UNDERSTANDING THE TENDERING PROCESS

Based on the Tendering Guidelines for NSW Local Government, 2009


Reviewed: January 2023
OVERVIEW

Tendering is a formal process for seeking offers for the supply of goods or services and the disposal of property whereby an invitation is extended and offers are made and considered, according to a set of pre-determined assessment criteria, prior to the creation of a contract for the supply of the goods or services. The legislative requirements for tendering by NSW local and county councils are prescribed by section 55 of the Act and by the Regulation. However, other legislation is also relevant to council operations and activities involved in tendering, procurement and contracts.

The following standards of behaviour and ethical principles are based on those developed for procurement and tendering activities by all NSW State Government agencies.

- Honesty and fairness: Councils must conduct all tendering, procurement and business relationships with honesty, fairness and probity at all levels.
- Accountability and transparency: Councils must ensure that the process for awarding contracts is open, clear, fully documented and defensible.
- Consistency: Councils must ensure consistency in all stages of the tendering process.
- No conflict of interests: A council official with an actual or a potential conflict of interests must address that interest without delay.
- Rule of law: Councils must comply with all legal obligations. These include the provisions of the Act and the Regulation.
- No anti-competitive practices: Councils must not engage in practices that are anti-competitive or engage in any form of collusive practice.
- No improper advantage: Councils must not engage in practices that aim to give a potential tenderer an advantage over others, unless such advantage stems from an adopted Council procurement policy such as a local preference policy.
- Intention to proceed: Councils must not invite or submit tenders without a firm intention and capacity to proceed with a contract, including having funds available.
- Co-operation: Councils must encourage business relationships based on open and effective communication, respect and trust, and adopt a non-adversarial approach to dispute resolution.
This policy aims to ensure that procurement within Council complies with the following principles:

- Ethical and legal Behaviour
- Responsible financial management
- Value for Money
- Quality Assurance
- Sustainability
- Use of local providers and content
CONFIDENTIALITY

Councils must not disclose tender information received from tenderers that is intellectual property, proprietary, commercial-in-confidence or otherwise confidential, without their prior consent.

In addition, council staff or councillors must not disclose information regarding the specific details of a tendering process, including a recommendation of the tender evaluation or assessment panel before the outcome of the tender has been determined.

Where a council is dealing with a tender pursuant to section 55 of the Act and confidential information needs to be disseminated to councillors for the purpose of deciding whether or not to accept any submitted tender, the confidential information should be issued as a separate confidential attachment to the council report with the non-confidential information included in the council business paper which is available to the public.

Section 10A of the Act outlines the circumstances under which a council or council committee meeting may be closed to the public.

This includes information that would, if disclosed:

• Confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business with, or
• Prejudice the commercial position of the person who supplied it, or
• Confer a commercial advantage on a competitor of the council, or
• Reveal a trade secret.
CONFLICT OF INTERESTS

Conflict of interests may occur when an individual could be influenced, or a reasonable and informed person would perceive that an individual could be influenced, by a personal interest when carrying out public duties.

There is a requirement that where such a conflict occurs, it will be declared, assessed and resolved in favour of the public interest.

A conflict of interests can be of two types:

• Pecuniary – an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person (section 442 of the Act). A person's pecuniary interest may arise because their spouse, de facto partner, relative, partner or employer, or company or other body of which the person or a nominee, partner or employer is a member has a pecuniary interest in a matter (section 443 of the Act).

• Non-pecuniary – a private or personal interest the council official has that does not amount to a pecuniary interest as defined by the Act. For example, a non-pecuniary interest could be a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature.

The Model Code of Conduct for Local Councils in NSW and the supporting guideline provides further information regarding conflict of interests and the requirements of the Act in relation to conflict of interests.

The NSW Government established the ICAC to protect the public interest, prevent breaches of public trust and guide the conduct of public officials.

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Value for money is a comparison of the apparent benefits in the proposed contract with the whole-of-life costs of the proposed contract or project. Value for money is determined by considering all the factors that are relevant to the proposed contract and may include: experience, quality, reliability, timeliness, service, risk profiles and initial and ongoing costs.

These are all factors that can make a significant impact on benefits and costs.

Value for money does not automatically mean the 'lowest price'. It is important that tender documents, within the Conditions of Tendering, specify the evaluation criteria that will be used to assess the costs and benefits of each submitted tender. It is also an advantage to have returnable schedules consistent with the evaluation criteria.

