

PURCHASING

1.1 OBJECTIVES

- To provide compliance with the *Local Government Act 1995* and the *Local Government Act (Functions and General) Regulations 1996*.
- To deliver a best practice approach to all purchasing arrangements for the Town of Cottesloe and accompanying procedures to assist staff.
- To ensure consistency for all purchasing activities that integrates all of the Town of Cottesloe's operational areas.

1.2 PRINCIPLE

The Town of Cottesloe is committed to having efficient, effective, economical and sustainable procedures in all purchasing activities. This policy:

- Provides the Town of Cottesloe with an effective way of purchasing goods and services.
- Ensures that purchasing transactions are carried out in a fair and equitable manner.
- Ensures integrity and confidence in the purchasing system, by providing appropriate records showing the basis for purchasing decisions.
- Ensures that the Town of Cottesloe receives value for money in its purchasing.
- Ensures that the Town of Cottesloe considers the environmental impact of the procurement process across the life cycle of goods and services.
- Ensures the Town of Cottesloe is compliant with all regulatory obligations.
- Promotes effective governance and definition of roles and responsibilities.
- Uphold respect from the public and industry for the Town of Cottesloe's purchasing practices that withstands probity.

1.3 ETHICS & INTEGRITY

All officers and employees of the Town of Cottesloe shall observe the highest standards of ethics and integrity in undertaking purchasing activity and act in an honest and professional manner that supports the standing of the Town of Cottesloe.

The following principles, standards and behaviours must be observed and enforced through all stages of the purchasing process to ensure the fair and equitable treatment of all parties:

- full accountability shall be taken for all purchasing decisions and the efficient, effective and proper expenditure of public monies based on achieving the best value for money;
- all purchasing practices shall comply with relevant legislation, regulations, and requirements consistent with the Town of Cottesloe policies and Code of Conduct;

- purchasing is to be undertaken on a competitive basis in which all potential suppliers are treated impartially, honestly and consistently;
- all processes, evaluations and decisions shall be transparent, free from bias and fully documented in accordance with applicable policies and audit requirements;
- any actual or perceived conflicts of interest are to be identified, disclosed and appropriately managed; and
- any information provided to the Town of Cottesloe by a supplier shall be treated as commercial-in-confidence and should not be released unless authorised by the supplier or relevant legislation.

1.4 VALUE FOR MONEY

Value for money is an overarching principle governing purchasing that allows the best possible outcome to be achieved for the Town of Cottesloe. It is important to note that compliance with the specification is more important than obtaining the lowest price, particularly taking into account user requirements, quality standards, sustainability, life cycle costing, and service benchmarks.

An assessment of the best value for money outcome for any purchasing should consider:

- all relevant whole-of-life costs and benefits whole of life cycle costs (for goods) and whole of contract life costs (for services) including transaction costs associated with acquisition, delivery, distribution, as well as other costs such as but not limited to holding costs, consumables, deployment, maintenance and disposal.
- preference will be given to Australian made and/or locally sourced and/or recycled products in the event that all other criteria are equal and the price of the local supplier is within 5% of the lowest quote;
- 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;
- financial viability and capacity to supply without risk of default. (Competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history);
- a strong element of competition in the allocation of orders or the awarding of contracts. This is achieved by obtaining a sufficient number of competitive quotations wherever practicable.

Where a higher priced conforming offer is recommended, there should be clear and demonstrable benefits over and above the lowest total priced, conforming offer.

1.5 SUSTAINABLE PROCUREMENT

Sustainable Procurement is defined as the procurement of goods and services that have less environmental and social impacts than competing products and services.

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The Town of Cottesloe is committed to sustainable procurement and where appropriate shall endeavour to design quotations and tenders to provide an advantage to goods, services and/or processes that minimise environmental and negative social impacts. Sustainable considerations must be balanced against value for money outcomes in accordance with the Town of Cottesloe's sustainability objectives.

Practically, sustainable procurement means the Town of Cottesloe shall endeavour at all times to identify and procure products and services that:

- Have been determined as necessary;
- Demonstrate environmental best practice in energy efficiency/and or consumption which can be demonstrated through suitable rating systems and eco-labelling;
- Demonstrate environmental best practice in water efficiency.
- Are environmentally sound in manufacture, use, and disposal with a specific preference for products made using the minimum amount of raw materials from a sustainable resource, that are free of toxic or polluting materials and that consume minimal energy during the production stage;
- Products that can be refurbished, reused, recycled or reclaimed shall be given priority, and those that are designed for ease of recycling, re-manufacture or otherwise to minimise waste.
- For motor vehicles – select vehicles featuring the highest fuel efficiency available, based on vehicle type and within the designated price range as per Council Policy Vehicle Fleet Administration;
- For new buildings and refurbishments – where available use renewable energy and technologies.

