

9.5 Policy Review - Procurement Policy

REPORT BY THE MANAGER PROCUREMENT AND FLEET
TO 14 DECEMBER 2022 ORDINARY MEETING
GOV400098, GOV400087, GOV400047

RECOMMENDATION

That Council:

1. **receive the report by the Manager Procurement and Fleet on the Policy Review - Procurement Policy;**
2. **accept the revised policy name of 'Sustainable Procurement & Contract Management Policy';**
3. **place the revised Sustainable Procurement & Contract Management Policy on public exhibition for 28 days; and**
4. **adopt the Sustainable Procurement & Contract Management Policy if no submissions are received.**

Executive summary

A review of Council's Procurement Policy (the Policy) has been undertaken, and a revised Policy has been recommended to provide improvements for the organisation and the community. The new policy is now referred to as 'Sustainable Procurement & Contract Management Policy'. The policy now includes updated Procurement thresholds; refined, best practice additions; and Contract Management principles. This new policy demonstrates an increased focus on sustainability (Quadruple Bottom Line) and whole life cost & management considerations.

Disclosure of Interest

Nil

Detailed report

With the staged implementation of a Procurement & Contract Management framework and in order to continue best practice procurement and contract management efficiencies across the organisation, it has become necessary to review and amend the original Procurement Policy. This is to ensure that Council remain up to date with current best practice methodologies for both Procurement and Contract Management responsibilities. The new 'Sustainable Procurement & Contract Management Policy' is required to provide clarity of Council's undertakings with regards to Procurement and Contract Management to both staff and the community, with the intent to remain transparent and to maintain fair and reasonable dealings with our suppliers. This will improve Sustainable Procurement & Contract Management considerations to ensure the best value for money is achieved.

To support the Procurement and Contract Management Policy, a Sustainable Procurement & Contract Management Procedure has been created. This will better support staffing navigating sustainability and procurement & contract management activities by providing detailed guidance notes in the form of a procedure.

Community Plan implications

Theme	Good Government
Goal	An effective and efficient organisation
Strategy	Pursue efficiencies and ongoing business improvement

Strategic implications

Council Strategies

Not Applicable

Council Policies

By adopting the newly created 'Sustainable Procurement & Contract Management Policy', replacing Councils current Procurement Policy, Council is endorsing the changes to be placed out on exhibition for comment. Should any submissions be received a further report will be presented back to Council for consideration. If no submissions are received at the end of the exhibition period, the revised policy will be adopted and apply from that date.

Legislation

The Local Government Act 1993, section 55, sets out the parameters of tendering, and this is referenced in the Policy.

Financial implications

Not Applicable

Associated Risks

By endorsing the proposed 'Sustainable Procurement & Contract Management Policy', Council is reducing procurement and contract management risks by providing a more diligent, defined policy that supports the 'before, during and after' procurement activities by including procurement guidelines, additional focus on sustainability and adding a clear contract management framework.

KRISTIE WARD
MANAGER PROCUREMENT AND FLEET

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

29 November 2022

Attachments: 1. Current Procurement Policy.
2. Revised Procurement Policy - New 'Sustainable Procurement & Contract Management Policy'.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



POLICY Procurement Policy

*A prosperous
and progressive
community.*

ADOPTED		VERSION NO	2.3
COUNCIL MEETING MIN NO.	120/22	REVIEW DATE	APRIL 2023
DATE:	20 APRIL 2022	FILE NUMBER	FIN300032,FIN300086; FIN300155

Objective

This policy aims to ensure Council's procurement of goods and services is legal, ethical and to Council's best advantage. The outcomes of this policy are:

- Open and fair competition;
- Value for money;
- Enhancement of the capabilities of local business and industry;
- Environmental protection; and
- Ethical behaviour and fair dealing
- Maintaining a high standard of health & safety management

Legislative requirements

- Local Government Act 1993
- Local Government (General) Regulation 2005
- WHS Act 2011

Related policies and plans

- Local Preference Policy
- Service Provider Management Policy
- Code of Conduct
- Statement of Business Ethics
- Risk Management Policy
- Disposal of Assets Policy
- WHS Risk Management Procedure

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Policy

In entering into contracts for the carrying out of work, or the supply of goods and services, Council officers will have regard to Mid-Western Regional Council's purchasing objectives as set out above.

Every effort should be made to ensure businesses operating within the Mid-Western Regional Council area are given an opportunity to quote.

The general objectives of this policy apply to all purchases regardless of whether payment is made via traditional Accounts Payable processes, petty cash or corporate purchase cards.

Those persons/organisations providing goods and services to Council shall be considered to be agents of Council and shall be required to comply with Council's relevant policies.

Breach of the requirements of this policy may result in disciplinary action.

Training of Staff

Staff involved in the procurement of goods and services will be appropriately trained in the relevant procedures to be followed.

Delegation of Authority

The General Manager has delegated authority to incur financial expenditure on behalf of Council under the following provisions:

- Where expenditure has been provided for in Council's budget; or
- to respond to an emergency, community safety issue or potential public liability issue at a cost not exceeding \$250,000;

The General Manager is authorised to enter into contracts on behalf of Council within the expenditure delegation authorised. The Delegation of Authority for the General Manager at item 3.2 allows the General Manager to accept Council tenders with a contract value of up to \$3,000,000 or a contract entered into through a prescribed entity tender, where all other tender requirements of section 55 of the *Local Government Act 1993* and Part 7 of the *Local Government Regulation 2005* are met.

Other Council Officers may only incur expenditure on behalf of the Council if:

- The Officer has been granted a financial delegation by the General Manager and such delegation is recorded in the Delegations Register; and
- The expenditure is provided for in Council's budget; or
- In the case of genuine emergency or hardship where the power to incur expenditure in these circumstances has also been delegated.

