



POLICY:

**TENDERING POLICY**

STATUS:

**ADOPTED**

ADOPTED:

**March 2000**

LAST REVISION:

**9.8.2005**

POLICY REF.:

**4/2005/Version 2**

ISSUED BY:

**Corporate Policy Group**

INQUIRIES:

**Financial & Risk Mgt**

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## OBJECTIVE

To ensure that any Tenders called by council are in accordance with the provisions of Section 55 of the Local Government Act (1993) and the regulations accompanying that Act.

## POLICY STATEMENT

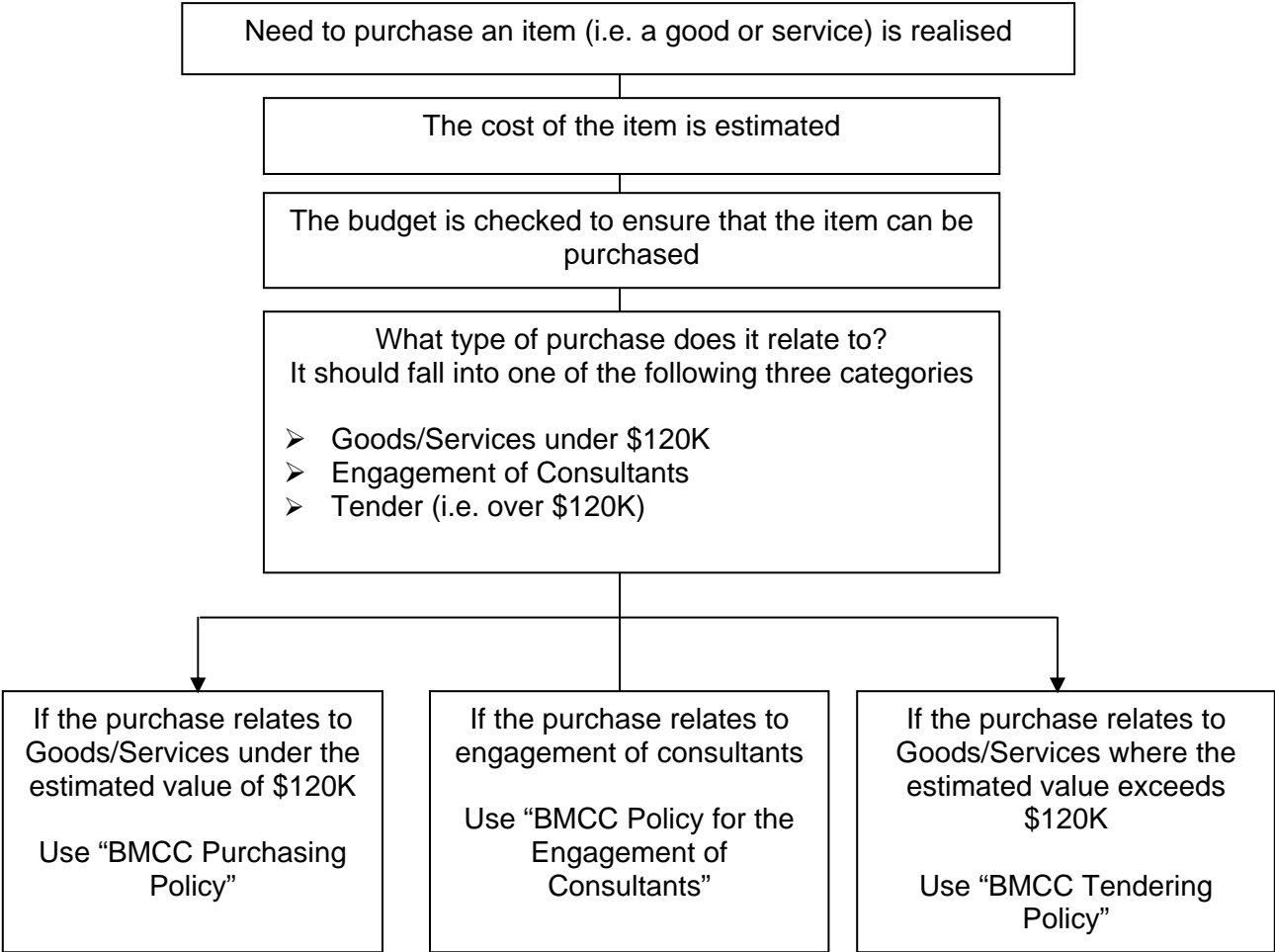
The Tendering Procedures have been adopted by the Executive Management Team and **shall be adhered** to for all tenders.

It is the responsibility of the initiating officer to familiarise themselves with the contents of council's tender documents.

## PROCEDURES

1. Tenders shall be called in accordance with the steps outlined in the Tendering Procedures.
2. It will be the task of the Tender Review Committee to review the process followed in each Tender and ensure that the process has been in accordance with the procedure as outlined in the Procedures. Any non-adherence shall be reported to the General Manager.
3. The Tendering Procedures is an evolving document. Any requests for changes/amendments to the document are to be reported to your Group Manager. The Group Manager will then refer these proposed changes to the Executive Management Team for consideration.

# PURCHASING DECISION TREE



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# TENDERING PROCEDURES

## INTRODUCTION

Council deals with the private sector in providing a wide range of works and services to the community by contract. It is important to demonstrate to all who do business with council that proper procedures are in place to obtain the best value for public money while observing the principles of fairness and impartiality in awarding contracts.

The establishment of proper tendering procedures enhances the reputation of council by reducing the risk of corruption and the wastage of time and public money.

The purpose of the Tendering Procedures is to document the procedures to be followed in the tendering process so as to meet the standards of probity and value for money referred to above and to ensure compliance with legislation and all applicable codes and standards.

In order to achieve uniformity and consistency throughout the organisation, the Procedures cover the following aspects of tendering:

- \* justification for acquisition of assets or other major contract expenditures and their inclusion in the Management Plan and Budget
- \* preparation, invitation, evaluation and acceptance of tenders
- \* compliance with legislation and probity requirements
- \* contract documents.

These Procedures shall be followed in all instances involving contracts for expenditure of \$120,000 or more; when otherwise required to call tenders under Section 55 of the Local Government Act, 1993; and when it is decided to call tenders with a view to obtaining the most benefit for council.

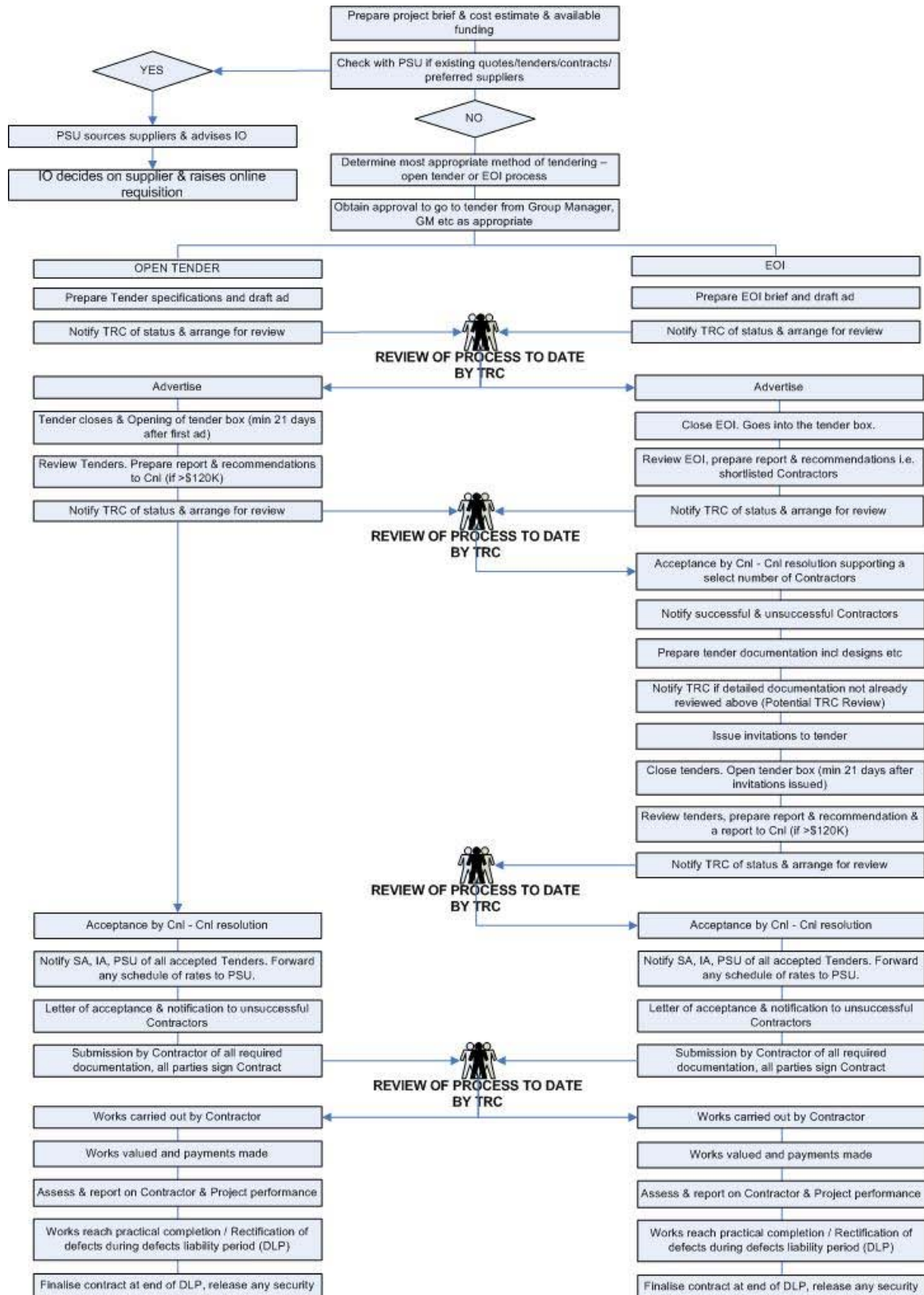
The Local Government (Tendering) Amendment (Threshold Amount) Regulations 2004 require tenders to be called for expenditure over \$150,000. Council's Executive Management Team has, however, resolved to subject estimated expenditure over \$120,000 to a Tendering process. If the actual expenditure comes in below \$150,000 threshold there is no requirement to report to Council.

