

COUNCIL POLICY			
Date Adopted by Council	12 May 2021	Council Resolution	2021/05/12.12
Effective Date	13 May 2021	Next Review Date	30 June 2022
Responsible Officer(s)	Executive Manager Procurement, Property and Fleet	Revokes	LG_CORP_2017_01

Purpose

The purpose of this policy is to provide consistent direction and guidance to all officers when undertaking procurement and disposal activities in accordance with the sound contracting principles stipulated in the Local Government Act 2009:

- a) value for money; and
- b) open and effective competition; and
- c) the development of competitive local business and industry; and
- d) environmental protection; and
- e) ethical behaviour and fair dealing.

The policy also stipulates the requirements regarding the disposal of valuable non-current assets, including land.

Scope

This policy is applicable to all Employees with delegation (contractual or financial) or responsibility for Contracting Activities including:

- a) The carrying out of work; or
- b) The supply of goods and services; or
- c) The disposal of non-current assets.

It is the responsibility of these Employees to understand the meaning and intent of this Policy.

Applicable Legislation

This policy refers to:

Competition and Consumer Act 2010
 Local Government Act 2009
 Local Government Regulation 2012
 Public Sector Ethics Act 1994
 Trade Practices Act 1974
 Work Health and Safety Act 2011

Policy Statement

1. Default Contracting Procedures

Council has not decided to apply the Strategic Approach (refer Part 2 Chapter 6 of the Regulation) to Councils Procurement Activities.

Council will operate under the Default Contracting Procedures (refer Part 3 Chapter 6 of the Regulation) which sets out prescribed requirement for Medium Sized Contractual Arrangements, Large Sized Contractual Arrangements and Valuable Non-Current Asset Contracts.

2. Application of Sound Contracting Principles

a) Value for Money

The concept of value for money is not restricted to price alone. Value for money is weighing up the benefits of the purchase against the cost of the purchase. Value for money factors need to be specifically included in evaluation criteria and include:

- i. Contribution to the advancement of Council's priorities;
- ii. Fitness for purpose, quality, services and support;
- iii. Compliance with the Work Health and Safety Act 2011 and Regulations for the provision of the goods and/or services.
- iv. Whole of life costs including costs of acquiring, using, maintaining and disposal;
- v. Internal administration costs;
- vi. Technical compliance issues;
- vii. Risk allocation; and
- viii. The value of any associated environmental mitigation and/or benefits as identified through contemporary Sustainable Procurement assessment criteria.

b) **Open and effective competition**

Procurement should be open and result in effective competition in the provision of goods and services. Council must give fair and equitable consideration to all prospective suppliers.

Purchasing Thresholds

Unless an exception is made in accordance with the Local Government Regulation 2012 Division 3, Council will apply the following threshold levels for the provision of goods and services include the carrying out of work:

- a) Goods and services to **\$1,000.00 (Excluding GST)** – a minimum of one verbal offer can be obtained.
- b) Goods and services **\$1,001 to \$14,999 (Excluding GST)** – a minimum of two written offers are to be obtained and recorded within Councils ERP system.

- c) Medium – sized contract for goods and services **\$15,000 to \$200,000 (Excluding GST)**, either in a financial year, or over the proposed term of the contract – a minimum of three written quotes shall be obtained and recorded within Councils ERP system.
- d) Large-sized contracts for goods and services over **\$200,000 (Excluding GST)** either in a financial year, or over the proposed term of the contract require the calling of public tenders in accordance with Section 228 the Regulation unless the provisions for an Exception as provided for under sections 230-235 of the Regulation.

Public notices will be advertised on Councils website through a web based tender portal and local newspapers circulating in the Region.

These are the minimum requirements for purchases, and there may be instances at the requesting officer discretion, where it is prudent to obtain more quotations than are documented above.