Council Officers may only receive an expenditure delegation greater than \$1,000 where the Officer has completed appropriate training or has relevant experience which, in the opinion of the General Manager, qualifies the Officer to the delegated level.

Any Officer incurring expenditure may only do so in accordance with any constraints imposed by the Council or the General Manager in respect to a financial delegation.

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The General Manager has authority to approve exemption from Procurement threshold requirements, as appropriate. The General Manager may delegate this authority. Exemptions are only to be granted where exceptional circumstances exist that would not allow for the minimum procurement requirements (eg 2 quotes). Exemption management processes will be defined in Councils Purchase of Goods and Services Procedure.

Splitting of Orders

Council Officers are prohibited from splitting orders for the purposes of acquiring goods or services above their delegated financial and procurement levels, or to avoid the necessity to obtain quotes or call for tenders.

When party to a trade-in on goods, the delegated level of authority will be used for the purchase price of the goods not the purchase value less the trade in price.

Promotions & Incentives

The offering or acceptance of promotional goods, rewards, benefits or any other form of incentive in relation to the purchase of goods and services is strictly prohibited. Refer to Part 6 of Council's Code of Conduct.

Allocation of Funds

Apart from delegated authority to purchase, it is essential that funds are made available for a purchase prior to any commitment being entered into. A budget allocation must have been made by Council in the Operational Plan or subsequent reviews for the purpose to which the proposed expenditure applies.

For special projects, contribution works, and grant works not specifically detailed in the Operational Plan, approval to purchase is dependent upon the funds being available. These funds must either be received or committed in writing by the funding body and accepted by Council.

For any job which exceeds the preliminary estimate by more than an immaterial amount, initial approval for works to commence must be given by the General Manager and reported to Council via the Quarterly Budget Review process.

Budget allocations are provided for a purpose. Expenditure contrary to this purpose, (such as using a budget in one area to cover another, or using a recurrent budget to fund a capital purchase and vice versa), must be approved initially by the General Manager and then reported to Council via the Quarterly Budget Review process.

Aggregation of Requirements

Council has the opportunity to utilise contracts offered by Prescribed Entities (Local Government Procurement & Procurement Australia). Council Officers are encouraged to seek opportunities to aggregate purchases within these alliances as well as other groups when applicable.

Local Service Providers should be encouraged to submit a quotation or tender in these circumstances (with the Prescribed Entities), and advertising of such tenders or expressions of interest in locally circulated media (Community News, Mudgee Guardian) is essential.

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Purchase of Goods and Services up to \$1,000

Purchases may be made via corporate credit cards or out of petty cash except as defined otherwise by the General Manager. An alternative to a corporate card purchase is the use of a purchase request form upon receipt of the invoice. The use of an official purchase order is also available, but not preferred. Council staff may either request a specific purchase order or utilise Council's monthly order process.

Petty cash limits are defined in the Petty Cash Procedure.

Purchase of Goods and Services above \$1000 and up to \$5,000

Purchases may be made via corporate credit card except as defined otherwise by the General Manager. The use of an official purchase order is preferred. Council staff may either request a specific purchase order or utilise Council's monthly order process. An alternative to a purchase order is the use of a purchase request form upon receipt of the invoice.

For various services involving recurrent payments, such as telephone and electricity accounts, subscriptions, credit card purchases and monthly rentals, it is impractical to raise orders prior to receipt of the invoice

Purchase of Goods and Services above \$5,000 and up to \$50,000

Purchases must be made by submitting an official purchase order to the Service Provider. Exceptions to placing a purchase order will be made for various services involving recurrent payments, such as telephone and electricity accounts, subscriptions, credit card purchases and monthly rentals, where it is impractical to raise orders prior to receipt of the invoice.

Purchases must be undertaken by:

- Accessing a Standing Offer Arrangement (SOA); or
- Accessing a Preferred Supplier Arrangement (PSA) or Pre-qualified Supplier Arrangement (PQA) (via Vendor Panel where applicable) or
- Obtaining at least two quotes (sole supplier situations excepted); including consideration for Council's Local Market Place on Vendor Panel;

or

- Accessing Government contract pricing.

When utilising SOA, PSA or PQA procurement methods, Council must ensure that there is provision for the evaluation of the arrangements, including the removal of a service provider from an arrangement because of poor performance.

An SOA or a PSA may be established if:

- The supply of goods or services is needed in large volumes and or on a frequent basis; and
- Use of an SOA or PSA will obtain better value for money by aggregating demand for the goods or services required.

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Purchase of Goods and Services above \$50,000 and up to \$100,000

Purchases must be made by submitting an official purchase order to the Service Provider. Public advertising for quotations is encouraged but is not essential. If public advertising is used, the responsible Director or Council's Manager Procurement & Fleet will assess the coverage of such public advertising.

Purchases must be undertaken by:

- Accessing a Standing Offer Arrangement (SOA); or
- Accessing a Preferred Supplier Arrangement (PSA) or Pre-qualified Supplier Arrangement (PQA); (via Vendor Panel where applicable) or
- Obtaining at least three written quotes (sole supplier situations excepted) including consideration for Council's Local Market Place on Vendor Panel (providing public advertising to appropriately test the market); or
- Accessing Government contract pricing. Or

All quotations received are to be given due consideration in accordance with Mid-Western Regional Council's purchasing objectives.

All persons and organisations that provide a quotation must be advised in writing of the outcome.

When utilising SOA, PSA or PQA procurement methods, Council must ensure that there is provision for the evaluation of the arrangement, including the removal of a Service Provider from an arrangement because of poor performance or ensure the inclusion of Council's Service Provider Management Policy.