Where consultants are engaged, reference should be made to the companion policy document titled "Blue Mountains City Council Policy for the Engagement of Consultants". For expenditure under \$120,000 or where the expenditure does not involve the engagement of consultants, reference should be made to the companion document titled "Blue Mountains City Council Purchasing Policy".

Reference material from other authorities has been used in compiling the Procedures. Blacktown and Parramatta City Councils have kindly made available their tendering manuals through the internal auditor network and reference has been made to the principles expounded in the Capital Project Procurement Manual issued by the New South Wales Government.

These Procedures have been updated to include the changes to the regulations effective 1 September 1999 (supporting the Local Government Act 1993), as well as a small number of amendments arising from the Local Government Amendment Act 2000.

# TENDER AND EOI PROCESS FLOWCHART



IA – Internal Auditor, IO – Initiating Officer, SA – Senior Accountant, PSU – Purchasing Services Unit

**1 GENERAL REQUIREMENTS**

**1.1 Requirement to Call Tenders**

1.1.1 Under the provisions of Section 55 of the Local Government Act, 1993, council must invite tenders before entering into contracts for any of the following:

- \* carrying out any work
- \* performing a service or providing facilities
- \* providing goods or services to council
- \* disposal of property other than land
- \* instalment contracts over a period of two or more years.

The terms “works”, “services” and “facilities” include the acquisition and replacement of assets and the construction of assets under council’s capital works program.

It is also important to note the changes arising from the Local Government Amendment Act 2000. Under the amendments, council must also invite tenders in the following circumstances:

- \* where it seeks to subcontract work, and for
- \* services such as legal services, computing services and other “consultancy type” contracts.

1.1.2 An exhaustive list is provided in Section 55(3) of the Act of those contracts which do not require the prior calling of tenders. The two main exceptions are contracts for goods, materials or services specified by the State Contracts Control Board or the Commonwealth Department of Administrative Services and contracts involving an estimated expenditure or receipt of an amount of less than \$150,000.

1.1.3 The Executive Management Team of council has determined that any purchase where the estimated cost of the purchase exceeds \$120,000 is to adhere to the requirements of this Policy. This determination is set out in further detail in council’s Purchasing Policy. For purchases under \$120,000, and that do not involve the engagement of consultants, reference should be made to the companion document titled “Blue Mountains City Council Purchasing Policy”.

1.1.4 Other exceptions are contracts with the Crown or another council; purchase, sale or lease of land; purchase or sale at auction; employment contracts and exemptions under other legislation. Council may by resolution decide not to call tenders in cases of emergency or if a satisfactory result would not be achieved by calling tenders.

1.1.5 Notwithstanding the above requirements, it is appropriate to call tenders if it is considered necessary for probity purposes or if council would obtain the most benefit or best price by going to tender.

1.1.6 The legislative requirements for calling tenders apply to the selection of both contractors and consultants. However, a separate policy titled “Policy for the Engagement of Consultants” has been prepared covering the special requirements which must be followed when engaging those services.

### 1.2 Applicable Legislation Codes and Standards

Tendering procedures are governed by the requirements of the following legislation, tendering codes and standards. Members of staff dealing with tenders and contracts should be familiar with these documents:

- \* Local Government Act, 1993 (Section 55)
- \* Local Government Amendment Act 2000
- \* Local Government (General) Regulation, 2005
- \* Code of Tendering - Australian Standard AS 4120-1994
- \* Code of Practice and Code of Tendering for the Construction Industry - Department of Local Government Practice Note No. 8(a)
- \* Practical Guide to Corruption Prevention (ICAC) Module 12 - Purchasing
- \* Local Government (Tendering) Amendment (Threshold Amount) Regulations 2004.

In instances where requirements may differ, the provisions of the Local Government (General) Regulation must take precedence over the standards.

### 1.3 Tendering Methods

- 1.3.1 Clause 166 of the General Regulations specifies the tendering methods available to council. The method must be employed which is best suited to the project to be undertaken.
- 1.3.2 Open tenders under Clause 167 of the General Regulation are tenders invited by public advertisement where any tenderer may bid for the work. Open tendering is appropriate when there are many contractors in the field and council knows the market. The advantage of this form of tendering is that market pressure from a wide field of tenderers can force the best price out of the system.
- 1.3.3 Selective tenders for a particular contract are dealt with in Clause 168 of the General Regulation. After inviting expressions of interest by public advertisement from those interested in tendering for a particular contract, tenders are invited from those who best meet the required criteria. This form of tendering is appropriate when council is unsure of the market or the availability of contractors specialising in the work required. The advantage of this form of tendering is that council is only dealing with a small number of tenderers with proven ability at a lower cost both to council and the industry.

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## General Requirements

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1.3.4 Clause 169 of the General Regulation enables council to use the selective tendering method for particular kinds of proposed contracts. After inviting expressions of interest by public advertisement from those interested in tendering for contracts of that kind, council prepares a list of suitably qualified tenderers. Selected contractors from that list are invited to tender for proposed contracts. This form of tendering is appropriate for regular and routine works, goods or services and has similar advantages to those outlined in 1.3.3 above.

1.3.5 As an alternative to preparing a list of recognised contractors in accordance with Clause 169 of the General Regulation council may adopt a list of contractors prepared by another public authority following a public advertisement calling for expressions of interest. (Clause 169(8))

### 1.4 Confidentiality

1.4.1 Council is required to take all practical steps to ensure the confidentiality of tender information. Information contained in a tender or related document must not be disclosed to any person without the permission of the tenderer. This does not apply to disclosure of information which is lawfully made for the purposes of the Act or the General Regulation.

1.4.2 Section 664 of the Act makes it an offence for a person to disclose information obtained in connection with the administration or execution of the Act except where that disclosure is made in certain specified circumstances. One of the intended effects of that section is to preserve the confidentiality of tender documents submitted by tenderers.

1.4.3 Clause 4.2 of the Code of Tendering (Practice Note 8(a)) requires that council must preserve, throughout the tendering process, the confidentiality of information, particularly intellectual property. This precludes the disclosure to any person of commercial information, documents under copyright, detailed alternatives and comparable prices for alternative proposals, the names of persons who have requested tender documents and trade secrets.

### 1.5 Delegations of Authority

1.5.1 Responsibilities for the tendering function are governed by the delegations of authority made by the General Manager to staff members.

1.5.2 The General Manager has delegated authority from Council to carry out all the functions of council made under the Local Government (General) Regulation other than the acceptance of tenders which council is required to call under the Local Government Act and accompanying regulations.

1.5.3 Authority has been sub-delegated by the General Manager to all Group Managers to carry out the following functions in their areas of responsibility. "To carry out the following tendering functions in accordance with the requirements of the relevant legislation and Council's tendering policies:

- (i) to call (but not determine) public tenders, when required to do so under the tendering legislation, for the provision of goods and services up to the estimated contract value of \$250,000, and
- (ii) to call tenders when not required to do so under the tendering legislation if the delegate is of the opinion that the calling of tenders is

## General Requirements

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appropriate as the best means of testing the market, and

- (iii) to determine the appropriate tendering method to be employed as provided under Clause 166 of the General Regulation.

1.5.4 The effect of the delegations to Group Managers is that for contracts having a value of greater than \$250,000 the approval of the General Manager must be obtained in respect of the following:

- (i) whether tenders shall be called and the tendering method to be employed.

The General Manager has sub-delegated authority to the Executive Officer to determine whether tenders shall be called and the tendering method to be employed for all contracts having a value greater than \$250,000. Where the Executive Officer does not exercise approval, or the recommendation is to refuse, the matter will be forwarded to the General Manager for determination.

1.5.5 Applications to the General Manager, the Executive Officer or a Group Manager, as the case may be, for approval to call tenders must show:

- (i) the purpose of the tender
- (ii) estimated value of contract
- (iii) items to be sold or traded-in
- (iv) availability of funds, covering vote and method of financing the purchase
- (v) whether circumstances have changed since the proposed purchase was included in the Management Plan
- (vi) in the case of purchases not included in the Management Plan the authority for the proposed contract
- (vii) the recommended method of tendering.

A sample approval form to call tenders is attached in Appendix 3 and available electronically from staff intranet under BMCC Policies.

A copy of the approval must be placed on the relevant contract file.

## General Requirements

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1.5.6 Authority has been delegated to the Senior Accountant to carry out the functions of “appropriate person” in accordance with the requirements of Clause 164 of the General Regulation as the person designated for the purpose.

1.5.7 Those occupying the following positions have delegated authority to be present at the opening of tenders as persons designated for that purpose under Clause 175 of the General Regulation:

- \* Manager Financial and Risk Management
- \* Senior Accountant
- \* Finance Officer Taxation Compliance
- \* Systems & Reporting Accountant
- \* Management Accountant
- \* Executive Officer
- \* Administration Officer
- \* other officers as directed by the Manager, Financial & Risk Management.

In addition a member of council's Tender Review Committee shall be present at all Tender openings.

### 1.6 Tender Period

#### 1.6.1 General Requirement

The Regulation requires that the deadline for submission of tenders or of expressions of interest in tendering for a particular proposed contract, shall be at least 21 days after the date of publication of the first advertisement.

Under the Interpretation Act, the day of publication of the advertisement must be excluded from the reckoning of 21 days.

No period of time is prescribed for the submission of applications from persons interested in being listed as a recognised contractor for particular kinds of proposed contracts. However, the deadline for both selective tendering arrangements is set as a minimum of 21 days in these Procedures.

#### 1.6.2 Shortened Tender Period

Clause 171 of the Regulation provides that in exceptional circumstances Council may decide on a shorter period of at least 7 days after the first publication of an advertisement under clauses 167, 168 and 169 or an invitation under Clauses 168(4) or 169(6).

Such a decision can be made by council or by the initiating officer with the approval of the Group Manager. Where the Executive Officer or the General Manager have approved the calling of tenders that position should determine whether or not it is appropriate to shorten the tender period. A record must be kept on file documenting the reasons for this decision, as well as the name of the person who made and approved the decision.

**1.6.3 Extended Tender Period**

If there are circumstances that show that the deadline of 21 days will not allow sufficient time for meaningful tenders to be submitted, the initiating manager may obtain the approval of the relevant Group Manager, to an extended tender period. Such approval can be obtained either in conjunction with the approval to call tenders or after tenders have been called or invitations invited. In the latter case, advice must be given to the persons who have been issued with tender documents or invitations. (See Clause 172 of the General Regulation).

