

9.14 Contractor Management Policy Review

REPORT BY THE CHIEF FINANCIAL OFFICER
TO 03 NOVEMBER 2021 ORDINARY MEETING
GOV400088, COR400019

RECOMMENDATION

That Council:

- 1. receive the report by the Chief Financial Officer on the Contractor Management Policy Review;**
- 2. place the revised Contractor Management Policy on exhibition for 28 days; and**
- 3. adopt the policy if no submissions are received after the exhibition period.**

Executive summary

This report seeks to obtain approval to amend the Contractor Management Policy (the Policy). Changes to the Policy include introducing a mandatory vaccination requirement for contractors, sub-contractors and employees of contractors.

The attached reviewed policy shows the changes via track changes.

Disclosure of Interest

Nil.

Detailed report

The revised Policy introduces a requirement for contractors, sub-contractors and their employees to be vaccinated against the acute respiratory syndrome coronavirus 2 (SARS-CoV-2, or COVID-19), or have appropriate medical exemptions and aims to minimise the risk of COVID-19 being contracted and/or transmitted by contractors in the course of their duties and to assist Council in ensuring, so far as is reasonably practicable, that the health and safety of our workers and anyone who comes into contact with our workers or contractors is not put at risk. COVID-19 is a highly contagious and potentially fatal disease which has been transmitted across workplace settings.

Because of these factors, there is a material risk to the health and safety of Council Workers who attend to work at the same site locations as contractors. The Policy amendments are a proportionate response to that risk.

The purpose of the revised Policy changes are to:

- allow Council to meet its requirements under Work Health and Safety Act 2011 by minimising the incidence and risk of workplace transmissions of COVID-19;
- assist Council to adopt best practice standards in doing so;
- minimise disruptions to the essential services we provide to the community;
- minimise the impact of COVID-19 on Council's financial sustainability (in particular on cash-flows); and
- allow Council to meet its obligations under any policy directive from the Commonwealth and/or New South Wales Government, as required

Community Plan implications

Theme	Good Governance
Goal	An effective and efficient organisation
Strategy	Prudently manage risks association with all Council activities

Strategic implications

Council Strategies

Not Applicable.

Council Policies

WHS Management Policy.
Risk Management Policy.

Legislation

Local Government Act 1993.
Local Government (General) Regulation 2005.
Work Health and Safety Act 2011.

Financial implications

Not Applicable.

Associated Risks

Nil.

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

19 October 2021

Attachments: 1. POLICY - REVIEW - Contractor Management Policy.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



POLICY Contractor Management

*A prosperous
and progressive
community.*

REVIEW	VERSION NO	2.4
COUNCIL MEETING MIN NO	REVIEW DATE	APRIL 2022
DATE: 03 NOVEMBER 2021	FILE NUMBER	COR400004

Objective

This policy aims to ensure Mid-Western Regional Council's ('Council) expectations and management of Contractors is legal, ethical and transparent for all parties. It is to provide guidance in the selection, management and monitoring of Contractors engaged by Mid-Western Regional Council. The outcomes of this policy are:

- Clear & Defined Expectations & Responsibilities
- Performance Management Criteria & Matrix
- Ethical Behaviour & Fair dealing
- Maintaining a High Standard of Health & Safety Management
- Protection of Contractor Pricing, Rates and intellectual property

This policy applies to all Council workplaces including though not limited to depots, buildings and worksites. The policy covers the selection, management and monitoring of Contractors associated with the supply of goods and/or services to Council and all Contractors engaged by Council for the purpose of maintenance, repairs and capital works, including those selected via a tender or a formal contract process. This procedure also encompasses other services engaged by Council such as training providers or consultants.

For workplace health and safety (WHS) risk management of Contractors refer to Council's WHS Management Policy.

Legislative requirements

- WHS Act 2011

Related policies and plans

- Procurement Policy
- Local Preference Policy
- Fraud Control Policy
- Statement of Business Ethics
- Code of Conduct
- Work Health and Safety Policy
- Enterprise Risk Management Policy
- Complaints Policy
- Chain of Responsibility Procedure

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Policy

In entering into contracts for the carrying out of work, or the supply of goods & services, Council Officers will have regard to Council's Contractor management objectives as set out above.

