

5.3. PROCUREMENT GENERAL POLICY 2022-23

REPORT AUTHOR Tara Killeen, Chief Financial Officer

MANAGER Rachel Brophy, Chief Executive Officer

DEPARTMENT Finance and Corporate Services

RECOMMENDATION

That Council adopts the Procurement General Policy for the 2022/2023 financial year.

EXECUTIVE SUMMARY

This report discusses Douglas Shire Council's (Council) policy for the acquisition of goods and services and adherence to "sound contracting principles" as stipulated in s 104 of the *Local Government Act 2009* and s 198 of the *Local Government Regulation 2012*. This policy is required to be re-adopted by Council on an annual basis.

Council previously adopted the Procurement Policy on 31 May 2022. This policy outlines the responsibilities of officers regarding procurement and sound contracting principles as determined by legislation.

A review of the policy has been undertaken by staff following recommendations by Queensland Audit Office and the policy is to be presented to Council on 13 December 2022 for re-adoption. There has been rewording to include reference to the Human Rights Act and outlining the process for evaluation of tender and quotes and other minor administrative changes. There have been amendments to the Appendix outlining the procurement delegation levels for staff.

Proposed amendments to the Procurement Policy were workshopped with Councillors on 6 December 2022.

PROPOSAL

That Council adopts the Procurement General Policy for the 2022/2023 financial year.

FINANCIAL/RESOURCE IMPLICATIONS

S 198 of the *Local Government Regulation 2012* requires Council to adopt a Procurement Policy. There are no budgetary implications in reviewing the policy on an annual basis.

RISK MANAGEMENT IMPLICATIONS

Complying with legislative requirements ensures Council mitigates any regulatory or reputational risk.

SUSTAINABILITY IMPLICATIONS

- Economic:** The development of competitive local business and industry is addressed in the policy outlining Council's commitment to this principle.
- Environmental:** Council is committed to promoting environmental protection through its purchasing activities and how this will be achieved is outlined within the policy.
- Social:** Nil

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 1 - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

Goal 2 - *We will put the customer at the centre of our service delivery and process improvement as we deliver efficient and appropriate services based on community expectations.*

Goal 3 - *We will make sound financial decisions by ensuring robust strategic planning, financial management and reporting.*

Operational Plan 2022-2023 Actions:

Legislative requirement.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

- Builder/Owner** Council makes a significant investment every year in the infrastructure that underpins the Shire through its capital works program. Council will manage its assets with appropriate frameworks and deliver its projects through robust project management.

Regulator Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

CONSULTATION

Internal: Procurement Team, Manager Governance, CEO, Council Workshop 6 December 2022

External: Queensland Audit Office

COMMUNITY ENGAGEMENT

This proposal will fall within the 'inform' category of Council's Community Engagement Framework.

ATTACHMENTS

1. Procurement Policy (1) [5.3.1 - 10 pages]



8. PROCUREMENT POLICY

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Purpose

This document sets out Douglas Shire Council's policy for the acquisition of goods and services and adherence to "sound contracting principles" as stipulated in s 198 of the *Local Government Regulation 2012 (Qld)*.

The policy serves to provide Council with a framework for managing the procurement function that ensures compliance with statutory requirements, an efficient and effective process, and a reduction in the risk of fraud and corruption.

Scope

This policy applies to the procurement and contracting activities undertaken in acquisition of all goods and/or services, and is binding upon the Council and its officers, temporary employees, volunteers, contractors, and consultants whilst engaged by Council.

Policy Content

Objectives

Council's purchasing activities aim to achieve advantageous procurement outcomes by:

- promoting value for money with probity and accountability;
- advancing Council's economic, social, and environmental strategies;
- providing reasonable opportunity for competitive local businesses that comply with relevant legislation to supply to Council; and
- promoting compliance with relevant legislation.

In accordance with relevant legislation, this policy incorporates requirements regarding the procurement of goods and services and the application of sound contracting principles.

Responsibility

Council officers responsible for the procurement of goods and services must comply with this policy. It is the responsibility of Council officers involved in the procurement process to understand the meaning and intent of this policy.

