



Central Darling Shire Council

Title of Procedure	Procurement	
This applies to	All employees of Council	
Author	Greg Hill	Date approved:
Position of Author	General Manager	Authorised by:
Legislation, Australian Standards, Code of Practice	<i>Local Government Act 1993</i> <i>Local Government (General) Regulation 2005</i> <i>Government Information (Public Access) Act 2009</i> <i>Tendering Guidelines for NSW Local Government 2009</i> <i>NSW Code of Practice for Procurement 2005</i> <i>Independent Commission Against Corruption Act 1998</i>	
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1. PRINCIPLES

1.1 Objectives

Central Darling Shire Council:

- Recognises that:
 - Developing a procurement strategy and adopting appropriate best practice contracting and procurement principles, policies, processes and procedures for all goods, services and works by Council, will enhance achievement of Council objectives such as sustainable and socially responsible procurement, bottom-line cost savings, supporting local economies, achieving innovation, and better services for communities.
 - The elements of best practice applicable to local government procurement incorporate:
 - Broad principles covering ethics, value for money, responsibilities and accountabilities.
 - Guidelines giving effect to those principles.
 - A system of delegations (i.e. the authorisation of officers to approve a range of functions in the procurement process).
 - Procurement processes, with appropriate procedures covering minor simple procurement to high value complex procurement.
 - A professional approach to all major procurements.
- Requires that its contracting and purchasing activities:
 - Support the Council's corporate strategies, aims and objectives including, but not limited to those related to sustainability, protection of the environment, and corporate social responsibility.
 - Consider the whole life cycle of an acquisition, from initial concept to the end of the useful life of an asset, or the end of a service contract.
 - Achieve value for money and quality in the acquisition of goods, services and works by the Council.
 - Can demonstrate that public money has been well spent.
 - Are conducted, and are seen to be conducted, in an impartial, fair and ethical manner.
 - Seek continual improvement including the embrace of innovative and technological initiatives such as electronic tendering processes to reduce activity cost.
 - Where practical generate and support business in the local community.

1.2 Scope

This Procurement Procedure accords with the provisions of Clause 211 of the *Local Government (General) Regulation 2005*.

This clause establishes that a liability for the expenditure of money must not be incurred unless the council has approved the expenditure and voted the money necessary to meet the expenditure.

This procedure applies to all contracting and procurement activities at Council and is binding upon Councillors, Council officers and temporary employees, contractors and consultants while engaged by the Council.

1.3 Purpose

The purpose of this procedure is to:

- Provide guidance to the Council to allow consistency and control over procurement activities.
- Demonstrate accountability to ratepayers.
- Provide guidance on ethical behaviour in public sector purchasing.
- Demonstrate the application of elements of best practice in purchasing.
- Increase the probability of obtaining the right outcome when purchasing goods and services.

1.4 Guiding Principles

Council will be guided by the principles for procurement contained in the Tendering Guidelines for NSW Local Government. These are:

Standards of Behaviour and Ethical Principles

- Honesty and fairness
- Accountability and transparency
- Consistency
- No conflicts of interest
- No anti-competitive practices.

Confidentiality

Information received from tenderers (intellectual property, propriety, commercial-in-confidence or otherwise confidential) is not disclosed without prior consent from the tenderer. All details of a tendering process, including a recommendation of the tender evaluation must not be disclosed before the outcome of the tender has been determined.

Conflicts of Interest

Council staff have an obligation to disclose potential or actual conflict of interests between their public duties and their personal or private interests. The benefit or loss could be financial or non-financial. The objective of disclosing interests that are or could be in conflict with official duties is to ensure prompt consideration, comprehensive assessment and where necessary the implementation of alternative working arrangements or other action deemed necessary.

Value for money

Council will seek to obtain the best quality and value for price, ensuring that the quality of the goods or works meets any set criteria and cost constraints. Obtaining value for money does not mean Council is obliged to accept the lowest price.

Support of Local Business (Local Preference)

Council is committed to buying from local businesses where such purchases may be justified on value for money grounds.

Aboriginal Employment Participation

In certain circumstances tenderers will be required to indicate measures they intend to implement if awarded the contract, which are designed to lead to improved conditions in Aboriginal communities.

Additional principles guiding Council's procurement activities are:

Open and Fair Competition

All prospective suppliers and vendors will be treated equally and fairly in an open and transparent manner without bias or perception of bias. The same access to information about proposed procurement will be provided to all prospective suppliers and vendors to enable tenders and quotations to be submitted on the same basis.

Accountability

A consistent approach to procurement will be achieved through compliance with procurement principles, processes and procedures. The 'procurement framework' will be robust and nominate relevant Council officers and their responsibilities, and provide clear lines of responsibility and accountability. All transactions will be adequately documented to enable and facilitate audit.

Risk Management

Council recognises that all procurement carries some risk and as a result will adopt pro-active and ongoing management strategies to minimise risk.

Probity and Transparency

Council will conduct their business in a fair, honest and open manner, demonstrating the highest levels of integrity consistent with the public interest.

Sustainability

Council is committed to adopting a procurement approach that supports the principles of sustainable procurement.