The general objectives of this policy apply to all Contractors regardless of engagement timeframes.

Council's Contractors shall be considered to be agents of Council and therefore required to comply with Council's relevant policies and procedures. A breach of these policies and procedures may result in disciplinary action as specified in this policy.

Fraud Control

Council is committed to the prevention, detection and investigation of all fraudulent and corrupt activity. Fraud and corruption wastes scarce public resources and damages organisational reputation. Council does not and will not tolerate fraudulent or corrupt practices either by staff, contractors or others working on behalf of Council.

Contractors are encouraged to report suspected fraudulent activity to the General Manager.

Council's Fraud Control Policy is available on Council's website.

Training of Staff

Staff involved in the engagement (and/or management) of Contractors will be appropriately trained by Procurement in the relevant procedures.

Training will be provided based on position requirements:

- To new recruits;
- In line with revision schedules for this policy (see Review date);
- With any major changes to this policy;
- Intermittently, as directed by Executive or the Manager Procurement, to address known risks.

Responsibilities

<p>Council's General Manager & Directors are responsible for:</p>	<ul style="list-style-type: none"> ■ The compliance management of the Contractor Management Policy and other associated policies ■ Requesting/undertaking investigations relating to such policies & procedures ■ Reporting suspected fraud and/or corruption ■ Document procurement decisions appropriately ■ <u>The General Manager has authority under this Policy to approve any exemption from full vaccination requirements for contractors, subcontractors or employees of contractors, at the General Managers discretion</u> ■ <u>Documenting approved exemptions from full vaccination requirements, including reasons for approving the exemption and any alternate risk management controls</u>
<p>Manager Procurement & Fleet is responsible for:</p>	<ul style="list-style-type: none"> ■ Providing guidance for, or assist in the management of non-conforming Contractors in accordance with this and other relevant procedures; ■ Undertake investigations relating to breach of procurement policies & procedures and contractor performance ■ Maintain relevant Council Policies & Procedures ■ Maintaining compliance with Council's Policies & Procedures ■ Monitor& report on compliance of Councils' Contractor Management Policy and Council's Procurement Policies & Procedures regarding the engagement of Contractors for both goods & services ■ Monitor Council's procurement activities promoting transparency & probity ■ Provide recommendation on procurement contractor expectations, terms & conditions prior to advertising ■ Document procurement decisions appropriately ■ Maintaining security around tendered rates and pricing ; and ■ Monitoring and maintaining VendorPanel for the organisation as a whole (Super Administrator) ■ Reporting suspected fraud and/or corruption
<p>Procurement Coordinator/ Officer is responsible for:</p>	<ul style="list-style-type: none"> ■ Providing support to the Manager Procurement & Fleet for all procurement activities ■ Administer & provide notification of non-conformance to relevant Contractor ■ Liaising with Council's WHS Coordinator regarding new and existing Contractors and non-conformance and any other relevant matter; ■ Maintaining security around tendered rates and pricing ; and ■ Monitor and maintain VendorPanel including Contractor compliance information (Administrator) ■ Assisting with the coordination of all Council tenders in conjunction with relevant project managers.

