



Title: Procurement Policy

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Related legislation: Local Government Act 1993
Local Government (General) Regulation 2005
Trade Practices Act 1974

Related policies: Code of Conduct
Records Management
Competition and Consumer Act 2010
Waste Reduction and Procurement

Related procedures: Canterbury City Council Procurement Guidelines

Related forms: Tender templates

Canterbury City Council Policy
Delegations of authority

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1. Purpose

The purpose of this policy is to provide a framework for procurement activities that are in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005.

Purchase and disposal activities must be governed by strict considerations of probity, transparency and accountability in the expenditure of public funds for public purposes. As part of the Division of Local Government's aim to encourage and support the spread of best practice, it has produced Tendering Guidelines for NSW Local Government to assist councils. This policy includes information from the Tendering Guidelines.

This Procurement Policy governs how procurement activities are to be undertaken to ensure obligations under the Act and Regulation are complied with.

2. Objectives

The objectives of this policy are to:

- Ensure that Council Staff act in accordance with legislation when undertaking procurement activities
- Ensure procurement is governed by strict considerations of probity, transparency and accountability
- Ensure effective and efficient procurement that provides value for money
- Assist Council Staff to undertake procurement in such a way as to satisfactorily address environmental impacts and ecological sustainability

3. Scope

This Policy applies to all Council Staff involved in the procurement of goods and services.

This policy applies to the purchase of all goods and services undertaken by Council Staff as well as the disposal of Council assets including materials, equipment, plant and machinery, furniture, technological equipment, property, office equipment and land.

4. Definitions

In this policy, the following definitions apply:

Act	Local Government Act 1993
Contract	A legally-binding agreement between the buyer and a supplier with agreed terms and conditions, including purchase orders
Council	Canterbury City Council
Council Staff	Includes councillors, members of staff and delegates of council

Prescribed Entity	An entity prescribed by the Regulation that can enter into contracts that councils can access. Currently the only prescribed entities are NSW State Contracts Control Board, Local Government Procurement Pty Ltd and Procurement Australia
Procurement	The process of obtaining goods and services.
Regulation	The Local Government (General) Regulation 2005
Request for Quotation	A document used to solicit price and delivery quotations that meet minimum specifications for specific goods and/or services
Request for Tender	A document used to initiate a competitive tender process for the supply of clearly defined goods and/or services during a specified timeframe
SSROC	Southern Sydney Regional Organisation of Councils. An association of 16 councils in southern Sydney.
Value	Value is the estimated dollar value of the good/service to be procured over the proposed term of the acquisition.
Vendor	A supplier of goods and/or services

5. Principles

This policy is based on the following key principles:

- Rule of law
A Council Official must comply with all legal obligations including the Local Government Act 1993 and the Local Government (General) Regulation 2005
- Honesty and fairness
A Council Official must conduct all procurement activities and business relationships with honesty, fairness and probity. A Council Official must not disclose confidential or proprietary information
- Accountability and transparency
A Council Official must ensure that the process in undertaking all procurement related activities is open, transparent, fully documented and defensible
- Consistency
A Council Official must ensure consistency in all stages of the procurement process. For example, all potential vendors must be given the same information and all requirements must be clearly specified to potential vendors

- No conflicts of interest
A Council Official with an actual or potential conflict of interest must address that interest without delay
- No anti-competitive practices
A Council Official must not engage in practices that are anti-competitive nor engage in any form of collusive practice
- No improper advantage
A Council Official must not engage in any practices that aim to give a potential tenderer an advantage over others
- Intention to proceed
A Council Official must not invite quotes, tenders or make any other approach to market without a firm intention and capacity to proceed with a Contract, including having funds available
- Cooperation
A Council Official must encourage business relationships based on open and effective communication, respect and trust, and adopt a non-adversarial approach to dispute resolution

6. Sanctions

Breaches of this policy may result in sanctions as provided for under Council's Code of Conduct.

7. Procedures

The steps below describe the actions to be taken when undertaking the procurement of goods or services. Refer to our Purchasing Guidelines for more detailed information.

