

# Council Policy

## Procurement



<b>Council Policy</b>	
Legal Authority	<i>Local Government Act 1995 &amp; Local Government (Functions and General) Regulations 1996 (WA) 11A</i>
Department	Office of the CEO

## 1 Title

Council Policy – Procurement

## 2 Purpose

The purpose of this Policy is to guide the City's purchasing activities and procurement decisions to:

- ensure compliance with legislation, regulations, common law obligations, and requirements consistent with the City's policies and Code of Conduct;
- provide guidance on ethical behaviour and ensure probity, transparency, effective competition and the avoidance of conflicts of interest and bias in all City procurement and contracting activities
- ensure the City receives value for money in its procurement;
- reduce the risk of corruption and fraud;
- provide a balance between best value for money and administrative burden; and
- assist progression of the City's sustainability and social visions.

For the avoidance of doubt, this Policy is the purchasing policy referred to in the *Local Government (Functions and General) Regulations 1996, Part 4, Reg 11A*.

## 3 Scope

This Policy applies to all purchasing and procurement activities undertaken by and on behalf of the City.

## 4 Non-compliance

Failure to comply with this Policy, the *Local Government Act 1995 (the Act)* and Part 4 of the *Local Government (Functions and General) Regulations 1996 (the Regulations)* may be considered misconduct under the City's Code of Conduct and could result in disciplinary action.

## 5 Principles

The purchasing or procurement of goods and services by or on behalf of the City shall be conducted in accordance with the following principles:

- Principle 1 – Socially Sustainable Procurement - Aboriginal Business and Australian Disability Enterprises;
- Principle 2 – Sustainable Procurement;
- Principle 3 – Act fairly;
- Principle 4 – Value for money; and
- Principle 5 – Local economic benefit.

## **5.1 Socially sustainable procurement**

### **5.1.1 Aboriginal business**

The City recognises that Kwinana's aspirations and Aboriginal aspirations are aligned and that there will be times when procurement requires close consideration of Aboriginal cultural competencies such as language, Aboriginal understanding knowledge, skills, procedures, customs, practices and protocols.

The City's Reconciliation Action Plan will seek to deliver agreed priorities and ensure that the City's purchasing activities consider, where possible:

- the potential to engage and enable Aboriginal community and business; and
- the delivery of Aboriginal customer friendly services.

Where the City makes a determination to contract directly with an Aboriginal Business it must be satisfied that the engagement truly represents value for money.

### **5.1.2 Australian disability enterprises**

*Regulation 11(2)(i)* provides a Tender exemption if the goods or services are supplied by an Australian Disability Enterprise. An Australian Disability Enterprises (ADE) is a type of employment support for people with disability who need significant support to work.

The City's Disability Access and Inclusion Plan will seek to ensure that WA Disability Enterprises have the same opportunity as other people to obtain and maintain work with the City. Where the City makes a determination to contract directly with an Australian Disability Enterprise it must be satisfied that the engagement truly represents value for money.

### **5.1.3 Considerations**

Where appropriate and practicable, the City will:

- consider practices, procedures and specifications that avoid bias and do not without due cause, disadvantage Aboriginal Businesses or Australian Disability Enterprises;
- consider direct or indirect flow on benefits for Aboriginal Businesses or Australian Disability Enterprises;
- explore the capability of Aboriginal Businesses or Australian Disability Enterprises to meet requirements and ensure that procurements are designed to accommodate the capabilities of Aboriginal Businesses and/or Australian Disability Enterprises;
- provide adequate and consistent information to potential suppliers; and
- consider a qualitative weighting in the evaluation of quotes and Tenders to provide advantages to Australian Disability Enterprises, Aboriginal Businesses or businesses that demonstrate a high level of aboriginal employment.

## 5.2 Sustainable procurement

Sustainable procurement is the procurement of goods and services that have better social, environmental, community and economic impacts than competing goods and services.

