is determined that the City will establish such a register, the General Manager will invite applications from prospective suppliers for inclusion on the register by publishing a notice in the Mercury newspaper and its online Tendering portal.

The General Manager will ensure that applicants are provided with the following in order to make an application:

- details of the categories of goods or services required
- the conditions of participation to be met by applicants
- the criteria for evaluating applications
- the method of evaluating applications against the criteria
- a reference to the City's Code for Tenders and Contracts.

The General Manager will advise all applicants of the results of their application including the categories for which they are registered and if applicable, the reasons for any rejection.

When the City wishes to use the register, the General Manager will invite all successful applicants that are registered for the relevant category to Tender for the provision of the required goods or services.

The Council will review any Multiple-Use Register at least once every two years.

The City will allow a prospective applicant to apply for inclusion on a multi-use register at any time, unless the applicant has applied within the previous 12 months and has not been accepted.

**5.4. MULTIPLE-STAGE TENDER**

The City may invite Tenders for a contract for the supply of goods or services using a multiple-stage Tender process, which is a process by which suppliers are evaluated through stages against criteria determined by the City.

At the first stage of the multiple-stage Tender process, the General Manager will invite expressions of interest by publishing a notice in the Mercury newspaper and its online Tendering portal.

The General Manager will ensure that applicants are provided with the following in order to make an expression of interest:

- details of the goods or services required
- the conditions of participation to be met by applicants
- the criteria for evaluating expressions of interest
- the method of evaluating expressions of interest against the criteria
- details of any further stages in the Tender process
- a reference to the City's Code for Tenders and Contracts.

At the final stage in the multiple-stage Tender process, the General Manager will invite all suppliers who met the criteria determined by the City to Tender for the supply of goods or services. The criteria used at each stage of the multiple-stage Tender process will be consistent.

If only one supplier meets the criteria determined by the City at the first stage, the City will contract with that supplier after a Tender by that supplier or a decision by absolute majority of the Council to do so.





### 5.5. STANDING CONTRACT

The City may establish a Standing Contract through an Open Tender process (refer to section 5.2 above) in which a single Tenderer or multiple Tenderers may be contracted for a specified period to provide specified goods or services during that period without the need for a further Tender process.

The City refers to a Standing Contract arrangement with a single Tenderer or multiple Tenderers as a Panel arrangement.

When purchasing from a Panel the City will seek written quotations in line with its procurement thresholds set out in section 2 of this Code.

There may be occasions where, for a number of reasons, quotation(s) cannot be obtained / sought from the Panel or where doing so would have no additional benefit to the City or the market.

Therefore, exemptions from the requirement to seek written quotes under the thresholds can be sought from the Divisional Director if the reason for doing so satisfies one of the grounds outlined in section 2 of this Code – non-application of the quotation process.

#### Panel Additions

The City will generally not permit the addition of providers to a Panel of providers during the term and any further terms of the Panel arrangement. However, additional Panel providers may be able to join a Panel during the term and any further terms of the Panel arrangement with approval by the General Manager if the request meets at least one of the criteria and all of the conditions for Panel additions outlined below.

#### Criteria for Panel Additions

At least one of the following criteria for adding Panel providers to an existing Panel must be satisfied:

- An increase in the volume of goods, services or works under the existing Panel arrangement has occurred that cannot be accommodated by existing Panel members.
- A court order or directive has been made after the original Tender process changing the circumstances of the original Panel.
- A change in legislation, Australian Standard or similar has occurred after the original Tender process changing the circumstances of the original Panel.
- The prospective additional Panel provider's legal entity was not in existence (i.e. registered, constituted, formed or incorporated) at the time the original Tender process was advertised.
- The prospective additional Panel provider's business did not have an operational presence in Tasmania at the time the original Tender process was advertised.
- A corporate reconfiguration or restructure has impacted a Panel provider on an existing City of Hobart Panel arrangement.
- To accommodate market innovation not contemplated or available at the time of the original Tender process.
- The Panel has insufficient providers to meet the City's needs under the Panel.



#### Conditions for Panel Additions

All of the following conditions for adding Panel providers to an existing Panel must be satisfied:

- A submission to join the Panel is made by the prospective additional Panel provider by completing the same Tender forms of the original Tender process for establishment of the Panel.
- The Tender submission to join the Panel is assessed against the same evaluation criteria and process as the original Request for Tender for establishment of the Panel.
- The prospective additional Panel provider meets the same requirements as the original Tenderers when the Panel was originally established.
- The submission of the prospective additional Panel provider is approved by the General Manager.
- The prospective additional Panel provider substantially agrees to the conditions of contract already executed by existing Panel providers.
- The additional Panel provider's contract expires on the same date as that of the original Panel providers.

Providers may be removed from a Panel if they fail to perform and meet key performance indicators or on the ground of insolvency.

A decision to add or remove a provider from a Panel will be at the sole discretion of the General Manager.

#### 5.6. USE OF OTHER CONTRACTS

Where it is determined that it is cost effective to do so the City may use a State or Commonwealth Government Contract, the National Procurement Network, Procurement Australia or another council contract for the provision of goods, services or works. The use of such Contracts exempts the City from the requirement to tender under Regulation 27 of the Regulations.



## 6. TENDERING PRACTICES

These Tender practices must be applied to all procurements where a public Tender is required. These Tender practices may, at the City's discretion, be applied to a Quotation process.

