



**Broken Hill City
Council**

Tendering Policy

POLICY STATEMENT

To set down the methodology and circumstances whereby Council will call for tenders, for the acquisition of goods and services required by the Council or to the disposal of assets, in accordance with the provisions of relevant current legislation and to ensure that tendering activities are addressed in a cost effective, accountable, ethical and professional manner. The policy is aimed at meeting the provisions of the Local Government Act 1993 (s55) and the Local Government (Tendering) Regulation 1999

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1. APPLICATION

Tenders may be invited at any time by Council for the acquisition of goods and services or the disposal of assets (as per the *Disposal of Assets Policy*). However tenders must be invited by Council when it is intended that Council enter into a contract for any of the following which is estimated to be in the amount of \$150,000 or more, including GST:

- (a) Work Council is directed or authorised to carry out by or under any current Act;
- (b) Performance of any service or provision of any facilities which any current Act directs or authorises be performed or provided by Council;
- (c) Provision of goods and services to Council or disposal of Council property as specified under the relevant policies;
- (d) instalment payments by or to the Council over a period of two (2) years or more.

The calling of tenders will not be required when Council enters into contracts for or with the following:

- (a) the Crown or its representative
- (b) another Council
- (c) purchase, sale or lease of land
- (d) purchase of goods, materials or services from a supplier at a time and maximum rate specified by the State or Commonwealth
- (e) recruitment to the workforce
- (f) emergency situations such as when there is a disruption to an essential service or when there are public safety risks
- (g) where, by resolution of the Council, it is determined that remoteness or the unavailability of competitive or reliable tenders will preclude a satisfactory result.

2. DEFINITIONS

2.1 Tenders

Prices, bids, quotations or proposals lodged in response to an invitation or request.

2.2 Tenderers

Parties submitting tenders.

2.3 Open Tendering

The process whereby tenders for contracts will be invited by public advertisement

2.4 Selective Tendering

The process whereby only certain parties are invited to tender by:

- (a) tenders are invited following a public advertisement calling for expressions of interest, or

- (b) recognised contractors prequalified by Council are invited to tender for particular kinds of proposed contracts.

2.5 Contract

Agreement for the supply of goods or performance of services.

2.6 Contractor

The successful tenderer who has entered into a legal contract with Council for the supply of goods or performance of services.

2.7 Contact Staff Member

The person nominated by Council for that purpose in a tender advertisement.

3. GENERAL CONDITIONS OF TENDERING

The general conditions of tendering should conform with Australian Standard 2124-1992 but must at least meet the following conditions:

- (a) Parties must conduct the tendering process with honesty at all levels.
- (b) Parties must conform to all legal obligations.
- (c) Parties must not seek or submit tenders without a firm intention to proceed.
- (d) Parties must not engage in any practice, including improper inducements which gives one party an improper advantage over another.
- (e) Tenderers must be prepared to attest to their probity, and not engage in any form of collusive practice.
- (f) Conditions of tendering must be the same for each tenderer on any particular tender.
- (g) All requirements must be clearly specified in the tender documents and criteria for evaluation must be clearly indicated.
- (h) Evaluation of tenders must be based on the conditions of tendering and selection defined in the tender documents.
- (i) Parties must not disclose confidential or proprietary information.
- (j) Any party with a conflict of interest must declare that interest as soon as the conflict becomes apparent and immediately withdraw from the tender process.

4. PREPARATION OF TENDERS

- (a) The tender documents relating to a proposed contract must:
 - (i) give details of the work to be carried out, the goods or facilities to be provided, the services to be performed and, if the proposed contract is an instalment contract:
 - give details of the instalments to be paid by or to the Council,
 - specify the period over which the instalments are to be paid,
 - specify the intervals between payments of the instalments.
 - (ii) specify the criteria on which the assessment of tenders will be based.

- (iii) specify the name of the person to whom requests for information concerning the proposed contract may be addressed and how the person can be contacted.
 - (iv) specify that Council expects all tenderers and contractors to Council to conduct their business with Council in an ethical manner and that they should be aware that they may be subject to public scrutiny by such bodies as the Independent Commission Against Corruption.
 - (v) specify that canvassing of Councillors and Council staff (other than Council's nominated contact staff member) at any stage up to and including the acceptance of tenders may automatically disqualify the applicant.
- (b) The officer compiling the technical specifications of the tender document is required to ensure that the Procurement Manager and Insurances Officer are aware of all aspects of the tender in order to ensure that the relevant clauses for insurance purposes are inserted in the "Conditions of Contract" portion of the tender documents in order to protect the Council from any possible litigation.