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	<ul style="list-style-type: none"> ■ Providing support to departments on the creation of procurement contractor expectations, terms & conditions prior to advertising ■ Monitoring the requirements of CPI rate increase to or requests for updated rates for relevant preferred Contractor lists at the start of each contract renewal or extension period and provide notification to Contractors as necessary; ■ Support Council's departments in Procurement activities ■ Assessment and undertaking of approval with regards to the addition of Contractors; ■ Document procurement decisions appropriately ■ Reporting suspected fraud and/or corruption
<p>Council's Delegated Officers (including Managers, Coordinators, Supervisors, and Employees) are responsible for:</p>	<ul style="list-style-type: none"> ■ Ensure compliance to Council's Policies & Procedures ■ Document procurement decisions appropriately ■ Confirm the goods/services received meet Council requirements; ■ Advising the Council's Procurement team of proposed tenders including provision of scope, expectations, contract type, terms & conditions and financial requirements ■ Utilising <u>only</u> Council approved Contractors and/or obtaining the minimum compliance requirements from Contractors prior to engagement. This includes Council's Contractor inductions, appropriate insurances, licences and motor vehicle/plant registrations where required ■ Confirming relevant Contractor compliance information prior to them entering a work site; ■ Confirm validity of the Contractors Council's Contractor Induction and their employees that will be entering or working on any Council site; ■ Reporting any hazards and non-conformance identified as a result of work being performed by Contractors or any other non-conformance immediately ■ Sighting Safe Work Method Statement (SWMS) where applicable; ■ Undertaking site specific inductions and risk assessments; ■ Ensure compliance with Council's Chain of Responsibility (CoR) Policies & Procedures and the RMS Chain of Responsibility provisions in the Road Transport (General) Regulation 2005; ■ Investigating and/or eliminating any hazards identified by all Council & Contractor's employees; ■ Ensuring relevant work permits are completed where applicable prior to commencing work; ■ Ensure compliance with all applicable obligations under the Fair Work Act 2009 and the Fair Work Regulations 2009; ■ Manage and report non-conformance issues to Contractors via HRWHS 026 Notification of Non-Conformance Report to Council's Manager Procurement & Fleet and where applicable to Council's WHS Coordinator for investigation and/or action; ■ Maintaining probity; ■ Ensuring the term and conditions of the relevant Contractor contract are relevant, monitored and enforced;

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	<p>Reporting suspected fraud and/or corruption</p> <ul style="list-style-type: none"> ■ <u>Responsibility to confirm that all contractors, subcontractors and employees of contractors have provided evidence of full vaccination (minimum 2 doses) with an approved COVID-19 or an accepted certified medical contraindication or a General Manager exemption before starting work at any council site or workplace (either through the appropriate induction process or by visual inspection)</u>
<p>Council's WHS / Human Resources are responsible for:</p>	<ul style="list-style-type: none"> ■ Maintaining compliance with Council's Policies & Procedures ■ Coordination of the induction of Contractors & relevant suppliers as required; ■ Managing Induction renewal registers and advise Council staff and Contractors of any updated inductions that are required; ■ Advising relevant Council staff of Contractors employees that fail to meet induction requirements; and ■ Provide assistance and assessment (where required) to assist in the acceptance of additional Contractors and recommended tenderers with regards to risk management. ■ Reporting suspected fraud and/or corruption
<p>Contractors are responsible for:</p>	<ul style="list-style-type: none"> ■ Ensuring services/goods are executed as directed by Council in compliance with Council policies, procedures, specifications, requirements and expectations and/or any relevant Contract associated to their engagement; ■ Ensuring & maintaining appropriate qualifications, training, experience and certifications of competency required by Council for any Contractor persons conducting work under the Contract terms; ■ Commit to re-inducting their employees/representative to the Council specific induction when requested by Council; ■ Ensure their employees/representatives carry the Council specific induction ID on their person at all times and present to Council representatives on site as request (if issued); ■ Ensuring SWMS have been completed for tasks identified as high risk, are present on site and have been signed by all workers engaged in the task. This includes though is not limited to construction works exceeding \$250,000, and demolitions and/or asbestos removal work that requires a licence; ■ Ensuring all Risk Assessments are undertaken and copies presented to Council; ■ Maintaining the workplace in a safe and healthy manner for themselves, subcontractors and other staff and visitors of Council; ■ Raise any issues that may become a WHS concern with Council's nominated officer; ■ Ensure compliance with the National Heavy Vehicle Regulator's (NHVR) Chain of Responsibility laws and the RMS Chain of Responsibility provisions in the Road Transport (General) Regulation 2005; ■ Ensure that all employees and, as far as practicable all subcontractors employees are paid the correct wages, loadings, allowances, penalties and that any underpayments identified are rectified immediately;