Value for money considers the following:

- Initial cost
- Service life cost
- Quality and reliability of product and supplier
- Availability of service/maintenance.parts
- Service levels
- Job creation potential
- Delivery time
- Social effect
- Safety
- Environmental effect of procurement, use, and disposal
- Retention of value on disposal
Narrabri Shire Council aim to encourage the development and promotion of business and industry within the Shire boundaries and in doing so will assist in creating growth of such business or industry. Every effort should be made to ensure locally based organisations are given an opportunity to participate in the quotation or tender process in accordance with the NSW State Government Purchasing Policy.

For all purchases above $75,000 (including GST) the decision to purchase will be based on several criteria.

When determining the ranking score of the “price criteria” for local suppliers, the submitted “lump sum” price is to be reduced by 5% (up to $20,000). In order to be considered a Local Supplier, an entity must:

- Operating in the Narrabri LGA
- Based or headquartered in the Narrabri LGA
- Controlled by a resident of the Narrabri LGA; 10.16. For a person conducting business to be considered a Local Supplier, they must:
  - Operate their business in the Narrabri LGA
  - Base their business in the Narrabri LGA
  - Reside in the Narrabri LGA. 10.17. In order to be considered a Local Supplier, an entity must prove they are by submitting a Local Supplier Application Form.

- The General Manager or their delegate will consider the content of the form and determine whether the entity or person is a local supplier.
- Local Supplier status will only last twelve months. Local suppliers must re-apply for Local Supplier status at least once every twelve months.
ABORIGINAL EMPLOYMENT PARTICIPATION

In certain circumstances tenderers will be required to indicate measures they intend to implement if awarded the contract, which are designed to lead to improved conditions in Aboriginal communities.

These measures may relate to employment of Aboriginal people, procedures to develop the business skills of Aboriginal people and the provision of economic benefits to Aboriginal communities.

The Construction Agency Coordination Committee has produced Aboriginal Participation in Construction Guidelines, which set out what is required of parties involved in construction projects for the NSW government. The website may be found at www.dpws.nsw.gov.au
WHEN IS A TENDER REQUIRED?

Councils are encouraged to use the tendering process in the following circumstances:

• Where estimated expenditure (including on-costs such as GST) is close to the tendering threshold specified in the Regulation (currently $150,000). The calculation of estimated expenditure should be a critical element of planning and contract scoping.

• Councils should not invoice or order split to avoid tendering requirements as such activities would be contrary to the requirements of council’s charter under the Act.

• Where the aggregated or cumulative cost of a contract conducted over more than one accounting period is likely to exceed the tendering threshold specified in the Regulation.

• Where the sale or purchase of good or services may be considered controversial, contentious or political.

• Where the sale or purchase of land may be considered controversial, contentious or political. Acknowledging that the sale or purchase of land is specifically exempt under section 55(3) of the Act, council should still consider using the tender process in such circumstances.

• Where there is a risk that ‘would be’ tenders could claim that council has ‘preferential’ arrangements with a single supplier.

• Where there is a risk that ‘would be’ tenders could claim that they would have tendered for the work if a public tendering process had been undertaken.
PROCUREMENT THRESHOLDS & REQUIREMENTS

- **PURCHASES UP TO $5,000.00**

Where the item is not available in the store, all purchases where possible should be made within the Narrabri Shire Local Government Area, where the total costs to Council are comparable to the costs of purchasing the same items outside of the area. A Purchase Order is required at the time of engaging the contractor or making a purchase.

- **PURCHASES $5,000.00 TO $75,000.00**

Minimum of two (2) written quotations are required.

The objectives of the Procurement Policy are to be considered when evaluating the quotes. A Purchase Order is required at the time of engaging the contractor or making a purchase.

- **PURCHASES $75,000.00 TO $250,000.00**

Seek quotations via advertisement.

Minimum of two (2) written quotations are required.

The objectives of the Procurement Policy are to be considered when evaluating the quotes. A Purchase Order is required at the time of engaging the contractor or making a purchase.

- **PURCHASES OVER $250,000.00**

The *Local Government Act 1993, Division 1, 55, 3 (n)* states that $250,000 is the minimum value at which tendering becomes compulsory.