5. CALLING TENDERS

The officer preparing the tender, will seek written direction from the General Manager as to whether the tenders are to be invited by way of open tendering or selective tendering.

5.1 Open Tendering

- (a) Invitations to tender are to be extended by way of advertisement in a Sydney metropolitan daily newspaper, the Barrier Daily Truth newspaper and any other newspaper circulating in an area considered to be a likely location of potential tenderers.
- (b) The advertisement must express the purpose of the proposed contract, detail availability of tender documents and the costs of obtaining same and advise the closing date for submission of tenders.
- (c) Tenders advertised will remain open for a minimum of twenty one (21) days after the first date of publication of the advertisement.
- (d) The tender documents must incorporate the following:
 - (i) details of works to be carried out, goods and services to be provided, services to be performed, property to be disposed of;
 - (ii) in the case of instalment contracts - the details of the instalments, intervals of payment and period of the contract;
 - (iii) criteria for assessment of tenders;
 - (iv) details of Council contact person for enquiries.

5.2 Selective Tendering – Expressions of Interest

- (a) Persons/Companies interested in tendering for the proposed contract tender will be invited by way of advertisement to submit expressions of interest.
 - (b) The advertisement must be placed in a Sydney metropolitan daily newspaper, the Barrier Daily Truth newspaper and any other newspaper
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circulating in an area considered to be a likely location of potential tenderers.

- (c) The advertisement must include a brief description of the work, goods, facilities, services or property concerned, details of the Council contact person for enquires and the closing date.
- (d) Applications must remain open for a minimum of twenty one (21) days after the first date of publication of the newspaper advertisement.
- (e) All applications received in response must be registered in Council's inwards mail system and referred to the appropriate officer of Council for assessment.
- (f) Assessment of the applications must take into account the experience of the applicants in fulfilling the requirements of, and their capacity to undertake, similar contracts.
- (g) After applications have been considered, the appropriate officer of Council will recommend to the General Manager one of the following courses of action:-
 - (i) that Council decline to invite tenders from any of the applicants; or
 - (ii) that Council despatch invitations to tender for the proposed contract to either all of the applicants, or only to those applicants considered likely to be able to fulfil the requirements of the proposed contract; in which case:
 - The invitations will specify a closing date for submission of at least 21 days from the date of the letter of invitation and will also advise availability of tender documents and costs of same.
 - The tender documents must incorporate details of works to be carried out, goods and services to be provided, services to be performed, or property to be disposed of;

Instalment contracts require details of the instalments, intervals of payment and the period of the contract, criteria for assessment of tenders, and details of Council's contact person for enquiries.

5.3 Selective Tendering – Prequalified Contractors

- (a) Persons/Companies interested in tendering for the proposed contract tender will be invited by way of advertisement to submit applications so that Council may prepare a list of suitable tenderers.
 - (b) Prequalified contractors must be readvertised every three (3) years as a minimum or if market conditions alter.
 - (c) The advertisement must be placed in a Sydney metropolitan daily newspaper, the Barrier Daily Truth newspaper and any other newspaper circulating in an area considered to be a likely location of potential tenderers.
 - (d) The advertisement must include a brief description of the work, goods, facilities, services or property concerned, details of the Council contact person for enquires and the closing date.
 - (e) Applications must remain open for a minimum of twenty one (21) days after the first date of publication of the newspaper advertisement.
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- (f) All applications received in response must be registered in Council's inwards mail system and referred to the appropriate officer of Council for assessment.
- (g) Assessment of the applications must take into account the experience of the applicants in fulfilling the requirements of, and their capacity to undertake, similar contracts.
- (h) After applications have been considered, the appropriate officer of Council will recommend to the General Manager one of the following courses of action:-
 - (i) list the applicant as a recognised contractor for some or all of the kinds of work, goods, facilities, services or property specified in the application; or
 - (ii) reject the application in whole or part.
- (i) In seeking tenders for a particular proposed contract, Council may invite some or all of the recognised contractors listed by it under this Clause 5.3 to tender for that contract and may do so on the basis of:
 - (i) the basis of their ability to fulfil the requirements of the proposed contract; and
 - (ii) the number of occasions on which each contractor has previously been invited to tender for similar proposed contracts.
- (j) In inviting tenders for a proposed contract from recognised contractors listed by the Council under Clause 5.3, Council must:
 - (i) invite them to submit tenders by the deadline specified in the invitations, and
 - (ii) give details of where and when tender documents relating to the proposed contract can be obtained and the purchase price of those documents.
- (k) Alternatively, Council may adopt a list of contractors prepared by another public authority, but only if the list was prepared by the authority following the publication of an advertisement similar to that provided under Clause 5.3 (b).
- (l) A person who is a contractor recognised by Council ceases to be so recognised if the person informs the Council in writing that the person no longer wishes to be listed as a recognised contractor for the purposes of this Clause.