1. Determine if there is a business need for the good/service to be procured. If there is a specific business need then proceed.
2. Seek approval to purchase the good/service from an authorised, delegated officer
3. Can the good/service be supplied by an in-house provider such as Council Stores or another business unit.
4. If an in-house provider cannot provide the good/service then determine if a pre-existing agreement such as a Council Supply Agreement, Local Government Procurement, Procurement Australia or NSW State Contract can provide the good or service required.
5. If there is an appropriate supply agreement then a supplier under that agreement should be engaged. It is good business practice to obtain quotations from several suppliers under the agreement before engaging a supplier. Always check the terms and conditions before making a purchase under an existing agreement.
6. If there is no existing supply agreement then the action to be taken depends on the value of the good/service as follows:

Value of the procurement activity	Procurement method to be undertaken
Less than \$5000	Obtain 1 verbal quotation from a supplier of your choice
\$5000 - \$49 999	Obtain 3 written quotations from suppliers of your choice
\$50 000 - \$149 999	Issue a Request for Quotation to at least three suppliers (refer to Attachment 1 for further details)
\$150 000+	Issue a Request for Tender (refer to Attachment 2 for further details)

7. Once a decision has been made about which supplier to engage then a purchase order for the good/service is to be issued to the supplier. The purchase order is to be used as the means of placing the order with the supplier.

8. Value for Money

The aim of the procurement process is to obtain best value for money. This means considering all factors relevant to the proposed contract including supplier experience, reliability, and whole of life costs including initial outlay and ongoing costs. Value for money does not automatically mean the lowest price.

9. Contract Value and Order Splitting

Contract Value is the estimated dollar value of the proposed good/service over the proposed term of the acquisition and not a value per annum.

Splitting orders to overcome limitations due to an assigned delegation or to avoid the requirement for obtaining competitive prices should not take place under any circumstances. Such action may be subject to disciplinary action under our Code of Conduct.

10. Conflicts of Interest

Conflicts of interest may occur when an individual could be influenced, or a reasonable person would perceive that an individual could be influenced, by a personal interest when carrying out public duties. There is a reasonable community expectation that when such a conflict occurs, it will be declared, assessed and resolved in favour of the public interest.

Council Officials have an obligation to disclose potential or actual conflicts of interest between their public duties and their personal or private interests. The benefit or loss may be financial or non-financial.

A conflict of interest can be of two types:

- i) Pecuniary
An interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as defined by section 442 of the Local Government Act.
- ii) Non-pecuniary
A private personal interest the council official has that does not amount to a pecuniary interest as defined by the Act. For example, a non-pecuniary interest could be a friendship, membership of an association, society or trade union or involvement or interest in an activity.

Our Code of Conduct provides further information regarding conflicts of interest and how they can be managed.

11. Tender Submissions

Tender documents must be submitted to a secure tender box. Submission of tenders via email, fax or any other insecure means is not acceptable. Council officials must not submit tender documents on behalf of a tenderer.

Late tenders must not be considered except in circumstances specified in Clause 177 of the Local Government (General) Regulations 2005. If a late tender is accepted then the circumstances must be clearly documented with the reasons why it was deemed acceptable to accept the late tender.

12. Environmental Management

We are committed to reducing waste throughout the procurement lifecycle through waste reduction and avoidance strategies.

Our Waste Reduction and Procurement Policy requires that procurement decisions are based on decisions of “value for money over lifecycle of products” rather than “lowest cost”. Where appropriate, preference is to be given to cost competitive goods and services that are energy efficient, water efficient and environmentally friendly.

Refer to our Waste Reduction and Procurement Policy for further information.

13. Local Preference

We have adopted a policy (Policy No. 24-068) that shows our commitment to supporting Australian made products and local business, where appropriate. Australian content of the products offered and location of the supplier’s business should be considered when determining the bid that provides the maximum advantage for Council expenditure.

Refer to our policy on Australian Made Goods and products and Purchasing Guidelines for further information regarding the application of Local Preference.

14. Record Management and Access to Records

Records management is the responsibility of the officer who is undertaking the procurement action. All documents created and received during the procurement process must be registered in our electronic document management system and managed in accordance with the NSW State Records Act 1998, our Records Management Policy and any other legislation in place controlling the keeping and disposing of these types of records.

Members of the public can request access to Council’s documents in accordance with the Government Information (Public Access) (GIPA) Act 2009.

The GIPA Act 2009 requires that certain information relating to contracts with the private sector with a value of \$150 000 or more be published on Council’s Internet site. Such information is available on our web site.

In conducting the tendering process council officials should ensure records are kept of the entire tendering process. This includes:

- The decision to tender.
- A copy of the public advertisement.
- Details of any changes made to the conditions of tender
- Policies, procedures and decisions regarding risk assessment and management
- A complete copy of the tender documents provided to tenderers.
- The tender evaluation criteria and weightings.
- The policy or procedure regarding the operation of tender evaluation panels and the names of council officials involved.
- Details of all communication with potential tenderers.
- The names of all tenderers and the amounts tendered.
- Where a council submits a tender, any policy or procedure regarding the management of in-house tenders and the names of council officials involved in an in-house tender.
- Evaluation report on each tender.
- The evaluation of tenders and the reasons for selecting the successful tender or not accepting any of the submitted tenders.
- Final report that documents the reasons, based on the tender criteria, for selecting the successful tenderer or, not accepting any of the submitted tenders.
- The notification to all tenderers of the outcome of the tendering process.