1.6 PURCHASING THRESHOLDS

Where the value of procurement (excluding GST) for the value of the contract over the full contract period (including options to extend) is, or is expected to be:-

| Amount of Purchase | Model Policy |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Up to \$250 | Direct purchase from suppliers requiring no quotations due to the minor and frequent nature of such goods. |
| \$251 to \$3,000 | Direct purchase from suppliers requiring only two verbal quotations*. |
| \$3,001 - \$19,999 | Obtain at least three verbal* or written quotations. |
| \$20,000 - \$39,999 | Obtain at least three written quotations. |
| \$40,000 - \$149,999 | Obtain at least three written quotations containing price and specification of goods and services. with procurement decision based on all value for money considerations) |

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\$150,000 and above

Conduct a public tender process.

**A purchase order will only be issued after a written quote, confirming the verbal quote is received.*

Exemptions

Council has so determined that the following purchases are exempt from the above requirements;

1. The engagement of short term professional staff to relieve existing staff when on periods of leave or to meet operational requirements. This is considered exempt as the expertise and experience of the individual is considered to be the critical factor in engaging such an individual and the provisions of this purchasing policy do not provide the best mechanism to secure their services. Such appointments are generally made through a third party employment provider.

Where it is considered beneficial, tenders may be called in lieu of seeking quotations for purchases under the \$150,000 threshold (excluding GST). If a decision is made to seek public tenders for Contracts of less than \$150,000, a Request for Tender process that entails all the procedures for tendering outlined in this policy must be followed in full.

1.6.1 Up to \$250

Where the value of procurement of goods or services does not exceed \$250, no quotation is required, although depending on the nature of the goods, these may still be obtained to ensure good value.

This is to provide for the purchase of goods such as milk, minor refreshments and other sundry items that are best obtained on an ongoing basis from local suppliers and to obtain quotations would be an inefficient and time consuming exercise, for no real benefit.

However it is recommended to use professional discretion and occasionally undertake market testing with a greater number of suppliers or more formal forms of quotation to ensure best value is maintained.

This purchasing method is suitable where the purchase is relatively small and low risk.

Record keeping requirements must be maintained in accordance with record keeping policies. The *Local Government Purchasing and Tender Guide* contains a sample form for recording verbal quotations.

1.6.2 \$250 Up to \$3,000

Where the value of procurement of goods or services exceeds \$250 but does not exceed \$3,000, purchase on the basis of at least two verbal quotations is permitted. However it is recommended to use professional discretion and occasionally undertake market

testing with a greater number of suppliers or more formal forms of quotation to ensure best value is maintained.

This purchasing method is suitable where the purchase is relatively small and low risk.

Record keeping requirements must be maintained in accordance with record keeping policies. The *Local Government Purchasing and Tender Guide* contains a sample form for recording verbal quotations.

1.6.3 \$3,001 to \$19,999

This category is for the procurement of goods or services where the value of such procurement ranges between \$3,001 and \$19,999.

At least three verbal or written quotations (or a combination of both) are required. Where this is not practical, e.g. due to limited suppliers, it must be noted through records relating to the process.

The general principles for obtaining verbal quotations are:

- Ensure that the requirement / specification is clearly understood by the Town of Cottesloe employee seeking the verbal quotations.
- Ensure that the requirement is clearly, accurately and consistently communicated to each of the suppliers being invited to quote.
- Read back the details to the Supplier contact person to confirm their accuracy.
- Written notes detailing each verbal quotation must be recorded.

Record keeping requirements must be maintained in accordance with record keeping policies. The *Local Government Purchasing and Tender Guide* contains sample forms for recording verbal and written quotations.

In the event a verbal quotation is accepted, a purchase order shall only be issued after the provision of a written quote, confirming the verbal quote.

1.6.4 \$20,000 to \$39,999

For the procurement of goods or services where the value exceeds \$20,000 but is less than \$39,999, it is required to obtain at least three written quotes (commonly a sufficient number of quotes would be sought according to the type and nature of purchase).

The responsible officer is expected to demonstrate due diligence seeking quotes and to comply with any record keeping and audit requirements. Record keeping requirements must be maintained in accordance with record keeping policies.