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- Maintain adequate insurance coverage and provide copies to Council of updated insurance information including current Certificates of Insurance, policy exemptions and a public liability Certificate of Insurance noting Council as an interested party;
- Ensuring they are complying with all applicable obligations under the Fair Work Act 2009 and Fair Work Regulations 2009;
- Ensure accuracy of invoicing and paperwork prior to forwarding to Council;
- Specifying their allocated Local Contractor number on all quotes & tenders (as per Council's Local Preference Policy);
- Maintaining probity
- Reporting suspected fraud and/or corruption
- Ensuring all contractors, subcontractors and employees must not enter or remain at a Council workplace/site unless they have:
 - been fully vaccinated (minimum 2 doses) with an approved COVID-19 vaccine and provide the Council with Evidence of Vaccination; or
 - an accepted certified medical contraindication; or
 - have an exemption from this requirement, authorised by the General Manager;
- Ensuring all contractors, subcontractors and employees carry evidence of vaccination status or medical contraindication while entering a Council workplace/site

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Council's ~~Responsibilities~~Responsibilities Engaging a Contractor

- For all goods & services engagements with a cumulative value (over the term of the contract) a financial value greater than \$50,000, Council will engage contractors via a relevant contract, however this policy is still relevant with regards to Contractor Management.
- Council are required to place all contract arrangements over \$50,000 in Council's Contracts Register.
- When a requirement is identified that cannot be provided or undertaken by a Council employee, the person requiring this good/service must estimate potential costs associated with the requirement for that particular service. Council have preferred and prequalification contractor lists for several services including but not limited to: Trade Services, Wet & Dry Plant hire and also many contracts for the provision of goods to assist with the smooth engagement of our contractors. Council must engage contractors or purchase goods based on a spend threshold as noted in Council's Procurement Policy and make inclusive to their decision, consideration for Council's Local Preference Policy.
- When engaging a Contractor that is not on a prequalification list, it is recommended that necessary compliance requirements be discussed with Council's Procurement department prior to engagement or commitment of any service or goods. If acceptable, the Contractor may be required to undertake several steps prior to engagement e.g. register on Council's Marketplace or complete Additional Contractor application forms or inductions.
- In some instances a non-tendered pre-qualification list may be established in VendorPanel for commonly used Contractors enabling Council to capture and maintain compliance information. Council must also obtain relevant compliance information prior to the engagement of any supplier.
- When evaluating procurement responses, Council will document the reasoning of their evaluation outcome to ensure transparency around the decision.
- Council will provide appropriate feedback on procurement decisions as requested by respondents.
- All Contractors that enter a Council site must participate in induction processes, as specified by Council. See Contractor Induction for further information.
- WHS requirements are to be communicated to the Contractor prior to engagement (provision of necessary documentation, including sign off and proof of receipt, as required).

Contractor Selection - Evidence

- It is essential that the process of selection regarding Contractors is well documented. Tenders for trade services and wet & dry plant hire can generated as both preferred and prequalification lists. The preferred order is utilised either up to the threshold nominated in the Tender documentation and for any work over the nominated threshold staff will approach all approved (prequalified) Contractors via Council's electronic quoting system 'VendorPanel' inviting a 'request for quote' or the list will be used in preferred order only.
- Consideration needs to be made when sourcing goods and services with a holistic view highlighting the intent of obtaining value for money. Extra costs associated eg floating costs, travel costs or even providers location may move a particular plant/supplier from say No. 3 to No. 1 as the overall cost would be lower for that particular item or service. Demonstrating

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value for money and documenting evidence to justify why the No.3 was selected is an acceptable means of procuring from our preferred supplier lists.

- The inclusion of Local Preference discount should be nominated by the Contractor on the quotations/response documents, however often identified and applied by Council staff where experience and local knowledge can be utilised. The inclusion of the Local Preference discount must be documented by Council staff as applied.
- Council's backing sheets must be used as the evidence based document for all preferred supplier engagements where No.1 is not utilised

Addition of Contractor to an Existing Procurement Service Arrangement

Procurement arrangements include:

- Pre-qualification panels; and
- Preferred supplier lists (overflow only).

The addition of Contractors to existing procurement arrangements can only occur in accordance (and if permitted) within the original tender documentation terms & conditions specification, compliance items and associated contract documents. Copies of application documents can be obtained by Contracting making contact with Council's Procurement department.

