



Brighton Council

POLICY NAME: Code of Tendering

POLICY NO: AP08

PURPOSE OF POLICY:

The purpose of this Code for Tenders and Contracts (Code), is to provide a policy framework on best practice tendering and procurement methods in line with the legislative requirements of the *Local Government Act 1993* (the Act) and the *Local Government Regulations 2015* (Regulations).

SCOPE:

All Brighton Council employees.

POLICY:

1. INTRODUCTION:

The purpose of this Code for Tenders and Contracts (Code), is to provide a policy framework on best practice tendering and procurement methods in line with the legislative requirements

2. PROCUREMENT PROCESS:

The following table refers to the thresholds and summarises what purchasing method Council utilises based on the total dollar value of the purchase.

Procurement Value	Minimum Requirement
\$100,000 and below	Direct Purchase - Verbal Quotations No formal quotations are required however the General Manager may at his discretion obtain verbal quotations, of which at least one will be sought from a local business (if available).
Between \$100,000 and \$249,999	Written quotations The General Manager may at his discretion obtain at least three written quotations, of which at least one will be sought from a local business (if available).
\$250,000 and greater	Public Tender <ul style="list-style-type: none">• Council will advertise each tender at a minimum in the Mercury newspaper. Other advertising may be utilised as required.• Each tender will be advertised on Council website.• Council will seek at least one tender from a local business (if available).

A local business is one that is operating in the municipal area, has a permanent office or presence in the municipal area and employs workers from the municipal area.

Nothing in this section precludes the General Manager from calling Public Tenders for procurement for a value less than \$250,000 excluding GST, such tenders are to be in accordance with this Code.

2.1 Purchasing Documentation

2.1.1 Verbal Quotations (for purchases below \$100,000 excluding GST)

While no formal quotations are required for purchases below \$100,000 excluding GST the General Manager may, at his discretion, obtain quotations on a verbal basis.

2.1.2 Written Quotations (for purchases between \$100,000 and \$249,999 excluding GST)

The Request for Quotation (RFQ) is a document inviting offers from businesses to provide a specified good or service. An RFQ may be in letter form. Council's quotation documents will include all terms and conditions of quotation, together with a clear description of the goods or services (specifications) required, and the details of any applicable Council policies.

The complexity of the documentation will depend upon the nature and value of the purchase.

2.1.3 Tenders (for purchases greater than \$250 000 excluding GST)

Council's Request for Tender (RFT) is a document inviting offers from businesses to provide specified goods or services. Council's Request for Tender documentation usually consists of four main parts as follows:

Conditions of Tender - The Conditions of Tender set out the terms under which Council will receive and evaluate tenders. The conditions will usually include:

- evaluation criteria and a brief outline of the evaluation methodology to be used;
- closing date, time and place of lodgement;
- Council contact details;
- pricing requirements (eg the price should exclude GST);
- details of the intended duration of the contract, including any extensions applicable to the contract;
- advice and details on the availability of any briefing sessions for prospective tenderers;

- details on how tenders are to be lodged to ensure that Tenders lodged through the post are brought to the attention of Council Officers and placed in the relevant Tender Box and not opened, for example, in an envelope marked “Confidential - Tender”;
- advice on how and in what circumstances the purchasing documentation can be altered;
- advice on the treatment of late submissions;
- an indication if alternative bids will be considered;
- relevant Council policies and principles;
- entitlement of unsuccessful bidders to be debriefed; and
- information on the Council’s complaints process.

Specification - The specification clearly and accurately describes the requirements of the goods or service being purchased. It is the basis of all offers and is the foundation for the contract.

The specification will usually include functional requirements, performance requirements and technical requirements.

Conditions of Contract - The Conditions of Contract contain the contractual terms defining the obligations and rights of the parties concerned. Generally, contracts are used for all purchases over \$250 000, or where there are material risks involved.

Tender Form - The Tender Form must be completed, signed and returned by the tenderer. It includes a declaration by the tenderer that: the tenderer agrees to the Conditions of Tender; the information provided in the tender is accurate and correct; and the person signing the form is duly authorised to do so.

When preparing tender documentation Council will ensure that specifications do not restrict competition, reflect bias to any brand, or act as a barrier to the consideration of any alternatives.

Where applicable, documentation such as tenders will be cleared by Council’s legal advisers and the General Manager before being issued.