15. Confidentiality

Council Officials must not disclose information that is received from Vendors that is intellectual property, proprietary, commercial in confidence or otherwise confidential. In addition, Council Officials must not disclose information regarding the specific details of a tendering process, including a recommendation of the tender evaluation panel before the tender is resolved by resolution of Council.

16. Competition and Consumer Act Compliance

We are committed to nurturing a culture of commitment to the provisions of the Competition and Consumer Act, which aims to promote competition and to protect consumers against unfair business practices.

All procurement activity undertaken by Council Officials must be in compliance with the Competition and Consumer Act 2010.

For further information, refer to our Competition and Consumer Act Policy.

17. Delegations of Authority

The following is a list of delegations granted by Council to particular officers, to enable the administration of the tendering process to be carried out in a timely and efficient manner. In all cases other than those detailed in point 10, the extent of the delegation is that Council has delegated authority to the General Manager, who has, in turn sub-delegated to the Directors and Managers of all Divisions on the basis that the delegation be exercised individually by respective Directors and Managers in relation only to contracts which will be directly administered by their Division.

1. To determine whether tenders should be called
2. To determine the most appropriate method of tendering to be adopted in accordance with Clause 7 of the Regulation.
3. To determine the media in which the tender advertisement will appear, and the extent of appearance.
4. To determine a purchase price for tender documents, if appropriate.
5. To determine the content of tender documents.
6. To determine the criteria on which the assessment of tenders will be based.
7. To determine the person to whom requests for information concerning the proposed contract may be addressed.
8. To determine which applicants in accordance with Clause 168 and 169 (3) of the Regulation are capable of fulfilling the requirements of, and undertaking the proposed contract, and to determine which, or if any, applicants are to be invited to submit a tender for the contract.
9. To determine whether an extended period should be granted in appropriate circumstances, in accordance with Clause 172 of the Regulation.
10. To designate an "appropriate person" to receive or deal with tenders.
11. To designate at least two other people aside from the appropriate officer to witness the opening of tender envelopes by the appropriate officer.
12. To determine requests (up until the time that Council accepts a tender) to vary submitted tenders and to make a determination that a mistake or anomaly may exist in a submitted tender, or that further information by way of explanation or clarification may be required, if in the circumstances it appears reasonable to allow the tenderer to provide the information.
13. To determine whether any variation made to a tender in accordance with Clause 176 of the Regulation is such that it substantially alters the original tender, and to report to Council accordingly.

ATTACHMENT 1: THE REQUEST FOR QUOTATION PROCESS

Council's Procurement Policy requires Council officers to run a formal Request for Quotation process for procurement with a quoted value of between \$50 000 and \$149 999. The complexity of the Request for Quotation process depends on the degree of risk of the purchase. For low risk procurement in this value range, the request for quotation process can be relatively simple while higher risk procurements will require a more detailed and robust process.

Following is a flow chart of the various steps involved in the open tendering process:-



Analysis of Quotation Process

- Preparation of Quotation Documents and Contract:
A template is available on the Intranet to assist you in developing your Request for Quotation document. The Quotation documents should advise the respondents of Council's requirements up to and including the time when the contract is formally executed including the criteria on which the assessment of quotations will be based. The contract/s regulates the relationship between the parties thereafter.

The quotation documents should include:-

- a general outline of the circumstances surrounding the need for the contract, including a broad outline of the main features of the contract (summarised), and details of information which will enable the prospective contractor to make an informed commercial decision to lodge a quotation.

- a statement of quotation conditions
- response schedules
- the name of the person who can supply information about the quotation and contract and how the person can be contacted.
- A copy of Council's Statement of Business Ethics
- Evaluation process and the criteria for evaluation of quotations
- A statement that unethical or inappropriate conduct, such as approaching councillors or council officers or intimidating behaviour, will result in a quotation being disqualified.
- A statement advising Council's rights to access certain information in the respondent's/contractor's records in accordance with s.121 of the Government Information (Public Access) Act 2009.

Annexed to the quotation documents should be a copy of the proposed contract in most circumstances.

- Evaluation Criteria

It is essential that the evaluation criteria be established at the same time specifications are prepared so that the quotation documents can specify all the information and data needed for a comprehensive evaluation. Evaluation criteria should include but not be limited to any of the following factors:

- Fees, prices or charges
- Whole of life costs, including costs of disposal
- Innovation
- Delivery times
- Quality of product/service
- Previous performance of tenderer
- Experience of respondent and their personnel
- Capability of respondent, including technical, management organisational and financial capability and capacity
- Respondent's occupational health and safety management practices and performance
- Respondent's workplace and industrial relations management practices and performance
- Environmental management practices and performance
- Community relations practices and performance
- Value adding components such as economic, social and environmental development initiatives, if appropriate and relevant to the procurement
- Conformity of quotation with requirements.