Expressions of Interest

Council may also seek Expressions of Interest as per section per section 228 of the Regulation if:

- a. Prior to the issuing of the Request for Expressions of Interest that Council decides by resolution that it would be in the public interest; and
- b. That the reasons for making the resolution are recorded in the minutes of the meeting at which the resolution was made.

c) The development of competitive local business and industry

- i. Council recognises the significant impact that its operations play in the local economy however also is mindful of its requirement to provide value for money outcomes through its procurement activities.
- ii. Council has implemented a Local Preference Policy LSP_CORP_32 that provides a framework to Council officers when purchasing future goods, services and/or works. The Framework provides a 10% weighting benefit to Local Supplier in all procurement decisions and direction for officers to seek responses from Local Supplier as per policy direction.
- iii. Consideration must be given to the benefits of utilising Local Suppliers when undertaking procurement activities. These benefits include:
 - Creation of new and/or maintaining existing local employment opportunities;
 - More responsive and readily available servicing and on-going support;
 - Assisting Local Suppliers in developing management systems required for supplying to government which may provide further opportunities with other government agencies;
 - Returning value-added benefits to Council and its ratepayers through the associated local commercial transactions.

d) Environmental protection

In undertaking procurement activities Council will endeavour to support Sustainable Procurement through the following actions:

- promote the procurement of environmentally friendly goods and services that satisfy value for money criteria;

- foster the development of products and processes of low environmental and climatic impact;
- provide an example to business, industry and the community by promoting the use of climatically and environmentally friendly goods and services; and
- encourage environmentally responsible activities.

Council may also consider the following:

- the environmental performance of prospective contractors or suppliers;
- the selection of products that may have a reduced impact on human health and / or the natural environment; and
- the environmental impact and performance of a requested product, such as energy and / or water
- efficiency rating, fuel efficiency, durability, recycled content, toxicity, origin of any components made from wood (e.g. paper products) and end of life disposal.

e) Ethical behaviour and fair dealing

Ethical behaviour and fair dealing will be promoted by fulfilling the requirements of Council's Code of Conduct, working with sound ethics and ensuring that both Council and suppliers:

- apply sound ethical principles and equitable dealings with fair and reasonable opportunities;
- ensure probity, transparency, impartiality and accountability for all contracting activities;
- use procurement and contracting processes, systems and procedures that provide a consistent approach to Council's legislative and policy requirements
- promote high standards of professionalism in procurement and contracting activities; and
- ensure Council officers with contracting responsibilities act with integrity and in a way that shows concern for public interest.

3. Exceptions for medium-sized and large-sized contractual arrangements

Council may enter into medium-sized and large -sized contractual arrangements without first inviting quotes or tenders as provided for under sections 230-234 of the Regulation. These are:

a) *Exception for Quotation or tender consideration plan; or*

Council may enter into a Medium or Large Sized Contractual Arrangement without first inviting quotes or tenders if Council resolves to:

- i. Prepare a quote or tender consideration plan; and
- ii. Adopts the plan in accordance with section 230(2) of the Regulations.

b) *Approved contractor list; or*

Council may enter into a contract for a Medium or Large Sized Contractual Arrangement without first seeking written quotes or inviting tenders for services only, if the contract is made with a person who is on an Approved Contractor List.

(ii) Council, must appoint persons to an Approved Contractor List by inviting expressions of interest in the manner stipulated in clause (f) of this Procurement Policy and in accordance with the Sound Contracting Principles.

c) *Accessing a Register of Pre-Qualified Suppliers; or*

Council may enter into a contract for a Medium or Large Sized Contractual Arrangement without first seeking written quotes or inviting tenders for goods and services, if the contract is entered into with a supplier from a Register of Pre-Qualified Suppliers.

i. Prior to the formation of a Register of Pre-Qualified Suppliers Council must establish that:

- The preparation and evaluation of invitations every time that the goods or services are needed would be costly; and
- The capability and financial capacity of the supplier of the goods and services is critical; or
- The supply of the goods and services involves significant security considerations; or
- A precondition of an offer to contract for the goods or services is compliance with particular standards or
- conditions set by the local government; or
- The ability of local Suppliers to supply the goods or services needs to be discovered or developed.

d) *Preferred Supplier arrangement; or*

Council may enter into a contract for a Medium or Large Sized Contractual Arrangement without first seeking written quotes or inviting tenders for goods and services, if the contract is entered into with a preferred supplier under a Preferred Supplier Arrangement.