Council officers are required to:

- adhere to the "sound contracting principles";
- preserve Council's integrity in the procurement process to ensure that Council may be seen to have acted beyond reproach in all dealings;
- abide by Council's Code of Conduct and all applicable policies and instructions; and
- source quotations and raise purchase orders prior to receiving goods and services.

The expected value of a contractual arrangement with a supplier for a financial year is the total expected value of all of Council's contracts, in the financial year, with the supplier for goods and services of a similar type. Accordingly, the purchase of goods or services must not be divided into unreasonable components, or order quantities reduced, to avoid the necessity to comply with the dollar limit requirements under this policy.

All relevant documentation relating to the procurement process is to be recorded in Council's record management system (e.g. quotes, emails, letters etc..).

Sound contracting principles

Chapter 4, s 104 of the *Local Government Act 2009* requires that a local government adheres to the following five sound contracting principles in all purchasing activities:

Value for money

Council must harness its purchasing power to achieve the best value for money. The concept of value for money is not restricted to price alone. The value for money assessment must include consideration of:

- contribution to the advancement of Council's priorities;
- fit for purpose, quality, services and support;
- whole-of-life costs including costs of acquiring, using, maintaining and disposal;
- internal administration costs
- technical compliance issues;
- risk exposure;
- the value of any associated environmental benefits; and
- proven ability to fulfil the contract.

Open and effective competition

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

The development of competitive local business and industry

Council encourages development of competitive local business and industry by:

- (a) Actively seeking out potential local supplies and suppliers and where applicable, encourage local businesses to provide a quote;
- (b) Encouraging principal contractors to give local suppliers every opportunity, to participate in major projects as partners or subcontractors;
- (c) Giving preference to locally sourced goods and services, where price, performance, quality, suitability and other evaluation criteria are comparable;
- (d) Ensuring that payments are prompt and in accordance with the agreed terms of contract; and
- (e) Giving consideration to the advantages of buying locally sourced goods and services, and to dealing with local suppliers, including:
 - i) Spare parts and servicing support are more readily available;
 - ii) Compliance with warranty provisions is more reliable;
 - iii) Supply lines are shorter; and
 - iv) Communications for contract administration are more convenient.

If a tender or quotation is evaluated using selection criteria then a local preference selection criterion with a weighting of no more than 20% (of the selection criteria total) may be utilised in the evaluation process. Local preference is not simply a 20% price benefit to a local supplier, but also a quantitative measurement that can be utilised in recognition of location of supplier and the associated benefits that this provides to Council, such as:

- creation of local employment opportunities;
- more readily available servicing support;
- more convenient communication for contract management; and
- economic growth within the local area.

In this policy statement, a "local supplier" is a supplier which:

- is owned by persons who are residents or ratepayers of the local government area; or
- has its principal place of business within the local government area; or
- otherwise has a place of business within the local government area, which solely or primarily employs persons who are residents or ratepayers of the local government area.

Environmental Protection

Council promotes environmental protection through its purchasing procedures. In undertaking any purchasing activities, Council will:

- promote the purchase of environmentally friendly goods and services that satisfy value for money criteria;
- consider the environmental impact of goods and services during the procurement decision making process;
- provide an example to business, industry, and the community by promoting the use of environmentally friendly goods and services; and
- wherever possible, encourage environmentally responsible activities

Ethical behaviour and fair dealing

Council officers involved in purchasing must behave with impartiality, fairness, independence, openness, integrity and professionalism in their discussions and negotiations with suppliers and their representatives. Appropriate records are to be maintained evidencing decisions and terms of engagement.

It is the responsibility of Council officers to report any potential or perceived conflict of interest to their Manager prior to any business dealings.

Human Rights Act 2019

Douglas Shire Council is committed to respecting and promoting the human rights protected by the Act. Council is committed to acting ethically and with integrity and transparency in all business dealings.

The Complaints Process for complaints concerning procurement is managed through Council's Complaints (Administrative Actions) Policy and Procedures.