During the procurement life cycle, Council will commit to reducing consumption of resources and minimising waste, including:

- Encouraging and preferring eco-friendly products which are more power efficient;
- Selecting energy, fuel and water efficient products;
- Preferring to purchase from a source which is less polluting or uses clean technology;
- Considering the provision of re-usable products and recycling as part of the project planning process, including whole of life costs and disposal considerations;
- Buying recycled or part recycled products to optimise consumption and stimulate demand for recycled products; and
- Encouraging suppliers to adopt good environmental practices.

1.5 Treatment of GST

All monetary values stated in this policy include GST except, where specifically stated otherwise.

1.6 Definitions and Abbreviations

Act

Local Government Act 1993

Regulation

Local Government (General) Regulation 2005

Commercial in Confidence

Information that, if released, may prejudice the business dealings of a party e.g. prices, discounts, rebates, profits, methodologies and process information, etc.

Contract Management

The process that ensure both parties to a contract that fully meet their respective obligations as efficiently and effectively as possible, in order to deliver the business and operational objectives required from the contract and in particular, to provide value for money.

Contractors and Consultants

Includes the staff of contractors, sub-contractors and consultants while engaged by Council.

Council Staff

Includes full time and part-time council officers, and temporary employees.

Probity

The dictionary definition of probity refers to uprightness, honesty, proper and ethical conduct and propriety in dealings. Within Government, the word “probity” is often used in a general sense to mean “good process”. A Procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with the Council’s policies and legislation are established, understood and followed from the outset. These procedures need to consider the legitimate interests of suppliers and ensure that all potential suppliers are treated equitably.

Standing Offer Arrangements (SOA)

A contract that sets out rates for goods and services which are available for the term of the agreement. However, no commitment is made under the agreement to purchase a specified value or quantity of goods or services until a Purchase Order is raised (also referred to as period contracts, annual supply contracts, schedule of rates contracts, or panel contracts).

Sustainability

Activities that meet the needs of the present without compromising the ability of future generations to meet their needs.

Procurement

Procurement is the whole process of acquisition of external goods, services and works. This process spans the whole life cycle from initial concept through to the end of the useful life of an asset (including disposal) or the end of a service contract.

Tender Process

The process of inviting parties to submit a quotation or tender by public advertisement, followed by evaluation of submissions and selection of a successful bidder or tenderer.

Value for Money

Value for money in procurement is about selecting the supply of goods, services and works taking into account both cost and non-cost factors including:

- Contribution to the advancement of the Council’s priorities;
- Non-cost factors such as fitness for purpose, quality, WHS risks, environmental priorities, service and support; and
- Cost-related factors including whole of life costs and transaction costs associated with acquiring, using, holding, maintaining and disposing of the goods, services or works.

Emergency

A situation that the Council or General Manager has resolved to be an emergency under which circumstances Section 55(3) of the *Local Government Act 1993* will apply.

2. EFFECTIVE LEGISLATIVE AND POLICY COMPLIANCE AND CONTROL

2.1 Ethics and Probity

2.1.1 Requirement

Council's procurement activities shall be performed with integrity.

2.1.2 Conduct of Councillors and Council Staff

2.1.2.1 General

Councillors and Council staff shall at all times conduct themselves in ways that are in accordance with the Code of Conduct and are seen to be ethical and of integrity. They will:

- Treat potential and existing suppliers with equality and fairness.
- Not seek or receive personal gain.
- Maintain confidentiality of information such as contract prices and other sensitive information.
- Present the highest standards of professionalism, transparency and probity.
- Deal with suppliers in an honest and impartial manner that does not allow conflicts of interest.
- Provide all suppliers and tenderers with the same information and equal opportunity.
- Be able to account for all decisions and provide feedback on them.

Council staff who are responsible for managing or supervising contracts are prohibited from performing any works under the contract they are supervising i.e. staff cannot also work for the supplier or contractor.

2.1.2.2 Members of Professional Bodies

Councillors and Council staff belonging to professional organisations shall, in addition to the obligations detailed in this policy, ensure that they adhere to any code of ethics or professional standards required by that body.

2.1.3 Conduct of Tenderers

Tenderers are expected at all times to conduct themselves in ways that are, and are seen to be, ethical, and of integrity and will present the highest standards of professionalism and probity.

2.1.4 Procurement Processes

All procurement processes shall be conducted in accordance with the requirements of this procedure, relevant legislation, relevant Australian Standards, Council's procurement policy and the Act.

2.1.5 Conflict of Interest

Councillors and Council staff shall at all times avoid situations in which private interests conflict, or might reasonably be thought to conflict, or have the potential to conflict, with their Council duties.

Councillors and Council staff shall not participate in any action or matter associated with the arrangement of a contract (i.e. evaluation, negotiation, recommendation, or approval), where that person, any member of their immediate family or any person with whom they have a close association has a significant interest or holds a position of influence or power in a business undertaking tendering for the work.

The onus is on the Councillor and the member of Council staff involved being alert to and promptly declaring an actual or potential conflict of interest to the Council.

2.1.6 Fair and Honest Dealing

All prospective contractors and suppliers must be afforded an equal opportunity to submit a tender or quotation (to the extent that the minimum required number of quotes has been obtained as per Section 2.3.2).

Impartiality must be maintained throughout the procurement process, so that it can withstand public scrutiny.