6. OTHER ISSUES

6.1 Alteration to Tender Period

- (a) In circumstances deemed by the General Manager to be exceptional, advertisements in relation to tenders may specify a closing date being not less than seven (7) days after the date that the advertisement is first published or invitations to tender are prepared in accordance with clauses 5.1 (a), 5.2 (b) and 5.2 (g)(ii) of this policy.
 - (b) In circumstances deemed by the General Manager to be such that the originally advertised closing time in respect of any Council tendering process is not sufficient to permit meaningful tenders to be submitted; the closing date may be extended and all reasonably practicable steps shall be
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taken to inform persons who have acquired contract documents of the extended closing date.

6.2 Alteration to Tender Conditions

In circumstances deemed by the General Manager to be exceptional, tender documents may be altered after they have been issued to persons. In such a situation all reasonable steps must be taken to inform those persons of the amendments.

6.3 Council May Submit Tenders

Council may itself submit a tender for works and services so advertised which are within its capacity.

7. SUBMISSION OF TENDERS

- (a) Tenders must be submitted in writing and be enclosed in a sealed envelope unless submitted by facsimile or electronic transmission, in which case the person receiving the tender must immediately place it within an envelope, seal the envelope and record across the seal of the envelope their signature and the date and time of receipt; that person must then deliver that sealed envelope containing the tender to the Procurement Manager and witness that Officer's placement of same into the tender box. The same will apply to tenders received by mail, with the exception that they will remain in their original envelope.
- (b) All tenders shall be placed in the tender box provided for that purpose in a safe and secure location at the Council's Administrative Centre.
- (c) Should the closing deadline have expired, the tender shall be sealed in an envelope in the same manner and the sealed envelope shall then be delivered to the relevant Manager who will determine, in conjunction with the General Manager, whether or not the tender is eligible for consideration.
- (d) Tenders received after the closing date may be considered only if the tenderer proves to the satisfaction of the Council that the tender was despatched, in accordance with tender document requirements, in time to ensure delivery could have been effected within the ordinary course of business before the deadline for acceptance of tenders expired.

8. CLOSING OF TENDERS

- (a) Tenders will close at 3.00 p.m. at least 21 days after the date of first publication of the advertisement in the metropolitan or local newspaper.
- (b) Tenders received after the deadline has expired will be dealt with in accordance with clauses 7(c) and 7(d) of this policy.

9. ASSESSMENT OF TENDERS

- (a) At 3.00 p.m. on the closing date of a tender, the Customer Relations Manager (or designate) and an employee or Councillor independent of the tendering process will remove the tenders from the tender box. Each page
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of each tender received will be stamped and initialled by each of the participants in the opening process.

- (b) The Customer Relations Manager (or designate) will prepare a confidential summary of the names of the tenderers. A copy of all tenders, stamped and initialled as "authentic copies", together with the tender list, will be provided to Council's Records Officer.
- (c) All matters pertaining to the tenders received, excluding those covered in Clause 9(d), will remain confidential until the tender has been awarded by resolution of the Council.
- (d) A member of the public who attends the opening of tenders for a proposed contract shall be entitled, on request, to be informed as to whether the Council has received a particular tender and the number of tenders received, and will not be entitled to receive any other information about the tenders.
- (e) Variation of tenders is not permitted where the variations would substantially alter the original tender.

Tenderers may vary their submitted tender by providing Council with additional information to allow explanation or clarification or to correct an anomaly or mistake in the tender - such variations may be requested by Council; but when requested by the tenderer, permission to vary may only be given if all other tenderers whose tenders have the same or similar characteristics are offered the same opportunity.

Any such action shall be co-ordinated through the Officer responsible for handling the tenders and one other officer nominated by the General Manager.