The purpose of these Tender practices is to ensure all City of Hobart Tenders are conducted in a fair and uniform manner.

### 6.1. ADMINISTRATION OF TENDERS

The City 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.

Public Tender processes will be conducted on the City's behalf by the City's procurement staff.

Unless a situation exists for non-application of public Tender process, as outlined in section 2 of this Code, public Tenders must be called in accordance with the Act for all projects or purchases with an value equal to or greater than \$250,000 excluding GST (the Prescribed Amount)

Tenders may, at the Delegate's discretion, be called for any City of Hobart project or purchase with an estimated value less than the Prescribed Amount under the Act where the Delegate determines that:

- use of a formal Tender process is required or advisable due to the complexity, importance or organisational impact of the City's requirements
- it is likely or reasonably probable that the City would be exposed to a high level of risk due to the purchase
- use of formal Conditions of Contract are required or advisable.

### 6.2. ADMINISTRATION OF QUOTATIONS

All Quotations being sought for the supply of goods, services or works valued at or exceeding \$100,000.00 (excluding GST) but less than \$250,000.00 (excluding GST) must be issued with a unique identifier by the City's procurement staff, prior to the Quotation being sought.

### 6.3. DUMPED GOODS

Dumped goods are goods from overseas that are imported into Australia at less than their normal value that causes or may cause material injury to an Australian industry producing similar goods, or hinder the establishment of an Australian industry. Dumped goods and goods that are suspected of being dumped and are under investigation by the Australian Government's Anti-Dumping Commission, can be identified by referring to the Australian Government Anti-Dumping Commission website.

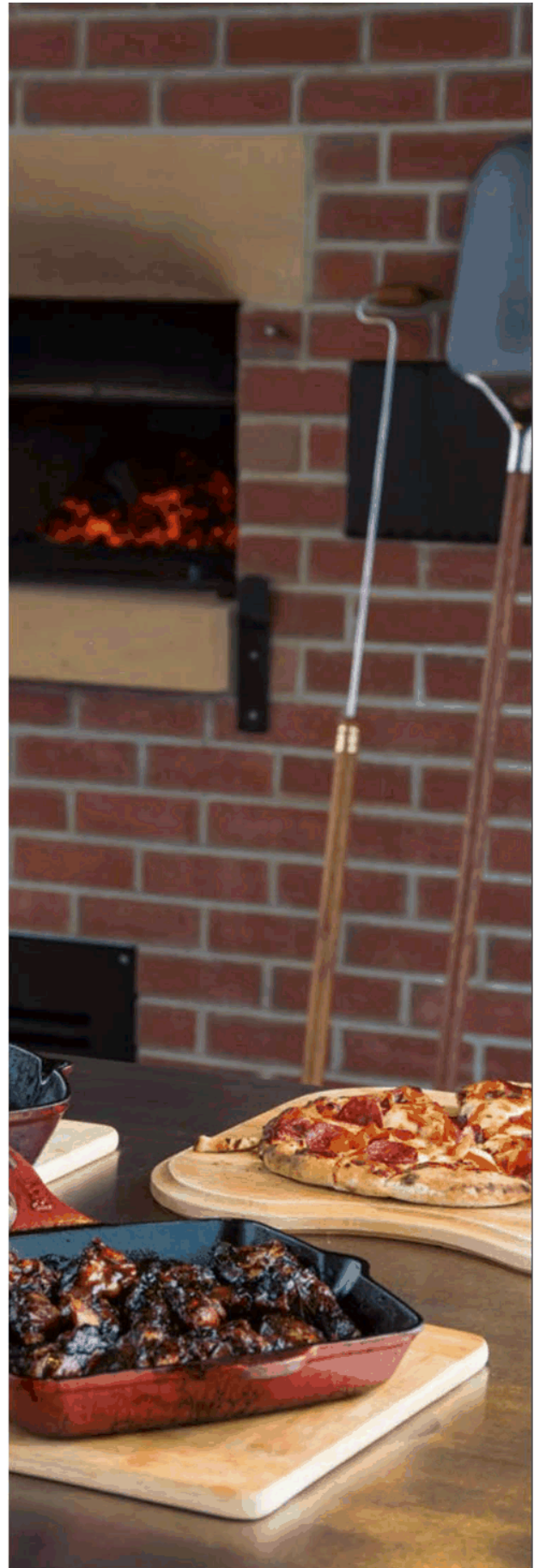
Where the City identifies that a Tender includes Dumped Goods, the Tender may be rejected on that ground.

#### 6.4. ETHICAL STANDARDS

The City 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:

- has zero tolerance for child abuse, in policy and practice
- respect people's fundamental rights to freedom from arbitrary and indefinite detention
- does not treat people in a cruel, inhumane or degrading manner
- commits to transparency and independent monitoring to ensure these principles are upheld.

When submitting a Tender or Quotation Service Providers in relevant fields are required to complete a declaration that neither they or their company's holdings or subcontractors provide services to Off-Shore Detention Centres.