The City is committed to implementing sustainable procurement and will, where possible, consider the extent to which a prospective supplier's business practices will result in positive social, environmental, community and economic outcomes. More particular considerations may include:

- a) value for money over the life cycle of the engagement, rather than just the initial cost;
- b) the supplier's strategies to minimise environmental impacts;
- c) supplier's practices and/or employment opportunities e.g. disability training opportunities
- d) the supplier's strategies to avoid unnecessary consumption and manage demand and minimise waste;
- e) the supplier's general social responsibility practices, including compliance with its legislative obligations to its employees; and
- f) other sustainability outcomes identified in the City's Strategic Community Plan and Corporate Business Plan.

## 5.3 Act fairly

The City's procurement of goods, works and services will be conducted with the utmost integrity.

All City's members, employees and suppliers are expected to conduct themselves with the highest standards of honesty, fairness, and personal integrity. It is critical that both employees and suppliers adhere to these standards, all applicable laws, and avoid all perceptions of conflict of interest and impropriety.

Fundamental aspects of this principle are:

- **Transparency** – following procurement guidelines and be open in administration, ensure spend and appropriate contract award information is available to the public, promote a shared understanding of respective roles and obligations between council and any external parties participating in purchasing activities;
- **Accountability** – be accountable for performance and be able to give complete and accurate accounts of public funds, including funds passed on to others for particular purposes. It will also have suitable governance in place to oversee procurement arrangements; and
- **Ethical consideration** – behave ethically, adhering to the standards set in this Policy and associated procurement guidelines and any other relevant internal policies, i.e. Code of Conduct, Gifts and Hospitality Policy etc.

All open contestable procurement activities will be publicly notified so all potential suppliers have equal access. The procurement documentation that the City provides the market will contain information which makes it clear what the City is looking for by way of response, and evaluations will be undertaken in a manner that avoids bias.

## 5.4 Value for money

Value for money is an overarching principle governing the procurement of goods and services and underpins the City's purchasing activities. Value for money is the achievement of the best possible outcomes for the total cost of ownership (or whole of life cost), it does not necessarily mean selecting the lowest price response. Other related considerations include:

- a) the technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality. This includes but is not limited to an assessment of compliances, the supplier's resource availability, capacity and capability, value-adds offered, warranties, guarantees, repair and replacement policies and response times, ease of inspection and maintenance, ease of after sales service, ease of communications, etc.;
- b) the supplier's financial viability and capacity to supply without the risk of default, including the competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history;
- c) a strong element of competition by obtaining a sufficient number of competitive quotations consistent with this Policy, where practicable;
- d) the safety requirements and standards associated with both the product design and the specification offered by suppliers and the evaluation of risk arising from the supply, operation and maintenance; and
- e) the environmental, economic and social benefits arising from the goods, services or works required, including consideration of these benefits in regard to the supplier's operations, in accordance with this Policy and any other relevant City Policy including Local Economic Benefit.

## 5.5 Local economic benefit

Under the State Government's Buy Local Policy, Government Agencies and Local Governments, including the City, are encouraged to maximise participation of local and small businesses in the supply of goods, services and works purchased or contracted by the City in accordance with the City's local economy objectives and Strategic Community Plan.

A key goal in this policy is open and fair competition to ensure that Western Australian businesses are provided with every opportunity to bid for work. It is recognised that not every category of goods, services or works purchased by the City will lend itself to supply by local businesses.

The City is committed to not unfairly disadvantaging local businesses within the City's boundary, the surrounding South West Metropolitan Group of Councils and Western Australia.

The City will embrace a good – better – best methodology during procurement activities:

1. **Good** – Within Western Australia
2. **Better** - Within the South West Metropolitan Group of Councils
3. **Best** - Within the City of Kwinana's boundary

Where appropriate and practicable, the City will:

- consider practices, procedures and specifications that avoid bias and do not without due cause, disadvantage local or small businesses;
- consider direct or indirect flow on benefits for a local business or area;
- explore the capability of local businesses to meet requirements and ensure that procurements are designed to accommodate the capabilities of local businesses; and
- provide adequate and consistent information to potential suppliers.