- (f) The relevant Manager will ensure that the Public Officer of the Council is aware of the names of the tenderers for the purpose of handling any enquiries from tenderers about receipt of tenders.

10. ACCEPTANCE OF TENDERS

- (a) The lowest or any tender will not necessarily be accepted.
 - (b) Any tenders submitted in the form of a referential bid will not be accepted.
 - (c) As soon as practicable after the opening of tenders, the officer directly responsible for handling the tenders will prepare a confidential summary of the tenders received which incorporates the amounts tendered and include that information in a confidential report assessing the tenders received for submission to the General Manager for the consideration of the Council via the next available meeting of the appropriate standing Committee of the Council and thence to a full meeting of the Council.
 - (d) After considering the tenders submitted, Council must either accept the tender which appears the most advantageous to Council or decline to accept any of the tenders.
 - (e) If Council declines to accept any of the tenders, or receives no tenders for a proposed contract, it must by resolution, postpone or cancel the proposed contract; invite fresh tenders based on the same or different details; enter into negotiations with any person with a view to entering into a contract whether that person was a tenderer or not; or carry out the requirements of the contract itself.
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- (f) A decision of the Council not to accept a tender and to provide the goods, materials, services, facilities or works itself, must be made at a public meeting of the Council at which time Council must state the reasons for its decision and those reasons must be included in the formal minutes of that meeting.

11. NOTIFICATION TO TENDERERS

- (a) After a decision is made at a Council meeting to award a tender; on the next working day, the Officer overseeing the tender, will advise the successful tenderer by telephone of Council's decision; this notification will be followed by formal written advice, execution of the required contract documents and, where applicable, the required Council Purchase Orders; as soon as practicable.
- (b) As soon as practicable after entering into a formal contract arrangement with the successful tenderer, or deciding not to accept any of the tenders for a proposed contract, letters must be sent by post to the unsuccessful tenderers to advise them of Council's decision.
- (c) A notice must then be placed on the public noticeboard next to the Cashier's office (ground floor foyer) at the Council's Administrative Centre, specifying the name of the successful tenderer and the amount of the contract awarded; or alternatively, that none of the tenders were accepted.

12. ADMINISTRATION OF CONTRACTS

- (a) The Council Officer overseeing the contract will be responsible for authorising progress payments to the successful tenderer.
- (b) Progress or final payments are not to be authorised unless the Tenderer provides periodic evidence of compliance with this Policy and provide access to all relevant information to demonstrate compliance for the duration of the contract that may be awarded.
- (c) If any tenderer has failed to comply with this Policy, their failure will be taken into account by the Broken Hill City Council when considering this or any subsequent tender being passed over without prejudice to any other rights of action or remedies available to the Council.

13. CONFIDENTIALITY

Council must ensure the confidentiality of tenders as required under the Local Government (Tendering) Regulation 1993.

14. QUALITY ASSURANCE REQUIREMENTS

Preference will be given to tenderers accredited by the Standards Association of Australia as a quality assurance supplier of goods and services and which must at least meet the following conditions:

- (a) Successful tenderers must ensure documentation and provision of Suppliers' Quality Systems in conformity with AS3901 and AS3902 or the equivalent international standard.
- (b) Submission of the tenderer's quality manual may be required by Council as part of the tender evaluation.
- (c) Successful tenderers may be required to provide Council with evidence of compliance with AS3902 by way of certification by Standards Australia (supplier assessment scheme).
- (d) The successful tenderer shall determine any liability in respect of his/her contract under the Building and Construction Industry Long Service Payments Act, 1986, for the specified work, and produce evidence to Council of his/her payment of the required levy or alternatively, of the non-liability of the project.

15. NONCOMPLIANCE WITH THIS POLICY

15.1 Breach of Procedure

Failure to comply with the policy will result in one or all of the following:

- (a) an explanation of the policy and a retraining by the relevant manager;
- (b) a warning to the employee from the relevant manager;
- (c) a reduction in or loss of authorisation to purchase goods and services on behalf of Council.

Breaches of policy will be reported to the responsible Manager for action. The matter will be referred to the General Manager where necessary.

15.2 Serious Breaches

Any instances of corrupt conduct can lead to dismissal and/or criminal prosecution.

16. REVIEW

This policy shall be reviewed biennially to ensure that it meets the requirements of legislation and the needs of Council

17. ASSOCIATED COUNCIL POLICIES & DOCUMENTS

Procurement Policy

Disposal of Assets Policy

Competitive Neutrality Policy