A record must be made and kept on file documenting the reasons for the decision to extend as well as the names of the person who made and approved the decision.

**1.7 Risk Management**

**1.7.1** Council has a responsibility under the law to ensure the health and safety of all non-employees including contractors. Council is also responsible for ensuring that contractors carry out their work in safe premises, using proper and safe plant and substances and employing safe work systems in which adequate training and supervision is provided. When engaging a contractor, council has a duty to ensure, as far as practicable, that nobody suffers a risk to their health and safety from the work of the contractor. It is therefore essential that council follow all requirements in respect of Risk Management. Contractors must be required to bear the risks that are fairly their responsibility.

Council's Risk Management Coordinator and Occupational Health and Safety Coordinator should be contacted in respect to these requirements.

**2 PLANNING**

**2.1 Planning and Forecasting**

**Justification of Capital Outlays and Sales**

2.1.1 Under the provisions of Section 403 of the Local Government Act, 1993 council must provide details of proposed capital works projects, asset replacement programs and sales of assets in the Management Plan and Budget. It is essential for the purpose of planning tenders in the coming year that the Management Plan include only firm proposals for expenditure. This requires the justification for, and approval of, capital expenditures and asset sales as part of the budgetary process.

**Budget Funding Proposals**

2.1.2 Funding proposals for capital outlays in the ensuing year are to be submitted to the Group Manager, City Solutions and must include how the project/outcome is likely to affect the factors below.

**1. Environmental Sustainability**

- Protection of natural resources (e.g. soil, vegetation, water, air quality)
- Rare or Threatened flora or fauna/biodiversity
- Efficient energy usage (maintenance)
- Efficient use of renewable resources (inputs)
- Effective waste management, minimisation and recycling (outputs)
- Effective ongoing waste management and minimisation
- Restores damaged areas of the natural environment
- Contributes to the reduction in greenhouse gases
- Restores damaged areas of the built environment.

**2. Economic Sustainability**

- The project can operate in a profitable manner
- Accurate budget has been prepared
- Additional non council funds are available
- Investment mitigates exposure to financial risk
- Diversified local employment opportunities
- Support local economy
- Methods of Life cycle costing have been analysed and costed appropriately
- Life cycle costing of the asset is sustainable
- The timing of the project represents cost efficiencies.

**3. Community and Social Sustainability**

- Project goals align with City Strategy Objectives
- Incorporates community consultation strategy
- There is demonstrated community need
- Required by relevant laws, government and council policies
- Encourages and supports a healthy community lifestyle
- Protects diverse cultural and heritage values
- The project accords access and equity and social justice principles
- Consistent with adopted council strategies and plans
- Community/other partnerships in place and viable.

Further inquiries regarding the criteria should be addressed to the Group Manager, City Solutions.

**2.1.3 Tender Forecasting**

The following measures are to be adhered to in relation to the forecasting of tenders:

- (i) As part of the annual budgeting process undertaken for each year, Group Managers are to provide a listing of proposed contracts for which it is expected that tenders will be called. The listing shall include plant, equipment, capital works, non-capital works, as well as goods and services. This listing shall be provided to the Tender Review Committee (TRC) (care of the Internal Auditor) and the General Manager.
- (ii) Group Managers are to provide an update to these listings following each quarterly budget and capital works review process.
- (iii) Initiating officers (those responsible for the tender) are to prepare a formal Tender Planning Timeline (as outlined below) and forward this to the Internal Auditor and the appropriate person at the start of the tender process.
- (iv) Initiating officers are to keep the TRC informed of the progress of the tender and if there are likely to be any deviations in timelines.

**2.2 Planning and Supervision**

An officer of the initiating Group of Council shall be appointed to take responsibility for the management of each tender and to be accountable for the results. The following action shall be taken to plan each tendering project:

- (i) complete the formal Tender Planning Timeline as outlined in Appendix 1.
- (ii) appoint the Tender Evaluation Panel (refer 2.3 below).
- (iii) in order to facilitate audit and independent review, arrange for full documentation of all processes and decisions including records of specification details, assessment criteria, weightings, decisions, reasons for departures from established procedures and approvals of such departures by a senior officer not directly involved in the tendering process.
- (iv) complete the Tender Checklist for each stage of the tender process. This checklist is outlined in Appendix 2.

**2.3 Tender Evaluation Panel**

As part of the planning responsibilities of the initiating officers they will appoint a Tender Evaluation Panel to assess Tenders and/or Expressions of Interest received. The Tender Evaluation Panel is to be made up of the following people:

- (i) the initiating officer/Manager responsible for the Tender

- (ii) at least one other staff member with the relevant skills in the area of the Tender. This person could also be from outside of council or a consultant etc
- (iii) at least one staff member with no interest in the outcome of the Tender (i.e. an independent). This person could also be from outside the council (i.e. a person from another council, a consultant or industry expert etc).

**The Tender Evaluation Panel should convene to assess Tenders as well as Expressions of Interest.**

The initiating officer/Manager should advise panel members to disclose at the start of, or during, the Tendering process any potential pecuniary or non-pecuniary conflict of interest that could affect their impartiality. This process should be documented and placed on file.

#### **2.4 Tender Review Committee - Oversight of Procedures**

The General Manager shall establish a TRC consisting of appropriate officers.

The role of the Committee shall be to review the process for each tender and the draft report prepared by the initiating manager, with a view to ensuring compliance with council's tendering procedures and relevant legislation. The Committee shall have regard to:

- \* expressions of interest processes
- \* tender documents
- \* advertisement
- \* project plans and specifications
- \* Occupational Health and Safety requirements
- \* selection criteria
- \* documentation of evaluation of tenders by the responsible manager
- \* probity requirements
- \* risk management arrangements
- \* environmental impact considerations.

TRC will formally meet at the following stages of the tender process:

1. Once the specification is ready and approval to go to tender has been obtained. A tender will not be advertised until the review is complete and signed off.

This review will focus on the adherence to the Procedures to this stage in the Tender process. Any non-adherence to the Procedures will be formally reported to the initiating officer/Manager.

2. Once the draft report to Council has been prepared.

The review will focus on the adherence to the Procedures to this stage in the Tender process. Again, any non-adherence to the Procedures will be formally reported to the initiating officer/Manager.

Any dispute between members of the TRC or between the TRC and the initiating officer/Manager shall be referred to the General Manager for resolution.

3. Once the tender process has been finalised and the contract executed.

The reviews undertaken by the TRC will need to be allowed for in the planning/scheduling of the Tender undertaken by the initiating officer/Manager. The TRC should be notified as to when these reviews will need to take place by the initiating officer/Manager. The initiating officer/Manager should allow for one working day for the initial and final reviews and two to three days for the second review. This is outlined in the Tender Planning Timeline and the Tender Checklist (as per Clause 2.2 above).

### **2.5 Document Issued Register**

The initiating Group shall maintain a Document Issued Register to record the names and addresses of persons issued with expressions of interest and tendering information documents. The register must be treated as confidential.

### **2.6 Procurement Strategies**

- 2.6.1 At the planning stage of tendering, it will be necessary to determine the type of contract to be used to procure the project, goods or services. This involves selection of the appropriate delivery system and the appropriate contract system.

#### **Delivery Systems**

- 2.6.2 The delivery systems are single contracts, multiple contracts and period contracts.

- 2.6.3 Single contracts involve one main contract which covers construction of the project with or without smaller associated contracts. Projects most suited to single contracts are those where there is no advantage in splitting the works.
- 2.6.4 Multiple contracts involve a number of contracts of various sizes and complexity. They allow separate contracts to be awarded as documentation proceeds for each segment of the project within an overall program. Projects most suited to this system are those requiring staging, fast tracking or greater control over the project.
- 2.6.5 Period contracts are used for programs of works rather than for projects. These are “schedule of rates” contracts let for specific types of works over a period of time.

### **Contract Systems**

- 2.6.6 Single or multiple contracts can be used for the following contract systems:
- \* construct only
  - \* design development and construct
  - \* design, novate and construct
  - \* design and construct.
- 2.6.7 Construct only contracts are based on a fixed detailed design and are entered into on the basis of a lump sum with or without a bill of quantities or schedule of rates. Under these contracts there are advantages in quality, realistic pricing, lower tender cost and greater competition. There is less risk to council.
- 2.6.8 Design development and construct contracts are let to develop a conceptual design prepared by council and construct the work. They are most suitable for work where council has a conceptual design but either wishes to avoid the coordination problems and risks associated with the “construct only” system or does not have the resources or time required under that system.
- 2.6.9 Design, novate and construct contracts are similar to design development and construct contracts but the contractor assumes full responsibility for the design as well as the construction and pays the designers fees. Council has full control of the conceptual design and can ensure continuity of the single designer’s input from conception to completion. Contracts of this type are suitable for large, one-off projects where the brief is clear and well defined, there are specialist firms, proprietary designs and construction processes available in the market place or there is a benefit from having the contractor responsible for design and documentation. They are usually lump sum.
- 2.6.10 Design and construct contracts are let for the preparation of the conceptual design, design development and construction. They are usually lump sum. Council prepares a performance and quality requirements specification. These contracts are more applicable to projects with simple and concise briefs, few complex requirements and little likelihood of changes after the contract has been awarded. The main advantages are that the contractor assumes total responsibility for the work, scope for innovation can be broadened, fewer council resources are required and project time can be reduced.

### **Lower Value Contracts - \$500,000 or less**

- 2.6.11 One of two delivery systems should be used for works valued at \$500,000 or under:
- (i) single contracts with one contract covering the majority of the work with or without satellite contracts, or
  - (ii) multiple overlapping contracts awarded progressively in trade packages.
- 2.6.12 The single contract is most suited to small contracts which are well defined because a single contractor is given responsibility for the management and coordination of all trades involved.
- 2.6.13 Multiple contracts are used where:
- (i) fast tracking is required
  - (ii) brief is imprecise
  - (iii) elements of the work are subject to impacts of fast-changing technology
  - (iv) work is fragmented because of physical constraints or distance
  - (v) staging is difficult
  - (vi) other high-risk situations exist.
- 2.6.14 For lower-valued contracts one of two contract systems are usually employed. These are the traditional system and the non-traditional system with various degrees of design completion.
- 2.6.15 The traditional system consists of the completion of all design and documentation before calling tenders. The contractor is responsible for construction only and it can be either lump sum or schedule of rates methods of payment. It is appropriate where there is sufficient time to carry out design and documentation and construction consecutively.
- 2.6.16 The non-traditional contract system is best adopted for works where well established standards exist for details and finishes. They can range from design and construct based on a functional brief to design development and construct based on a completed conceptual design.