To this extent, officers are encouraged to consider local economic benefit when evaluating quotes and submissions by asking suppliers to demonstrate where and how they can benefit or contribute to the local economy, including use of local businesses and subcontractors and also potential employment and skill development opportunities within local region/s. A qualitative weighting may be afforded in the evaluation of formal quotes and Tenders.

## 6 Procurement requirements

### 6.1 Legislative/regulatory requirements

The requirements that must be complied with by the City, including procurement thresholds and processes, are prescribed within the Regulations, this Policy and associated Procurement Procedures.

### 6.2 Procurement from existing contracts

Where the City has an existing contract in place, it must ensure that goods and services required are purchased under these contracts to the extent that the contract (including the scope) allows. Officers must refer to the City's Contracts Register in the first instance before seeking to obtain quotes and/or Tenders.

### 6.3 Procurement value thresholds

The table below outlines the practice requirements that apply to the City's purchasing and procurement activities. All procurement must be conducted in accordance with the City's Procurement Procedures and must be approved by an officer with the appropriate financial authorisation/ limits and/or delegation.

Value of procurement	Procurement requirement	Minimum assessment panel requirement	Approval of procurement	Record of decision
Up to \$2,000	Seek at least 1 verbal or visual quote (ie: advertising/website) for ad-hoc activities	One officer	An authorised employee (that is not the evaluator) with a financial authorisation limit more than the consideration value	Required information to be entered when raising a requisition including providing comments to justify the purchase decision
\$2,001 to \$10,000	Seek at least 1 written quote (email/advertising/website)	One officer	An authorised employee (that is not the evaluator)	Required information to be entered when

Value of procurement	Procurement requirement	Minimum assessment panel requirement	Approval of procurement	Record of decision
	etc.)		with a financial authorisation limit more than the consideration value	raising a requisition including providing comments to justify the purchase decision
\$10,001 to \$20,000	Seek at least 2 written quotes (email/advertising/website etc.)  <b>OR</b>  Seek at least 1 written quote from a <b>pre-qualified</b> Tender Exempt Supplier			
\$20,001 to \$100,000	Seek at least 3 written quotes  <b>OR</b>  Seek at least 2 written quotes from <b>pre-qualified</b> Tender Exempt Suppliers	One officer up to 50k  <b>OR</b>  Two officers 50k-100k		Evaluation Report 20k – 50k  <b>OR</b>  Evaluation Report 50k – 100k
\$100,001 to \$250,000	Seek at least 3 written quotes via a Formal Request for Quotation process (including detailed specifications and pre-determined selection criteria) from suppliers or from <b>pre-qualified</b> Tender Exempt Suppliers.  All processes over \$100,000 are to be conducted by Procurement and Contracts.	The responsible coordinator or equivalent (or above) and two officers		Using the appropriate memorandum to Director or CEO (as applicable)
Over \$250,000 (Tender Threshold)	Conduct a formal Request for Tender in accordance with the Act and formal Tender process.  <b>OR</b>	The responsible manager (or above) and two officers		CEO approval up to delegated financial authorisation limits  <b>OR</b>  Council approval if

Value of procurement	Procurement requirement	Minimum assessment panel requirement	Approval of procurement	Record of decision
	<p>Seek at least 3 written quotations from Tender Exempt Suppliers via a Formal Request for Quotation process</p> <p>All processes over \$250,000 are to be conducted by Procurement and Contracts.</p>		above CEO authorisation limits	