The commercial interests of existing and potential suppliers must be protected. Confidentiality of information provided by existing and prospective suppliers must be maintained at all times, particularly commercially sensitive material such as, but not limited to prices, discounts, rebates, profit, manufacturing and product information.

2.1.7 Accountability and Transparency

Accountability in procurement means being able to explain and provide evidence on the process followed. The test of accountability is that an independent third party must be able to see clearly that a process has been followed and that the process is fair and reasonable.

Therefore the processes by which all procurement activities are conducted will be in accordance with the Council's procurement policies and procedures as set out in this procedure and related Council policies and procedures.

Additionally:

- All Council staff must be able to account for all procurement decisions made over the lifecycle of all goods, services and works purchased by the Council and provide feedback on them.
- All procurement activities are to leave an audit trail for monitoring and reporting purposes.

2.1.8 Gifts and Hospitality

For the purposes of acceptable behaviour regarding acceptance of gifts refer to Council's Code of Conduct.

Additionally:

- Councillors and Council staff must not accept hospitality from contractors or their representatives, or from organisations, firms or individuals with whom they have official dealings. Councillors and Council staff should also avoid the ambiguous situation created by visiting the premises or a contractor, organisation, firm or individual uninvited and/or not on official business.
- Offers of bribes, commissions or other irregular approaches from organisations or individuals (no matter how flimsy the evidence available), must be immediately brought to the attention of the General Manager.

2.1.9 Disclosure of Information

Information received by Council that is commercial in confidence must not be disclosed and is to be stored in a secure location.

Councillors and Council staff are to protect, by refusing to release or discuss the following:

- Information disclosed by organisations in tenders, quotation or during tender negotiations.
- All information that is commercial in confidence.
- Pre-contract information including but not limited to information provided in quotes and tenders

or subsequently provided in pre-contract negotiations unless required to so by law and then only to the extent the law requires.

Councillors and Council staff are to avoid references to any contracts in discussion with acquaintances or outside interests.

Discussion with potential suppliers during tender evaluations should not go beyond the extent necessary to resolve doubt on what is being offered by that supplier with information provided to all potential tenderers.

At no stage should any discussion be entered into which could have potential contractual implications prior to the contract approval process being finalised, other than authorised pre-contract negotiations.

2.1.10 Collusion

Attachment A details clauses which may be included in tender specification documents so as to deter collusive behaviour.

The Council is committed to ensuring that it deals with suppliers in a fair and ethical manner and expects to be treated in a similar manner. To assist in ensuring that this occurs the Council will include standard clauses in all of its tender documentation that makes it clear that the Council will report any suspicion it has, relating to collusive behaviour by tenderers or contractors, to the relevant authorities.

2.2 Governance

2.2.1 Structure

Council shall:

- Establish a procurement management responsibility structure and delegations ensuring accountability and traceability of all procurement decisions made over the lifecycle of all goods, services and works purchased by the Council.
- Ensure that the Council's procurement structure:
 - Is flexible enough to purchase in a timely manner the diverse range of material, goods, works and services required by Council.
 - Ensures that prospective contractors and suppliers are afforded an equal opportunity to tender/quote.
 - Encourages competition.
 - Ensures that policies that impinge on the purchasing policies and practices are communicated and implemented.

2.2.2 Standards

The Council's procurement activities shall be carried out to the professional standards required by best practice and in compliance with the:

- *Local Government Act 1993.*
- Council's policies.
- *Department of Local Government Tendering Guidelines 2009.*
- The Council's Code of Conduct.
- Other relevant legislative requirements such as, but not limited to, the *Trade Practices Act* and the *Protection of the Environment Operations Act*.

2.2.3 Agreement/Contract Types

Council will maintain a Contracts Register in accordance with the provisions of the *Government Information (Public Access) Act 2009*.

Prior to determining the procurement methods to be used, the Contracts Register must be checked for existing contracts with the same scope, products and services. Consideration should also be given to utilising other existing contracts available to Council.

2.2.4 Methods

The Council's standard methods for purchasing goods, services and works shall be by one of the following processes:

- Purchase order following a quotation process from suppliers of goods and services that represent best value for money under directed quotation thresholds.
- Under contract following a tender process.
- Using aggregated purchasing arrangements with other Councils, (Local Government Procurement).
- Credit card.
- Fuel card.
- Petty cash and other reimbursement systems.
- Other arrangements authorised by the Council or the General Manager on a needs basis as required by abnormal circumstances such as emergencies.

Council may, at its discretion and based on the complexity and cost of the project, conduct one stage or multi-stage tenders.

Typically a multi-stage tender process will commence with a registration/expression of interest stage followed by a tender process involving the organisations selected as a consequence of the registration of interest stage.

Expressions of Interest (EOI) may be appropriate where:

- The requirement is complex, difficult to define, unknown or unclear.
- The requirement is capable of several technical solutions.
- Council wishes to consider ahead of formal tender processes such issues as whether those tendering possess the necessary technical, managerial and financial resources to successfully complete the project.
- Tendering costs are likely to be high and Council seeks to ensure that companies incapable of supplying the requirement don't incur unnecessary expense.
- It is necessary to pre-qualify suppliers and goods to meet defined standards.
- The requirement is generally known but there is still considerable analysis evaluation and clarification required (both of the objective and the solution).