## 7. TENDER PROCESS

Stages 1–6 (inclusive) of the following diagram identify the steps in the City's Tender process:

STAGE 1	STAGE 2	STAGE 3	STAGE 4	STAGE 5	STAGE 6	STAGE 7	STAGE 8
<b>TENDER PROCESS</b>				<b>CONTRACT MANAGEMENT</b>			
Identify the procurement method/Plan the purchase	Prepare the Tender documents	Invite and receive Tenders	Evaluate Tenders	Implement a contract	Advise and de-brief providers	Manage the contract	Review contractor performance

### 7.1. STAGE 1 – PLANNING THE PROCUREMENT

The following actions are required prior to preparing a request for tenders (RFT):

- verifying that the appropriate Delegate has approved undertaking the purchase by completion of a Quote and Tender Application form
- establishing the objectives of the purchase and preparing the Specification, which will clearly convey the City's requirements to Service Providers
- identifying the correct purchasing method, including
  - determining if the City's own workforce has the capability to fulfil the City's requirements
  - determining if there is an appropriate Contract already in place
  - determining if there is a need for a whole of organisation contract arrangement
- valuing the purchase and, at a minimum, complying with the purchasing thresholds set out under this Code
- confirming sufficient funds are available in the City's budget
- confirming the Tender has been approved by the appropriate Director
- establishing the evaluation committee, their roles and responsibilities
- consideration of conflict of interest for any person involved in the procurement process
- 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
- defining the evaluation criteria (and weightings if applicable) which will be used to evaluate Tenders and select the successful Service Providers(s).





#### **Calculating the Value of a Purchase**

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.

The duration of a contract (including standing offers for the supply of goods, services and works, or any combination thereof) must be based on the contract period that best fits the City's business, operational and risk management requirements. A shorter contract period must not be selected in order to avoid the requirement to seek Tenders.

A purchase must not be split into multiple smaller purchases in order to avoid the requirement to seek Tenders or Quotations.

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 over a two year period.

#### **Competitive Neutrality**

The City 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.

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.

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.

#### **Use of Experts or Probity Advisors**

The City will engage the services of Probity Advisors and external experts where the nature of the Tender warrants it. For example, where the City is requesting Tenders with complex requirements or high cost or where the contractual arrangement is for extended periods.

## 7.2. STAGE 2 – PREPARE THE TENDER DOCUMENTS

A unique identifier will be allocated to all Tenders and Requests for Quotation \$100,000.00 and over. Once the contract is awarded the unique identifier will be provided for the contract. The unique identifier must be referred to on all correspondence and other documentation relating to the Tender/Quote and the contract.

Appropriate records are to be maintained throughout the duration of a Tender process.

### Conditions of Tendering

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 unique identifier number
- the place for lodgement of Tenders
- lodgement instructions
- the Closing Time and place
- specific lodgement requirements, including the information to be submitted with a Tender
- a single nominated contact officer, to which all enquiries concerning the RFT must be submitted
- the procedure for responding to enquiries and amending or clarifying the RFT documents
- any other matters relating to the RFT process, including details of pre-Tender briefings and site inspections
- mandatory Conditions of Participation or compliance criteria applicable to the RFT
- evaluation criteria and weightings and the method of selecting the Preferred Tenderer
- reference to the Code for Tenders and Contracts.

### Specification

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

The Specification must, at a minimum include:

- a description of the City'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
- legislative and mandatory requirements and minimum fitness for purpose and quality standards
- health and safety and environmental management requirements.

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.

### Conditions of Contract

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.

The RFT will include either:

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

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

### Tender Forms

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

### **7.3. STAGE 3 - INVITING AND RECEIVING TENDERS**

#### **Inviting Tenders**

The Invitation to Tender must be in the form of a public advertisement, which at a minimum provides:

- a description of the City's requirements
- the Closing Time
- instructions on how to obtain the Tender documents
- details of Tender deposits or other payments  
Tenderers are required to make in order to obtain the Tender documents (if applicable)
- the times and dates for pre-tender meetings (if applicable).

At a minimum, the Invitation to Tender will be placed in the Tenders section of the Wednesday or Saturday edition of the Mercury newspaper and will be posted on the City's online Tendering portal.

#### **Tender Closing**

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.

Tenderers will be provided with sufficient time between issuing of the Invitation to Tender and the closing date in which to prepare their Tenders.

The period within which a Tender is to be lodged will be a period ending at least 14 days after the date on which the notice is published.

Unless the City's operational needs require otherwise, submission of Tenders will not be required:

- before 3 pm
  - on a Monday or any day immediately after a day which is a declared statutory public holiday in Tasmania
- or

- between the dates of 24 December to 2 January (inclusive).

The City may amend the Closing Time for Tenders by issuing a written notice to all parties in receipt of the RFT via its e-Tendering portal website.

#### **Requests for Advice and Information**

The City will establish an online forum at the City of Hobart e-Tendering portal website for each Tender.

All requests:

- for clarification of a document forming part of the RFT
- for additional information
- regarding other enquiries in connection to the RFT

must be made via the online forum provided for the RFT before it closes at the City of Hobart e-Tendering portal website prior to the Closing Time.

This is to allow sufficient time for a response and information to be provided to all parties that have downloaded the RFT documentation.

The City will respond to requests for clarification or information via the online forum. Any matter which requires amendment to a document forming part of the RFT will be dealt with by issuing a Notice of Addendum.

The City will nominate a City of Hobart officer or other representative (the "contact person") to deal with RFT enquiries. All enquiries about the RFT must be directed to the contact person.