An SOA or a PSA may be established if:

- The supply of goods or services is needed in large volumes and or on a frequent basis; and
- Use of an SOA or PSA will obtain better value for money by aggregating demand for the goods or services required.

Purchase of Goods and Services above \$100,000 and up to \$250,000

Purchases must be made by submitting an official purchase order to the Service Provider.

Purchases must be undertaken by:

- Accessing a Standing Offer Arrangement (SOA); or
- Accessing a Preferred Supplier Arrangement (PSA) or Pre-qualified Supplier Arrangement (PQA); (via Vendor Panel where applicable) or
- Accessing Government contract pricing; or
- Public advertising for quotations. The responsible Director or CFO will assess the coverage of such public advertising.

All quotations received are to be given due consideration in accordance with Mid-Western Regional Council's purchasing objectives.

All persons and organisations that provide a quotation must be advised in writing of the outcome.

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An instrument of engagement must be used when procuring goods and/or services with this threshold, for example a formal Contract or Instrument of Agreement. The terms and conditions relevant to this procurement must be made evident during the quoting process (attached to the Request for Quote)

The instrument of engagement must include any proposed retention, bank guarantee requirements, payment milestones or any other conditions. The instrument of engagement must be agreed upon with the successful applicant (and signed) prior to the issuance of purchase order.

When engagement via an SOA, PSA or PQA & Government Pricing occurs, confirmation of the existing Terms & Conditions is recommended prior to engagement of any listed service provider.

At the end of major procurements, the performance of the contractor or Service Provider should be assessed. This information can be used in the assessment process for the award of future contracts.

Purchase of Goods and Services above \$250,000

Purchases in this category shall be administered in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005.

Prior to proceeding on any form of procurement for this value, a budget and a job number must be allocated to the specific project

An official purchase order must be raised, and submitted to the Service Provider.

At the end of major procurements the performance of the contractor or Service Provider should be assessed. This information can be used in the assessment process for the award of future contracts.

Tendering

Section 55 of the Local Government Act 1993, in conjunction with the Local Government (General) Regulation 2005, provides the legislative framework that promotes the consistent use of good practice standards in local government tendering in a manner that is clear, consistent and readily accessible to all persons.

Tenders will be called for the provision of goods and or services that exceed \$250,000 in value (including GST). Exceptions may apply in certain circumstances as provided by section 55(3) of the Local Government Act 1993.

Whenever Council is required by section 55 of the Local Government Act 1993 to invite tenders before entering into a contract, Council must decide the tendering method to be used. The options are:

- The open tendering method by which tenders for the proposed contract are invited by public advertisement;
- The selective tendering method by which invitations to tender for a particular proposed contract are made following a public advertisement asking for Expressions of Interest;
- The selective tendering method by which recognised contractors selected from a list prepared or adopted by Council are invited to tender for proposed contracts of a particular kind.

The General Manager must approve the selective tendering methods prior to advertising (as an alternative to the open tendering method). The General Manager must also approve those

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selected tenderers from the Expression of Interest prior to undertaking the selective tender process.

- Or, Accessing a Standing Offer Arrangement (SOA); accessing a Preferred Supplier Arrangement (PSA); or accessing a Pre-qualified Supplier Arrangement

Part 7 of the Local Government (General) Regulation 2005 outlines the requirements for tender processes. The legislation and regulations should be complied with in all instances.

Council has a detailed Tendering Toolkit to guide Officers through the tendering process. This toolkit must be used for all tenders conducted by Council.

Tenders should be evaluated based on Council's purchasing objectives as well as but not limited to previous performance of contractors.

An instrument of engagement must be used when procuring goods and/or services via a tender. For example a formal contract or Instrument of Agreement. The terms and conditions relevant to this procurement must be made evident during the tendering process (attached to tendering documentation).

The instrument of engagement must include any proposed retention, bank guarantee requirements, payment milestones or any other conditions. The instrument of engagement must be agreed upon with the successful applicant (and signed) prior to the issuance of purchase order.

Accessing tenders through external organisations & prescribed entities

Council has the option to access tenders conducted by external organisations. This practice eliminates the need for Council to tender as an individual when there is demonstrated value for money from our alternatives due to a 'bulk buy' methodology.

Council can access current tenders listed with Local Government Procurement (Prescribed Entity), Procurement Australia (Prescribed Entity), Regional Procurement & Centroc (Central NSW Councils) by following the relevant participation procedures. Council is not limited to utilising tender arrangements as sought by the abovementioned organisations and is encouraged to utilise the most effective method of Tendering for Council's purchasing objective.

Council have the capability to compare pricing and if an alternative is deemed better value for money than we are capable of obtaining as a single organisation we may utilise these alternatives. Considerations must also be given to Contract terms and conditions of the alternative tender to ensure the needs and expectations of Council are met

When Council participate in an external organisations tenders the project manager should assess the qualification criteria including compliance, standing offer deed, specifications and any evaluation criteria if available. Considerations must also be given to contract terms and conditions of the tender to ensure the needs and expectations of Council are met.

When accepting a tender conducted by an external organisation appropriate approvals must still be sought from either Council or the General Manager, depending on estimated contract value.

When Council utilise tenders from Prescribed Entities, an approved panel of Service Providers is supplied, Council may choose to do business with one or all of the Service Providers. Where Council spend for any one quote is estimated to exceed \$250,000, and prior to approaching the panel of approved service providers, Council staff must obtain permission to proceed from the Manager Procurement & Fleet or the CFO through Council's Procurement Evaluation Plan and the relevant

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Director. Once this documentation has been completed and approved, Council staff approach the appropriate approved Service Providers (via appropriate formats i.e. e-quoting portals) to provide a quote under the conditions of tender by the Prescribed Entity for the goods/services required. Council are able to engage suppliers directly (without obtaining quotes), however this is not encouraged.