Table 1 – Procurement Requirements

**The following notes apply to Table 1 above and all procurement activities:**

- 1) the value is exclusive of Goods and Services Tax;
- 2) an approved budget is required for the purchase of any goods or services;
- 3) the value of procurement will be based on the estimated total expenditure for a category of goods or service over a minimum 3-year period;
- 4) the appropriate length of the contract is to be determined based on market volatility, ongoing nature of supply, historical purchasing evidence and estimated future purchasing activities or business decisions;
- 5) procurement activities for the same category of supply (good or service) should, where possible, be aggregated into single contract arrangements to achieve best value and efficiency in future purchasing activities;
- 6) officers must not conduct multiple procurement activities or raise multiple purchase orders with the intent of 'splitting' or 'staging' the contract and its value, in order to avoid a procurement requirement in line with this policy, the City's Procurement Procedures and/or *Reg 12*;
- 7) any person evaluating submissions must be suitably experienced and have a reasonable knowledge of the goods/services being purchased;
- 8) sourcing of quotations from at least one local supplier is highly encouraged when available;
- 9) the City's Procurement Procedures apply to all procurement activities; and
- 10) All recording of purchasing and procurement decisions must be performed in accordance with the City's Procurement Procedures and Record Keeping Policy;

**6.4 Waiver of quotation (exceptional circumstances)**

Where quotes are not practical and the total expenditure is expected to fall under the tender threshold, a Director or the Chief Executive Officer, at their discretion, may waive the requirements to obtain quotations under this policy, providing that written and justifiable reasons for such waiver are provided by the responsible Officer and documented in line with the City's Procurement Procedures.

All waivers exercised by a Director or the Chief Executive Officer are to be captured in the City's Waiver of Quotation Register and will be reported bi-annually to the Audit and Risk Committee.

Time constraints, poor planning, administrative omissions and errors do not justify a purchase under a Waiver. Every effort must be made to research and anticipate purchasing requirements in advance to allow sufficient time for planning and scoping proposed purchases and undertaking the relevant procurement process, as applicable.

## 6.5 Procurement exemptions

The City is exempt from publicly inviting Tenders when procurement meets any of the requirements outlined under *Regulation 11(2) of the Functions and General Regulations 1996*.

Furthermore, if a good or service falls within one of the below categories and the purchase value is under the Tender threshold (over the life of the Contract) and every effort to ensure value for money is achieved, the procurement is not subject to the above procurement requirements and officers may approach a single supplier:

- advertising of employment opportunities at the City;
- recruitment of temporary personnel (as defined in the Procurement Procedures - conditional to the WALGA Preferred Supplier Arrangements and Common Use Arrangements);
- advertising services, including mandated state-wide public notices (conditional to the WALGA Preferred Supplier Arrangements and State Common Use Arrangements) and digital advertising (for example, Facebook, Instagram or Google);
- purchasing of training services or training courses undertaken by the City's Human Resources department;
- conferences and seminars;
- legal services (conditional to WALGA Preferred Supplier Arrangements and State Common Use Arrangements only);
- annual memberships and subscriptions. For example, WALGA, LGIS, and SAI Global;
- non-contestable utility services;
- purchases from the original manufacturer or supplier whereby any other purchase may void the warranty;
- light fleet (conditional to State Common Use Arrangements and WALGA Preferred Supplier Arrangements);
- expenditure related to a local emergency that is required (**within existing budget allocations**) to respond to an imminent risk to public safety, or to protect or make property or infrastructure assets safe; and
  - purchases obtained through the government of the State or the Commonwealth or any of its agencies, or by a local government, a regional local government or government body/statutory authority.

## 6.6 Unique nature of supply (sole supplier)

Where the procurement requirement is over the value of \$10,000 and of a unique nature that can only be supplied from one supplier, the purchase is permitted without undertaking a quotation or Tender process. This is only permitted in circumstances where the City is satisfied and can evidence that there is only one source of supply for those goods, services or works. The City must use its best endeavours to determine if the sole source of supply is genuine by exploring if there

are any alternative sources of supply. Once determined, the justification must be endorsed by the Chief Executive Officer, prior to a contract being entered into or purchase order being raised and must be captured in the City's Sole Supplier Register.

An arrangement of this nature will only be approved for a period not exceeding one year. For any continuing purchasing requirement, the approval must be re-assessed before expiry, to evidence that only one potential supplier still genuinely exists.

All sole supplier endorsements made by the Chief Executive Officer are to be captured in the City's Sole Supplier Register and will be reported bi-annually to the Audit and Risk Committee.