Any requests or queries regarding the Tender process after the Closing Date must be referred to the Contact Officer via email to [procurement@hobartcity.com.au](mailto:procurement@hobartcity.com.au)

The City reserves the right not to respond to any requests for clarification or for additional information sent via email after the Closing Date.



Information not included in the RFT documents, which is provided to a potential Tenderer, will be equally provided to all other potential Tenderers.

#### **Amending or Extending a Tender**

The City reserves the right to amend any of the documents comprising the RFT or provide clarification of any matter relating to the RFT prior to the Closing Time.

If the RFT is amended or clarification of the RFT matter, other than clarification of the RFT process, is required, the City will issue a notice of addendum via its e-Tendering portal website.

Tenderers will be provided with sufficient time to allow for incorporation of the requirements of any addenda issued in their Tender submission.

The City 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.

#### **Receiving and Lodgement of Tenders**

Clear instructions on how to lodge a Tender will be provided in the Conditions of Tendering.

A Tenderer must comply with the lodgement instructions given in the Conditions of Tendering. The City may reject any Tender which is not lodged in accordance with the lodgement instructions, without consideration.

#### **Late Tenders**

Any Tender received after the Closing Time for Tenders will not be considered unless the City is of the opinion, and the City's decision shall be final, binding and not open to dispute, that:

- the cause of the lateness was beyond the Tenderer's reasonable control;
- consideration of the late Tender would not provide an unfair advantage to the Tenderer submitting the late Tender; and
- consideration of the late Tender would not compromise the Tender process.

#### **Opening of Tenders**

The City will provide the facility for lodgement of Tenders via the City of Hobart e-Tendering portal website.

Tender submissions will not be opened until the time set for the closing of Tenders has elapsed.

The opening of Tenders will not be public.

Tender submissions will be opened in the presence of at least three City of Hobart officers together with the external Probity Advisor if applicable, and the Tender submissions received will be clearly identified and recorded upon opening.

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.

A Tenderer may withdraw its Tender at any time prior to acceptance of the Tender, by providing the City with written notification.

A Tender must remain valid for the period of time required by the Conditions of Tendering.

#### **Alternative Tenders**

The City may consider any Tender which meets the City's requirements in an alternative and practical manner provided that it meets the totality of those requirements (i.e. the City may consider an "Alternative Tender").

Alternative Tenders may relate to the functional, performance and technical aspects of the requirements or to opportunities for more advantageous commercial arrangements.

The City may either consider Alternative Tenders on their merits or reject Alternative Tenders without consideration at its discretion.

**Confidentiality and Commercial-in-confidence**

Any of the documents, information or other materials provided to Tenderers by, or on behalf of, the City in connection to an RFT, remains the property of the City and may only be used by the Tenderer to the extent required to prepare its Tender.

A Tenderer or other person receiving the Request for Tenders must not publish, disclose or copy any of its content, except as necessary to prepare its Tender. The Tenderer must keep confidential all information provided by or on behalf of the City as part of, or in connection to, the Request for Tenders.

The City may publish and publicly disclose (in annual and other reports, on the internet or otherwise) a description of the Contract arising out of awarding of the Tender, the successful Tenderer's name and the value of the successful Tender.

The City may reproduce and disclose or distribute and save or store all or part of a Tender as required to enable the Tender evaluation process and as necessary to meet its legal, governmental and other obligations.

The City will disclose the name of the successful Tenderer to unsuccessful Tenderers.

Further information regarding confidentiality in the Tender evaluation process is outlined in section 7.4 of this Code.

All Tenders become the property of the City immediately upon submission.



#### 7.4. STAGE 4 – TENDER EVALUATION

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.

##### Conforming and Non-conforming Tenders

A Tender will initially be assessed for conformance. A conforming Tender will be taken to mean a Tender which:

- is lodged by the Closing Time and in compliance with the requirements of the Conditions of Tendering
- meets the mandatory Conditions of Participation.

The City will consider any conforming Tender on its merits. The City may reject, as a non-conforming Tender, any Tender which:

- is not submitted in conformance with the Conditions of Tendering
- is incomplete or which contains insufficient information to allow the City to carry out a valid evaluation in accordance with the procedure for evaluating Tenders set out in this Code.

The City reserves the right to exclude any Tender from evaluation which, in the City's judgement, is excessively low or high in price so as to have an effect on the relativity of other Tenders.

##### Tender Evaluation Committee

A Tender Evaluation Committee (TEC) will be established for each Tender process. The TEC will consist of at least three members plus one of the City's procurement staff to act as an advisor/observer and to administer and provide oversight of the Tender process. In order to ensure consistency a common structure for all TECs within the City is required. Therefore, the TEC will always include the following:

- chairperson
- at least two members additional to the chairperson
- an independent probity advisor, if required
- the City of Hobart procurement officer allocated responsibility for administering the Tender process.

The chairperson should be a City of Hobart officer with suitable seniority, normally the TEC would be chaired by a relevant Manager at a minimum and at least one member should be a technical/subject expert.

A non-City of Hobart employee may be appointed to a TEC as appropriate, subject to having no declared conflict of interest.

A probity advisor may be required for high value or complex Tenders where independent probity advice and an independent probity contact for Tenderers would benefit the procurement process and reduce procurement risk.