The Local Government (General) Regulation 2005 and the Tendering Guidelines for NSW Local Government must still be considered during the evaluation phase of the responses from the request for quote. The same responsibilities apply to a tender with regards to the security of documentation and pricing as well as commercial in confidence information.

The evaluation of the responses (quotes) must align to the methodology stated in the approved Procurement Evaluation Plan. An Approval Memorandum must be submitted to the General Manager for acceptance of the recommended applicant unless delegated otherwise.

Amending Tendered Rates

Tendered rates cannot be amended mid-contract unless the original tender documentation and contract specifically permits rate increase considerations and/or variations. 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).

All approved increases must be responded to in writing from Council's delegate.

Conflicts of Interest

Council officers or delegates are required to report any identified relationships that could be actual, potential or perceived conflicts of interest both pecuniary and non-pecuniary. A relationship must be reported as it is identified, whether that be before or during any procurement activity, during a contract term, or as a conflict arises. It is the responsibility of the Council officer or delegate to make the appropriate persons aware (as per the Code of Conduct) of the relationship and complete a 'Conflict of Interest Declaration' form. It is at the discretion of that delegated person in the Code of Conduct to make determination on the conflict.

Due Diligence

Due diligence of Service Providers is to be carried out, where appropriate, where a tender is not required.

Due diligence of any Service Provider must be carried out in all Tender situations.

Receipt of Goods and Services

When the goods are received or the works and services carried out, a Goods Received declaration shall be completed in the prescribed format.

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Council Specific Procurement

Council will call for tenders on a regular basis for the provision of certain goods and services. The frequency of tenders will be guided by legislative requirements and operational needs. These contracts may include, but are not limited to:

- The supply of fuel and oils
- Cleaning of Council premises
- Security services
- Electricity supply
- Telecommunications

Tenders for casual plant hire will be publicly advertised as required. The advertisement will call for fixed rates from owners of specialised plant and equipment, for projects required to be carried out by Council on an as required basis. Quotations for capital works and/or any other works will be sought from these Service Providers via VendorPanel.

Tenders for casual hire of trade services will be publicly advertised as required. The advertisement will call for pre-qualified Service Providers of trade services for projects and routine maintenance required to be carried out by Council on an 'as required' basis. Quotations for capital works and/or any other works will be sought from these Service Providers via VendorPanel prior to engagement.

Certificates of Insurance

Service providers must have appropriate levels of public, products liability and professional indemnity insurance as necessary. Service providers must also provide evidence of their workers compensation coverage where applicable. All required Certificates of Currency for appropriate insurance must be downloaded into VendorPanel prior to the engagement. If procuring outside of VendorPanel, service providers must provide relevant insurance requirements to the engaging Council staff member.

Service providers identified to be working with (near) children or vulnerable people will be required to complete Police Checks for subcontractors & working with children checks prior to entering any relevant site.

Publication of Successful Tenderers and Expressions of Interest

Council will maintain a register showing those successful Service Providers to Council in those cases where the contract value is in excess of \$50,000.

Work Health & Safety Management and Workplace Injury Management

Mid-Western Regional Council assigns a high priority to the continuous improvement of work health and safety and workplace injury management.

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Council is responsible for:

RISK ASSESSMENTS

A purchasing risk assessment must be undertaken for all items/goods with regards to its potential use at the workplace. Supporting documents are available on Council's Intranet. In undertaking the risk assessment, the following factors are to be considered:

- Manner in which it is to be used and the suitability of the item for the purpose
- Hazards and risks presented by the item (including biological and chemical products) to be purchased
- Potential impact on affected personnel
- Transport, Maintenance, Cleaning and Storage
- Any associated needs (e.g. appropriate firefighting gear) should an emergency with the item occur
- Legal requirements such as codes of practice or relevant standards
- Specifications which are required to ensure safe operation or use
- Training requirements
- The need to change work procedures
- The need for personal protective equipment(PPE)
- Technical data or information required
- Opinions of the users of the item
- Hazards and risks associated with compounds used in operating, maintaining, cleaning, transporting and storage of the items
- Environmental impact of disposal of waste arising from the above

All risk assessments are to be documented in Council's record system and undertaken in consultation with employees/ workers who may be affected by the purchase. All records of assessments, and details provided by the service provider shall be maintained in a file by the originator of the purchasing request or the life of the equipment and updated when any modifications are carried out. Previous records of assessments are to be archived as appropriate.

PLANT & EQUIPMENT

In respect to the purchase of plant and equipment including furniture, the Service Provider will be requested to provide information regarding the hazards associated with the items and recommended controls to manage these hazards.

Suppliers of second-hand plant are specifically required to inform purchasers of any reasonably identifiable faults in the plant.

All plant and equipment must comply with all relevant Australian Standards.

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HAZARDOUS SUBSTANCES

The Safety Data Sheets (SDS) and instructions for use for all hazardous substances must be obtained before the purchase of hazardous substances.

All substances must meet labelling and usage requirements of WHS legislation, standards and codes of practice. From January 2017 all Service Providers must be compliant with Global Harmonisation System (GHS) for chemicals. This includes Pictogram Identification on all labels and documents

Any associated emergency control equipment including correct type of fire-fighting equipment and spill control is to be considered (re. Transport, use and storage) in the purchase of a hazardous substance.

PERSONAL PROTECTIVE EQUIPMENT [PPE]

Prior to purchasing PPE, consideration on whether other forms of hazard control from higher up the hierarchy of hazard control can be implemented needs to be taken into account.