2.1.4 Minimum Requirements

It will be a minimum requirement of all quotations and tenders that the tenderer and quoter must be able to meet Council’s applicable workplace health and safety, risk management and insurance requirements.

2.1.5 Tenderer Conduct

Tenderers must not:

- engage in any form of collusive tendering
- lobby Councillors or Council employees

- offer gifts or personal benefits to Councillors or Council employees.

Any tenders will not be considered if a tenderer is found to have acted in breach of this requirement.

2.2 Inviting Offers

2.2.1 Verbal Quotations

When inviting verbal quotations the General Manager will provide each supplier with the same information and will give each supplier the same amount of time to prepare a quote; and seek at least one verbal quotation from a local business (if available).

2.2.2 Written Quotations

When inviting written quotations:

- where possible, the General Manager will seek at least three written quotations of which one quotation will be sought from a local business if available;
- in some cases, the General Manager may choose to advertise a quotation if advantageous to do so;
- the General Manager will send the invitation to quote to identified businesses;
- the time the General Manager provides to bidders to respond to the request for quotation will depend largely upon the nature and the complexity of the purchase; and
- exemption from seeking quotations will only be granted by the General Manager in circumstances outlined below under Exemptions.

2.2.3 Tenders

When inviting tenders:

- Council will advertise as required under section 2.11;
- Council tender documentation will either be made available via mail, email, or electronically available from Council's website at www.brighton.tas.gov.au
- The General Manager may send tender documentation directly to identified businesses, however, any documentation will not be provided to a potential tenderer until the tender has been advertised;
- The General Manager will ensure that all potential suppliers are provided with identical information upon which to base tenders and are given equal opportunity to meet the requirements;
- The General Manager may conduct a Tender Briefing;
- The General Manager will endeavour not to modify the evaluation criteria or methodology after the request for tender has been released however if

for any reason, there is a need to alter the tender documentation once it has been issued, an addendum will be sent to all businesses that have been issued with that documentation; and

- If it is necessary to extend the closing date of the tender the following will be done:
 - all businesses that have been issued with tender documentation will be advised in writing of the change in closing date; and
 - the new closing date will be advertised in all newspapers and websites where the original advertisement was placed.

2.3 Contact Officer

For the purposes of communication with all potential tenderers the General Manager is to nominate one Contact Officer for each purchasing activity and clearly specify their name and contact details

The Contact Officer will:

- be the sole point of communication with prospective tenderers and document any questions asked of them by prospective tenderers and any response given;
- where possible, request that questions from prospective tenderers be put in writing (email or facsimile will suffice). Any response from the Contact Officer will also be provided in writing; and
- where possible, limit the provision of information to the clarification of procedural issues.

Any additional information provided to one prospective tenderer is also provided to everyone else who has requested or received tender documentation.

2.4 Receiving Offers

2.4.1 Verbal and Written Quotations

Any written or verbal quotation received prior to the closing time will be held in a secure location to maintain confidentiality and to protect the individuals involved from claims of unfair practices.

All quotations that the Council receives will be clearly marked with the time and date of receipt.

For written quotations, the General Manager will follow the procedures set out in the conditions of quotations for any late quotations and by receiving a late quotation will ensure that we are not providing an advantage to that bidder over other bidders.

2.4.2 Tenders

The General Manager will provide a locked tender box at the designated tender lodgement location.

When opening Tenders the General Manager will ensure that tenders are:

- opened in the presence of a minimum of two Council Officers; and
- clearly identified and recorded.

The General Manager will acknowledge receipt of Tenders in writing prior to evaluation however the tenderer is to be advised that such acknowledgement does not constitute acceptance of the tender or that the tender is complete or in compliance with the request for tender.

The General Manager will follow the procedures set out in the conditions of tender for any late tender submissions and by accepting a late tender will ensure that it is not providing an advantage to that bidder over other bidders.

2.5 Evaluating Offers

2.5.1 Verbal and Written Quotations

The General Manager when evaluating verbal and written quotations is to do so with the objective of identifying the offer that best meets Council's requirements and provides the best value for money. When evaluating quotations the following factors are to be taken into consideration:

- estimated life, disposal value and maintenance requirements and costs;
- price;
- compliance with quotation specifications;
- quality, delivery and service;
- the benefits of sourcing locally;
- the consequences, including possible risks, of entering into a contract where there is one supplier, or a limited number of suppliers, that can provide and maintain the particular product over its lifetime; and
- any relevant Council policies.