**Confidentiality**

Tender evaluations should be strictly confidential. All contact with the suppliers must be confirmed in writing through the Procurement Officer advising the TEC. Members of the TEC will not discuss with any other person outside the TEC issues regarding the evaluation. The Chair of the TEC may obtain advice from specialists to assist in the Tender evaluation process.

**Method**

Tenders will be evaluated with the aim of determining the Tender submission which offers the best value for money outcomes to the City.

When assessing value for money, the City may:

- in addition to price, take into account any non-price criteria that it considers relevant to the successful performance of the City's requirements and achievement of the City's desired commercial and other outcomes, including but not necessarily limited to the City's Procurement Principles
- apply a weighting to the price and non-price criteria.

The evaluation method and evaluation criteria and weightings must be determined before finalising the RFT and must be disclosed to Tenderers in the Conditions of Tendering.

Selection and manner of application of the evaluation criteria and weightings will be at the sole discretion of the City. The City will not be liable to any Tenderer for the application, or non-application, of any evaluation criterion or weighting. Evaluation criteria and weightings will apply equally to all Tenderers.

**Clarifications**

During the evaluation process, the City 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 material information in order to make a non-conforming Tender into a conforming Tender.

**Tender Negotiations**

During the evaluation process, the City reserves the right to negotiate with a Tenderer or Tenderers in order to:

- assess a Tenderer's understanding of the City's requirements, test any assumptions made by a Tenderer in determining their Tender prices(s) and rectify any false assumptions
- obtain clarification of matters in relation to the Tenderer's capability to fulfil the City's requirements
- enhance the commercial benefit to the City by achieving cost reductions or service improvements with the preferred tenderer
- finalise the commercial terms required to form a contract.

The City will not enter into negotiations which result in substantial modification to the City's requirements or which would lead to a non-conforming Tender becoming a conforming Tender.

The outcomes of Tender negotiations will be reflected in the final contract documentation.

In the course of negotiations with a Tenderer, the City will not disclose the details of any other Tender submissions.



## **7.5. STAGE 5 – ESTABLISH A CONTRACT**

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 the City's Delegation Register.

### **Tender Rejection and Acceptance**

The City is not obliged to accept the lowest priced Tender or any Tender.

The City may reject all Tenders.

The City may accept a conforming or Alternative Tender.

If the City rejects all Tenders, it will advise all Tenderers accordingly in writing.

The City 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.

The requirements for acceptance of Tender and contract formation will be specified in the RFT.

### **Contract Extension**

The City may extend a contract entered into by Tender under the following conditions:

- if the contract conditions provide for an extension of contract
- by a decision of the Council made by absolute majority.

The City will be mindful when such extension of contract is granted that the principle of open and effective competition is adhered to.

### **Contract Variation**

A variation to a contract could include, but not be limited to, a change in scope and type of the City's requirements, quality standard, service level, delivery times, timeframes, personnel and price.

All contract variations must be approved by the appropriate delegate in line with their financial delegation and generally must:

- not exceed budget unless a budget variation request has been approved
- not materially alter the Specification for the goods, service or works initially tendered for
- Be less than 10% of the contract price and less than \$250,000 in value.

In the case of large projects, Council approval will be sought where the variation value is more than \$250,000 in value.

If a variation to a Contract has a value more than \$10,000, an exemption from the requirement to quote should be sought from the Divisional Director.