All personal protective equipment must comply with relevant Australian Standards. Since PPE is personal, when purchasing the individual needs of staff MUST be considered. Such needs will include, but not be limited to, individual body size, impairments, capabilities etc.

All employees/workers – including managers – associated with PPE, require training in correct selection, fitting, use, maintenance and storage of the PPE

PRE - PURCHASE TRIALS

Trials of equipment and substances including PPE will be undertaken where reasonably practicable, providing an opportunity for monitoring by relevant personnel and management to ensure that no previously unforeseen hazards arise during use.

Trials should also ensure consultation where appropriate e.g. the introduction of new types or brands of PPE.

Feedback from the trial is to be recorded on the Purchasing Risk Assessment (HRWHS 025).

MAKING A DECISION TO PURCHASE

If after the risk assessment, trials and/or the provision of information from the potential Service Provider, the level of risk associated with the item to be purchased cannot be controlled and is not acceptable, the item is not to be purchased. An alternate item is to be sourced and the process started again.

WHS STANDARDS FOR PROCUREMENT OF SERVICE PROVIDERS

HRWHS 059 Safety Management Framework is to be referred to prior to the commencement of the service provider procurement process.

This procedure provides a framework for the determination of the level of WHS risk associated with any service to be provided, along with guidelines for WHS documents to be provided as part of any RFT or RFQ.

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Service Providers Responsibilities

Service providers shall have a demonstrated commitment to, acceptable performance with, and a systematic approach to work, health and safety management and workplace injury management.

Service providers, their employees and subcontractors must comply with work, health and safety, workers compensation insurance, injury management and rehabilitation obligations under legislation, relevant industry codes of practice, safety procedures in applicable industrial awards and approved agreements, and the general law.

If a service provider is deemed a regular or high-risk service provider by Council's WHS Coordinator, all employees of the service provider must undertake Council's Contractor Specific Induction Program. This induction does not replace site-specific inductions.

Principal contractors are accountable for compliance by their service providers with their legal obligations regarding their employees.

All service providers, their employees, their unions and subcontractors must also comply with their workplace obligations, including the provisions of all applicable industrial awards and approved agreements.

Arrangements or practices designed to avoid workplace obligations under relevant laws, industrial awards and approved agreements are not permitted.

Local Preference

Mid-Western Regional Council acknowledges that it has an important role to play in the local economy and is committed to assisting local industry engage in business with Council. To assist local industry and local economic development, Council's Local Preference Policy supports our commitment to providing opportunities for our local service providers.

Full details of Council's Local Preference Policy can be found on Council's website.

Service Provider Management Policy

The Service Provider Management policy aims to ensure Council's expectations and management of service providers (contractors) is legal, ethical and transparent for all parties. It is to provide guidance in the selection, management and monitoring of service providers engaged by Mid-Western Regional Council. The outcomes of this policy are: Clear & Defined Expectations & Responsibilities, Performance Management Criteria & Matrix, Protection of Service Provider Rates and Ethical Behaviour & Fair dealing

Full details of Council's Service Provider Management Policy can be found on Council's website.

Contract Management

Council Representatives will govern the execution and management of contracts entered into on behalf of Council to minimise the exposure to financial and reputational risk

Council has introduced a contractor management system which:

- Improves record management of Contracts and relevant reporting requirement capabilities;
- Improves the overall contract management process;

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- Provides a robust, accountable and transparent audit trail;
- Seeks opportunities for improvements in service delivery;
- Is based on contemporary risk management principles; and
- Promotes positive working relationships between contractors and Mid-Western Regional Council

All contracts over the value of \$50,000 will be identified and published in Council's Contracts Register, excluding those specified in the Local Government Act as exempt from publication

All variations will be reviewed by Council Representatives with appropriate (project) subject matter knowledge and delegation.

The above excludes any employment contracts, non-binding Memoranda of Understanding or partnering agreements with other agencies.

Value for Money

The Council strives to achieve value for money in its procurement activities by:

- Undertaking a comparative analysis of the costs and benefits of each proposal throughout the whole procurement cycle, and
- Specifying clear conditions and evaluation criteria in approach to market documents.

Council will take into account the following factors in determining value for money:

- The maturity of the market for the good, property or service sought
- The performance history of each prospective supplier
- The relative risk of each proposal
- The flexibility to adapt to possible change over the life cycle of the good, property or service
- Financial considerations, including all relevant direct and indirect benefits and costs over the whole procurement cycle
- The anticipated price that could be obtained, or the costs that may be incurred at the point of disposal
- The evaluation of contract options (e.g. contract extension options), and
- Any other value-add functions of relevance to Council that the supplier can provide (e.g. environmental performance of the product / service, contribution of supplier to the local economy / community, etc.).

Value for money' is achieved by delivering the most advantageous outcome possible while practising transparency, fairness and equity to all potential suppliers and efficient, effective and proper expenditure of public monies.

Variations of this policy

Council reserves the right to vary the terms and conditions of this policy, subject to a report to Council.

Definitions

SOA - Standing Offer Arrangement

- An agreement where the Service Provider allows Council to purchase goods and services at a set price for a set period of time

PSA - Preferred Supplier Arrangement

- An agreement where the Service Provider allows Council to purchase goods and services at a set price for a set period of time, however, Council place Service Providers in a preferred order. This particularly relates to Wet & Dry Plant Hire and also Trades lists (to name a few). Lists are tendered for and Service Providers are numbered from 1 to say 5 during the evaluation process. In the first instance Council must contact the number 1 Service Provider and if unavailable contact number 2 on so on.