Evaluation of Tenders and Quotes

Sound contracting principles are utilised in the evaluation of all quotes and tenders along with other selective criteria determined relevant to the procurement activity. This is not limited to the procedures and evaluation criteria specified within the quote or tender documentation.

The following must occur:

- evaluation and probity plans are developed for procurement activities that are considered high-risk in nature (via a risk assessment), including declaration of any potential, perceived or actual conflicts
- interactions and content of meetings with suppliers are noted and recorded
- suppliers' commercially confidential information and/or intellectual property is safeguarded

Probity

A Probity Plan must be prepared for all contracts greater than \$200,000 (exc GST). For purchases below \$200,000 (exc GST) a probity plan must also be prepared where the probity risk has been deemed to be high by the actioning officer. In consideration of probity risk, the officer should consider the level of cost, complexity, and public interest.

Procurement Thresholds

Procurement thresholds refer to the expenditure with a supplier for goods and/or services.

| Purchase of goods and services | |
|---------------------------------|-----------------------------|
| Less than \$5,000 | One verbal or written quote |
| \$5,000 to less than \$15,000 | Two written quotes |
| \$15,000 to less than \$200,000 | Three written quotes |
| \$200,000 or more | Tender required |

All amounts are GST exclusive.

It must be noted that s 226 *Local Government Regulation 2012 (Qld)* obligates Council to go to tender if the expected value of goods and services of a similar type procured from the same supplier is \$200,000 or more (exclusive of GST) in a financial year, or over the proposed term of the contractual arrangement.

Exemptions to these requirements

s 231-235 *Local Government Regulation 2012 (Qld)* allows for exemptions to the above thresholds:

- a contractor on an approved contractor list; or
- a supplier on a register of pre-qualified suppliers; or
- a supplier on a preferred supplier arrangement; or
- a supplier on a LGA (Local Buy) arrangement

Regarding LGA arrangements, Council recognises that:

- The arrangements are entered into as a result of market testing processes which ensure that the price and other relevant terms under these contracts are expected to be equal to or better than the price and terms available which would be available under a separate call for quotes or tenders;
- These contracts can be accessed immediately so that there is no time delay as occurs where tenders or quotations are sought;
- There are minimal overhead costs to Council in accessing these contracts as compared to separately calling for tenders or quotations that involved significant staff resources to assess and report on the tenders or quotations received; and

Further statutory exemptions exist if:

- Council resolves it is satisfied that there is only one supplier who is **reasonably** available; or
- Council resolves that due to the specialised or confidential nature of the services that are sought, it would be impractical or disadvantageous for the local government to invite quotes or tenders; or
- a genuine emergency exists; or
- the contract is for the purchase of goods and is made by auction; or
- the contract is for the purchase of second-hand goods; or
- the contract is made with, or under an arrangement with, a government agency (Federal government, State government or another Local government).

It is further recognised that purchases from Original Equipment Manufacturers (OEM) for spare parts for Council owned equipment may be considered a sole supplier where the use of a non-OEM spare part could invalidate the warranty or functionality of the equipment.

Regardless of exemptions above, all purchases greater than \$200,000 (exc GST), irrelevant of how they were procured require approval by means of Council resolution.

Procurement Policy Exemption Tender Consideration – Council operated events

On 20 August 2019, Council resolved to adopt an exemption to the Procurement Policy requirement for three written quotes, under s 230(1) of the *Local Government Regulation 2012 (Qld)* to allow Council to engage with contractors, suppliers and for sponsorship for Council operated events for contractual arrangements greater than \$15,000. Council delegated authority to the Chief Executive Officer to approve any contractual arrangements for amounts over \$15,000 and up to \$200,000. This resolution applies for a period of three years (from resolution date), with an extension of up to a further three years. The extension will commence from 20 August 2022 for a three-year term.

When seeking quotations, staff should consider the likelihood of exceeding the \$200,000 legislative threshold relating to the requirement to seek tenders. If there is a risk, that this limit will be exceeded, then tenders should be called instead of quotations.