The evaluation criteria should be consistent with the proposed contract requirements and aim to identify the respondent offering the best value for money.

As previously mentioned, the evaluation criteria should be included in the quotation documents. However, the weighting given to each criterion should not be included in the quotation documents as this may influence a potential supplier's response. The weighting of the evaluation criteria and the evaluation methodology should be determined prior to the calling of tenders and must not be determined later than close of tenders.

Once the Request for Quotation documents are completed and approved for release they can be sent to prospective suppliers. The documents are to be sent to at least three potential suppliers. Suppliers should be given at least 21 days to lodge their quotation. This gives them time to submit a high quality and meaningful quotation.

- Enquiries

Enquiries should be handled by one officer in order that prospective suppliers receive consistent advice. That officer must be named in the quotation documents. A complete listing of parties who have received quotation documentation is to be kept. Records should also be kept of all communication with all respondents.

Unless impractical, all communication with respondents is to be done in writing and simultaneously in respect of a question asked regarding the quotation.

Any amendments to quotation documents and the steps taken to inform all potential respondents of the amendments must be documented.

If an enquirer asks as to whom quotation documents have been issued, Council is under no obligation to divulge the information.

- Receipt of Quotations

All Quotations received are to be kept confidential and should not be opened until after the quotation closing date and time. Late quotations should not be considered if they are received after quotations have been opened or the respondent who submits a late quotation may have a competitive advantage by submitted a late quotation.

- Evaluation of Quotations

The criteria by which quotations need to be analysed would have been pre-specified in the tender documentation previously supplied to all respondents. Council is duty bound to apply these criteria in the analysis process.

Evaluation or consideration of quotations should be based on the conditions of quotation and the evaluation criteria provided in the quotation documents. Quotations should be evaluated by people with the necessary skills and knowledge, and who are free of any conflict of interests that might undermine the fairness of the process.

A quotation evaluation panel consisting of at least two people should be established for each request for quotation process. The role of the panel should include:

- Preparing a quotation evaluation plan
- Approving the conditions of quotation
- Develop criteria and weightings
- Ensuring the appropriate performance measures are included in the conditions of quotation
- Conducting the review and assessment of quotations

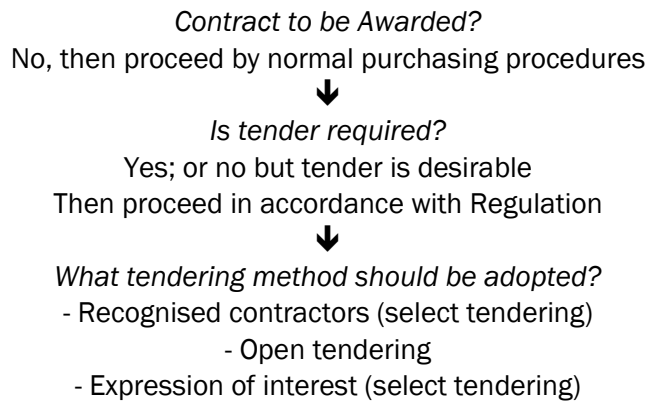
- Preparing an analysis of respondent's performance against the criteria
- Ensuring that appropriate contract documents are prepared and kept with Council's legal documents
- Maintaining minutes of panel meetings and documenting decisions.

Each member of the Evaluation Panel should independently assess the Respondent's performance against the set criteria to ensure due diligence is applied to the evaluation process. Each panel member should submit their evaluation score sheets to the Chair of the panel at the completion of the evaluation session. The score sheets should be attached to the Quotation file.

- Notification to Respondents
After completion of the evaluation, the successful respondent should be notified in writing and the contract executed. Once the contract has been executed, the unsuccessful respondents should be notified in writing.