#### **7.6. STAGE 6 – ADVISING AND DEBRIEFING SUCCESSFUL AND UNSUCCESSFUL SERVICE PROVIDERS**

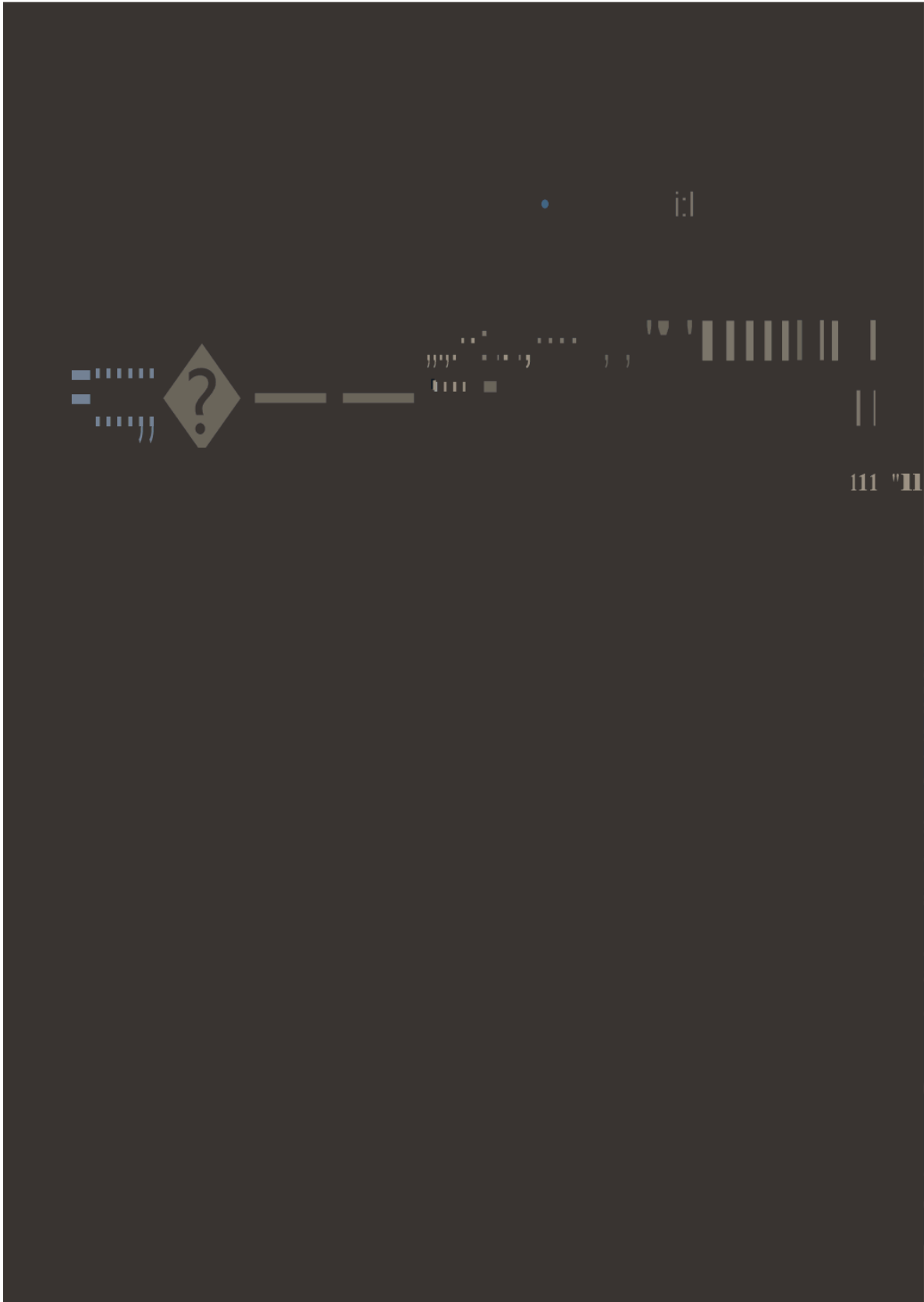
Both successful and unsuccessful Service Providers will be provided with an opportunity for a debriefing. The debriefing for unsuccessful Service Providers will be designed to assist them to improve their ability to successfully bid for future City of Hobart requirements.

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

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.







## 8. COMPLIANCE AND REVIEW

### 8.1. REVIEW OF TENDER PROCESS

Following completion of the tender evaluation process a report is prepared for the appropriate Delegate to review the tender process and accept or reject the recommendation from Procurement.

Periodic reviews of procurement and tender process controls will be conducted by the City's internal auditors.

Procurement will continually review and improve procurement, tendering and contract management procedures.

### 8.2. PROCUREMENT COMPLAINTS

A complaint about procurement can be communicated to the City via the process for making a complaint contained in the City's Customer Service Charter, which may be obtained via the City's website at [hobartcity.com.au](http://hobartcity.com.au)

The Procurement Officer should first attempt to find resolution to the procurement complaint in consultation with the Group Manager Rates and Procurement. The Chairperson of the TEC should be consulted in relation to the complaint. If the complaint can't be resolved the complaint should be referred to the General Manager.

### 8.3. BREACH OF THE CODE

The City will comply with its Code and its legislative obligations.

If any employee of the City, or a body controlled by the City, breaches this Code, the City may take disciplinary action if, in its absolute discretion, it considers it desirable to do so.

If a Service Provider commits a breach of this Code, the City may, in its absolute discretion, take action against that Service Provider. Action may include, but not be limited to:

- giving a warning to the Service Provider
- a reduction in future opportunities for that Service Provider to bid (i.e. submit Tenders or Quotations)
- the City refusing to consider any Tender or Quotation submitted by that Service Provider
- reporting of the breach to a statutory, professional or other relevant body
- termination or suspension of the Service Provider's engagement.

## 9. REPORTING

### 9.1. ANNUAL REPORTING

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, the City's annual report for that financial year will include the following information:

- a description of the contract
- the period of the contract
- the periods of any options for extending the contract
- the value of any Tender awarded or, if a Tender was not required, the value of the contract (excluding GST)
- the business name of the successful contractor
- the business address of the successful contractor
- any other prescribed matter.

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

- a brief description of the reason for not inviting public Tenders
- a description of the goods or services acquired
- the value of the goods or services acquired
- the name of the contractor.

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 \$250,000.00 (excluding GST) is, entered into, or extended, the City's annual report for that financial year will include the following information:

- a description of the contract
- the period of the contract
- the periods of any options for extending the contract
- the value of the contract (excluding GST)
- the business name of the successful contractor
- the business address of the successful contractor
- any other prescribed matter.

**9.2. REPORTING TO THE COUNCIL**

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 must be reported to the Council on a quarterly basis.