For highly complex projects the Council may run sequential tenders, the first to solicit solutions, the second to compete to provide the solution selected by Council. Such sequential tenders may or may not be preceded by the expression of interest phase as required by the Council based on the actual needs of the project.

2.2.5 Responsible Financial Management

The principle of responsible financial management shall be applied to all procurement activities.

Accordingly, to give effect to this principal, the availability of existing funds within an approved budget, or source of funds, shall be established prior to the commencement of any procurement action for the supply of goods, services or works.

Council staff must not authorise the expenditure of funds in excess of their financial delegations.

Council funds must be used efficiently and effectively to procure goods, services and works, and every attempt must be made to contain the costs of the procurement process without compromising any of the procurement principles set out in this procedure. Efficient and effective procurement of goods can be achieved by careful forecasting of requirements and optimising stock levels by determining the economic order quantity.

2.2.6 Petty Cash

Council will operate a petty cash system throughout the organisation for expense re-imburement only. Cash advances are not permitted and there is a limit of \$25 for each transaction. All petty cash vouchers must be approved in accordance with Council's delegations.

For purchases greater than \$25, including GST, the signature of the supervisor is also required. Any reimbursement for any purchase greater than \$25 will be processed as a Creditor's payment. Claims of this type will require a copy of the tax invoice and a Request for Payment form approved by a line manager before payment is made.

2.2.7 Credit Cards

The General Manager may operate a corporate credit card system and delegate appropriate staff to hold a Council Credit Card with card limits at the General Manager's absolute discretion.

Any corporate credit card holders must comply with the Corporate Credit Card Conditions of Use Agreement that is required prior to application. All expenditure incurred on Council credit cards shall be supported by a tax invoice in compliance with the requirements of the goods and services tax. All staff issued with a Council credit card, including the General Manager shall provide and be responsible for, the monthly production of supporting documentation on a Credit Card Claim Form approved by their supervisor. No private expenditure shall be incurred under any circumstances.

Credit cards must be used in accordance with the Procurement Policy and Procedure.

2.2.8 Fuel Cards

The General Manager may authorise fuel cards for use with Council vehicles. The staff member issued with the vehicle or at the time driving the Council particular vehicle is authorised to purchase fuel for that vehicle with Council fuel card and is responsible and accountable for the security of that fuel card.

2.3 Quotation and Tender Thresholds

2.3.1 Tenders

Purchase of all goods and services for which the estimated expenditure exceeds \$150,000, (inclusive of GST) must be undertaken by public tender as per thresholds contained in the Act and Regulation. Such expenditure value should be based on the anticipated aggregated expenditure value over the period of engagement.

However, where the estimated expenditure for purchase of goods, services and works is below this threshold Council staff may consider that the nature of the requirement and the characteristics of the market are such that the public tender process would lead to a better result for the Council and public tenders may be called.

2.3.2 Quotations

Purchase of goods and services for which the estimated expenditure is less than \$150,000, may be undertaken

using the procurement by quotation method as described below:

The calling of formal tenders for goods and services with a value below \$150,000 is NOT a legislative requirement, however, the following procedures and conditions apply.

Step 1

- a) Decide if the supply is to go to tender.
Yes. Purchase in accordance with the Act and Regulation.
No. Purchase in accordance with step 2 guidelines.
- b) Is the supply available under a Government Contract?
Yes. Purchase goods and services via the issue of a Council approved order.
No. Purchase in accordance with step 2 guidelines.
- c) Is the acquisition available under a Council approved pre-qualified supply agreement?
Yes. Purchase goods and services via the issue of a Council approved order.
No. Purchase in accordance with step 2 guidelines.
- d) Is the supply required as a consequence of an emergency?
Yes. Obtain approval from the General Manager prior to proceeding to purchase.
The reasons are to be documented. For the purpose of this Policy an emergency shall be defined as follows:
“The immediate non supply of the goods or services would pose a health, safety or financial risk to the Council and/or the community.”
No. Purchase in accordance with Step 2 guidelines.

Where the purchase exceeds \$150,000 refer to Exemptions (2.3.8) in this document.

Step 2

Purchases less than \$1,500

Council Officers should seek value for money in purchases less than \$1,500 however, seeking quotations is not necessary unless the officer believes Council is not receiving “best value”.

Reference can be made to Council’s Contractor Register for assistance in sourcing goods and services.

Purchases from \$1,501 to \$29,999

It is necessary to obtain at least two written quotes from suitable suppliers. Where it is not possible to obtain two quotes, an explanation of the reasons why must be clearly documented on a file note.

The quotation offering the best value for money must be confirmed by the supplier and the order placed with that firm.

Details of the suppliers contacted and their quotations must be recorded on at least a simple spreadsheet or similar document and attached to Council’s order.

Obtaining two written quotes is a minimum requirement. Depending on the nature and complexity of the works or goods or services, Council’s Officer should consider whether or not to seek written quotes (at least 2 required) or to advertise a public tender.

Purchases from \$30,000 to \$149,999

It is necessary to obtain at least three written quotes from suitable suppliers by issuing a written description of the scope and standard of the work or product required via a formal request for quotation document with a contract number allocated and a set closing date. Where it is not possible to obtain 3 quotes, an explanation of the reasons why must be clearly documented and an exemption granted.