## **2.7 Estimate of End Cost**

A realistic estimate of cost should be prepared for the overall project before calling tenders. The estimate should be based on a comparison of the works to similar works and estimating cost based on unit rates. The estimate must include all costs outside the contract such as design and/or documentation fees if applicable, contingencies, supervision costs and insurances for which council would be responsible.

The estimate needs to be reliable and verifiable, formally documented and placed on file prior to any decision being made on the method of procurement.

## Planning

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Under the following circumstances, the formal tendering process (as outlined in these Procedures) should be followed:

- \* where the previous year's expenditure has exceeded \$120,000
- \* where the technology/methodology is new or untested and there is no reliable/verifiable basis for estimating the costs
- \* where the estimates of costs are reliant on unknown/unreliable factors which given unfavourable outcomes may increase the contract value to greater than \$120,000
- \* where the estimate of the total cost of the project is less than \$120,000 but the tender method is considered the best way of testing the market
- \* to comply with the EMT threshold of \$120,000.

Where the initiating officer is unsure as to which way they should proceed the members of the TRC should be contacted to discuss the situation prior to a decision being made.

**3 INVITING EXPRESSIONS OF INTEREST**

**3.1 Scope**

3.1.1 This section of the Procedures sets out the procedures to be followed in inviting expressions of interest in conjunction with the two selective tendering methods provided for in the General Regulation:

- (i) invitations to tender for a particular proposed contract (Clause 168)
- (ii) invitations to tender for particular kinds of proposed contracts with a view to preparing a list of suitable tenders (Clause 169).

**3.2 Document Preparation**

3.2.1 The initiating Manager shall arrange for the allocation of a contract number and the preparation of any expression of interest information documents which it is proposed to provide to enquirers.

3.2.2 Expressions of interest documents should include all information necessary to give interested persons a clear understanding of the works, goods or services required by council and to enable them to provide details of their capacity to meet council's requirements. The information could include such information as:

- (i) registered company name, ACN and GST registered ABN ( note council's policy with regard to conducting business only with organisations with a GST registered ABN)
- (ii) business address and numbers for telephone, facsimile, mobile phone and email
- (iii) name of the contact person and the position held in the company
- (iv) number of years in business
- (v) number of years experience in similar work to that proposed by council
- (vi) details of past and current projects of a similar kind to that proposed by council and details of contracts which the company has failed to complete
- (vii) names, roles and technical experience of the principal persons who would be involved in the proposed work
- (viii) details of the financial capacity of the company including latest audited financial statements and names of bankers and accountant
- (ix) details of labour, plant and equipment which would be dedicated to the proposed project
- (x) management systems which would be employed to manage the proposed project

- (xi) the names, addresses and contact numbers of two referees and their relationship to the company.

3.2.3 The documents must also include the requirement for all persons/companies submitting a tender to complete the Tenderer's Declaration as set out as per Appendix 11. Any tender not submitting this declaration will be considered invalid. A Tenderer's disclosure of any potential conflict of interest will be evaluated by council's TRC to determine their impact on the overall probity of the tenderer's submission. Disclosure of a potential conflict of interest will not necessarily result in the disqualification or non-consideration of the tenderer's submission.

### **3.3 Advertisements**

#### **Preparation of Draft Advertisement**

3.3.1 The advertisement shall be prepared by the initiating officer based on example given in these Procedures (refer Appendices) and specific requirements.

3.3.2 It is essential that the advertisement satisfies the requirements of Clauses 168 and 169 of the General Regulation which provides that advertisements must:

- (i) be placed in a Sydney Metropolitan daily newspaper and either or both a newspaper circulating in council's area or a newspaper circulating in the district where potential tenderers are likely to be carrying on business or to be residing
- (ii) include a brief description of the work, goods, facilities, services or property concerned
- (iii) specify the name of the contact person and how that person can be reached to enable enquirers to obtain additional information concerning the proposed contract or kinds of contracts
- (iv) invite applications from persons interested in tendering for the proposed or kinds of contracts by a specified time on a date at least 21 days after the date (or first date) of publication.

In addition, the advertisement should include:

- (i) an indication that expressions of interest documents can be obtained from the nominated officer, the purchase price of those documents (if applicable), and telephone number of the of the person to be contacted in that regard
- (ii) an indication (if possible) of when council proposes to call tenders following consideration of the expressions of interest received
- (iii) the place for lodgement of expressions of interest (the tender box located in the Business and Information Centre on the ground floor)
- (iv) a statement that applicants and members of the public are invited to the opening of the expressions of interest immediately after the time for closing of invitations.

## **Inviting Expressions of Interest**

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- 3.3.3 The initiating officer should also determine whether the tender document is to appear on council's website as a downloadable document. This is to be done in conjunction with council's IT Department. It should also be considered whether a document fee is to apply to hard copies obtained. Specifications to be lodged on council's website are to be electronically provided to IT in two parts – one part comprising the full specification and one part comprising documentation to be completed and submitted with the tender.

### **Design and Placement of Advertisement**

- 3.3.4 Consideration should be given to the requirement of the ICAC "Practical Guide to Corruption Prevention" concerning the design of advertisements to attract the attention of bidders in the relevant industry or location and the placement in appropriate journals as well as newspapers. The size and placement of the advertisements will be commensurate with the value, importance and nature of the proposed contract.

### **Distribution of Copies of Advertisement**

- 3.3.5 The initiating officer shall ensure that copies of the advertisement are forwarded to:

- \* Records and Archives to assist with identification of expressions of interest
- \* contact persons named in the advertisement
- \* Business and Information Centre
- \* the Internal Auditor for referral to the TRC.

### **Advertising deadlines**

- 3.3.6 For advertisements to appear in the following week's Sydney Morning Herald (Tuesday) and Blue Mountains Gazette (Wednesday), they need to be completed and forwarded to the Administration Assistant, in Executive Services, by no later than 11am on the preceding Thursday.

The initiating officer will also have to coordinate a meeting of the TRC in accordance with the requirements set out in Clause 2.4. This should be held by the Tuesday preceding the advertisement lodgement. A tender will not be advertised until the review is complete and signed off.

## **3.4 Issue of Expressions of Interest Documents**

- 3.4.1 The initiating officer may direct documents to interested persons, either nominated by the initiating officer or from known historic data.
- 3.4.2 One set of expressions of interest documents and drawings shall be supplied to the Internal Auditor for referral to the TRC.
- 3.4.3 The initiating officer shall maintain a Document Issued Register and enter details of the persons and companies who have been issued with expressions of interest documents. These details will include the name of those persons or companies, contact details and date of issue.
- 3.4.4 Information shown in the Document Issued Register must not be disclosed to any persons enquiring as to which companies have been issued with expressions of interest documents.

**3.5 Receipt, Opening and Recording of Expressions of Interest**

The procedure set out in these Procedures for dealing with the receipt, opening and recording of tenders shall apply to expressions of interest. (See Section 5).

**3.6 Evaluation of Expressions of Interest**

**Consideration of Applications Received**

The procedure set out in these Procedures dealing with the evaluation of tenders shall apply to the evaluation of expressions of interest. Reference should be made to Section 6.1 of these Procedures.

3.6.1 Clauses 168(3) and 169(3) of the Tendering Regulations require that all expressions of interest received by Council must be considered. However, consideration shall not be given to late applications except in accordance with Clause 177 of the General Regulation and Clause 6.1.3 of these Procedures.

If consideration is not given to an expression of interest, the reasons for rejection must be recorded by the Senior Accountant and the TRC.

**Matters for Consideration**

3.6.2 When considering expressions of interest applications, the following criteria shall be taken into account:

- \* experience of the applicant in fulfilling the requirements of similar contracts
- \* capacity of the applicant to fulfil the requirements of the proposed contract
- \* general selection criteria as applicable.

**Submission to Tender Review Committee**

3.6.3 Before submission of a report to Council the responsible manager shall prepare a draft report recommending the acceptance of suitable expression(s) of interest and present this to the TRC for consideration. Supporting documentation including copies of all expressions of interest submitted and working papers justifying the recommendation should also be presented with the draft report. Further details of the TRC's role are given in Clause 2.4.

**3.7 Report to Council**

3.7.1 A report to Council concerning evaluation of expressions of interest is to be prepared by the responsible manager at the earliest practical opportunity. The report shall include a comparison of all expressions submitted and reasons as to why the selected expression(s) of interest is recommended.

3.7.2 The report to Council is to be signed by the relevant Group manager and include a statement that the TRC has reviewed the Tender procedures and is satisfied as to the fairness of the process. Note: This statement will be subject to the appropriate clearance of any issues highlighted by the TRC.

3.7.3 The evaluation methodology and evidence supporting the decision for

## **Inviting Expressions of Interest**

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acceptance of an expression of interest by Council shall be fully documented and held on file.

3.7.4 Interested parties shall not be advised of report details or recommendations prior to the Council meeting.

3.7.5 It is necessary that commercial information is not disclosed in an ordinary report or attachments. Should it be necessary to provide this information to Council for its consideration then this should be supplied in the form of a confidential report or confidential attachments.

### **3.8 Acceptance of Expressions of Interest**

3.8.1 Council may decide either to send invitations to tender to all applicants or those it considers will be able to fulfil the requirements of the proposed contract, or to decline to invite tenders from any of the applicants. All applicants must be advised of the outcome of their applications by the initiating officer. (See Appendix 4)

3.8.2 Confidential details shall not be disclosed to any person concerning the expressions of interest completed by the successful, or any other party.

3.8.3 In the case of invitations to tender for a proposed contract under Clause 9 of the Tendering Regulation, the successful applicants should be advised that they will be invited to submit tenders for the proposed contract by the initiating officer.

3.8.4 In the case of invitations to tender for particular kinds of proposed contracts under Clause 169 of the General Regulation, the successful applicants should be advised by the initiating officer that they have been listed as recognised contractors for some or all of the kinds of work, goods, facilities, services or property listed in their applications.