**9.3. REPORTING TO THE GENERAL MANAGER**

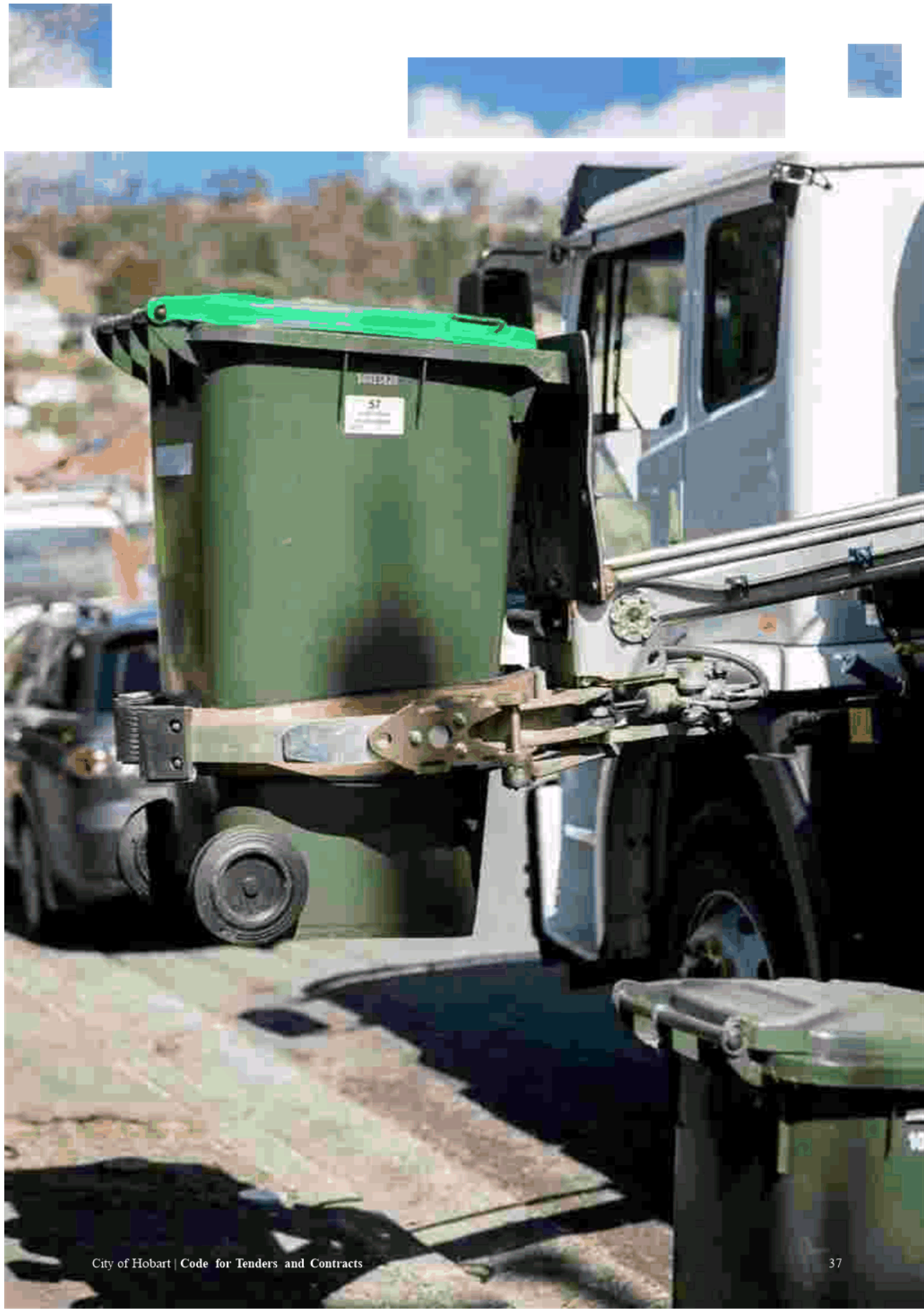
For purchases with a value equal to or exceeding the value where two written Quotations are required, the number of instances of non-application of the requirement to obtain two written Quotations according to reason must be reported by the Group Manager Rates and Procurement to the General Manager.





## 10. REVIEW OF THE CODE

This Code for Tenders and Contracts will be reviewed at least every four years by 1 January unless a change occurs that requires the City to amend its Code for Tenders and Contracts.