(ii) Prior to the formation of a Preferred Supplier Arrangement for goods and services Council must establish that it:

- needs the goods or services—
 - in large volumes; or
 - frequently; and
- is able to obtain better value for money by accumulating the demand for the goods or services; and
- is able to describe the goods or services in terms that would be well understood in the relevant industry.

(iii) To enter into a Preferred Supplier Arrangement Council must:

Invite tenders as described in section 2(b) of this Procurement Policy; and

- Describe the terms of the preferred supplier arrangement; and
- Must give regard to the Sound Contracting Principles when selecting persons; and
- Ensure the terms allow for termination for the poor performance of the supplier; and

- Enter into the arrangement for a term greater than two years only if MRC is satisfied that it will get better value for doing so.

e) *LGA Arrangement.*

- i. Council may enter into a contract for a Medium or Large- Sized Contractual Arrangement without first seeking written quotes or inviting tenders for goods and services, if the contract is entered into under a LGA arrangement. However, to demonstrate value for money outcomes, it is strongly recommended that a minimum of two quotes are sought.
- ii. An LGA arrangement is an arrangement that—
has been entered into by—
 - LGAQ Ltd.; or
 - a company (the associated company) registered under the Corporations Act, if LGAQ Ltd. is its only
 - shareholder; and
- if LGAQ Ltd. or the associated company were a local government, would be either—
 - a contract with an independent supplier from a register of pre-qualified suppliers established under
 - section 232 by LGAQ Ltd. or the associated company; or
 - a preferred supplier arrangement entered into with an independent supplier under section 233.
- iii. An independent supplier is an entity other than a subsidiary (a relevant subsidiary) of LGAQ Ltd. or the associated company under the Corporations Act.
- iv. Despite subsection (2)(b), an LGA arrangement may include a contract with a relevant subsidiary from a register of prequalified suppliers or a preferred supplier arrangement with a relevant subsidiary if the arrangement is approved by the Minister.

For deciding whether to approve an LGA arrangement under subsection (iv), the Minister—

- must have regard to the sound contracting principles; and
- may ask LGAQ Ltd. or the associated company to give the Minister information or documents relevant to the arrangement.

In regard to LGA arrangements, Council recognises that:

- i. They will only be utilised where no known Local Supplier is affected; and
- ii. The arrangements are entered into as a result of legislated market testing processes which ensure that the price and other relevant terms under these contracts are always equal to or better than the price and terms available which would be available under a separate call for tenders or quotations;
- iii. Acknowledges that these contracts can be accessed immediately so that there is no time delay as occurs where tenders or quotations are sought.

4. Other exemptions to threshold limits

In accordance with section 235 Council may enter into a contract for a Medium or Large-Sized Contractual Arrangement without first seeking written quotes or inviting tenders if:

- a) The local government resolves it is satisfied that there is only 1 supplier reasonably available; or
- b) The local government resolves that, because of the specialised or confidential nature of the services that are sought, it would be impractical or disadvantageous for the local government to invite quotes or tenders; or
- c) A genuine emergency exists; or
- d) The contract is for the purchase of goods and is made by auction; or
- e) The contract is for the purchase of second-hand goods; or
- f) The contract is made with, or under an arrangement with, a government agency.

Valuable non-current asset contracts – tenders or auction needed first (Disposals)

Council cannot enter into a valuable non-current asset contract unless it first:

- i. Invites written tenders for the contract in accordance with the tender process set out section 228 of the Regulation; or
- ii. Offers the non-current asset for sale by auction.