Quotations returned by the nominated closing date must be evaluated and a recommendation made in favour of the supplier offering the best value for money outcome.

All documentation must be maintained in Council's records system.

Obtaining three written quotes is a minimum requirement. Depending on the nature and complexity of the works, goods or services, the Council officer should consider whether or not to advertise a public tender.

- **Public Advertising**

Quotations may be advertised at the Council staff member's discretion in addition to the methods above. This may occur when a field of potential tenderers hasn't been established, or an innovative approach is required, or the project has broad appeal that may attract keen prices, etc.

- **Insufficient Quotations**

The situation may arise where insufficient quotations are received to satisfy the above requirements.

This may occasionally occur where there are few local suppliers for the goods, services or works being sought or the work is highly specialised. In this case, the details of the contacted suppliers must be recorded on the spreadsheet or recommendation and an appropriate comment recorded.

Where a quotation/price has been obtained from a supplier under a Standing Offer Arrangement or under an aggregated purchasing arrangement, then it is optional whether to seek other quotations, as the purchase has already been subjected to a public tendering process.

- **Emergency Circumstances**

The General Manager has the discretion in emergency circumstances to waive all or part of the procurement policy and procedures.

2.3.3 Assessment of Quotations

A formal assessment of quotations is to be undertaken by the appropriate officer having regard to, but not limited to, the following criteria:

- Track record of company (general reputation for work competence, delivery, service, etc.)
- Product quality (quality standards, suitability etc.) and/or technical expertise (credentials of key personnel, systems and techniques, depth and nature of support)
- Time performance (ability to provide goods or services on time)
- Price (type of fee, contingencies, terms and conditions).
- Price should not be limited to up-front purchase price alone, as this may distort the true long term costs to Council. 'Price' should also include consideration of life cycle costs and incorporating issues such as cost of installation, maintenance, replacement and disposal costs.
- The ability of providers to demonstrate that they can comply with current Work Health & Safety, Workers Compensation and Environmental legislation applicable to the contracted works.
- The ability of providers to demonstrate that they can meet the provisions of Council's Contractor Safety Management Procedures.

- Enhancement of the capabilities of local businesses (goods/services supplied locally, skills/knowledge transfer to local firms).

For the purpose of assessment, a weighting shall be assigned to the attributes within the assessment criteria.

2.3.4 Acceptance of Quotations

A record of the quotations is to be made on the Council record system.

Successful and unsuccessful firms/persons submitting quotations are to be notified as soon as possible after acceptance. The issue of a Council order will constitute acceptance of a quotation.

If not accepting the lowest priced bid, then the reasons must be documented and forwarded to the officer's Supervisor/Manager for acceptance and sign off. The Supervisor/Manager may accept or reject this recommendation. If rejected, then the entire process is to recommence, or the Manager decides to accept another provider not recommended, in which case full justification for this decision must be documented and recorded.

2.3.5 Purchase Orders

Council purchase orders are to be issued in respect of any purchase entered into by Council with the exception of acquisitions made using credit cards, fuel cards or contracts entered into by Council which are repetitive in nature e.g. utility accounts.

All official purchase orders generated by Council must include an estimate of the purchase price (excluding GST) for every individual item. This is standard purchasing procedure and it eliminates any issue of providers charging incorrect prices for goods and services and ensures that Council's cost reports are kept up-to-date with all commitments recorded.

No orders are to be placed with providers without an official purchase order being supplied by Council first. All providers are instructed not to supply goods unless they make reference to an official Council purchase order number. If a provider supplies goods without a purchase order number, and produces an invoice to Council without reference to an official purchase order number, then Council reserves the right to refuse payment for those goods or services.

2.3.6 Preferred Supplier Arrangements

Preferred supplier arrangements allow individual purchases to be made without calling for tenders or quotations. Council is continuing to appoint preferred suppliers through the formal tendering or request for quotation process and a list of these suppliers can be found in Council's preferred supplier register available on Council record system.

It is expected that such arrangements will be in place for large volume, or frequently purchased products, thus eliminating the need to obtain quotations for purchases. The results for Council will be reduced prices on core, large volume products and services and more efficient use of internal resources.

If large volumes of particular goods or services are required, then Council Officers still have the right to call for open quotations as required, even if the required goods or services are currently under a preferred supplier arrangement.

2.3.7 Strategic Alliances/Collaborative Purchasing Contracts

This is where Council is part of a collective group where a contract has been put in place that Council can access, including:

- Local Government Procurement Partnership (ABN 340578 553 267);
- A purchasing group of which Council is a member;

- Other Councils;
- MAPS Group Limited trading as Procurement Australia (ABN 45 058 335 363).

2.3.8 Exemptions

The General Manager may decide by Council resolution (which states the reasons for the decision), due to:

- extenuating circumstances,
- emergency,
- remoteness of locality,
- unavailability of competitive or reliable tenderers.

that a satisfactory result would not be achieved by inviting tenders, to waive the provisions of the Procurement Policy and Procedure in line with Section 55(3) of the *Local Government Act*.

In any circumstance where a decision not to tender, in accordance to the *Local Government Act 1993* - Section 55 (3), Council must record its reasons in writing for any exemptions to this Policy and Procedure.