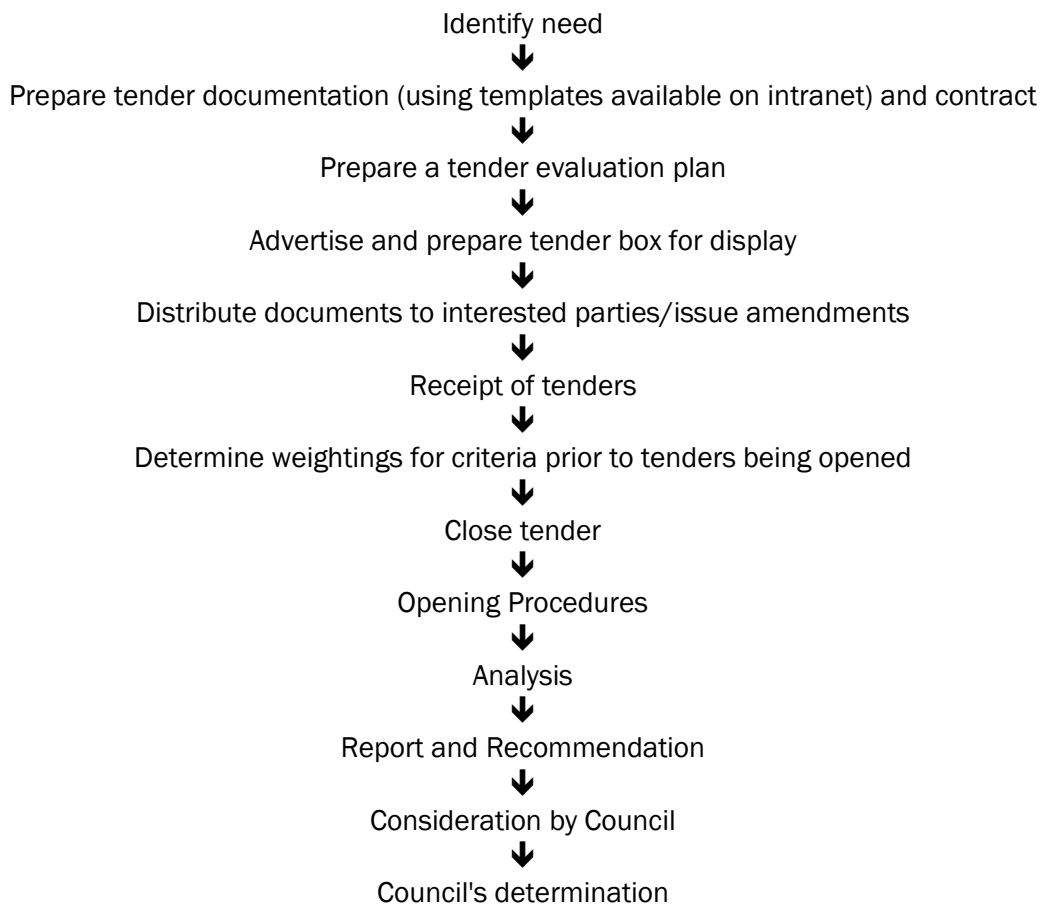
ATTACHMENT 2: THE TENDERING PROCESS

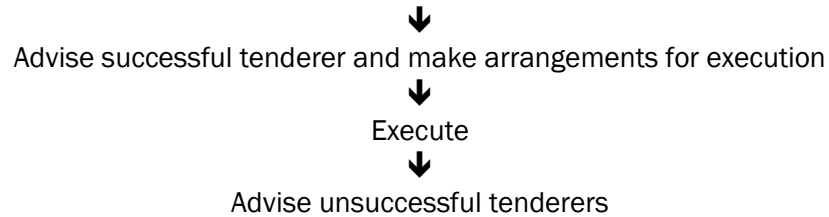
Tendering is a process that can be depicted in a flow chart format. (Refer to s.55 of the Local Government Act 1993 and Part 7 of the Local Government (General) Regulation 2005)



Having answered this question by selecting a method, then the Regulation prescribes various steps in the process. The most common method of awarding contracts is the "open tender" method and the procedures for tendering for this method are detailed below.

Following is a flow chart of the various steps involved in the open tendering process:-





Analysis of Tendering Process

- Is Tender Required?
A Council official must follow the provisions of Section 55 (1) and (3) of the Local Government Act 1993 in determining whether or not a tender is required to be called. The decision to tender for goods and services or dispose of council property must be comprehensively documented.

Section 55(3) of the Act describes the types of contracts that may be exempt from the tendering process. Exemptions to the tendering process must be carefully considered and reasons for exemption clearly documented.

The authority to determine whether a tender needs to be called has been delegated by Council to the General Manager. This authority has in turn been sub-delegated to the Council's Directors and Managers.

Tenders must be invited when the estimated expenditure on a particular good/service is \$150,000 or greater amount. Invoice or order splitting must not be undertaken to avoid the tendering requirement.

- If a tender is required, what method should be used?
Clause 166 of the Local Government (General) Regulation 2005 ("the Regulation") specifies the three methods that can be used as follows:-
 - a) Open tendering (tenders invited by public advertisement).
 - b) The selective tendering method by which invitations to tender for a particular proposed contract are made following public advertisement asking for expressions of interest.
 - c) The selective tendering method by which recognised contractors are invited to tender for proposed contracts by a particular kind.