## **4 PREPARATION OF TENDER DOCUMENTS**

### **4.1 Scope**

4.1.1 This section is applicable to the preparation of tender documents both for tenders invited from selected applicants under the selective tendering methods and for public tenders called under the open tendering method.

### **4.2 Records for Open Tenders**

#### **Contract Number**

4.2.1 The initiating Manager shall arrange for the allocation of a contract number which shall appear on each page of the tender documents.

#### **File Number**

4.2.2 The initiating officer must arrange with the Records and Archives for the opening of a contract file. The written approval of the General Manager or the relevant Group Manager to the calling of tenders must be placed on the contract file. The tender advertisement and the specification should also be placed on this file.

### **4.3 Project Definition**

4.3.1 To assist with the preparation of tender documents, a clear and specific project brief shall be designed and documented by the responsible manager. The brief must adequately define the project to be undertaken by council. (See Code of Tendering for the Construction Industry, Page 40 and AS 4120 Clause 6.1).

### **4.4 Legislative Requirements**

4.4.1 Tender documents must be prepared by the responsible manager and, in accordance with Clauses 167(3), 168(6), 169(7) and 170 of the General Regulation must include:

- (i) details of the work, goods, services, facilities or property concerned
- (ii) if the proposed contract is an instalment contract, details of the instalments, the instalment period and intervals between instalment payments
- (iii) criteria for assessment of tenders
- (iv) name of the contact person and how that person can be reached to enable enquirers to obtain additional information
- (v) a statement to the effect that tenders will not be considered unless formal tender documents are submitted to council and indicating the circumstances under which council will consider tenders received after the advertised deadline.

**4.5 Code of Tendering Requirements**

4.5.1 The Code of Tendering for the Construction Industry (Practice Note 8(a)) applies to all council building, construction, maintenance and material supply contracts, consultant commissions and government funded projects and sites within the construction industry. The Code requires that tender documents should include the following matters:

- (i) a clear definition of the contractual obligation of the parties (e.g. safety matters, insurance and industrial relations)
- (ii) any special conditions or obligations under the proposed contract which depart from council's normal practice
- (iii) any supporting information required from tenderers
- (iv) positive encouragement to tenderers allowing them the option, in addition to submitting a conforming tender, to incorporate maximum innovation while still satisfying council's objectives
- (v) inclusion of the statement:

"All tenderers must comply with the New South Wales Government Code of Practice for the Construction Industry. Lodgement of a tender will be evidence of the tenderer's agreement to comply with the code for the duration of any contract that may be awarded. If any tenderer fails to comply with the code, the failure may be taken into account by Council when considering this or any subsequent tender and may result in this or any subsequent tender being passed over."

**4.6 Other Requirements**

4.6.1 Consideration should be given to the relevance for inclusion in the tender documents any of the following matters specified in the Code of Tendering, Australian Standard As 4120 -1994 and the ICAC Manual, Practical Guide to Corruption Prevention:

- (i) information known to Council which is relevant to enable tenderers to evaluate the risks in the project
- (ii) a statement that each tenderer is required to state the main sub-contractors to be used on the project or a small panel from which those main sub-contractors will be drawn
- (iii) the tender validity period
- (iv) arrangements for opening of tenders and display of tenders list with reference to clauses 175 of the General Regulation
- (v) copy of the draft contract and documents to be used for the tender.

## 4.7 Composition of Tender Documents

4.7.1 The Commissioning and Assets branches of council maintain a set of standard tender documents based on Australian Standards AS 2124, AS 2125 and AS 2127 which can be used for most tenders for provision of services, supply of goods and materials, civil engineering and building work. These include:

- \* letter of invitation
- \* general description of the works and site
- \* conditions of tendering
- \* the tender form
- \* essential information to be submitted with tenders including risk management and environmental protection
- \* insurance documents including Indemnity and Risk Assessment
- \* general conditions of contract and the form of contract to be used
- \* special conditions of contract
- \* specifications of required works or services, performance requirements or standard of workmanship and materials
- \* schedule of rates or bill of quantities
- \* drawings
- \* Occupational Health and Safety requirements
- \* conditions under which alternative tenders will be considered
- \* criteria for assessment of tenders
- \* form of agreement.

4.7.2 The conditions of tendering must include the statement: "The lowest or any tender will not necessarily be accepted".

4.7.3 Provision should be made on each page of a Schedule of Rates or Bill of Quantities for the name, address, telephone number, signature and date for the tenderer to complete.

4.7.4 Tender documents for the supply of goods or services will depend on the type of contract intended and shall form part of the procedures relating to such acquisition or work to be carried out.

4.7.5 Tender documents should clearly indicate milestones that must be achieved if progress payments are to form part of the tender process.

4.7.6 Ownership of Intellectual Property, Disclosure and/or Subsequent Use of Information.

Where appropriate these factors should be specified. This may be necessary to protect council's interest in software or systems being developed, or for copyright of other items being written or produced. Some invitations seek preliminary proposals and ideas which are used as a basis for short-listing firms for a second round of bidding. In such cases council must respect the confidentiality of responses and the intellectual property of firms. This is particularly relevant where council may be tempted to use an innovative idea of a firm in a specification for issue to other firms. It is desirable to declare any such intent so that the owner of the intellectual property rights can elect to grant a license to use the rights and to negotiate an appropriate fee and/or restrict the form of license. Legal advice should be sought before pursuing that option

- 4.7.7 The documents must also include the requirement for all persons/companies submitting a tender to complete the Tenderer's Declaration as set out in Appendix 11. Any tender not submitting this declaration will be considered invalid. A Tenderer's disclosure of any potential conflict of interest will be evaluated by council's TRC to determine their impact on the overall probity of the Tenderer's submission. Disclosure of a potential conflict of interest will not necessarily result in the disqualification or non-consideration of the Tenderer's submission.

#### **4.8 Criteria for Assessment of Tenders**

- 4.8.1 Clause 170(16) of the General Regulation requires council to specify, in the tender documents, the criteria on which the assessment of tenders will be based. The criteria should contain the critical factors that will make the project successful. These include, but are not limited to, the following:

- \* conformity with tender requirements
- \* innovation
- \* value for money
- \* construction period or length of service period
- \* technical, management, physical, environmental management and financial resources to be applied to the project including risk management
- \* quality assurance
- \* industrial relations and OHS&R performance record
- \* price compared with estimated cost
- \* current commitments
- \* previous performance of contractor
- \* ability to trade electronically
- \* local supplier preference (all other criteria being equal).

#### **4.9 Specification for Supply of Goods**

- 4.9.1 Where the proposed contract is for the supply of goods the specification should include precise details of the product required. The description should specify the type, class, style, grade or other identification, number or quantity, time or period of delivery and delivery charges. Where applicable, requirements should be included for submission of drawings, engineering standards, technical details and for approval of samples and inspections prior to acceptance

#### **4.10 Lodgement of Tenders by Facsimile**

The tender documents must clearly state that Tenders may be lodged by facsimile on (02) 4780 5555 (Records and Archives fax number) provided that the transmission is complete and sufficient time has been allowed for the submission to be lodged in the tender box by the advertised closing time. Tender documents must also state that:

- \* Tenders must not be lodged on any other number without the prior agreement of council
- \* The availability of facsimile facilities at all times or the confidentiality of tenders lodged by facsimile cannot be guaranteed
  
- \* Facsimile transmissions not completed and lodged in the tender box

## **Preparation of Tenders Documents**

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- by the closing time will be invalid
- \* Facsimile submissions must provide the tender amount and all other essential information in accordance with the specification
- \* Satisfactory independent evidence of dispatch of the formal tender documents prior to the closing time must be provided either with the facsimile transmission or with the formal submission for the tender to be considered valid
- \* Formal tender documents must be received within two (2) working days to allow the facsimile lodgement to be considered valid
- \* It is recommended that Tenders not be lodged by facsimile.

**Failure to meet these requirements will render the Tender invalid (under Clause 6.1.3).**

**5 INVITING TENDERS**

**5.1 Scope**

5.1.1 This section applies to tenders invited under the selective tendering methods for particular projects and particular kinds of projects, and to tenders invited by public advertisement under the open tendering method.

**5.2 Inviting Selective Tenders**

5.2.1 The manager responsible for the project shall invite tenders from selected persons or firms approved by council for a particular proposed contract or from a list approved by council for particular kinds of proposed contracts.

5.2.2 The letter of invitation shall be in a similar format to that set out in Appendix 4. It must give details of where and when tender documents can be obtained and the purchase price (if applicable), and indicate that tenders must be submitted by a specified time on a date that is at least 21 days after the date of the invitation.

5.2.3 A copy of the letter of invitation and the tender documents must be referred to the TRC for dealing with the tenders in the normal course. See 5.4 below.

**5.3 Inviting Open Tenders**

**Preparation of Draft Advertisement**

**5.3.1 The advertisement will be prepared by the initiating officer**

5.3.2 It is essential that the advertisement satisfies the requirements of Clause 167 of the General Regulation and the Code of Tendering. The advertisement must:

- (i) be placed in a Sydney metropolitan daily newspaper and either or both a newspaper circulating in Council's area or a newspaper circulating in the district where potential tenderers are likely to be carrying on business or to be residing
- (ii) express the purpose of the proposed contract (a description of the work, goods, services or property concerned)
- (iii) give details of where and when tender documents can be obtained and the purchase price of those documents (indicate the nominated officer and telephone number of the person to be contacted in that regard)
- (iv) specify the name of the contact person and how that person can be reached to enable enquiries to obtain additional information (technical information in relation to the proposed contract)
- (v) invite any person willing to fulfil the requirements of the proposed contract to submit a tender by a specified time on a date at least 21 days after the date (or first date) of publication
- (vi) state that "the lowest or any tender will not necessarily be accepted"

- (vii) display, in respect of proposed construction contracts the words “Tenderers are required to comply with the Local Government (General) Regulation 2005 and the New South Wales Government’s Code of Tendering for the Construction Industry”.

- 5.3.3 The initiating officer should also determine whether the tender document is to appear on council’s website as a downloadable document. They should also consider whether a document fee is to apply to hard copies obtained. This should be discussed with the TRC prior to printing to ensure that a minimum number of specifications are produced. Specifications to be lodged on council’s website are to be electronically provided to IT in two parts – one part comprising the full specification and one part comprising documentation to be completed and submitted with the tender.