Management of Rates/Pricing

ACCESS TO RATES

- All rates/pricing provided to Council are confidential when submitted. There are circumstances where rates are exposed publicly, however only the successful price can be documented in a Council report after acceptance from Council. The Council staff recommendation shall only state '\$XX' for the sum with no actual figure in the original report. All rates must be presented in the confidential section of the Business Paper. Once Council/General Manager accepts the recommendation, the minute will then demonstrate the approved pricing/sum for the project.
- In the instance of prequalification or preferred supplier lists, tenders and additional Contractor's rates, these shall be placed in the confidential section of the business paper to ensure 'commercial in confidence' is maintained. On acceptance of the pre-qualification list tenders the preferred order and rates will be shared with the appropriate Council staff once authorised for release by the General Manager. If rates are authorised for release, staff will be appropriately trained in confidentiality and protection of commercial rates. In the instance that confidentiality is compromised, an investigation will be completed and disciplinary action will be enforced as appropriate.
- In the event that Council engage a consultant to assist with the procurement and/or project management process, there may be instances that require Contractor rates to be shared with nominated consultants. If rates are authorised for release, consultants will be appropriately trained in confidentiality and protection of commercial rates. In the instance that confidentiality is compromised, an investigation will be completed and disciplinary action will be enforced as appropriate.

AMENDING TENDERED RATES

- Tendered rates cannot be amended mid-contract unless the original tender documentation and contract specifically permits rate increase considerations. All requests for rate increases must be made in writing to the appropriate Council delegate and must not exceed the most recent annual CPI rate increase (nearest quarter) All Groups (or the rate specified in the tender/contract).
- Any approved increase must be responded to in writing from Council's delegate
- In the event that a Request for Quote via VendorPanel is sent to contractors via a prequalification panel, Contractors have the opportunity to review rates depending on the requirements, however the value must not exceed the value of the original tendered amount.

Contractor Induction

- Council's Contractor inductions will remain valid indefinitely unless this induction is withdrawn by Council or major amendments are made to the WHS Act, in which, a new induction process must be undertaken. Council will notify Contractors of any re-induction requirements.
- The induction process is coordinated by Council's WHS department. Contractors, their employees or any other representative of the Contractor will be required to complete an on-line induction. Early renewal or updated inductions may be called at any time deemed necessary by Council.
- Site specific inductions will occur as necessary.
- Council employees must confirm validity of Contractor inductions prior to engagement and all Contractors must have the induction card on their person at all times when working on a Council site. Council reserves the right to randomly request inductions cards (or any other WHS required item) at any time from any person or organisation on their site. Should evidence of the induction (or any other WHS required item) not be supplied, Council reserves the right to stand that person/Contractor down immediately and until such time as the evidence is provided.
- The Council Contractor induction may not be required in some instances. This is at the discretion of the WHS Coordinator.
- The induction process will include review of appropriate COVID-19 vaccination evidence, and/or any approved exemptions

Contractor Performance Management

- Non-conformance relates to all activities concerning a Contractor where processes, actions, equipment or goods fail to meet Council's expected standards. These activities include (but are not limited to) the work whilst being undertaken, completion of works, behaviour of Contractors and their employees on Council worksites, condition of plant and equipment and

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any associated paperwork requirements, for example invoices and risk assessments or goods or services provided to Council.