2.5.2 Tenders

Tenders will be evaluated in accordance with the evaluation criteria and methodology specified in the evaluation plan, which was developed prior to offers being invited. Council will not modify the evaluation criteria or methodology after the Request for Tender has been released unless all potential tenderers are advised of the change in writing.

Evaluation of Tenders is to be undertaken by an Evaluation Committee established by the General Manager. An Evaluation Committee is to consist of at least 2 members including the relevant Manager.

In evaluating tenders the Evaluation Committee is to undertake the following steps:

- *Evaluate compliance* - Screen all offers to ensure that they are complete and comply with all mandatory evaluation criteria. Offers which do not meet all mandatory criteria and are non-compliant may be excluded from further evaluation.
- *Clarify offers* - It may be necessary to seek clarification from a tenderer if an offer is unclear. Clarification does not mean that tenderers can revise their original offer. Any clarification sought should be documented.
- *Evaluate qualitative / non-cost criteria* - this stage involves an analysis of each offer against the non-cost or qualitative evaluation criteria and weightings specified
- *Shortlist offers* - This step is only used for complex purchases in order to eliminate offers that are clearly not competitive. However, during this process, eliminated offers are not yet totally rejected, and may be revisited later in the evaluation process.
- *Requests for Tenderers to make a formal presentation* - If appropriate, and tenderers have been forewarned in the Conditions of Tender, tenderers may be requested to make a formal presentation to the Evaluation Committee, clarifying their tender and providing the opportunity for the committee to ask questions. Under these circumstances, the tenderer will be directed to not introduce new or revised information. All information, questions and answers will be recorded by the Council.
- *Calculate value for money and compare offers* - The aim of Council's comparative evaluation process is to determine which offer best meets all the requirements of the specification and offers the best value for money. The major factors which the Council take into consideration when evaluating value for money are:
 - the quality of the proposed good or service (how well it meets the specified requirements); vs
 - risk, that is, the capacity of the tenderer to deliver the goods or services, as specified, on-time and on-budget.
- *Select preferred tenderer* - when selecting the offer that represents the best value for money for Council and where two or more firms are ranked equally following the value for money assessment, preference will be given to a local business over businesses outside the municipal area. In selecting a preferred tenderer for a high risk/high value or complex process, the Council may undertake a due diligence investigation to ensure that the tenderer has the capacity and stability to fulfil all of the requirements of the contract.
- *Write the evaluation report* - on completion of the evaluation process the Evaluation Committee will document the selection of a successful tenderer in an Evaluation Report to be submitted to the General Manager. An Evaluation Reports is to include a record of the evaluation method, the rationale used to select the preferred supplier, and whether it is recommended that negotiations should be undertaken, and on what basis.

2.6 Determination - Acceptance of Tenders and Quotations

The General Manager is delegated the power and function for the expenditure or funds and relating to the purchase of goods and services under \$250,000 excluding GST including the acceptance of quotes as provided within Council's budget estimates under Delegation No. 1(ii).

On receipt of the Evaluation Report the General Manager may determine the preferred tenderer and accept the lowest tender within Councils budget.

Nothing in this Code or delegations granted to the General Manager precludes the General Manager from referring any quotation or tender to the Council for determination and acceptance.

For tenders not approved under delegation or tenders or quotations referred to the Council the General Manager is to present a report to the Council providing a recommendation.

2.7 Notification of Successful and Unsuccessful bidders

Once a preferred tenderer is selected and all relevant Council approvals to proceed with the purchase have been granted, the General Manager shall write and (in most cases) telephone the preferred tenderer to notify them that they have been successful. After the preferred tenderer has been notified, the General Manager will notify all unsuccessful bidders in writing of their non-selection.

Unsuccessful bidders may request a debriefing session.

2.8 Debriefing unsuccessful bidders

The purpose of the debriefing session is to help unsuccessful tenderers submit more competitive bids in future by identifying ways in which the tenderer's offer could be improved.

A debriefing interview will be provided to any unsuccessful bidder who requests one and at this interview the unsuccessful bidder will be briefed as to:

- how their offer performed with respect to the evaluation criteria; and
- strengths as well as weaknesses of their offer.

During this interview, the following will not happen:

- comparisons between the unsuccessful tenderer's offer and the winning, or any other, offer; or
- the debriefing interview being used to justify the selection of the successful tenderer.

The Council's debriefing team will include at least one member from the Tender Evaluation Committee.