### **Design and Placement of Advertisement**

- 5.3.4 Consideration should be given to the requirement of the ICAC “Practical Guide to Corruption Prevention” concerning the design of advertisements to attract the attention of bidders in the relevant industry or location and the placement in appropriate journals as well as newspapers. The size and placement of the advertisements will be commensurate with the value, importance and nature of the proposed contract.

### **Distribution of Copies of Advertisement**

- 5.3.5 The initiating officer shall ensure that copies of the approved advertisement are forwarded to:

- \* Records and Archives to assist with identification of tenders
- \* Contact persons named in the advertisement
- \* Business & Information Centre
- \* The Internal Auditor for referral to the TRC.

### **Advertising deadlines**

- 5.3.6 For advertisements to appear in the following week’s Sydney Morning Herald (Tuesday) and Blue Mountains Gazette (Wednesday), advertisements need to be completed and forwarded to the Administration Assistant, in Executive Services, by no later than 11am on the preceding Thursday.

The initiating officer will also have to coordinate a meeting of the Tender Review Committee in accordance with the requirements set out in Clause 2.4. This should be held by the Tuesday preceding the advertisement lodgement. A tender will not be advertised until the review is complete and signed off.

## **5.4 Issue of Tender Documents**

- 5.4.1 The initiating officer may direct documents to interested persons, either nominated by the initiating officer or from known historic data.

- 5.4.2 One set of tender documents and drawings shall be supplied to the Internal Auditor for referral to the TRC.

- 5.4.3 The initiating officer shall maintain a Document Issued Register and enter details of the persons and companies who have been issued with expressions of interest documents. These details will include the name of

those persons or companies, contact details and date of issue.

- 5.4.4 Information shown in the Document Issued Register must not be disclosed to any persons enquiring as to which companies have been issued with tender documents. This is to minimise the possibility of collusion between tenderers.

### **5.5 Requirements During Tender Period**

#### **Tender Inquiries**

- 5.5.1 In accordance with the Code of Tendering for the Construction Industry (Department of Local Government) and the Code of Tendering, AS 4120, information must not be given to one tenderer without being given to all tenderers.

#### **Errors in Tender Documents**

- 5.5.2 If an inquiry reveals a significant error, omission, ambiguity or discrepancy in the tender documents, the information provided to resolve the problem must be conveyed promptly in writing to all tenderers.

#### **Pre-tender Briefing**

- 5.5.3 If the tender documents require pre-tender briefing conferences, such meetings must be minuted, and the minutes forwarded to all tenderers and become part of the tender documents.

#### **Amendment to Tender Documents**

- 5.5.4 Where it becomes necessary to amend tender documents during the tender period, the amendments must be forwarded to all tenderers as an addendum in sufficient time for full and proper consideration before tenders close. The addendum should clearly state that it forms part of the tender documents. Tenderers should be requested to acknowledge receipt of an addendum in writing and to confirm in their tenders that allowance has been made therein for each addendum. When an addendum is issued, consideration should be given to extending the tender period in accordance with Clause 172 of the General Regulation (particularly if the amendment is issued within three (3) working days of the closing date). If more than one addendum is issued they must be numbered in the order of issue.

### **5.6 Receipt and Custody of Tenders**

- 5.6.1 This section applies both to tenders and expressions of interest.
- 5.6.2 Persons delivering tenders by hand are to be directed to the locked tender box located in the foyer of the Headquarters, Katoomba and instructed to personally place their tender in the box. The keys of the tender box shall be kept by the appropriate person. The tender box shall not be opened except for the extraction of tenders at the appropriate time. If a tender is too bulky to fit into the tender box it must be immediately referred to the Records and Archives who shall keep it secure and produce it when the tender box is opened.
- 5.6.3 Tenders received by post or by courier must be clearly identified and handed by the receiving officer to the appropriate person who shall place them in the

## Inviting Tenders

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tender box without delay.

- 5.6.4 Tenders received by telex, facsimile machine or other telegraphic device must be clearly identified and handed promptly to the appropriate person who shall seal them in an envelope endorsed with the description of the tender, and place them in the tender box.
- 5.6.5 Prior to the advertised closing time the appropriate person shall check to ensure that all tenders received by mail or fax have been placed in the tender box. The Records and Archives supervisor should be advised that tenders may be received by facsimile transmission and that these must be referred immediately to the appropriate person for attention in accordance with 5.6.4 above.
- 5.6.6 If any tenders received by mail prior to the closing time are inadvertently opened, the contents should be replaced in the envelope, resealed, dated, and initialled by the Records and Archives Supervisor and handed to the appropriate person for placing in the tender box.

### **5.7 Opening of Tenders**

- 5.7.1 This section applies both to tenders and expressions of interest.
- 5.7.2 Tenders will be taken from the tender box and opened by the appropriate person, who has been designated by the General Manager as the appropriate person. They must be removed and opened in the presence of the Internal Auditor or his representative if available and at least two other persons from the panel designated by the General Manager. The appropriate person must give adequate notice to those required to be present.

The following opening procedures in relation to the opening of tenders shall be followed:

- \* A stamp, indicating the date of the opening and provision for the signature of the 3 members of the opening panel, shall be affixed to all pages showing a price relevant to the tender, i.e. lump sum, breakdown of the lump sum, schedule of rates etc
- \* Supporting pages showing details of previous projects completed or financial details (i.e. balance sheets, profit and loss statements) shall be stamped but need not be signed. All other supporting pages do not need to be stamped
- \* In the event that multiple copies are received, one complete set shall be endorsed 'original' stamped and signed as appropriate, while the other copies shall be endorsed 'copy only' with the leading page stamped and signed.

- 5.7.3 Tenderers and members of the public may attend the opening of tenders but are not entitled to receive any information about the tenders other than whether council has received a particular tender and the number of tenders received. (Clause 175 of the General Regulation).
- 5.7.4 After the envelopes have been removed from the tender box, any tender envelopes which relate to other tenders not yet closed shall be replaced in the tender box. Any envelope not clearly endorsed shall be opened and identified and if it relates to a tender not yet closed, it shall be resealed, properly endorsed with the description of the relevant tender, dated, initialled

## Inviting Tenders

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by all members of the panel, and replaced in the tender box. The tender box shall then be locked.

- 5.7.5 Any tender identified as relating to a tender which has previously been closed, should be initialled by all members of the panel, time and date stamped and registered with the Records and Archives. The appropriate person shall amend the Summary of Tenders list by inserting details of the tender as a tender received after the closing time and the time on which it was opened. The appropriate person and the initiating Manager shall determine whether or not the tender should be considered as a late tender.
- 5.7.6 The remaining tenders shall then be placed in groups for each of the tenders closing on that day.

### 5.8 Recording of Tenders

#### Preparation of Tender List

- 5.8.1 As soon as practicable the appropriate person must record the apparent amounts tendered and prepare a list of Tenders Received (Appendix 5) specifying the names of tenderers in alphabetical order and including any other information considered appropriate by the appropriate person. (Clauses 175(3) and (4) of the General Regulation)

The values of each tender shall not be disclosed and, if appropriate, additional wording such as: ***“This list is in alphabetical order as the apparent order of price has not been determined”*** may be included as a disclaimer under Section 175 of the General Regulation.

#### Summary of Tenders Received

- 5.8.2 A Summary of Tenders Received list recording apparently tendered amounts is to be prepared for file purposes (refer Appendix 5). This is in accordance with Section 175(3)(a) of the Local Government (General) Regulation 2005.

#### Registration and Filing

- 5.8.3 On completion of the relevant documentation the appropriate person shall refer all tenders and the summary of tenders to the Records and Archives for filing and registration as correspondence in the correspondence register. Note: This should be done on the closing date of the tender. However, if there is a large number of submissions or there is more than one tender, this can be undertaken the following day.
- 5.8.4 Where tender deposit cheques are received, the appropriate person shall lodge the cheques with the Cashier, obtain receipts on the same day and include the receipts with the tender documents on the respective file.
- 5.8.5 The originals of all tender documents including receipts for tender deposits where applicable) are then to be forwarded to the initiating Manager for evaluation and the preparation of a report to Council as soon as practicable.

### **Public Display of Tender List**

- 5.8.6 Immediately after preparing the Tender List, the appropriate person must place it on display on the notice board in the foyer of the Administrative Headquarters, Katoomba where it can be readily seen by members of the public. (Clause 175(4) of the General Regulation). This list will not disclose the amount tendered.

### **Confidentiality and Security of Tenders**

- 5.8.7 Tenders, when not required for processing and evaluation, must be secured in a safe place to safeguard confidentiality.
- 5.8.8 Information contained in tenders must be kept confidential at all times and only made available on a need-to-know basis. No information shall be divulged to another tenderer at any stage other than the information which is publicly available in the tender list referred to in Clauses 5.8.1 and 5.8.6 above.

**6 EVALUATION, REPORTING AND ACCEPTANCE OF TENDERS**

**6.1 Evaluation of Tenders**

**Prompt Attention to Tenders**

6.1.1 Clause 177(1) of the General Regulation requires that tenders must be assessed as soon as practicable after the closing date.

**Tenders Not to be Considered**

6.1.2 This section applies to the rejection of both tenders and expressions of interest.

6.1.3 Consideration shall not be given to the following tenders and the reasons for rejection must be clearly documented:

- (i) tenders received by council after the advertised closing time, unless received within five (5) working days thereafter and the tenderer is able to provide evidence that those tender documents and all other requisite and essential information were posted or lodged at the Post Office or other recognised delivery agency in sufficient time to enable the documents to have been received by council before the advertised closing time
- (ii) tenders not submitted on formal tender documents where specified by council that formal documents must be submitted in accordance with Clause 177(4) of the General Regulation
- (iii) tenders received by facsimile that do not comply with the requirements as set out in Clause 4.10
- (iv) an alternative tender unless it was specifically invited or a conforming tender was also submitted
- (v) Tenders received after the closing time shall be endorsed with the time of receipt and signed by the appropriate person and the Internal Auditor
- (vi) The appropriate person shall contact the tenderer, if appropriate, to establish whether there are grounds to consider the tender valid
- (vii) Subject to the results of (2) above, the appropriate person shall immediately advise the tenderer in writing whether their submission is valid or invalid
- (viii) All submissions declared invalid shall be registered and held by Records and Archives until the tender process has been finalised. The invalid tender will then be placed on file

- (ix) Such tenders shall be sealed and will only be released upon the authority of the Internal Auditor.