2.4 Delegation of Authority

2.4.1 Requirement

Delegations define the limitations within which Council staff are permitted to work. Delegation of procurement authority allows specified Council staff to undertake certain purchases, quotation, tender and contractual processes without prior referral to the Council. This enables the Council to conduct procurement activities in an efficient and timely manner whilst maintaining transparency and integrity.

Procurement delegations ensure accountability and provide confidence to Council and the public that purchasing activities are dealt with at the appropriate level.

As such, Council has delegated responsibilities as detailed below relating to the expenditure of funds for the purchase of goods, services and works, the acceptance of quotes and tenders and for Contract Management activities.

2.4.2 Delegations

2.4.2.1 Council Staff

The Council shall maintain financial delegations that identify Council staff authorised to make procurement commitments in respect of goods and services and works on behalf of the Council that:

- Authorise expenditure (including invoices) and award contracts (based on anticipated expenditure level)
- Provide for contract term extensions and variations (non-financial and financial within authorised budget)
- Authorise signing of letters on behalf of Council for acceptance of tenders or quotes
- Authorise signing and issuing of Council purchase orders
- Authorise credit card purchases.

2.4.2.2 Delegations and Powers

The General Manager may sub-delegate a function delegated to the General Manager by the Council to any person or body (including another employee of the Council) under Section 378 of the *Local Government Act 1993*.

Delegation:

1. To authorise all expenditure and/or purchase orders within the adopted Council budget.
2. To obtain quotations and to authorise the purchase of goods, works and services up to a cost as listed in the in the schedule provided that:
 - a) due provision has been made in the approved estimates for the incurring of such expenditure or the incurring of such expenditure has been otherwise approved by the General Manager; and
 - b) an official order is placed in accordance with Council's policies and procedures.

POSITION TITLE	SPEND LIMIT	CREDIT CARD SPEND LIMIT	PETTY CASH REIMBURSEMENT	WESTPAC DELEGATIONS FOR CREDITORS & PAYROLL
Mayor (Administrator)	Unlimited	\$5,000	\$25	NIL
General Manager	Unlimited	\$10,000	\$1,000	YES
Executive Assistant	\$5,000	\$5,000	\$25	NIL
Director Business Services	\$150,000	\$5,000	\$1,000	YES
Director Shire Services	\$150,000	\$5,000	\$1,000	YES
Deputy Director Shire Services	\$75,000	NIL	\$25	NIL
Inspections Officer/Environmental Health Officer	\$2,500	NIL	\$25	NIL
Animal Control Officer/Ranger	NIL	NIL	\$25	NIL
Projects Engineer	\$50,000	NIL	\$25	NIL
Roads and Assets Engineer	\$50,000	NIL	\$25	NIL
Junior Engineer	\$5,000	NIL	\$25	NIL
Administration Officer, Creditors	\$5,000	\$5,000	\$25	NIL
Payroll Officer	NIL	NIL	\$25	YES
Risk and Work Health Safety Officer	\$5,000	NIL	\$500	NIL
Administration Officer – Shire Services	\$5,000	NIL	\$25	NIL
Senior Administration Officer Post Office	\$5,000	NIL	\$500	NIL
Coordinator Menindee RTC	\$2,500	NIL	\$500	NIL
Administration Officer – Ivanhoe MSO	\$2,500	NIL	\$500	NIL
Storeman	\$5,000	NIL	\$25	NIL
Works Supervisor	\$5,000	NIL	\$25	NIL
Town Gangers	\$1,000	NIL	\$25	NIL

Note: Temporary staff appointments only to be issued authorisations by the General Manager.

2.4.2.3 Council approval required

Commitments and processes which exceed the General Manager's delegation and which must be approved by the Council are:

- Tender recommendations and contract approval for all expenditure which equals or exceeds the value of \$150,000 (inclusive of GST).
- Signing and sealing of contract documents.
- Contract term extensions for contracts signed and sealed by Council.

2.5 Internal Controls

Management will install and maintain a framework of internal controls over procurement processes that will ensure:

- More than one person is involved in and responsible for a transaction end to end.
- Transparency in the procurement process.
- A clearly documented audit trail exists for procurement activities.
- Appropriate authorisations are obtained and documented.
- Systems are in place for appropriate monitoring and performance measurement.
- Members of staff, regardless of their expenditure delegation cannot approve expenditure where they are the beneficiary.

2.6 Commercial Information

Procurement activities will be carried out in a way that supports Council staff in meeting their obligations to ensure information of a commercially sensitive or confidential nature is obtained, stored, processed and published in an appropriate manner in accordance with the relevant Council guidelines.

2.7 Risk Management

2.7.1 General

Effectively managing risk at all stages of the procurement process is important to the Council to ensure that:

- The risk of loss to the Council as a consequence of procurement activities is effectively managed;
- The risk of reductions in service levels or loss of services is effectively managed;
- The risk to the Council's reputation is effectively managed;
- The risk of falling victim to cartel behaviour is effectively managed; and
- The risk of injury and illness to staff, contractors and the public is effectively managed.

2.7.2 Supply of Contract

The procurement of goods, services and works can expose the Council to risk.