- Any non-conformance issues identified with a Contractor must be forwarded to Council's Manager, Procurement & Fleet for assessment. The relevant Council representative must notify the Manager, Procurement & Fleet in writing via Council's non-conformance report or via email describing the incident in detail – including at a minimum dates, times, offence and persons involved.
- The report must include detail of any discussions undertaken with the Contractor regarding the non-conformance. In the event of a WHS non-conformance, Councils' WHS Coordinator must also be notified as soon as practicable.
- If deemed appropriate, a non-conformance notification will be forwarded to the Contractor detailing Council's concerns, identified non-conformance and any corrective actions required. Each non-conformance notification must be coded with Council's non-conformance codes. Any correspondence relating to this matter must be placed in Council's record management system on Council's non-conformance register.
- Contractors must be issued with a non-conformance notification once agreed by the Manager Procurement & Fleet. For high risk non-conformance the General Manager must be notified, medium risk the Director/Department Manager must be notified and low risk non-conformance the relevant project Manager, Supervisor, Works Officer or Team Leaders must be notified.
- Contractors that have tendered (and been accepted) for a preferred supplier list may be reprioritised as a consequence from the receipt of a non-conformance and/or face potential removal as per the matrix depending on the severity of the breach. All other Contractors are based on the non-conformance matrix and the severity of the breach. In the instance of a severe non-conformance (as determined by the Council representative) the Contractor may be immediately stood down from the site and/or removed from Council's prequalification list either before, during or following investigation. A severe or catastrophic non-conformance is a non-conforming behavior or action that has the potential or is likely to cause high risk to people or property. Council reserve the right to stand down the contractor immediately until the completion of an internal investigation and deemed safe to do so
- Contractors have right to respond to any non-conformance received. The response must be made in writing and within 14 days of receipt of the non-conformance notification letter.
- Council reserves the right to randomly audit Contractors products & services to capture feedback on Contractors. All feedback must be documented accordingly to support and future correspondence.

Supporting Documentation & Forms

- Council's Non-Conformance Matrix
- Council's (Non-Conformance) Consequence Outcomes
- Council's Feedback Form
- Council's Backing Sheet

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- HRWHS 059 - Framework for the Safety Management of Contractor & Construction Project Works

Note: The above forms are an internal document and are subject to change

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DEFINITIONS

Council means – Mid Western Regional Council (MWRC)

GM, Directors, Managers, Coordinators, Supervisors, Officers means any person employed by Council that holds a financial delegated authority to undertake the engagement of a contractor or the purchase of goods.

Council's Employee means – any person that is engaged by Council and has the delegated authority to undertake the engagement of a Contractor or the purchase of goods other than those noted above

Contractor means - Any person or organisation that provides goods and/or services to Council

Probity: Probity is also known as procedural integrity. It is a concept that brings together moral excellence, integrity, uprightness, conscientiousness, honesty, and sincerity in Contractor Management and the associated procurement processes.

THIS MATRIX IS A GUIDE ONLY – IN THE EVENT THAT A NON-CONFORMANCE BEHAVIOUR OR ACTION IS LIKELY TO CAUSE HIGH RISK TO PEOPLE OR PROPERTY COUNCIL RESERVE THE RIGHT TO STAND DOWN THE CONTRACTOR IMMEDIATELY UNTIL THE COMPLETION OF AN INTERNAL INVESTIGATION AND DEEMED SAFE TO DO SO

1. NON-CONFORMANCE MATRIX

		SEVERITY			
		>THREE Non-Conformances issued	THREE Non-Conformances issued	TWO Non-Conformances issued	ONE Non-Conformances issued
NON-CONFORMANCE	CATEGORY				
	NC001 Compliance	HIGH	MEDIUM	LOW	LOW
	NC002 Workmanship Performance Quality	HIGH	MEDIUM	MEDIUM	LOW
	NC003 Breach of Council's Policies and/or Procedures	HIGH	HIGH	MEDIUM	MEDIUM
	NC004 WHS and/or Environmental	HIGH	HIGH	HIGH	MEDIUM

2. CONSEQUENCES

To re-prioritise a preferred supplier list, the consequence is listed below.

HIGH

To be considered on a case by case basis:

1. Investigation and issue of Non-Conformance warning; 2. If Non-Conformance results in serious injury, instant suspension from list for remainder of contract term; OR Suspension pending investigation (if then proven negligent) removal from list for remainder of contract term; 3. Suspension from list for one month – all high risk non-conformances require the General Manager to be notified, and must be formalised by Non-Conformance letter being issued.

MEDIUM

To be considered on a case by case basis:

1. Works to be rectified at service provider's expense with management or improvement plan produced by service provider, or; 2. Suspension for one month; 3. Meeting to discuss issues and performance-improvement agreement made – Direct Manager must be notified and Non-Conformance letter must be issued.

LOW

To be considered on a case by case basis:

Non-Conformance letter must be issued.