Council delegated authority to the General Manager to determine tenders up to $1,500,000.00, any tender exceeding that amount must be determined by Council via resolution.

Local suppliers are shown preference by reducing their tendered price by 5% (up to $20,000) when comparing quoted prices for lump sum submissions.
TENDERING PROCESS FOR PURCHASES OVER $250K

**Tender Specification**
- Determine type of contract required (Design & Construct, Construct only (Lump sum - schedule of rates), Panel Contract (unit rates - generally accept all conforming tenders), consultancy.
- Prepare tender specification (includes conditions of tendering, technical specification, general conditions of contract, tender schedules, reference material etc)

**Tender Panel**
- Ensure tender documents meet minimum requirements set out in Clause 170 Tender Documents (LGP 2005).
- Ensure tender documents are clear and concise and contain all the standard clauses and requirements of Council.
- Determine assessment criteria and weightings before advertising.
- Approve advertisement, circulation and closing date

**Advertising**
- Tenders are to be advertised for a minimum of 21 days.
- Council’s e-tendering portal is www.tenderlink.com/narrabri or Vendor panel

**Opening of Tenders**
- Ensure that a member of tender panel is present when tenders are opened and registered in accordance with Clause 175 Opening of Tenders (LGR 2005).
- Public list of tenders is prepared.

**Tender Assessment & Recommendation**
- Tenders are assessed by one or more people (one of which can be a specialised consultant depending on the type of contract).
- Tender scoring and ranking schedules are prepared based on the previously determined criteria and weightings.
- Report and recommendation is prepared for Tender Panel.

**Tender Panel**
- Ensure that all tender panel members have no conflict of interest, perceived or otherwise, in relation to the tenders submitted.
- Consider the tender assessment, report and recommendation.
- Refer tender assessment, report and recommendation for determination.

**Determination of Tender**
- If under $1.5m the General Manager is authorised to determine.
- If over $1.5m the tender assessment, report and recommendation is referred to Council for determination via resolution

**Award of Contract**
- Only after determination of Tender - either by General Manager or Council Resolution will a letter of award be prepared and issued to the successful tenderer.
PRE-TENDER MEETING & SITE VISIT

Depending on the type of project being tendered, a Pre-Tender Meeting and Site Visit may be scheduled with all prospective contractors.

This will be detailed in the Tender Documents.

This is an important opportunity for tenderers to get a clear view of the requirements of the project and to ask questions and seek clarifications.

This is also an opportunity for potential Sub-contractors to promote their business to larger Principal Contractors.

The minutes from these meetings are posted on Tenderlink as an Addendum.
E-TENDERING

By registering for TenderLink you will be notified via email of any Tenders that Narrabri Shire advertises.

TenderLink captures who downloads the tender documents, allows Council to make amendments to documents and notifies tenderers of amendments, hosts a forum where questions and clarifications can be posted, and all potential tenderers can see the same consistent information.

Completed Tenders are then uploaded to the electronic tender box which Council cannot access until after the closing time.

This process ensures the highest standards of probity and integrity.

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TENDER DOCUMENTATION

Clause 170 of the Regulation outlines the information that must be included in the tender documents. Sufficient detail should be included in the tender documents to:

- Give a clear understanding of what is being procured
- Give a clear understanding of the proposed procurement, what is expected of tenderers, the type of decision that will flow from assessment of tenders and the basis of that decision
- Give a name and contact details of the person to whom questions about the proposed contract may be directed
- Specify the criteria which will be used to assess the tenders
- Elicit all information necessary to make that decision
- Indicate whether there are formal tender documents that must be submitted and information as to how they may be obtained
- Provide the information required by clause 170(1)(e) of the Regulation for waste management contracts.

The Tender Documents will generally consist of:

- Conditions of Tendering
- General conditions of Contract
- Plans and specifications or a description of the services being sought
TENDER EVALUATION CRITERIA

In addition to fees, prices or charges tendered, evaluation criteria should contain the factors critical to council being able to make appropriate decisions on matter arising from the tendering process. These factors may include, but are not limited to:

- Whole-of-life costs, including capital, operational and disposal costs
- Innovation offered
- Delivery times offered
- Quality offered Previous performance of tenderer
- Experience of tenderer and their personnel
- Capability of tenderer, including technical, management, staff, organisational and financial capability and capacity
- Tenderer’s occupational health and safety management practices and performance
- Tenderer’s workplace and industrial relations management practices and performance
- Tenderer’s environmental management practices and performance
- Tenderer’s community relations practices and performance
- Value adding components such as economic, social and environmental development initiatives, if appropriate and relevant to the procurement
- Conformity of tender with requirements.