Exceptions for valuable non-current asset contracts

1. Council may dispose of valuable non-current assets other than by tender or auction if:

- a) The valuable non-current asset:
 - i. Was previously offered for sale by tender or auction and was not sold; and
 - ii. Is sold for more than the highest tender or auction bid that was received; or
- b) The valuable non-current asset is disposed of to:
 - i. A government agency; or
 - ii. A community organisation; or
- c) For the disposal of land or an interest in land –
 - i. The land will not be rateable land after the disposal; or
 - ii. The land is disposed of to a person whose restored enjoyment of the land is consistent with Aboriginal tradition or Island custom; or
 - iii. the disposal is for the purpose of renewing the lease of land to the existing tenant of the land; or
 - iv. the land is disposed of to a person who owns adjoining land if –

- A. the land is not suitable to be offered for disposal by tender or auction for a particular reason, including,
- B. for example, the size of the land or the existence of particular infrastructure on the land; and
- C. there is not another person who owns other adjoining land who wishes to acquire the land; and
- D. it is in the public interest to dispose of the land without a tender or auction; and
- E. the disposal is otherwise in accordance with sound contracting principles; or
- vi. all or some of the consideration for the disposal is consideration other than money, for example, other land given in exchange for the disposal, if—
 - A. it is in the public interest to dispose of the land without a tender or auction; and
 - B. the disposal is otherwise in accordance with sound contracting principles; or
- vii. the disposal is for the purpose of a lease for a telecommunication tower; or
- viii. the disposal is of an interest in land that is used as an airport or for related purposes if—
 - A. it is in the public interest to dispose of the interest in land without a tender or auction; and
 - B. the disposal is otherwise in accordance with sound contracting principles; or
- a) for the disposal of a valuable non-current asset, other than land, by way of a trade-in for the supply of goods or services to the local government—
 - i. the supply is, or is to be, made under this part; and
 - ii. the disposal is, or is to be, part of the contract for the supply; or
- b) for the disposal of a valuable non-current asset by the grant of a lease—the grant of the lease has been previously offered by tender or auction, but a lease has not been entered into; or
- c) the Minister exempts the local government from complying with section 227.
- 2. An exception mentioned in subsection (1)(a) to (e) applies to a local government disposing of a valuable non-current asset only if, before the disposal, the local government has decided, by resolution, that the exception may apply to the local government on the disposal of a valuable non-current asset other than by tender or auction.
- 3. A local government may only dispose of land or an interest in land under this section if the consideration for the disposal would be equal to, or more than, the market value of the land or the interest in land, including the market value of any improvements on the land.
- 4. However, subsection (3) does not apply if the land or interest in land is disposed of under subsection (1)(b), (1)(c)(ii) or (1)(f).

5. For subsection (3), a written report about the market value of land or an interest in land from a valuer registered under the Valuers Registration Act 1992 who is not an employee of the local government is evidence of the market value of the land or the interest in land.
6. An exemption under subsection (1)(f) may be given subject to conditions.

Delegations

The Chief Executive Officer implements Council's policies and decisions e.g. Spending in accordance with the adopted budget.

Other officers may only incur expenditure on behalf of Council if:

- i. The officer has been granted the financial and/or contractual delegation by the Chief Executive Officer and this delegation has been recorded in the Delegation of Authority Register; and
- ii. The expenditure is provided for in Council's budget.

By signing or approving a requisition/purchase order all officers are confirming that they have taken full notice of this policy and will comply with all of the requirements of this policy. The Delegation Authority is available on the Council's intranet.

5. Publishing details of contracts entered that exceed \$200,000 (Excluding GST)

Council will display contracts over \$200,000 (Excluding GST) in accordance with Section 237 of the Regulation on Council's website and displayed in a public place at each of its Customer Contact Centres.