## **6.7 Inviting Tenders under the Tender threshold**

Where considered appropriate and beneficial, or to manage procurement risk, the City may consider publicly advertising Tenders in lieu of undertaking a Formal Request for Quotation for purchases under the Tender threshold (\$250,000). This decision should be made after considering the benefits of this approach in comparison with the costs, sustainability, timeliness and compliance requirements.

If a decision is made to undertake a public Tender for contracts expected to be \$250,000 or less in value, the City's tendering process must be followed in full.

## **6.8 Expressions of interest**

Expressions of Interest (**EOI**) will be considered as a prerequisite to a Tender process where the required supply evidences one or more of the following criteria:

- a) unable to sufficiently scope or specify the requirement;
- b) there is significant variability for how the requirement may be met;
- c) there is potential for suppliers to offer unique solutions and / or multiple options for how the purchasing requirement may be obtained, specified, created or delivered;
- d) subject to a creative element; or
- e) provides a procurement methodology that allows for the assessment of a significant number of potential tenderers leading to a shortlisting process based on non-price assessment.

All EOI processes will be based upon qualitative and other non-price information only. EOIs are to be conducted in line with the City's tendering process.

# **7 Annual procurement plan**

The City will release an Annual Procurement Plan on its website that captures the City's known upcoming procurement for the next financial year. This information will be released in order to better demonstrate to the market what, when, and how the City is expecting to undertake public Tenders, in order to meet the City's needs.

# **8 Panels of pre-qualified suppliers**

## **8.1 Panel policy objectives**

In accordance with Regulation 24AC of the *Local Government (Functions and*

*General) Regulations 1996*, a Panel of Pre-qualified Suppliers (“**Panel**”) may be created where most of the following factors apply:

- the City determines that a range of similar goods and services are required to be purchased on a continuing and regular basis;
- there are numerous potential suppliers in the local and regional procurement-related market sector(s);
- the procurement activity under the intended Panel is assessed as being of a low to medium risk;
- the Panel will streamline and improve procurement processes; and
- the City has the capability to establish, manage the risks and achieve the benefits expected of the proposed Panel.

## **8.2 Establishing and maintaining a panel**

Should the City determine that a Panel is beneficial to be created, it must do so in accordance with Part 4, Division 3 the *Local Government (Functions and General) Regulations 1996*. The following is to be considered and documented accordingly for each Panel:

- a) a Panel may be established for one supply requirement, or a number of similar supply requirements under defined categories within the Panel. This will be undertaken through a public invitation process (similar to that of a Tender) in line with the City’s Procurement Procedures.
- b) Panels may be established for a minimum of one (1) year and for a maximum length of three (3) years.
- c) evaluation criteria must be determined and communicated in the application process by which applications will be assessed and accepted.
- d) at the commencement of each Panel, a communications plan must be developed. This will set out how all communications between the City and each Panel Member will take place during the term of the Panel.
- e) there shall be a minimum of two (2) suppliers appointed to a Panel and a minimum of one supplier for each category when more than one category is set out in the Panel.
- f) should a Panel member leave or be terminated from the Panel within 6 months of contract commencement, they may be replaced by the next ranked Panel member determined in the value for money assessment (should they accept). Should the next ranked supplier decline, the City may decide to invite the next ranked supplier and so forth until a supplier accepts a contract. Should the City deem that all suitable suppliers be exhausted, the City may continue to operate the Panel ensuring that the minimum of two (2) Panel Members remain and if this is not the case, the City must re- establish a new Panel via the relevant procurement process as set out in this policy.
- g) the City may publicly re-advertise a Panel with a view of adding Panel members to an existing Panel using the same evaluation criteria used to initially establish the Panel.
- h) should a Panel Member leave or be terminated from the Panel after 6 months from contract commencement, the City may continue to operate the Panel ensuring that the minimum of 2 Panel members remain and if this is not the case, the City must either re-establish a new Panel or publicly re-advertise a Panel with a view of adding Panel members to an existing Panel using the same evaluation criteria used to initially establish the Panel.