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

All communications with potential tenderers should be conducted within strict probity and risk management frameworks to ensure accountability and transparency.

Councillors and staff are reminded of the key principles of the Code of Conduct, including:

- Integrity
- Leadership
- Impartiality
- Accountability
- Openness
- Honesty
- Modern Slavery (pending)
The tender schedules (or tender submission documents) are a series of forms that are essential for any tender submission. If they are not completed, a tender submission may be deemed non-conforming.

By all tenderers completing the same forms, it ensures that Council is comparing "apples with apples" when assessing the tenders.

The following are the standard schedules that Narrabri Shire Council use:

- Tender Form
- Schedule of Rates
- Tenderer’s Particulars – Financial (General)
- Tenderer’s Particulars – Current Commitments
- Tenderer’s Particulars – Prior Termination of Project(s)
- Tenderer’s Particulars – Project History
- Tenderer’s Particulars - Personnel
- Register of Tenderer’s Sub-Contractors and Suppliers
- Major Machinery and Equipment
- Non-Collusive Tender Declaration
- Receipt of Addenda
- Statement of Conformance
TENDER SUBMISSIONS

Tenders must be submitted in accordance with clause 173 of the Regulation. Tenders must be submitted in writing and may be posted or delivered in a sealed envelope; sent by facsimile transmission; or sent by electronic means in accordance with clause 173(2).

Submission of a tender by electronic means can be done in two circumstances:

- In accordance with any guidelines in force under section 23A of the Act (clause 173(2)(a)); or
- If no such guidelines exist, the tender must be submitted by secure electronic means (clause 172(2)(b)).

Tenders submitted by facsimile or non-secure electronic means must be printed out on receipt, and immediately be placed in an envelope and placed in the tender box by an appropriate person.

It is the tenderer’s responsibility to submit a tender in accordance with the conditions of tender, in a legible form and, in the case of electronic submission, in an uncorrupted format and by secure means.

Further to completing the Tender Schedules, Tender Submissions should also include (but not limited to, and may vary depending on the project):

- CVs of proposed project delivery team
- Detailed Program (Gantt Chart)
- Methodology
- Prequalification’s (RMS etc.)
- WHS/Quality/Environmental Management Systems

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Before a tender is advertised the assessment or evaluation criteria and the weighting for each criteria are determined by Councils Tender Panel.

The criteria are disclosed within the tender documents excluding the weighting which is kept confidential.

Who is going to assess the tenders is also disclosed within the documents.

Once the tender is closed, the submissions are carefully assessed by Council staff or a specialist consultant engaged by Council against the assessment criteria.

A Tender Assessment Report is then prepared and presented to Councils Tender Panel who then endorse the recommendation to be put forward to Council and or the General Manager.
NOTIFYING OF OUTCOME OF TENDERS

A decision to accept a tender can only be made by resolution of council as section 377 of the Act does not permit delegation of this task.

Council acceptance of tenders must be undertaken in accordance with clause 178 of the Regulation.

Council must notify unsuccessful tenderers either that their tender was unsuccessful or that no tender was accepted as soon as practicable after:

• Entering into a contract with the accepted tenderer; or

• Deciding not to accept any of the tenders.

Council must make information on the outcome of the tendering process publicly available by displaying, in a conspicuous place, the name and amount of the successful tender or a notice stating that none of the tenders were accepted.
CASUAL PLANT & TRADESPERSON HIRE

Each year Council advertises for suitably qualified plant and tradespeople to be included on Council’s Casual Plant & Tradesperson Hire Registers.

These advertisements generally go out around April each year for commencement on 1 July.

The intent is that Council will have a pool of plant and tradespeople available to call on for casual hire and in the event of an emergency.

Once the register is compiled each year it is circulated to all staff within Council that have purchasing delegation.

It should be noted that the procurement thresholds still apply, and should the work estimated to be completed be more than $5000 that Council is required to source two (2) written quotes.
If you require any assistance with the tendering process, please contact Contracts Officer Amy Withington amyw@narrabri.nsw.gov.au or 02 6799 6878.