Proceedings at each debriefing interview will be documented including:

- who attended (from the Council and from the business concerned);
- the information provided to the unsuccessful tenderer;
- any issues arising; and
- the details of any information that was requested, but not disclosed due to commercial-in-confidence considerations.

Where a multiple-stage purchasing process is used (for example where Expressions of Interest are used to short-list tenderers) suppliers not short-listed may be offered a debriefing interview at the discretion of the General Manager, in a similar way to unsuccessful tenderers.

2.9 Multiple-use register

From time to time the Council may utilise a multiple-use register process to establish a register of suppliers that Council has determined satisfy the conditions for participation in that register, and that Council intends to use more than once.

If it is determined that such a register will be established, the General Manager will invite tenders from prospective applicants by advertising as required under section 2.11

The General Manager will ensure that applicants are provided with the following in order to make an application:

- details of the categories of goods or services required;
- the criteria for evaluating applications;
- the method of evaluating applications against the criteria; and
- the conditions for participation to be satisfied by suppliers and the methods that the Council will use to verify a supplier's satisfaction of the conditions;
- a reference to the council's Code for Tenders and Contracts.

The General Manager will advise all prospective tenderers of the results of their application including all categories for which they are registered and the reasons for rejection of inclusion on the register as soon as practicable.

Council will review any established register at least once every 2 years.

A prospective applicant will be allowed to apply for inclusion on a register of tenderers at any time, unless the perspective tenderer has applied within the previous 12 months and has not been accepted.

2.10 Multiple-stage tenders

From time to time the Council may utilise a multiple-stage tendering process to:

- gain market knowledge and clarify the capability of suppliers;
- shortlist qualified tenderers; and

- obtain industry input.

A multiple-stage purchasing process may be more costly and time-consuming for both suppliers and for Council, and as such we will usually only use them where:

- the best way to meet the requirement is unclear;
- it is considered appropriate to pre-qualify businesses and restrict the issue of formal tenders (to reduce the cost of tendering);
- benefits exist which cannot be obtained by researching the market through conventional means; and
- maximum flexibility is required throughout the procurement process.

The multiple-stage processes that Council may use are as follows:

- *Expression of interest* - an expression of interest is generally used to shortlist potential suppliers before seeking detailed offers. Suppliers are shortlisted on their technical, managerial and financial capacity, reducing the cost of tendering by restricting the issue of formal tenders to those suppliers with demonstrated capacity.
- *Request for proposal* - may be used when a project or requirement has been defined, but where an innovative or flexible solution is sought.
- *Request for Tender* - may be used when a project requirement has been defined to solicit offers from businesses capable of providing a specified work, good or service.
- *Request for information* - may be used at the planning stage of a project to assist with defining the project. Council will not issue a request for information to identify or select suppliers.
- *Closed tender process* - may be used if the initial specification is well defined and an expression of interest or request for proposal has already been used to shortlist suppliers. Suppliers will be informed in advance that only those short-listed will be requested to tender.

Council is mindful of the following aspects when conducting a multiple-stage tender process:

- the same mandatory requirements regarding advertising and seeking at least one bid from a local business, that apply to a public tender process;
- that a short-listed party can not be engaged without going through a more detailed second (tender) stage process unless only one supplier meets the criteria determined by the council at the first stage and the tender is approved by an absolute majority of Council; and
- when using a Request for Information, issues relating to intellectual property and copyright must be clarified prior to using the information provided to prepare the Request for Tender.

2.10.1 Process

The General Manager will invite expressions of interest, and use the list of suppliers who lodge an application as the basis for inviting potential suppliers to submit tenders and is to advertise the expressions of interest in accordance with the minimum advertising requirements in Section 2.11.

The General Manager will ensure that prospective tenderers are provided with the following in order to lodge an expression of interest:

- details of the goods or services required;
- the criteria for evaluating expressions of interest;
- the method of evaluating expressions of interest against the criteria;
- details of any further stages in the tender process; and
- a reference to the council's Code for Tenders and Contracts.

The General Manager will then send an invitation to tender to all of the suppliers that expressed an interest in providing the good or service required unless it has stated specifically in the notice that the council may limit the suppliers that it will invite to participate.

Provided that the notice requesting expressions of interest states specifically that Council may limit the suppliers Council will invite to participate and the relevant requirements and evaluation criteria have been specified in the notice or associated documentation, the General Manager in determining the suppliers that will be invited to tender may:

- in assessing the technical ability, assess the extent to which an application meets the technical performance specifications of the procurement; and
- limit the number of businesses that it invites to tender, based on its rating of applications, provided that the largest number of potential suppliers selected, is consistent with an efficient tender process.