PQA - Pre-Qualified (Prequalification) Arrangement

- An agreement where Council create panels for regularly used goods or services, these may or may not be tendered for. Panels are created in VendorPanel (Councils' e-quoting portal) and Service Providers must meet Council's compliance requirements to be accepted. Prequalification panels allow Service Providers to nominate rates at time of quoting, any tendered rates are only used for tender evaluation, and therefore they may also be amended during the quoting process.
- This option allows Council to capture minimum compliance options for regularly used services providers as well as allowing service providers to present up to date pricing. The opportunity and potential for Council to obtain better value for money by creating a more competitive market is increased.

Prescribed Entity

- Any organisation that is specified in the Local Government (General) Regulation, Section 163 is recognised as a Prescribed Entity therefore approval is not required for acceptance of tenders sought from those specified.

VendorPanel

- Council's electronic quoting (e-quoting) portal

Council's VendorPanel Local Market Place

- VendorPanel Marketplace is an e-quoting portal enabling Council employees to directly contact businesses that Council may not utilise regularly or require tenders for, but may employ from time to time.

Public Advertising

Public advertising may include:

- Local and Sydney newspapers
- Approved Electronic Tendering & Quoting Portals (all service providers must be selected)
- Social Media
- Council's Website

Contracts

- A contract is a legally binding agreement that sets out the rights and duties of the parties involved. Typical contracts entered into by Mid-Western Regional Council include the provision of building maintenance & construction, construction of civil works, supply of goods and materials and consultancy services on issues such as engineering design, industrial relations, town planning, local enforcement and community engagement.



POLICY

Sustainable Procurement & Contracts Policy

*A prosperous
and progressive
community.*

ADOPTED		VERSION NO	[VERSION 1.1, 1.2 ETC]
COUNCIL MEETING MIN	[xx/xx]	REVIEW DATE	[DATE TO REVIEW]
DATE:	[INSERT DATE]	FILE NUMBER	[INSERT FILE NO]

Objective

This Policy provides an overview of the Council Procurement and Contract Framework and principles that MUST be followed by all Council Officers and representatives when purchasing goods and services and managing associated contracts.

The outcomes of this Policy are:

- value for money,
- align with business needs,
- improve service delivery,
- ensure legislative compliance and probity;
- and support a competitive local economy.

This policy supports the delivery of Councils 'Community Strategic Plan' to achieve a sustainable Local Region.

Legislative requirements

- Local Government Act 1993
- Local Government (General) Regulation 2021
- NSW Local Government Tendering Guide 2009
- NSW Model Code of Conduct
- GIPA Act 2009
- WHS Act 2011

Related policies and plans

- Procurement & Contract Management Procedure
- Local Preference Policy
- Contractor Management Policy
- Code of Conduct
- Statement of Business Ethics
- Enterprise Risk Management Policy
- Disposal of Assets Policy

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- Fraud and Corruption Control Policy

Scope

The Policy applies to all Council Officers and representatives who have delegated authority to purchase goods and services and manage the associated contracts on behalf of the Council.

It commits every individual involved in procuring and managing contracts for goods and services to actively ensure that all activities are:

- legal
- accountable and auditable
- fair and competitive
- ethically, environmentally, and socially responsible
- economically effective
- conducive to maintaining the Council's ability to exploit appropriate technological, commercial, and organisational developments as they arise
- capable of identifying, minimising, and managing risks that may threaten projects, procurements, or contracts, and
- free of any direct or indirect conflict of interest
- maintaining confidentiality

The scope of the Policy commences from when Council has identified a need for procurement, and continues through to the award, delivery, management and closing of the contract.

The word 'MUST' is used throughout this Policy to describe key principles against which Council will be audited and non-compliance identified. Non-compliance may result in disciplinary actions.

Focus on Sustainability

Sustainable procurement & contract management takes responsibility for the Economic, Environmental, Social and Governance impacts of any purchase – goods or services. These four factors are referred to as the Quadruple Bottom Line (QBL) and relate to a total lifecycle impact, and not just the upfront price.

More broadly, Sustainable Procurement considers:

1. The cost and **economic** impact of the procured product or service,
2. The **environmental** impact,
3. Any **social** and ethical implications, and
4. The application of good **governance**.

Sustainability is now an essential part of procurement. A sustainability lens ensures purchasing decisions are based on sound principles that maximise the benefit to the environment and society, and meets community expectations.

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There is a clear duty of care to spend public funds responsibly, and in a way that protects, nurtures, and grows the environment and the economy and supports local businesses, local jobs and guards against modern slavery or any other unethical practices.

Council acknowledges its responsibility to ensure the environmental, social, and economic sustainability of the local community, and to contribute positively to the overall health of the planet.



Roles and Responsibilities

POSITION	RESPONSIBILITIES
Council Officers and Representatives	Accountable for managing procurement and contracts in accordance with council’s financial delegations, Legislation, and this Policy. Council Officers are required to demonstrate due diligence in each of the PLAN, SOURCE, MANAGE stages based on the value and risk of the project.
Procurement Manager / Team	Overall responsibility of this Policy, its implementation and ongoing operational compliance. Provide support and guidance in the interpretation and use of this Policy and associated Procurement and Contract Management Framework and Legislation.
Executive Leadership Team (ELT)	Demonstrate leadership through commitment to Sustainable Procurement and Contract Management. Provide stewardship, oversight through review of “health checks” of procurement and contract management through consideration of regular reporting.

Procurement and Contract Management Framework

The Council Framework consists of 3 broad stages: **PLAN, SOURCE** and **MANAGE**.

When applying this framework and utilising the supporting templates, best practice and legislative requirements will be adhered to. This, in turn, will provide the best chance of reaching a successful

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procurement outcome, achieving value for money, mitigating risks and establishing appropriate contract management standards.