### 8.3 Distributing work amongst panel members

To satisfy *Regulation 24AD(5)* of the Regulations, when establishing a Panel, the detailed information associated with each invitation to apply to join the Panel must either prescribe whether the City intends to:

- a) Obtain quotations from each pre-qualified supplier on the Panel with respect to all purchases; or
- b) Purchase goods and services exclusively from any pre-qualified supplier appointed to that Panel, and under what circumstances; or
- c) Purchase goods/services from pre-qualified suppliers on the Panel in line with the contracted Schedule of Rates; or
- d) Develop a ranking system establishing clear rules when each Panel member will be able to quote; or
- e) A mix of any of the above distribution methods (eg: based on suitability, skills, experience availability, costs etc.)

In every instance, a contract must not be formed with a pre-qualified supplier for an item of work beyond 12 months, which includes options to extend the contract.

## 9 Contract management

Contracts are to be proactively managed during their lifecycle by the City Officer responsible for the delivery of the contracted goods, services or works, to ensure the city receives value for money and to enforce performance against the contract.

Where a contract variation is required, the contract can only be varied if it is necessary in order for the goods/services to be supplied and does not change the scope of the contract. When considering contract variations, any variation must also be identified as not to have affected the outcome of the initial procurement process in the view of both a reasonably skilled and experienced person having relevant expertise in the specific industry or type of work and the Procurement and Contracts team.

For all contract variations, a formal variation agreement must be completed by the Procurement and Contracts team. This agreement must be signed by a person with appropriate delegation and authorisation.

Further requirements are outlined in the City's Procurement Procedures.

## 10 Definitions

**CUA** – State Government formed Contracts, otherwise known as Common Use Arrangements.

**Formal Request for Quotation** - the process of developing, in conjunction with Contract Services, a detailed written description of purchase requirements along with assessment criteria, formal quote documentation (including a contract) and an appropriate assessment process.

**Officer** – any employee of the City of Kwinana or an external party engaged to perform works for the City (eg: consultants, temp personnel etc)

**Pre-Qualified Tender Exempt Supplier** – a supplier that has met the pre-qualification and due diligence requirements to be contracted to either a WALGA Preferred Supplier

Arrangement or a State Government Common Use Arrangement (CUA) and is contracted under a valid WALGA Contract or CUA for the particular scope or category of work at the time of purchase.

**Procurement Procedures** – relating document which governs the requirements for all City Procurement activities.

**Scope** – a general description of the goods/services required to achieve a desired outcome.

**Tender** – a publicly advertised invitation to submit a proposal to provide described goods or services for a fixed price.

**Tender Exempt** - any Tenders that do not have to be publicly invited pursuant to Local Government (Functions and General) Regulations 1996 Regulation 11(2)(a)-(k) inclusive.

**Tender Exempt Supplier** – a supplier that sits within a category referred to in the Local Government (Functions and General) Regulations 1996 Regulation 11(2)(a)-(k) inclusive.

**WALGA** - The WA Local Government Association (WALGA)

**WALGA Preferred Supplier Arrangement** – A specified grouping of suppliers that have been pre-qualified and appointed by WALGA to supply a category of goods or services to Local Governments.

## 11 References

Date of adoption and resolution No.	12 August 2020 - #222
Review dates and resolution No.	24 November 2021 - #025 28 September 2022 - #220
Next review due date	September 2024
Related documents	<ul style="list-style-type: none"> <li>• Procurement Procedures for the Procurement of Goods and/or Services</li> <li>• Finance Procedures for the Procurement of Goods and/or Services</li> <li>• Contract Register</li> <li>• Sole Supplier Register</li> <li>• Register of Delegated Authority</li> <li>• Strategic Community Plan 2021 - 2031</li> <li>• Corporate Business Plan 2021 - 2025</li> </ul>
	<ul style="list-style-type: none"> <li>• 1.1.22 – Expressions of Interest/Tenders for supply of goods and services</li> <li>• 1.1.2 – Execution of Documents (as supported by prior approval of Council)</li> </ul>

**Note: Changes to references may be made without the need to take the Policy to Council for review.**