6. Probity Auditor/Advisor

For projects over **\$1,000,000 (Excluding GST)** and whose risk score requires, the appointment of an external Probity Auditor/advisor is required.

The purchase of equipment such as items listed within Councils Fleet and Plant replacement program are excluded from this requirement.

7. Variations

A variation is an agreed amendment to a contract that changes the original terms, conditions or scope of the contract. For the purpose of this policy, variation refers solely to a financial deviation from original contract value. The contract can be a Council purchase order or agreement signed by an Authorised Delegate with an external service provider/organisation. Other variations such as non-financial scope changes, extension of time etc. are to be managed by delegated council officers.

Variation procedures for contracts are as follows:

- Each variation can only be approved in writing by a delegated officer up to their authorised financial and contractual delegation;
- The delegated officer must verify that funds are in approved budgets to meet the costs prior to the variation being actioned;
- Each variation requires an additional line item on the purchase order stating the change in scope and cost; and
- Officers must ensure that the contract variations are not of such a level that they significantly change the contract requirements and/or substantial parts of the original procurement. If this is the

case, it may be necessary to undertake another procurement process if the revised arrangements are substantially different to those selected during the original procurement.

8. Mates in Construction

All construction projects over \$1,000,000 Council requires that Principal Contractors awarded major construction projects shall adopt the Mates in Construction (MIC) Program General Awareness Training.

The MIC program is designed to:

- Raising awareness about suicide in the workplace;
- Making it easy to access help; and
- Ensuring that the help offered is practical, professional and appropriate.

9. Building and Construction Works

Council has adopted the Queensland Government Prequalification (PQC) System framework for building works over \$5 million \$5 Million and/or for projects with a PQC Service Risk Score of 2 or higher.

Definition

Approved Contractor List means a list of contractors (persons or companies) who Council considers to be appropriately qualified to provide the services – refer section 231 of the Regulation.

Authorised Delegate, of Council, means a Council officer with the appropriate delegation and permission to make the decision.

CEO refers to the Chief Executive Officer of the Whitsunday Regional Council appointed in accordance with the *Local Government Act 2009*.

Council refers to the Whitsunday Regional Council

Employee refers to any employee, contractor, volunteer etc. of Council.

Key Strategic Priorities, of Council, means those key strategic priorities set out at section XX of this Procurement Policy.

Large-Sized Contractual Arrangement means a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, \$200,000 or more in a financial year or over the proposed term of the contractual arrangement.

Local Supplier means a supplier of goods, services or works who maintain a permanent presence within Councils local government area (i.e., a workshop or office and permanent employees residing in the Council region) (as determined by Council in the event of any dispute).

Medium-Sized Contractual Arrangement means a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, \$15,000 or more but less than \$200,000 in a financial year or over the proposed term of the contractual arrangement;

Preferred Supplier Arrangement has the same meaning as set out at section 233 of the Regulation. Pre-Qualified Suppliers has the same meaning as set out at section 232 of the Regulation.

Regulation means the Local Government Regulation 2012 (Qld).

Small-Sized Contractual Arrangement means a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, less than \$15,000 in a financial year or over the proposed term of the contractual arrangement.

Social Procurement means the use of buying power to generate social value above and beyond the value of the goods, services or construction being procured.

Sound Contracting Principles means those principles set out at section 104(3) of the Act.

Sustainable Procurement means the act of adopting social, economic and environmental factors alongside the typical price and quality considerations into the organisations handling of procurement processes and procedures.

Terms of Business are the conditions applicable to each purchase order issued by Council. Details available on Council's website

Valuable Non-Current Asset has same meaning as set out in the Regulation.

Related Documents

Code of Conduct for Employees
Delegation of Powers Policy LSP_CORP_35
Fraud and Corruption Control Policy
Purchasing Card Policy

Human Rights Compatibility Statement

This Policy has been assessed as compatible with the Human Rights protected under the *Human Rights Act 2019*