The General Manager will:

- ensure that the evaluation criteria that is used to make a decision at the first stage of the process (expression of interest), is consistent with the criteria to be used for the second (tender) stage; and
- not directly engage a short-listed party without going through a more detailed second (tender) stage process unless approved by Council.

2.11 Minimum Advertising Requirements

All Tenders are to be advertised by the General Manager advertising at least once in the Mercury newspaper a notice requesting any interested supplier to submit a tender or an expression of its interest to supply the good or service required.

The notice is to specify:

- the nature of the goods or services the council requires;
- any identification details allocated to the contract;
- where the tender/expression of interest is to be lodged;
- the Contact Officer from whom more detailed information relating to the tender may be obtained;
- the period within which the tender/expression of interest is to be lodged.

3. EXEMPTIONS

The Regulations provide that Councils must publicly invite tenders for the purchase of goods and services with a value in excess of \$250 000 excluding GST.

As per the Regulations, Council may not issue a tender where the goods and services sought relate to:

- (a) an emergency, if, in the opinion of the general manager, there is insufficient time to invite tenders for the goods or services required in that emergency;
- (b) a contract for goods or services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth;
- (c) a contract for goods or services supplied or provided by another council, a single authority, a joint authority or the Local Government Association of Tasmania;
- (d) a contract for goods or services obtained as a result of a tender process conducted by –
 - (i) another council; or
 - (ii) a single authority or a joint authority; or
 - (iii) the Local Government Association of Tasmania; or
 - (iv) any other local government association in this State or in another State or a Territory; or
 - (v) any organisation, or entity, established by any other local government association in this State or in another State or a Territory;
- (e) a contract for goods or services in respect of which a council is exempted under another Act from the requirement to invite a tender;
- (f) a contract for goods or services that is entered into at public auction;
- (g) a contract for insurance entered into through a broker;
- (h) a contract arising when a council is directed to acquire goods or services due to a claim made under a contract of insurance;
- (i) a contract for goods or services, if the council resolves by absolute majority and states the reasons for the decision, being that a satisfactory result would not be achieved by inviting tenders because of –
 - (i) extenuating circumstances; or
 - (ii) the remoteness of the locality; or

- (iii) the unavailability of competitive or reliable tenderers;
- (j) a contract of employment with a person as an employee of the council.

4. COMPLAINTS PROCESS

In the first instance, complainants are to seek resolution through the Manager in charge of the relevant purchasing/tender process. If relevant, complainants are encouraged to seek a debriefing, if they have not already done so.

If a complainant is not satisfied with the response provided by the relevant Council's manager in charge of the purchasing/tender process, the complainant is able to write to the General Manager providing copies of all correspondence and other relevant material. The General Manager will take whatever action is considered necessary to deal with the complaint.

5. CONTRACT RENEWALS AND EXTENSIONS

5.1 Contract Renewals

In most cases, where the goods or services being delivered under the contract are required on an ongoing basis, Council will undertake a new procurement process (tender/quotation) prior to the completion of the existing contract.

5.2 Contract extension

In some circumstances, it may be desirable for Council to extend an existing contract, rather than seek new tenders or quotations for the delivery of the goods or services.

Contracts will only be extended:

- by Council;
- following a full evaluation of the performance of the current contractor; and
- where the principles of open and effective competition are protected.

As a general rule, Council will not extend contracts if:

- the original contract does not allow an extension;
- since the previous tender, the market has changed substantially; or
- the nature of the goods/services required has substantially changed.

7. CONFIDENTIALITY

Council treats information provided by suppliers as confidential and will not provide this information to unauthorised persons.

8. COMMON USE CONTRACTS

Where the Department of Treasury and Finance has established whole-of-Government contracts for the supply of goods or services to agencies and other authorised organisations, Council may choose to utilise those whole-of-Government contracts.

REFERENCES:

Local Government Act 1993

Local Government (General) Regulations 2015

ADMINISTRATIVE DETAILS:

Policy compiled: November 2005

Adopted by SMT: December 2005

Adopted by Council: 20th December 2005 & 17th November 2015

Reviewed: September 2011, October 2015; August 2019

To be reviewed: August 2021

Responsibility: Deputy General Manager



GENERAL MANAGER