NOTES: The general principles relating to written quotations are;

- An appropriately detailed specification should communicate requirement(s) in a clear, concise and logical fashion.
- The request for written quotation should include as a minimum:
 - Written Specification
 - Selection Criteria to be applied
 - Price Schedule
 - Conditions of responding
 - Validity period of offer
- Invitations to quote should be issued simultaneously to ensure that all parties receive an equal opportunity to respond.
- Offer to all prospective suppliers at the same time any new information that is likely to change the requirements.
- Responses should be assessed for compliance, then against the selection criteria, and then value for money and all evaluations documented.
- Respondents should be advised in writing as soon as possible after the final determination is made and approved.

The *Local Government Purchasing and Tender Guide* produced by the Western Australian Local Government Association (WALGA) should be consulted for further details and guidance.

1.6.5 \$40,000 to \$149,999

For the procurement of goods or services where the value exceeds \$40,000 but is less than \$149,999, it is required to obtain at least three written quotations containing price and a sufficient amount of information relating to the specification of goods and services being purchased.

The *Local Government Purchasing and Tender Guide* has a series of forms including a Request for Quotation Template which can assist with recording details. Record keeping requirements must be maintained in accordance with record keeping policies.

For this procurement range, the selection should not be based on price alone, and it is strongly recommended to consider some of the qualitative factors such as quality, stock availability, accreditation time for completion or delivery, warranty conditions, technology, maintenance requirements, organisation's capability, previous relevant experience and any other relevant factors as part of the assessment of the quote.

1.7 REGULATORY COMPLIANCE

1.7.1 Tender Exemption

The *Local Government Act 1995* and the *Local Government Act (Functions and General) Regulations 1996* provides for purchases which are exempt from these requirements. These are:

- An emergency situation as defined by the *Local Government Act 1995*;
- The purchase is under a contract of WALGA (Preferred Supplier Arrangements), Department of Treasury and Finance (permitted Common Use Arrangements), regional council, or another local government;
- Within the last six months Council has invited tenders or expressions of interest and there was none received that met the tender specifications or satisfied the value for money assessment (see 1.7.9): or
- The purchase is under auction which has been authorised by Council;
- The contract is for petrol, oil, or other liquid or gas used for internal combustion engines;
- Any of the other exclusions under Regulation 11 of the *Functions and General Regulations* apply.

1.7.2 Sole Source of Supply (Monopoly Suppliers)

The procurement of goods and/or services available from only one private sector source of supply, (i.e. manufacturer, supplier or agency) is permitted without the need to call competitive quotations provided that there must genuinely be only one source of supply. Every endeavour to find alternative sources must be made. Written confirmation of this must be kept on file for later audit.

Note: The application of provision "sole source of supply" should only occur in limited cases and procurement experience indicates that generally more than one supplier is able to provide the requirements.

1.7.3 Anti-Avoidance

The Town of Cottesloe shall not enter two or more contracts of a similar nature for the purpose of splitting the value of the contracts to take the value of consideration below the level of \$100,000, thereby avoiding the need to publicly tender.

1.7.4 Tender Criteria

The Town of Cottesloe shall, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.

The evaluation panel shall be established prior to the advertising of a tender and include a mix of skills and experience relevant to the

nature of the purchase.

For Requests with a total estimated (Ex GST) price of:

- Between \$40,000 and \$149,999, the panel must contain a minimum of 2 members; and
- \$150,000 and above, the panel must contain a minimum of 3 members.

1.7.5 Advertising Tenders

Tenders are to be advertised in a state wide publication e.g. “The West Australian” newspaper, Local Government Tenders section, preferably on a Wednesday or Saturday.

The tender must remain open for at least 14 days after the date the tender is advertised. Care must be taken to ensure that 14 **full** days are provided as a minimum.

The notice must include;

- a brief description of the goods or services required;
- information as to where and how tenders may be submitted;
- the date and time after which tenders cannot be submitted;
- particulars identifying a person from who more detailed information as to tendering may be obtained;
- detailed information shall include;
 - such information as the Town of Cottesloe decides should be disclosed to those interested in submitting a tender;
 - detailed specifications of the goods or services required;
 - the criteria for deciding which tender should be accepted;
 - whether or not the Town of Cottesloe has decided to submit a tender; and
 - whether or not tenders can be submitted by facsimile or other electronic means, and if so, how tenders may so be submitted.

1.7.6 Issuing Tender Documentation

Tenders will not be made available (counter, mail, internet, referral, or other means) without a robust process to ensure the recording of details of all parties who acquire the documentation.