6.1.4 All tenders apart from those rejected under 6.1.3 above must be considered.

**Tender Evaluation Panel**

6.1.5 The manager responsible for the contract shall refer the tenders to the Tender Evaluation Panel appointed to assess the tenders. (See Clause 2.3 of the Procedures).

6.1.6 Members of the Panel must be invited, in accordance with council's Code of Conduct, to disclose any pecuniary or non-pecuniary interest they may have in the matter. Any disclosures must be referred to the General Manager for determination.

6.1.7 The Panel shall ensure that all relevant schedules have been completed, all necessary documents submitted and that the tender is in conformity with the tender documents issued by council.

6.1.8 In evaluating the tenders the Panel should give consideration to the following:

- (i) experience of the tenderer in fulfilling the requirements of similar contracts
- (ii) capacity of the tenderer to fulfil the requirements of the proposed contract
- (iii) the selection criteria as specified in the tender documents issued by council (See 4.8.1)
- (iv) the contract price.

**Weightings**

6.1.9 Before the evaluation commences, the Panel should meet to determine the weightings to be allocated to each of the criteria to be used in the evaluation process. Not all criteria will be of equal weight because some will have a greater impact than others depending upon their importance. Furthermore, the weightings given to criteria will vary from one contract to another and weights should therefore be determined for each contract having regard for its particular characteristics.

6.1.10 The usual method of allocating weights is to allocate to each of the criteria a value out of 100, i.e. with the values for all criteria totalling 100. A score is given by each panel member to each of the criteria satisfied by a tender which is then multiplied by the relevant weightings factor to obtain the weighting score for that tender. That process is completed for each tender and the weighted scores made by each panel member aggregated for all tenders to ascertain a preferred tender.

6.1.11 All tender evaluations shall be fully documented by the manager responsible for the contract to substantiate the reason for the recommended selection.

## **6.2 Variations to Tenders**

6.2.1 Clause 176 of the General Regulation provides that tenders may be varied in certain circumstances. These requirements should be carefully noted and they are quoted in full below:

“176 (1) At any time before a council accepts any of the tenders that it has received for a proposed contract, a person who has submitted a tender may, subject to subclause (2), vary the tender:

- (a) by providing the council with further information by way of explanation or clarification, or
- (b) by correcting a mistake or anomaly.

(2) Such a variation may be made either:

- (a) at the request of the council, or
- (b) with the consent of the council at the request of the tenderer, but only if, in the circumstances, it appears to the council reasonable to allow the tenderer to provide the information or correct the mistake or anomaly.

(3) If a tender is varied in accordance with this clause, the council must provide all other tenderers whose tenders have the same or similar characteristics as that tender with the opportunity of varying their tenders in a similar way.

(4) A council must not consider a variation of a tender made under this clause if the variation would substantially alter the original tender.”

6.2.2 When communicating with tenderers, care must be taken to ensure that no indication is given of the possible outcome of the evaluation. Communication should be limited to seeking further particulars, explanation or clarification but care should be taken to ensure that any variation which might arise is dealt with strictly in accordance with Clause 176 of the General Regulation. It may be preferable in larger contracts to call a meeting of tenderers where all tenderers have an equal opportunity to provide explanations and to consider the need for variations. All communications with tenderers must be recorded.

## **6.3 Tender Review Committee**

6.3.1 Before submission of a report to Council detailing the recommendations of the Tender Evaluation Panel, the responsible manager shall present a draft of the report to the Tender Review Committee. Copies of the tenders, the contract files, supporting documentation and working papers justifying the recommendation must be presented with the draft report. Further details are available as per Clause 2.4.

## 6.4 Report to Council

6.4.1 A report to Council concerning acceptance of a tender is to be prepared by the responsible Manager at the earliest practical opportunity. The report shall include a comparison of all tenders submitted and reasons as to why the selected tender is recommended. **The responsible Managers shall have undertaken checks and searches on the successful tenderer, including financial checks and company searches.** The report and recommendations must address the following:

- \* the reasonableness of the recommended tender
- \* the reasons for passing over any tender lower in price than the recommended tender
- \* the ability of the recommended tenderer to satisfactorily carry out the work
- \* justification for accepting a tender well below the market price for the work or accepting any departures from the tender documents
- \* availability of the site
- \* availability of funds
- \* the reasons for not recommending the acceptance of any tender and the action which should follow
- \* authority for affixing the seal to the contract documents.

The report to Council is to be signed by the relevant Group Manager and include a statement that the Tender Review Committee has reviewed the tender procedures and is satisfied as to the fairness of the process.

6.4.2 The evaluation methodology and evidence supporting the decision for acceptance of a tender by Council shall be fully documented and held on file.

6.4.3 Tenderers shall not be advised of report details or recommendations prior the Council meeting. Staff should ensure, in that regard, that tenderers are given no information until the business paper is finalised and then provided only with the time and place of the meeting where tenders will be considered and where business papers are available to the public. Care must be taken to ensure that no information is divulged which is proposed to be considered by Council in the confidential session to be closed to the public.

6.4.4 It is necessary that commercial information other than lump sum figures is not disclosed in an ordinary report or attachments. Should it be necessary to provide this information to Council for its consideration then this should be supplied in the form of a confidential report or confidential attachments.

## 6.5 Acceptance of Tenders

6.5.1 After considering the tenders submitted for a proposed contract and the report and recommendations thereon, Council must, in accordance with Clause 178 of the General Regulation, do either of the following:

- (i) accept the tender which appears to be the most advantageous to council having regard for all the circumstances; or
- (ii) decline to accept any of the tenders.

- 6.5.2 There are a number of courses open to Council if it decides not to accept any of the tenders submitted or if no tenders are received. The Council may, by resolution, do one of the following:
- (i) postpone the proposed project
  - (ii) cancel the proposed contract entirely
  - (iii) invite fresh tenders using any of the three tendering methods using the same or different details
  - (iv) carry out the requirements of the proposed contract itself
  - (v) enter into negotiations with any person in accordance with Clause 178(3)(e) of the General Regulation with a view to entering into a contract. Councils are prevented to vary contracts during the negotiation process so that they no longer reflect the substance of the contracts initially tendered. Negotiations may be entered into with any person whether the person was a tenderer or not. The resolution must state the reasons for deciding not to call or invite fresh tenders. (See below).
- 6.5.3 If Council decides to enter into post tender negotiations in accordance with (v) above the requirements of the Code of Tendering - Practice Note 8(a) and the Code of Tendering - AS 4120 should be carefully noted. Both codes state that the principal (Council) should not, in post tender negotiations, seek to trade off different tenderers prices against others in an attempt to seek lower prices. This is regarded as “unconscionable” conduct and amounts to “bid shopping”. Council should first exhaust negotiations with the initially preferred tenderer before negotiating with a subsequent tenderer in order to achieve a conforming tender.
- 6.5.4 When the tenders have been dealt with by Council, tenderers shall be notified by the responsible Manager as to the outcome of their tenders. If no tenders are accepted the tenderers must be advised of the terms of Council’s resolution. (See 6.5.2 above and Appendices 9 and 10 for examples of correspondence).
- 6.5.5 The responsible Manager shall prepare a Result of Tender notice in accordance with the requirements of Clause 179(b) of the General Regulation. The notice must specify the name of the successful tenderer and the amount of the tender. If no tender is accepted by Council, the notice should be to that effect and specify the action proposed by Council. (See Appendix 7). The notice shall be displayed on the notice board in the foyer of the Headquarters, Katoomba where it can be readily seen by members of the public. The notice should also be published on council’s website.
- 6.5.6 Clause 178(2) of the General Regulation requires that every contract entered into as a result of a tender must be in accordance with the tender, or as it may be modified by any variation under Clause 176 of the General Regulation.

## **7 CONTRACTS AND DOCUMENTATION**

### **7.1 Forms of Contract**

7.1.1 The following forms of contract are available:

- \* Australian Standard AS2124-1986 is the main form of contract for building or civil works and services of any value. The standard was re-issued in 1992 but there are a number of legal issues which require resolution before it comes into general use
- \* Public Works Minor Services or Works General Conditions are used by the Department of Public Works and Services for building or civil works and services up to a value of \$250,000
- \* NPWC3 General Conditions of Contract issued by the National Public Works Council is available for works such as roads and bridges
- \* The RTA uses the RTA General Conditions of Contract for Minor Contracts for works supervised by the Authority
- \* For the supply or supply and installation of equipment or items which are manufactured off-site, the contract documents can be based on AS2987 General Conditions of Contract for the Supply of Equipment With or Without Installation.

7.1.2 Tender documents which later form the basis of a contract must contain the following (See also Clause 4.7.1):

(i) Contractual/commercial conditions comprising:

- \* Notices to tenderers
- \* Conditions of Tendering
- \* General Conditions of Contract
- \* Annexure to the General Conditions
- \* Preliminaries/Special Conditions of Contract.

(ii) Details of the extent of work under the contract

(iii) Technical requirements, including performance requirements or standards of workmanship and materials and drawings.

### **7.2 Completion Time**

7.2.1 The completion time for the works must be clearly specified in the Annexure to the General Conditions. It should be realistic and based on the following factors:

- (i) the needs of council
- (ii) the availability of the site and any site restrictions, if applicable
- (iii) an allowance for extensions of time due to such occurrences as wet weather
- (iv) the availability of resources to the contractor including labour, materials and finance.

**7.3            Extent of the Work**

7.3.1            The extent of the work must be clearly defined in the tender documents forming part of the contract and should cover all work to be carried out under the contract.

7.3.2            A contract must not be varied to include additional work except where circumstances arise which could not have reasonably been foreseen when the work was being documented for calling of the tender.

**7.4            Use of Brand Names**

The use of brand names in tender and contract documents should be limited to where this is the only satisfactory method of specifying requirements. Care must be taken to ensure that all suitable proprietary items are specified rather than a limited number.