Council has traditionally used only methods (a) and (b) for mandated tendering purposes. A Council official should document the reasons for choosing a particular tendering method. The tendering method selected should have the greatest likelihood of achieving the best value for money and should always be applied in a framework of probity and fair dealing to potential tenderers, while promoting open and effective competition.

Expressions of interest are generally used to shortlist prospective suppliers prior to releasing a selective request for tender to the short listed suppliers. This approach is useful for ensuring that only companies deemed capable of submitting genuinely competitive tenders are invited to participate in the

detailed request for tender process. This optimises the cost and time both Council and suppliers invest in tendering.

The expression of interest process is not meant to select the tenderer who will be successful; rather it is the reverse, whereby all parties who can't perform are excluded. The subsequent request for tender process will select the successful tenderer.

Authority has been delegated from Council to the General Manager to determine the most appropriate tender method. Each Director and Manager has in turn been given sub-delegated authority by the General Manager to determine such matters, in so far as the particular contract to be tendered falls within the operations of their Division/Management Unit.

- **Preparation of Tender Documents and Contract:**
Prior to the preparation of tender documents and contract, advice must be sought from the Procurement Co-ordinator who will provide assistance in preparing the documents. The tender documentation (as distinct from the actual contract it relates to) should advise the tenderer of Council's requirements up to and including the time when the contract is formally executed including the criteria on which the assessment of tenders will be based. The contract/s regulates the relationship between the parties thereafter.

The tender documents should include:-

- a general outline of the circumstances surrounding the need for the contract, including a broad outline of the main features of the contract (summarised), and details of information which will enable the prospective contractor to make an informed commercial decision to lodge a tender.
- a statement of tendering conditions
- tendering checklist
- tender form
- the name of the person who can supply information about the tender and contract and how the person can be contacted.
- A copy of Council's Statement of Business Ethics
- Evaluation process and the criteria for evaluation of tenders
- A statement that unethical or inappropriate conduct, such as approaching councillors or council officers or intimidating behaviour, will result in a tender being disqualified.
- A statement advising Council's rights to access certain information in the tenderer's/contractor's records in accordance with s.121 of the Government Information (Public Access) Act 2009.

Templates to assist in preparing tender documents are available on the intranet. Annexed to the tender documents should be a copy of the proposed contract in most circumstances.

- **Evaluation Criteria**
It is essential that the evaluation criteria be established at the same time specifications are prepared so that the tender documents can specify all the

information and data needed for a comprehensive evaluation. Evaluation criteria could include but not be limited to any of the following factors:

- Fees, prices or charges
- Whole of life costs, including costs of disposal
- Innovation
- Delivery times
- Quality of product/service
- Previous performance of tenderer
- Experience of tenderer and their personnel.
- Capability of tenderer, including technical, management, organizational and financial capability and capacity
- Tenderers work health and safety management practices and performance
- Tenderers workplace and industrial relations management practices and performance
- Tenderers environmental management practices and performance
- Tenderers community relations practices and performance
- Value adding components such as economic, social and environmental development initiatives, if appropriate and relevant to the procurement
- Conformity of tender with requirements.

The evaluation criteria should be consistent with the proposed contract requirements and aim to identify the tenderer offering the best value for money.

As previously mentioned, the evaluation criteria should be included in the tender documents. However, the weighting given to each criterion should not be included in the tender documents as this may influence a potential tenderers response. The weighting of the evaluation criteria and the evaluation methodology should be determined prior to the calling of tenders and must not be determined later than close of tenders.

- The Advertisement
Clauses 167, 168 and 169 of the Regulation set out the procedural requirements for the advertisement. As well as the mandatory requirements, Council has the discretion to decide to advertise the tender more widely as an extension to the marketing of the contract. The main purpose of the advertisement is to notify the availability of documentation to those in the market that may be interested.

Accordingly, the advertisement should include the following elements:-

- a) A brief description of the proposed contract's purpose (to be expanded on in the formal contract document).
- b) When, at what price (if any) and from where tender documents are available.
- c) An invitation to interested parties to lodge tenders by the deadline in the advertisement.
- d) The name of the person who can supply information and how that person can be contacted.
- e) Details of how to lodge a tender

The day the advertisement first appears in the newspaper, the tender box should be prepared and placed in the Administration Centre foyer. It must be kept there

whenever the office is open so that individuals may personally place their tender in the box up until the closing time of the particular tender. A copy of the advertisements should be retained on the file.