The Council will minimise its risk exposure by measures such as:

- Standardising contracts to include current, relevant clauses and specific requirements (such as relevant insurances, job safety and environmental analysis; etc.).
- Requiring security deposits, bank guarantees or warranty's where appropriate.
- Referring specifications to relevant experts for advice prior to seeking tenders.
- Requiring contractual agreement before allowing the commencement of work.
- Use of or reference to relevant Australian Standards (or equivalent).
- Effectively managing the contract including monitoring and enforcing performance.

2.8 Contract Terms

All contractual relationships (either under Purchase Order or Contract) must be documented in writing based on standard terms and conditions.

Where this is not possible, approval must be obtained from an appropriate, authorised member of Council staff. A request for such an approval should be supported with procurement and legal advice as relevant.

To protect the best interests of Council, terms and conditions must be settled in advance of any commitment being made with a supplier. Any exceptions to doing this expose the Council to risk thus must be authorised by an appropriate member of Council staff.

2.9 Endorsement

Council Staff must not endorse any commercial products or services. Individual requests received for letters of support must be referred to Manager level or above.

2.10 Dispute Resolution

All Council contracts shall incorporate dispute management and alternative dispute resolution provisions to minimise the chance of disputes getting out of hand and leading to legal action.

2.11 Contract Management

The purpose of contract management is to ensure that Council, and where applicable its clients, receive the goods, services or works provided to the required standards of quality, quantity and timeliness as intended by the contract by:

- Establishing a system monitoring and achieving the responsibilities and obligations for both parties under the contract.
- Providing a means for the early recognition of issues and performance problems and the identification of solutions.
- Adhering to Council's risk management framework and to relevant Work Health and Safety compliance procedures.

Contracts are to be proactively managed and documented by a qualified/trained member of Council staff or external Contract Superintendent, responsible for the delivery of the contracted goods, services or works to ensure the Council receives value for money.

3. DEMONSTRATE SUSTAINED VALUE

3.1 Integration with Council Strategy

The Council procurement procedure will support all of the Council's strategic objectives. More specifically it will support the Council in procuring services, goods and works of a standard and price that is consistent with community needs. It will support the Council in meeting its objectives relating to sustainability and it will assist the Council to meet its objectives of building the strength and resilience of the local economy.

3.2 Achieving Value for Money

3.2.1 Requirement

The Council's procurement activities will be carried out on the basis of obtaining value for money as defined above in section 1.4.

This means minimising the total cost of ownership over the anticipated lifetime of the goods, services or works whilst also receiving acceptable quality, reliability and delivery of goods, services and works.

It also includes ensuring that:

- Contribution to the sustainability of our local economy and the development of locally based businesses is considered as part of the decision making process;
- Minimisation of the life cycle impact on the environment is considered because this is a cost the community will ultimately have to bear.

3.2.2 Considerations

Value for money is a key objective of Council's Procurement Policy. It ensures that Council achieves the best possible outcome for the amount of money spent. Value for money does not necessarily mean selecting the bid that offers the lowest initial price. It represents the best return and performance from the money spend over the entire life of the product or service.

Purchasing decisions will be assessed on a value for money basis whilst giving full consideration to:

- Open and effective competition, ensuring tenders are evaluated on equal footing.
- Ethical behaviour and fair dealing.
- Compliance and specifications, guidelines and requirements.
- Any advantages of dealing with local businesses including local knowledge, networks and relationships, administrative and operational efficiencies, availability and access to after sales service and maintenance.
- The supplier's knowledge, experience and ability to fulfil the requirements of Council.
- Meeting the needs of the community.
- Local content.
- Whole-of-life cycle costs.
- Compliance with and capability to satisfy technical specifications, guidelines and other requirements such as financial capacity, industry reputation, and quality and safety systems.
- Net benefits to Council including the benefits of maintaining an ongoing, innovative and competitive local business environment, including economic benefits and employment.
- Environmental protection.
- Job creation potential.

3.2.3 Role of Specifications

Specifications used in quotations, tenders and contracts are to support and contribute to the Council's value for money objectives through being written in a manner that:

- Ensures impartiality and objectivity
- Encourages the use of standard products
- Encourages sustainability
- Eliminates unnecessarily stringent requirements
- Where ever possible specifies technical standards and requirements that are within the capabilities of local suppliers.

3.3 Performance Measure and Continuous Improvement

Appropriate performance measures are to be established and reporting systems will be used to monitor performance and compliance with procurement policies, procedures and controls.

Procurement procedures, practices and costs will be benchmarked externally where practical. Internal service standards will be agreed within the Council and performance against these targets will be measured and reviewed regularly to support continuous improvement.

The performance measurements developed will be used to:

- Highlight trend and exceptions where necessary to enhance performance.
- Improve the internal efficiency of the procurement process and where relevant the performance of suppliers.
- Facilitate programs to drive improvement in procurement to eliminate waste and inefficiencies across key spend categories.

3.4 Diversity

Promoting equality through procurement can improve competition, value for money, the quality of public services, satisfaction among users, and community relations. It should be a consideration in every procurement project and reflect corporate commitment to diversity and equal opportunity wherever possible.