Budgetary Provisions

Procurement must be in accordance with the adopted annual budget, or a council resolution and sufficient funds must be available to meet the full cost of the proposed procurement.

Emergencies

In recognition that full compliance with existing Council procurement procedures may not support the Council's needs during a critical or emergency incident, an alternative procurement process may operate during the incident. This alternative process aims to accommodate urgent Council needs, while ensuring that the procurement process adopted is reasonable and conducted with appropriate consideration of standard procurement principles.

The alternative process is to be authorised by the Mayor and/or Chief Executive Officer, once a critical or emergency incident has been declared. Such incidents are:

- A state of disaster declared under the *Disaster Management Act 2003 (Qld)*, or any other emergency declaration made by the State's Premier under an enactment;
- An incident declared by the Chief Executive Officer where the safety or security of any person or property associated with the Council is threatened; and
- An external incident to which the Chief Executive Officer has authorised the provision of urgent support.

Once the immediacy of the incident has passed, a procurement action must be raised to record the expenditure in the same way, as they would have been in normal circumstances.

Financial and Contractual Delegation

The Chief Executive Officer implements Council's policies and decisions (e.g. spending in accordance with the adopted budget). Refer also to Appendix 1.

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

- the officer has been granted the financial and contractual delegation by the Chief Executive Officer and this delegation has been recorded in the Register of Delegations; and
- the expenditure is provided for in Council's budget.

Splitting Orders and Contracts

Splitting orders or splitting contracts to stay below certain thresholds is not permitted.

Variations

For the purpose of this policy, variation refers solely to a financial deviation from original contract value. The contract can be a Council purchase order, contract, or agreement signed by a delegated Council officer. Other variations such as non-financial scope changes, extension of time etc. are to be managed by the delegated Council officers.

Variation procedures are as follows:

- All variations are to be approved in writing.
- Each variation shall require separate approval attached to the original purchase order stating the scope and cost; or alternately an additional purchase order raised/approved. Where an additional purchase order is raised/approved, it must clearly state 'variation' at the beginning of the description and reference the initial purchase order or contract number.
- An officer, where the total amended costs do not exceed their authorised financial and contractual delegation and the value of the variation is less than the values detailed below, can approve each variation.
- For an original purchase order, contract, or agreement involving a cost of greater than \$15,000 but less than \$200,000:
 - If the cumulative value of variations exceeds 20% of the value of the original purchase order, contract, or agreement; or \$15,000 whichever is the lesser, the variation and all further variations must be authorised by a Manager.
- For an original purchase order, contract, or agreement, involving a cost of \$200,000 or more all variations must be considered by Council's Management Team.
- Publishing Details of Contracts

As required by s 237 of the *Local Government Regulation 2012 (Qld)*, Council must publish details of all contracts worth \$200,000 or more (exclusive of GST) as soon as is practicable after entering into the contractual arrangement.

These details must be published monthly on Council's website and on a noticeboard located in the customer service area of Council's Administration Building in Front Street, Mossman. In line with the regulation requirements, details of all contractual arrangements will be published for a period of at least 12 months.

Information to be documented in these publications includes the following:

- the person/company with whom Council has entered into the contract
- the value of the contract
- the purpose of the contract

Definitions

| | |
|---------------------------------|---|
| Approved Contractor List | means a list of persons who Council considers to be appropriately qualified to provide the service |
| Contractual arrangement | Means a legally binding agreement between two parties |
| Council | Means Douglas Shire Council |
| Council operated events | Means public facing events that Council is responsible for (i.e. Carnivale, Anzac Day, New Year's Eve) |
| Goods | Means an inherently useful and tangible item (article, commodity, material, merchandise) |
| Local Supplier | Means a business entity that has its principal place of business/registered office within the Douglas Shire Council Local Government Area (LGA), or otherwise has a place of business within the Douglas Shire Council LGA which solely or primarily employs persons who are residents or ratepayers within the Douglas Shire Council LGA |