The deadline should be no sooner than 21 days after the date the advertisement first appears. Council may resolve to set an earlier deadline (no sooner than 7 days after advertisement) but must have exceptional circumstances, and these circumstances, must be specified in the Council resolution which authorises a shortened tender period. Such a decision cannot be delegated.

Council may also determine to extend a tender period after tenders are called, in circumstances that show that the deadline might not allow for meaningful tenders to be submitted. The authority to take such a decision, unlike one to shorten a tender period, can be delegated and such authority currently vests in the General Manager for all contracts and Directors and Managers for contracts within their management responsibility. In order to facilitate notification to parties that have collected documents before the decision to extend the tender period is made, a list should be kept of those parties to whom the documents have been issued.

The tender period may be varied depending on the circumstances of the particular contract. It must be long enough to enable prospective contractors to become aware of the proposed contract, and to gather the necessary information to lodge a meaningful tender. Care needs to be taken when specifying a closing date that it does not fall on a public holiday, a Friday or the day before a holiday. Time of closing should be no later than 3.00 p.m. Regard should be given to the industry from which we are seeking tenders when deciding on when to close tenders as well as considering Council's own requirements such as when a report on the tenders will be submitted to Council. Obviously it would not create a good image for Council if tenders closed and could not be considered for 6 weeks due to a Council recess.

Clauses 171 and 172 of the Regulation outline the requirements for shortened or extended tender periods. A Council official must keep a record of the circumstances requiring the change to the tender period and the name of the council official or the minute number of the resolution of council that made the decision to change the tender deadline.

- Enquiries and Distribution of Tender Documents:
This should be handled by one officer in order that prospective tenderers receive consistent advice. That officer must be named in the advertisement and the tender documents. A complete listing of parties who have received tender documentation is to be kept. Records should also be kept of all communication with all tenderers.

Unless impractical, all communication with tenderers is to be done in writing and simultaneously in respect of a question asked regarding the tender.

Any amendments to tender documents and the steps taken to inform all potential tenderers of the amendments must be documented in accordance with clause 170 of the Regulation.

Where briefings or site visits are offered by council in regard to a particular tender, an attendance register and minutes or notes of the proceedings, including questions asked and answers provided should be kept. During briefings or site visits, Council officials should avoid one to one communication with potential tenderers. Requests for information by one potential tenderer should be repeated aloud for the benefit of all those in attendance and the response provided to all.

If an enquirer asks as to whom tender documents have been issued, Council is under no obligation to divulge the information. Enquirers can be told however the number of sets of documents issued.

- Receipt of Tenders
The conditions in regard to the submission of tenders to council are prescribed by clause 173 of the Regulation. It is the tenderers responsibility to submit a tender in accordance with the conditions of tender and in a legible form.

The submission of tenders to council by electronic means is acceptable if this method of submission is specified in the tender documents in accordance with clause 177 of the Regulation.

Generally, late tenders should not be considered. However, Clause 177 (5) of the Regulation provides that a council must consider a tender received within a reasonable period after the close of the tenders where the tenderer can satisfy council that the tender documents and all necessary information were lodged at a recognized delivery agency in sufficient time to enable the documents to have been received before the deadline. Any decision to accept a late tender should be documented including the rationale for the decision.

For the purposes of determining what constitutes sufficient proof for the purpose of clause 177, the tenderer must, if requested by Council to do so, supply Council with written verification from the delivery agency concerned which confirms that the documents were lodged with the agency before the closing of the tender.

For the purposes of determining what constitutes "Reasonable Period" in terms of Clause 17(4) (b) of the Regulation, each case will be considered on its merits but in no instance will a tender submission be considered where it is received by Council later than 24 hours after the time of tender closing.

- Tender Closure
The General Regulation provides that the General Manager designate an appropriate officer to deal with the opening of tenders. The Group Manager Governance has been designated the appropriate person, with the Governance Co-ordinator an alternate delegate when the principal delegate is absent or unable to attend a tender opening.

When the tender closes, the appropriate officer, in the company of at least 2 other persons designated by the General Manager must remove the envelopes from the tender box and open the envelopes in the presence of any tenderers or members of the public who wish to attend and observe the opening procedures.

A record is then made of the names of the parties that submitted tenders and the apparent prices tendered. All designated officers should initial next to where the apparent amount appears on the tender form.

The appropriate officer must then prepare and display a list specifying, in alphabetical order, the names of the tenderers. It takes the form of a certificate from the appropriate officer.

As a matter of policy, the person designated as the person to whom tenderers should refer for requests for information, shall cause the precedence listing certificate to be displayed in a conspicuous place within the Administration Centre foyer.

Delegation has been given to each Director to designate the other two persons to be present at the tender opening. One of those people needs to be the person nominated for the tender as the Council contact person.