This is essential as if clarifications, addendums or further communication is required prior to the close of tenders, all potential tenderers must have equal access to this information in order for the Town of Cottesloe not to compromise its Duty to be Fair.

1.7.7 Tender Deadline

A tender that is not received in full in the required format by the advertised Tender Deadline shall be rejected.

1.7.8 Opening of Tenders

No tenders are to be removed from the tender box, or opened (read or evaluated) prior to the Tender Deadline.

In the event a tender is inadvertently opened prior to the close of the Tender period, then the Manager Corporate and Community Services or Chief Executive Officer is to be immediately notified; and

- The contents of the envelope, as well as the envelope the tender arrived in are to be completely placed in another envelope;
- A statement from the officer who opened the Tender is to be counter signed by the Manager Corporate and Community Services and sealed in the envelope;
 - This statement shall include details as to how and why the Tender was opened
 - The statement shall be filed with the Tender in the Tender register
 - The statement shall be read aloud at the Tender opening
- The sealed envelope is to be placed in the Tender box.

Tenders are to be opened in the presence of the Chief Executive Officer's delegated nominee and preferably at least one other Council Officer. The details of all tenders received and opened shall be recorded in the Tenders Register.

Tenders are to be opened in accordance with the advertised time and place. There is no obligation to disclose or record tendered prices at the tender opening, and price information should be regarded as *commercial-in-confidence* to the Town of Cottesloe. Members of the public are entitled to be present.

The Tenderer's Offer form, Price Schedule and other appropriate pages from each tender shall be date stamped and initialed by at least two Town of Cottesloe Officers present at the opening of tenders.

1.7.9 No Tenders Received

Where the Town of Cottesloe has invited tenders, however no compliant submissions have been received, direct purchases can be arranged on the basis of the following:

- a sufficient number of quotations are obtained;
- the process follows the guidelines for seeking quotations between \$40,000 & \$149,999 (listed above);
- the specification for goods and/or services remains unchanged;
- purchasing is arranged within 6 months of the closing date of the lapsed tender.

1.7.10 Tender Evaluation

Tenders that have not been rejected shall be assessed by the Town of Cottesloe by means of a written evaluation against the pre-determined criteria. The tender evaluation panel shall assess each tender that has not been rejected to determine which tender is most advantageous.

1.7.11 Addendum to Tender

If, after the tender has been publicly advertised, any changes, variations or adjustments to the tender document and/or the conditions of tender are required, the Town of Cottesloe may vary the initial information by taking reasonable steps to give each person who has sought copies of the tender documents notice of the variation.

1.7.12 Minor Variation

If after the tender has been publicly advertised and a successful tenderer has been chosen but before the Town of Cottesloe and tenderer have entered into a Contract, a minor variation may be made by the Town of Cottesloe.

A minor variation will not alter the nature of the goods and/or services procured, nor will it materially alter the specification or structure provided for by the initial tender.

1.7.13 Notification of Outcome

Each tenderer shall be notified of the outcome of the tender following Council resolution. Notification shall include:

- The name of the successful tenderer
- The total value of consideration of the winning offer

The details and total value of consideration for the winning offer must also be entered into the Tenders Register at the conclusion of the tender process.

1.7.14 Records Management

All records associated with the tender process or a direct purchase process must be recorded and retained. For a tender process this includes the recording of the following in the Tender Register;

- Tender documentation;
- Internal documentation;
- Evaluation documentation;
- Enquiry and response documentation;
- Notification and award documentation.

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For a direct purchasing process this includes:

- Quotation documentation;
- Internal documentation;
- Order forms and requisitions.

Record retention shall be in accordance with the minimum requirements of the State Records Act, and the Town of Cottesloe's internal records management policy.

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REVIEW: November 2020



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TO ALL LOCAL GOVERNMENTS

CIRCULAR N^o 16-2015

AMENDMENTS TO THE LOCAL GOVERNMENT (FUNCTIONS AND GENERAL) REGULATIONS 1996

Amendments to the *Local Government (Functions and General) Regulations 1996* were published in the *Government Gazette* on 18 September 2015 and take effect on 1 October 2015.

The amendments are a result of recommendations made by the Local Government Steering Committee and the Corruption and Crime Commission (CCC), with the aim of improving the purchase and tendering practices of local government. In addition to increasing the tender threshold, the amendments provide for local governments to appoint a panel of pre-qualified suppliers.

A summary of the key amendments are provided below.

Tender Threshold

The tender threshold has been increased from \$100,000 to \$150,000.