Processes and guidance are balanced with the risk and value of projects, procurements, and contracts. Complex projects with a high risk and high value, require careful planning, stringent peer review of Requirements Documents (Specifications) prior to any approach to the market.

Conversely, for low risk and low value simple procurement requirements, there is greater flexibility to minimise indirect administrative costs and improve efficiency.

Procurement Principles (PLAN AND SOURCE)

Accountability – Council is committed to ensuring accountability and transparency in its procurement activities. Accountability means that Council Officers are responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes. Council Officers MUST be able to demonstrate the basis of all decisions that can withstand any scrutiny.

Conflicts of Interest – A conflict of interest exists when a reasonable person might perceive that a public official's personal interest(s) could be favoured over their public duties corrupt conduct can arise when a conflict of interest is concealed, understated, mismanaged, or abused. Staff MUST declare, record, and save on file all identified conflicts in accordance with Councils Code of Conduct.

Record Keeping – The Council records provide evidence of actions and decisions and represent a vital asset to support its daily functions and operations. Council Officers MUST ensure appropriate documents and records are maintained in accordance with Council's Records Management Policy.

Confidentiality – Council Officers and consultation stakeholders MUST maintain the integrity and security of confidential information in their possession, or for which they are responsible. In addition to general obligations relating to the use of council information, Council Officers MUST only access confidential information that they have been authorised to access for the purposes of exercising official functions and only release confidential information authorised. Refer to the Council's Code of Conduct for further information.

Risk Analysis and Management – Risk analysis and management are techniques applied to ensure that procurement process contracts are successful. Council officers are required to identify and assess the risks and prioritise them by aligning relevant resources to monitor, control and minimise or overcome the impact. Consideration of Risk should be managed in accordance with the Council's Enterprise Risk Management Policy and Procedures.

Sustainability (QBL) – Councils top priority is to procure sustainably and with positive Planetary Health outcomes a focus wherever possible (i.e., socially, environmentally, and economically sustainable results delivered through excellent governance and leadership practices). When procuring or contract managing for Council, Council Officers MUST demonstrate that opportunities for sustainable outcomes have been adequately assessed and enacted, in accordance with Council's current procurement and contract management framework.

Emergencies – From time-to-time there may be a need to purchase goods or services due to an emergency whereby the requirements of Legislation and this Policy cannot be applied. An emergency is a situation that poses an immediate risk to health, life, property, or environment. Emergency procurement is only an option where Council must act immediately and take all reasonable and necessary action to mitigate any continuing risk associated with the emergency. This may only be used in cases of genuine emergency and not to remedy poor planning. Authorisation for emergency procurement MUST only be given under delegation by the General Manager (GM).

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Spend Threshold Requirements – The estimated value of the contract is inclusive of Goods and Services Tax (GST) for all goods and services for the life of the contract including any options to extend. The current tender threshold is \$250,000 including GST for the life of the contract. Council Officers MUST not split Purchase Orders or contract value estimates to avoid a defined or legislative process.

Purchase Orders – Suppliers MUST not be engaged to supply any goods or commence any services without first being issued with a valid Purchase Order (where specified in the Spend Thresholds below). Invoices issued by Contracted Suppliers must have a valid Council Purchase Order reference number that is referenced on their invoice, or it may not be paid.

Credit Cards – Council provides a credit card facility to enable the secure purchase of goods and services in support of legitimate Council business. Credit cards are intended to provide an efficient method of purchasing ad-hoc materials, travel, accommodation and minor expenses or urgent items where no preferred supplier agreement is in place. Council Officers issued with a corporate credit card are in a position of trust regarding the use of public funds. Expenditure on a credit card MUST be in accordance with financial delegations and the fundamental requirements set out in this Policy and Council’s Purchase Cards Policy and Corporate Cards Procedure.

Spend Threshold

The procurement methodology is dependent on the value threshold and/or risk of the purchase as shown below. All amounts include GST. The value threshold to determine the methodology is the total accumulated spend for the procurement including any anticipated variations for the procurement activity.

Council has access to a range of Common Use Arrangements (CUA’s). CUA’s are pre-established panels of providers that should be used for commonly purchased goods and services. These arrangements have been established by either Council (or group of councils), Local Government Procurement, Procurement Australia, NSW Procurement (State Government).

Contract Spend	Method	Description
Unlimited	Expression of Interest (EOI)	An EOI provides the opportunity to undertake market tests and can lead to a selective approach to your procurement. An EOI may lead to one of the below Procurement actions. It does not replace any action.
All Spend Thresholds	Review Common Use Arrangements (CUA) and access where possible	CUA’s are in place to reduce red tape and time. These should be accessed wherever possible for any spend level. Consider any opportunity to incorporate quadruple bottom line (QBL) initiatives.
Up to \$5,000	No quote required Credit cards to be utilised where possible	Credit card reconciliation is the process of ensuring that the transactions made match the transactions, are complete, correct, and valid. Reconciliation is an essential part of the closing process, and it’s how we ensure the integrity of our