When the appropriate officer is satisfied with the list of tenders in apparent order of amount the public display notice should be certified, placed in a conspicuous position on public view and the tenders should be referred to the reporting officer for analysis and report.

The following protocol should apply to contact between the tenderers and council officials, after the tender closes and prior to the announcement of the successful tenderer:

- Tenderer initiated contact should not be allowed (except where the tenderer seeks a variation)
- Council initiated contact should only be for the purposes of clarification. The decision to contact a tenderer should be a unanimous decision of the tender evaluation panel.
- Where the tender evaluation panel decide to request clarification from a tenderer, all tenderers are to be given the opportunity to provide clarification on that aspect of the tender if necessary
- Clarification should only be sought if information received in a tender is open to interpretation or is not clear and where the information is necessary to identify the successful tender.
- Council initiated contact must not result in any tenderer gaining an advantage over other tenderers. A tenderer must not be allowed to revise or enhance its original tender
- All contact must be documented.

Information contained in tenders and documents relating to them must be kept confidential unless disclosure is necessary or desirable for the conduct of a meeting of Council or a committee (see section 10A of the LGA).

- **Review of Tenders:**
During the course of analysis, certain anomalies may become apparent in tenders. Variations are possible to tenders prior to acceptance by Council. Clause 176 of the Regulation outlines the circumstances in which a tender may be varied after council has received it but before the council accepts a tender. Variations may be made either at the request of Council, or at the tenderer's request in reasonable circumstances. Any variation which substantially alters the original tender must not be considered by Council. Variation should be limited to providing further information (by way of explanation or clarification) or correcting a mistake or anomaly in a tender. A Council official must provide all other tenderers whose tenders have the same or similar characteristics the opportunity to vary their tenders. A record must be kept detailing the circumstances requiring the variation of a tender and the name of the council official handling the matter.

The Director of the Division and the Manager of the functional area involved with the contract have been given delegated authority to determine when Council should suggest to tenderers that variations may be needed, and to determine requests from tenderers to lodge variations.

The criteria by which tenders need to be analysed would have been pre-specified in the tender documentation previously supplied to all tenderers. Council is duty bound to apply these criteria in the analysis process.

Evaluation or consideration of tenders should be based on the conditions of tender and the evaluation criteria provided in the tender documents. Tenders should be evaluated by people with the necessary skills and knowledge, and who are free of any conflict of interests that might undermine the fairness of the process.

A tender evaluation panel including one member of the Governance team should be established for each tendering process. The role of the panel should include:

- Preparing a tender evaluation plan
- Approving the conditions of tender
- Develop criteria and weightings
- Ensuring the appropriate performance measures are included in the conditions of tender
- Conducting the review and assessment of tenders
- Preparing an analysis of tenderers performance against the criteria
- Preparing a report to Council
- Ensuring that appropriate contract documents are prepared and kept with Council's legal documents
- Maintaining minutes of panel meetings and documenting decisions.

Each member of the Tender Evaluation Panel should independently assess the Tender's performance against the set criteria to ensure due diligence is applied to the evaluation process. Each panel member should submit their evaluation score sheets to the Chair of the panel at the completion of the evaluation session. The score sheets should be attached to the Tender file.

- **Report to Council of Tender Evaluation Outcome**
Following the review of tenders by the evaluation panel, a report to Council must be prepared to allow council to make the decision to accept a tender under Section 377 of the Act, or not accept any of the tenders under clause 178 of the Regulation. The report should include:
 - Background information relating to the invitation to tender
 - Details of all tenders received, including non-complying or alternate tenders
 - Financial analysis of the tenders based on unit price, service price, annual cost, total cost or other appropriate measures depending on the nature of the tender
 - Details of the evaluation criteria
 - Details of any post-tender contact
 - Summary of the tender considered most suitable in the circumstances, including the rationale for the conclusions or the rationale for considering none of the tenders suitable.

- **Tender Negotiation**
If after the tendering process none of the tenders are acceptable, either due to the level of non-conformance or because they do not represent sufficient value for money, Council may, under clause 178 of the Regulation, determine by resolution to enter into negotiations with any person with the intention to enter into a contract. The resolution of Council must state the reasons for declining to advertise and invite fresh tenders. Council Officials should not use such tender negotiations as an opportunity to trade-off one tenderer's price against other tenderer's prices in order to obtain lower prices.

In general direct negotiating is not supported and should be avoided due to the risks associated with the process.

- **Contracts Register**
All contracts that Council enters into with the private sector with a value exceeding \$150 000 needs to be recorded in Council's Contracts Register, in accordance with the Government Information Public Access (GIPA) Act 2009. Contact the Procurement Coordinator to arrange for the contract to be included on Council's Contracts Register.