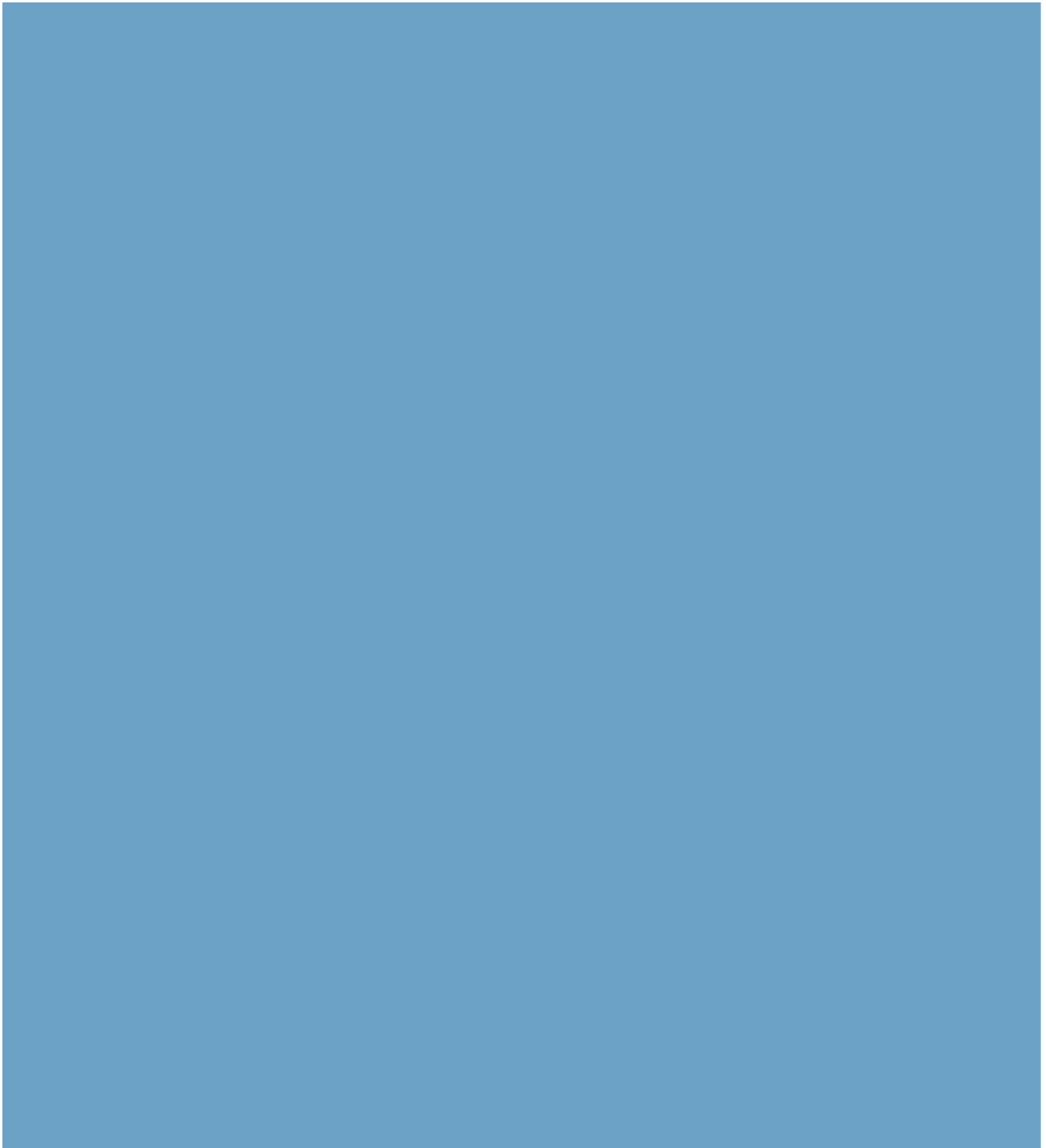


# 11. DEFINITIONS

TERM	DEFINITION
<b>Alternative Tender or Quotation</b>	A Tender or Quotation which meets all of the City's requirements but in a manner different to that specified.
<b>Central Procurement</b>	Located in the Financial Services Division responsible for providing centre-led guidance and compliance in relation to the City's procurement framework.
<b>Closing Time</b>	The closing time and date for Tenders or Quotations stated in the Conditions of Participation or Conditions of Tendering.
<b>Conditions of Contract</b>	The terms and conditions that a Service Provider will be required to substantially agree to if their Tender or Quotation is accepted.
<b>Contract</b>	A formal agreement entered into between the City and the successful Tenderer for performance of the City's requirements.
<b>Conditions of Participation / Conditions of Tendering</b>	The terms and conditions under which the City will seek receive and evaluate Tenders and Quotations.
<b>Council</b>	Hobart City Council (t/a City of Hobart) and where context permits, its employees and assigns.
<b>City's requirements</b>	The goods, equipment, services or works required by the City under an RFT or request for quotation.
<b>Delegate</b>	The Council Committee or officer authorised to expend funds to the value of the City's requirements under the current version of the City's Delegations Register.
<b>Dumped Goods</b>	Has the meaning given in section 6.3 of this Code.
<b>Invitation to Tender</b>	The advertisement or other written advice issued by the City in order to seek Tenders.
<b>Local Businesses and industry</b>	Includes suppliers with a permanent established business location in the Hobart municipal area, 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.
<b>Multiple-Use Register</b>	A register of suppliers who meet criteria established by the City in respect of the supply of particular categories of goods and services.

<b>TERM</b>	<b>DEFINITION</b>
<b>Panel</b>	A panel of providers established as a result of an open tender, each of whom signs a Contract (on terms substantially similar to the Standing Contract) with the City.
<b>Preferred Tenderer</b>	The Tenderer adjudged by the City as best satisfying the City's requirements.
<b>Procurement Principles</b>	The procurement principles prescribed under Regulation 28(a) of the Regulations.
<b>Procurement Process</b>	The process whereby the City seeks to engage a Service Provider to provide the City with goods, equipment, services or construction or building works.
<b>Quotation</b>	An offer from a prospective Service Provider in response to an Invitation issued by the City to a selected number of prospective suppliers.
<b>Request for Tender (RFT)</b>	The documents inviting Tenderers to offer to deliver the City's requirements by submitting a Tender in accordance with these Conditions of Tendering.
<b>Service Provider</b>	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".
<b>Specification</b>	The documents prepared for the purpose of describing the extent and the manner of the performance of the City's requirements, including preliminary and general requirements, directions, schedules, programs and drawings and other documents included with or referenced in an RFT or Request for Quotation.
<b>Standing Contract</b>	A contract in which a single tenderer or multiple tenderer may be contracted for a specified period to provide specified goods or services during that period without the need for a further tender process.
<b>Tender</b>	An offer from a prospective Service Provider in response to an open and public Invitation to Tender by the City, whereby no limit is placed on the potential number of offers.





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