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		records. Council Officers MUST reconcile credit cards as directed.
	No quotes required, however best practice	A Purchase Order with Standard Terms and Conditions or monthly order docket should be issued prior to goods or services being provided.
		Petty Cash is available for \$100 or less.
\$5,000 - \$50,000	MUST obtain 2 written quotes or an exemption to be obtained	It isn't always practical to obtain quotes. If, for any reason you can't obtain the required quotes value for money must still be considered. A procurement exemption MUST be obtained prior to goods or services being provided.
\$50,000 - \$150,000	MUST use Simple Request for Quote (RFQ) consider a detailed evaluation and award process. Consideration of QBL	Due to elevated spend and risk, an 'Open Market or Publicly Advertised' RFQ process MUST be conducted in line with the Council Framework guidance. If for any reason the RFQ process or public advertising cannot be undertaken, a procurement exemption MUST be obtained prior to goods or services being provided.
\$150,00 - \$250,000	MUST use Simple Request for Quote (RFQ) or Invitation to Quote process and MUST utilise a detailed evaluation and award process. Consideration of QBL	Due to elevated spend and risk, a 'Publicly Advertised' RFQ process MUST be conducted in line with the Council Framework guidance. If for any reason the RFQ process or public advertising cannot be undertaken, a procurement exemption MUST be obtained prior to goods or services being provided. Council Officers MUST prepare and utilise a detailed evaluation and award process.
Greater than \$250,000	MUST use Public Request for Tender (RFT) including Consideration of QBL	As per Legislative Requirements and the Council Framework guidance.
\$500k	Increased tender threshold for natural disaster response and recovery related contracts	Councils are not required to tender prior to entering into a contract with a value of less than \$500k where the contract: <ul style="list-style-type: none"> • is primarily for the purpose of response to or recovery from a "declared natural disaster", and • is entered into within 12 months after the date on which the natural disaster is declared. Refer to Clause 170(a) Local Government Regulation

Contract Management Principles (MANAGE)

This section provides the mandatory requirements for managing contracts. Council recognises that the effective management of contracts with suppliers is essential in maximising the business benefits, achieving value for money and minimising contractual risks.

A contract is an agreement made between two or more parties that creates rights and obligations enforceable in law. This Policy applies until all contractual obligations have been completed.

The following are excluded from this Policy:

- Employment contracts,
- Non-binding Memoranda of Understanding,
- Partnering and collaborative contracts with other Local or State organisations

Stages in the Contract Management Life Cycle

Contract Commencement (Stage 1) – starts before a contract is signed

Successful Contract Management is highly influenced by activities performed prior to contract award. Ensuring that contract terms, conditions, scope and deliverables, KPI reporting and relationship management are clearly established in the signed Contract and understood by all parties, is fundamental for effective Contract Management.

Contract Management (Stage 2) – runs until formal closure

Properly managing supplier performance with respect to outcomes and deliverables clearly specified and agreed in the Contract will help ensure Council and its customers obtain the business benefits and value for money within target timeframes

Contract Closure (Stage 3) – the formal conclusion

The contract close-out is the stage for closing-out Contract obligations and liabilities with suppliers. It may also include transitioning to another supplier for the goods/services.

Mandatory Requirements applying to contracts

- All Council Contracts valued at \$50,000 (including GST) or more must be registered and identified with a Contract Number - issued by Council's Contract Management System (CMS) Portt.
- A contract manager must be formally appointed. The Contract Manager may manage a contract valued at more than their level of financial delegation. However, the Contract Manager must not approve or incur expenditure on goods, services or a project valued at more than their level of financial delegation. Note, this also applies to any changes (variations) to the original price of procurement.
- Staff must use Council developed and recommended contract templates at all times. These include contracts based on Australian Standard, Standard Form Documents available from NSW Procurement and Purchase Order Term and Conditions.

All formal Contracts must include appropriate Sustainability clauses in the areas of;

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- Work Health & Safety; Quality Assurance; Environmental; Financial Capability; Insurance; Industrial Relations; Performance; Code of Conduct; Business Ethics; Exchange; and Disclosure of Information.
- That allow and support contract compliance and risk management, with having regard to project value, requirements and complexity.

All formal Contracts must include appropriate Commercial clauses in the areas of:

- Payments and Retentions (or security); Price Adjustments; Delay to Completion (or delivery); and Processes to Resolve Claims and Disputes.
- That allow managing or regulating variations to the original Contract, having regard to project value, Contract requirements and complexity
- Obtain all relevant approvals and licenses prior to commencement: of the contract planning and engagement (entering into a contract).

Contract Variations

All Contract Variations must be approved in writing in accordance with the Contract and be approved by the appropriate delegate.

Ethics and Probity

Council's Code of Conduct must always be adhered to in the management of Contracts on behalf of Council, in particular ensuring: responsible decision making, declaring and appropriately managing any Conflicts of Interest and appropriate decline of any offered Gifts or Benefits.

Contract Disclosures

In accordance with Part 3, Division 5 of the Government Information (Public Access) Act 2009 (GIPA Act), Council will maintain and publish a register of all Council contracts that records key information about each contract Council enters into with the private sector which has or is likely to have a value of \$150,000 (including GST) or more.

Modern Slavery Prevention

Council is committed to ensuring:

- its operations and supply chains do not cause, involve, or contribute to modern slavery; and
- its suppliers, relevant stakeholders, and others with whom we do business respect and share our commitment regarding minimising the risk of modern slavery.

This applies to all persons employed by Council or on Council's behalf in any capacity. The prevention, detection, and reporting of modern slavery in any part of Council's operations or supply chain is their responsibility.

Statement of Intent

Council is committed to combating Modern Slavery by:

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- Identifying where our modern slavery risks are in our supply chain and assessing the degree of those risks.
- Where Modern Slavery may be present, completing a risk checklist prior to making a purchase.
- Where risk is identified, engaging with our suppliers to provide further information on their commitment to minimising the risk of modern slavery in their own supply chains and operations. This will primarily be done by asking suppliers to complete a Modern Slavery Questionnaire.
- Including modern slavery criteria in Request for Tender documents and Contracts.
- Providing adequate training for all staff to ensure they are aware of what modern slavery is, what Council's modern slavery risks are and how to raise any identified or potential concerns.
- Utilising Council's complaint process to enable staff and others to raise concerns about modern slavery.