| | |
|---|---|
| Preferred Supplier Arrangement (PSA) | Means a contractual arrangement where there is a known program of works or services which are usually required in large volumes and frequently. Council is able to obtain better value for money by aggregating the demand for those goods and services. Prices or a schedule of rates are usually fixed for the duration of the PSA arrangement. |
| Pre-Qualified Supplier | Means a supplier who has been assessed by the Local Government as having the technical, financial and managerial capability necessary to perform contracts on time and in accordance with agreed requirements. |
| Procurement | Means the entering into of an agreement to purchase, hire, lease, rent or exchange by way of any transaction involving the outlay by Council of funds, goods, equipment, or services in return for the provision of goods and/or services to Council by another person, company or other entity. |
| Register of Pre-Qualified Suppliers (RoPS) | Means a 'list' of suppliers who satisfy certain key selection criteria relating to their interest and capability in supplying goods and/or services. |
| Services | Means intangible products including but not limited to accounting, banking, cleaning, consultancy, education, expertise, medical treatment, and transportation. |
| Sound contracting principles | Means the sound contracting principles set out in 104(3) of the <i>Local Government Act 2009</i> . |

Related Legislation

- Local Government Act 2009 (Qld)*
- Local Government Regulation 2012 (Qld)*
- Integrity Act 2009*
- Competition and Consumer Act 2010*
- Human Rights Act 2019 (Qld)*
- Public Service Ethics Act 1994*

Related Documents/Resources

- Douglas Shire Council Supplier Code of Conduct
- Douglas Shire Council Code of Conduct

Policy Review

This policy is to be reviewed annually as stated in s 198 (3) of the *Local Government Regulation 2012 (Qld)*.

Policy Details

| | |
|------------------------|-----------------------------------|
| Policy Name | Procurement General Policy |
| Policy Number | 8 |
| Policy Version | 11 |
| Document Number | 814364 |
| Endorsed by | Chief Executive Officer |
| Policy Type | Statutory |

| | |
|-------------------------------|--|
| Approval Authority | Council |
| Date Adopted | 13/12/2022 |
| Time Period | Annually |
| Review Date | 1/10/2023 |
| Policy Department | Finance and Corporate Services |
| Link to Corporate Plan | Robust Governance and Efficient Service Delivery |
| Revoked/Superseded | Nil |

This policy is to remain in force until otherwise determined by Council.

Appendix 1

Financial and Contractual Delegations

Officers may incur expenditure on behalf of Council but only if the expenditure is provided for in Council’s budget and the officer has been delegated the power to enter into contracts up to an amount not less than the amount of the expenditure proposed to be incurred.

The delegation is based on an officer’s position within Council and can be delegated to their back-up if the incumbent is on leave. The delegation lapses if the delegate is transferred or promoted to a different position.

Any officer incurring expenditure on behalf of Council must do so in accordance with any constraints imposed by Council or the Chief Executive Officer.

| Delegation level | Operational expenditure within budget | Capital expenditure within budget | Expenditure outside of budget |
|--------------------------------------|---------------------------------------|-----------------------------------|---|
| Chief Executive Officer | Up to \$200,000* | Up to \$200,000* | Utilise emergency provisions of the Local Government Act. These require a Council Resolution. |
| Managers | Up to \$200,000 | Up to \$200,000 | Nil |
| Coordinators/Project Managers | Up to \$100,000 | Up to \$100,000 | Nil |
| Team Leaders/Project Officers | Up to \$20,000 | Up to \$20,000 | Nil |
| Technical Officers | Up to \$10,000 | Up to \$10,000 | Nil |
| Appropriate support staff | Up to \$5,000 | Up to \$5,000 | Nil |

*Council further gives the Chief Executive Officer delegated authority to negotiate, finalise and execute recurring operational expenditure (e.g., insurance, electricity, telephone, vehicle registration, ongoing contracts, etc.) regardless of whether the value of the expenditure is more or less than \$200,000.

Co-ordinators/Project Managers: Are those positions that may or may not supervise staff but may need financial and contractual delegation to meet positional requirements.

All delegation amounts are GST exclusive.