3.5 Support of Local Business

Council is committed to supporting the local economy and enhancing the capabilities of local business and industry. Council will give due consideration to the actual and potential benefits to the local economy of sourcing goods and services locally where possible, whilst maintaining a value for money approach at all times. Locally sourced goods and services will be used where price, performance, quality, suitability and other evaluation criteria are comparable with non-locally sourced goods and services. Locally sourced goods and services are those which are procured from a local supplier or employees based permanently in the Council area. Council has a commitment to achieve the best value for money outcomes to Council and the community, while maximising opportunities for local business to compete for Council business.

To assist local industry and local economic development, Council will:

- Encourage a 'buy local' culture within the Council.
- Advertise all tenders, contracts and expressions of interest via Tenderlink and by other means as deemed appropriate.
- Make all tenders, contracts and expressions of interest available on Council's website.
- Disseminate contract and tender information to local industry, in a manner deemed appropriate.
- Package requirements in appropriately sized contracts to suit market capacity and encourage competition.
- Ensure that buying practices, procedures and specifications do not disadvantage local suppliers and ensure transparency in quotation, tendering and contract management practices.
- Encourage local businesses to promote their goods and services to Council.
- Encourage the use of local distributors within the delivery chain whenever goods, materials or services have to be sourced from outside the local government area.

3.6 Work Health and Safety and Design

When procuring goods, services and works the Council is conscious of its legal and moral obligations to ensure that injury or illness is not a consequence of any of its procurement decisions.

Accordingly, the Council will ensure that:

- Appropriate consultation is undertaken with all users of the item(s) proposed to be purchased and appropriate risks assessments are undertaken prior to any final decision being made to ensure that

health and safety is considered; and

- Where any hazardous substances are required to be purchased non-hazardous substitutes will be actively pursued as a priority.

When infrastructure is proposed to be procured, including existing infrastructure that is proposed to be upgraded or renewed, it will have unacceptable risks engineered out at the design stage. This includes buildings, roads footpaths, playgrounds and public art works. In order for this to occur:

- Risk assessments will be completed at the concept stage
- There will be documented engineering designs and or plans
- Reference to design standards, recognised procedures or industry guidelines will occur
- In developing whole of life costs for the asset, public risk and employee health and safety will form part of the considerations in determining maintenance levels for the asset.

DRAFT

ATTACHMENT A

The Australian Competition and Consumer Commission's proposed anti-collusion tender clauses

The following clauses may be included in Council's tender documents. These clauses indicate that Council is alert to collusion and will go a long way to deterring such behaviour.

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The material presented in this publication is not and must not be regarded as legal advice. Users should seek their own legal advice where appropriate.

While everything practicable has been done to ensure the information in this book is accurate, no liability is accepted for any loss or damage whatsoever that can be attributed to reliance on any of that information.

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Tender Clause 1: Facilitating reporting to the ACCC

Option 1

The purchasing authority reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by tenderers to the appropriate regulatory authority and to provide that authority with any relevant tenderer information.

Option 2

The purchasing authority's obligation to keep tenderer information confidential will not be breached if the information is disclosed by the purchasing authority to the appropriate regulatory authority because of suspected collusive or anti-competitive tendering behaviour.

Tender Clause 2: Disclosure of subcontracting

Tenderers must indicate if they intend any person or organisation who is not an employee to perform work on the services, and must provide their details. The contract with the successful tenderer will require the purchasing authority's prior written approval for any changes to these arrangements, and any further subcontracting.

Tender Clause 3: Warranty

The bidder warrants that their tender has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor, other than:

- Where certain joint venture arrangements exist between the bidder and a competitor
- Where the bidder and a competitor have an agreement that has been authorised by the ACCC

- Where the bidder has communicated with a competitor for the purpose of subcontracting a portion of the tender, and where the communication with that competitor is limited to the information required to facilitate that particular subcontract.

In such a situation the bidder agrees to fully disclose the full nature and extent of any agreements with competitors to the tendering body.

In the event that no such disclosure is made, the bidder warrants that their bid has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor regarding:

- Prices
- Methods, factors or formulas used to calculate prices
- The intention or decision to submit, or not submit, a bid
- The submission of a bid which is non-conforming
- The quality, quantity, specifications or delivery particulars of the products or services to which this call for bids relates
- The terms of the bid.

The bidder acknowledges that if Central Darling Shire Council accepts the bidder's offer and completes any contract Central Darling Shire Council will do so in reliance of this warranty.

Tender clause 4: Disclosure of prior anti-competitive conduct

Tenderers must indicate if they, or any corporation or person associated with their tender, including directors and senior management, are or have ever been subject to proceedings related to anti-competitive conduct in Australia or overseas. The information must include:

- The names of the parties to the proceedings
- The case number
- The general nature of the proceedings
- The outcome or current status of the proceedings.

Central Darling Shire Council reserves the right, at its discretion, to exclude any tenderer from the procurement process if the tenderer, or any corporation or person, including directors or senior managers associated with their tender, have ever contravened the anticompetitive provisions of the *Trade Practices Act 1974* or equivalent laws in Australia or overseas.

Central Darling Shire Council reserves the right, at its discretion, to exclude any tenderer from the procurement process if full disclosure of any or all contraventions of the anticompetitive provisions of the *Trade Practices Act 1974* or equivalent laws in Australia or overseas has not been made.