For the purchase of goods and services under this threshold, the amendments have introduced the requirement for the purchasing policy to include the minimum number of oral and written quotes that must be received. If the contract for goods or services is expected to be more than \$150,000 a public tender process is required.

Amendments have been made to Regulation 11(2) which relates to circumstances when tenders do not need to be publically invited. This includes when goods or services are obtained through:

- the WA Local Government Association preferred supplier program
- a person registered on the Aboriginal Business Directory WA for contracts worth \$250,000 or less, or
- an Australian Disability Enterprise.

It is also not necessary to invite public submissions if the term of the original contract is being renewed or extended where –

- (i) the original contract was entered into after a public submission period
- (ii) the invitation to tender included the option for a renewal or extension
- (iii) the original contract contained an option to renew or extend, and
- (iv) the supplier's tender included a requirement for such an option.

Anti-avoidance provisions

Reports prepared by the CCC made recommendations that the anti-avoidance provisions be strengthened to ensure that contracts were not split for the purposes of avoiding the tender threshold.

Regulation 12 has been amended to clarify this. It is expected that if a local government reasonably believes that the purchase of a good or service from one supplier will exceed the tender threshold of \$150,000 they should publically invite tenders.

No timeframe for the tender threshold has been included in the regulations. However, local governments should consider the importance of testing the market through a public tender process for low value, repetitive contracts. A best practice suggestion is that if the tender threshold is reached within three years, then a public tender is invited for that good or service.

Receiving and opening tenders

Regulation 16 has been amended to require that when tenders are opened there must be at least two employees of the local government present, or one local government employee and at least one person authorised by the Chief Executive Officer.

If tenders are received by email, it is suggested that a separate email inbox is created and no tenders are opened until the application period has closed.

Varying a contract

Regulation 21A is a new regulation that provides that a contract cannot be varied once a local government has entered into a contract for the supply of goods or services unless:

- the variation is necessary in order for the goods or services to be supplied and does not change the scope of the contract, or
- the variation is a renewal or extension of the original term of the contract (in accordance with regulation 11(2)(j)).

Panels of pre-qualified suppliers

Part 4 Division 3 has been inserted into the regulations to introduce the ability for local governments to create a panel of pre-qualified suppliers.

There are some conditions on developing a panel including: the need for a local government to develop a written policy outlining how the panel will operate; how each supplier will be invited to quote; consistent communication with the panel; and, the recording and retention of quotes and purchases from suppliers.

In establishing a panel, persons are to be publicly invited to apply. State-wide public notice is required and it must be open for at least 14 days following the first notice (not including the advertisement's publishing date).

There is a range of detailed information that needs to be made available about the proposed panel including: the written policy; details of how the panel will operate; the period for which the panel will be established; and, the number of suppliers the local government intends to appoint to the panel.

Once a panel has been established, local governments may enter into a contract (or contracts) with any of the pre-qualified suppliers. However, the contract(s) cannot exceed 12 months and cannot contain an option to renew or extend its term. If it is expected that a contract is to exceed 12 months the particular good or service should be put to tender.

Regulation 13 of the *Local Government (Audit) Regulations 1996* has been amended to require local governments to carry out an audit of compliance for panels of tenders in accordance with section 7.13(1)(i) of the *Local Government Act 1995*.

Other amendments

In addition to amendments around the tender provisions, the prescribed value of abandoned vehicle wrecks under regulation 29A(a) has been increased to \$500.

The consideration under 30(3)(b) has been increased to \$75,000 in regards to the disposition of property. This provision has been reworked to clarify that if the entire consideration received for the sale of property is used to purchase new property, which is not worth more than \$75,000, it is an exempt disposition.

For example: Vehicle 'x' is sold for \$50,000 and vehicle 'y' is purchased with that sale money. If the total cost of vehicle 'y' is \$75,000 or less, then vehicle 'x' is an exempt disposition.

If the purchase price of vehicle 'y' is more than \$75,000, even if the consideration received from the sale of vehicle 'x' is less than \$75,000, vehicle 'x' is not an exempt disposition.

This amendment clarifies that it is not the difference between the purchase price and the sale price, but the total consideration of the new property (\$75,000 or less).

More information

A copy of the regulations as published in the Government Gazette can be viewed on the State Law Publisher's website at www.slp.wa.gov.au.

If you require more information, please contact Ms Darrelle Merritt, senior legislation and strategy officer on 6552 1479 or via email darrelle.merritt@dlgc.wa.gov.au.



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10 September 2015