**7.5            Letter of Acceptance**

7.5.1            The letter of acceptance of a tender should include the following details:

- (i)     date of Council meeting
- (ii)    details of resolution
- (iii)   the contract sum
- (iv)    details of security deposit required when signing contract
- (v)    arrangements for signing of the contract agreement pointing out the need to affix the company seal and letter of authority for person signing the contract (Note: the contract must be signed by the Managing Director or the Company Secretary or a person authorised by both of those officers in writing)
- (vi)    arrangements for insurances.

**7.6            Contract Documents**

The contract documents shall be bound in the following order:

- \*     Instrument of Agreement
- \*     Specifications
- \*     Relevant correspondence
- \*     Schedules
- \*     Form of Tender
- \*     Conditions of Tendering and Contract
- \*     Copy of acceptance letter
- \*     Drawings
- \*     Brochures and other literature.

**7.7 Execution of Contract by Council**

- 7.7.1 The initiating Manager shall make arrangements for signing of the contract agreement by Council and affixing the seal.
- 7.7.2 The contract shall be signed by the Mayor and the General Manager or by at least one Councillor other than the Mayor and the General Manager or otherwise in accordance with council's Code of Meeting Practice and its delegation.
- 7.7.3 The original of the contract shall be filed as a legal document.
- 7.7.4 To ensure that a budget commitment is achieved within the Financial Management System an electronic requisition shall be raised authorising the creation of a Purchase Order. The requisition must contain details of the resolution of Council by providing the meeting date and minute. All invoices submitted must contain the Purchase Order number to ensure that the correct commitment value is maintained.

**7.8 Contracts Register**

- 7.8.1 The following details shall be entered in the Contracts Register maintained by Accounts Payable:
  - \* Contract number
  - \* Nature of contract
  - \* Name and address of contractor
  - \* amount of contract or rates
  - \* deposit paid, date and receipt number or details of bank guarantee
  - \* minute number of Council resolution accepting the tender
  - \* security deposit or retention amount.

- 7.9 The initiating officer shall advise Purchasing Services Unit of the outcomes of the tender. This advice shall include the contract lump sum. In a case of schedule of rates contract the pricing schedule shall be forwarded to Purchasing Services Unit and Internal Auditor.

**8 CHECKLISTS**

**8.1** In the following appendices are attached checklists which are to be used by staff engaged in tendering procedures, by internal audit and by the Tender Review Committee in the review process.

**8.2** Checklists of Tendering Procedures cover:

- \* Project Planning and Initiation
- \* Procurement Strategies
- \* Documentation
- \* Inviting Tenders
- \* Opening of Tenders and Expressions of Interest
- \* Evaluation of Tenders
- \* Report to Council
- \* Acceptance of Tenders.

## TENDER PLANNING TIMELINE

Once the need to call a tender has been established, the initiating officer must complete the following timeline. This timeline works back from the date of the proposed Council Meeting. This should be retained on file with a copy sent to the Internal Auditor and the Senior Accountant (Corporate Policy). This timeline is available electronically from staff intranet under BMCC Policies.

Description of task	Example Dates
<ul style="list-style-type: none"> <li>• Date of proposed Council Meeting</li> </ul>	25/6/02
<ul style="list-style-type: none"> <li>• Date of proposed TRC review (allow 3 day window)</li> </ul>	17-18/6/02
<ul style="list-style-type: none"> <li>• Council report preparation</li> </ul>	12-14/6/02
<ul style="list-style-type: none"> <li>• Tender Evaluation Panel review</li> </ul>	12-13/6/02
<ul style="list-style-type: none"> <li>• Opening of Tender (Tuesday)</li> </ul>	11/6/02
<ul style="list-style-type: none"> <li>• Tender period</li> </ul>	21/5/02 - 11/6/02
<ul style="list-style-type: none"> <li>• Date of first advertisement</li> </ul>	21/5/02
<ul style="list-style-type: none"> <li>• Date of initial TRC review</li> </ul>	15/5/02
<ul style="list-style-type: none"> <li>• Draft advertisement and hard copies of specification</li> </ul>	16/5/02
<ul style="list-style-type: none"> <li>• Preparation of specification</li> </ul>	6-16/5/02
<ul style="list-style-type: none"> <li>• Approval to go to tender/tendering method sought</li> </ul>	6/5/02
<ul style="list-style-type: none"> <li>• Pre-planning - funding/other requirements</li> </ul>	6/5/02

**CHECKLIST FOR THE TENDER PROCESS**

1. Need to call a tender is established in line with the Management Plan/Capital Works budget/Operating budget.
  
2. Estimate of cost established (**cl 2.7**)
  - Estimate to include design/documentation fees, contingencies, supervision costs.
  - Estimate to be realistic and verifiable.
  - Estimate must be documented and placed on file.
  
3. Budget/funding provisions checked (**cl 2.1.2**)
  - Is there funding available?
  - Is this provided in the budget?
  
4. Tender planning documentation completed (**cl 2.2 and Appendix 1 & 2**)
  
5. Approval to go to tender and the tendering method obtained (**cl 1.5**)
  - For those tenders where cost estimate is less than \$250K - approval by Group Manager.
  - For those tenders where cost estimate is greater than \$250K - approval from General Manager (Executive Officer).
  
6. Tender specification prepared (**cl 3.2 (EOI) & 4.7 (Tenders)**). Ensure that specification includes the following (as appropriate):
  - Contract conditions
  - Extent/description of work
  - Technical requirements
  - Completion time

## Checklists

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- Details of instalments
  - Evaluation criteria
  - Contact details of initiating officer
  - Requirement for the submission of formal tender documents
  - Encouragement for innovation
  - Statement of necessity for compliance with NSW Government Code of Practice
  - Arrangements for the opening of the tender box
  - Declaration by Tenderers (**Appendix 11**)
7. Initial review by Tender Review Committee (TRC) (**cl 2.4**)
- Cost estimate, approval to go to tender, tender specification presented to the TRC
8. Advertisement drafted by the initiating officer. The minimum information to be supplied is set out as follows (**cl 3.3.2 (EOI) & 5.3.2 (Tenders)**)
- Purpose and description of work/materials/services
  - Placement/coverage/date of advertisement
  - Price of documentation
  - Contact officer
  - Account number(s) to be charged for cost of advertisement
  - Whether specification is downloadable
  - Information required by 3pm on the Tuesday preceding advertisement (**cl 3.3.7 (EOI) and 5.3.7 (Tenders)**)
9. Hard copies of the specification available for distribution by the initiating officer prior to first advertisement
- Required by the Tuesday preceding advertisement (**cl 3.3.7 (EOI) & 5.3.7 (Tenders)**)

## Checklists

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10. Tender advertised:

- Minimum period of 21 days
- Period can be shortened - **cl 1.6.2**
- Period can be extended - **cl 1.6.3**

11. Tender closing date - opening of submissions by approved persons  
**(cl 1.5.7)**

- Schedules showing prices must be signed and stamped
- Supporting pages showing previous work, financial statements should be stamped but need not be signed
- Pages showing company details/curriculum vitae etc need not be signed/stamped
- Where multiple copies of the submission are received, one set shall be stamped and signed (as above). The other copies shall have the front page endorsed "copy only" with the leading page stamped and signed

12. Summary of submissions lodged is prepared by the appropriate person **(cl 5.8.1)**

- Copy to Internal Auditor
- Copy to initiating officer
- Copy placed on the noticeboard in the foyer

13. Tender Evaluation Panel (TEP) convened by the initiating officer  
**(cl 2.3 & 6.1.5)**. Made up of:

- (i) Initiating officer
- (ii) At least one other staff member with relevant skills in the area of the tender
- (iii) At least one other person with no interest in the outcome (independent). This person can either be a member of staff or from outside council

## Checklists

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14. Meetings of TEP (**cl 2.3 & 6.1.5**).

Items to address and document on file:

- (i) Disclosure by members of the TEP of any potential pecuniary or non-pecuniary interests
- (ii) Minutes to be taken of all meetings
- (iii) Report/working papers etc outlining TEP's decision? (if not outlined in the minutes)

15. Formal evaluation by TEP (**cl 6.1.5**)

- (i) Evaluation criteria as outlined in the specification only to be utilised
- (ii) TEP should determine weightings of criteria before evaluation commences

16. Report to Council prepared (**cl 6.4**)

Report should include as a minimum:

- Comparison of submissions
- Selected tenderer
- Reasons for not accepting a lower priced tender
- Ability to carry out the work
- Availability of site and of funds
- Reasons for not accepting any tender (if applicable)
- Statement by the TRC

17. Second meeting of TRC (**cl 2.4**)

- Needs to be planned on (as per planning timeline) and the TRC notified (allow at least 2 days for TRC review)
- Will review adherence to the policy

## Checklists

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18. Councillor Briefing Session (if applicable) and EMT

A presentation will need to be prepared for a Councillor Briefing Session under the following circumstances:

- (i) Where Councillors request a briefing
- (ii) The General Manager is of the opinion that a briefing is appropriate
- (iii) The value of the tender exceeds \$1 million

However, all draft reports to Council will need to be put to the relevant meeting of the EMT.

19. Council Meeting held (**cl 6.5**)

Council must at the meeting:

- (i) Accept the tender which appears to be most advantageous, or
- (ii) decline to accept any of the tenders

Further information is available at **cl 6.5.2** if Council resolves to decline to accept any of the tenders.

20. Initiating officer to prepare a "Result of Tender Notice". A copy of this should be:

- (i) Placed on the noticeboard in the foyer at HQ
- (ii) Sent to the Internal Auditor (by email)
- (iii) Sent to the Purchasing Services Unit (by email)
- (iv) Sent to the IT (by email) for publication on council's website

21. Initiating officer shall advise the successful and unsuccessful tenderers of the outcome of their submissions.

## Checklists

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22. Contract documents are to be prepared to include (in order) **(cl 7.6)**
- Instrument of Agreement
  - Specifications
  - Relevant correspondence
  - Schedules
  - Form of tender
  - Conditions of tendering and contract
  - Copy of acceptance letter
  - Drawings
23. Contract executed **(cl 7.7)** & Electronic Requisition raised authorising the creation of a Purchase order.
24. Contract Register updated:
- contact Accounts Payable
25. Post tender review undertaken by the Tender Review Committee.
26. Notify PSU & IA of contract sum and/or schedule of rates.

This checklist is available electronically from staff intranet under: BMCC Policies Tendering Policy.

**Prepared by:** \_\_\_\_\_  
Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**BLUE MOUNTAINS CITY COUNCIL**

**INSTRUMENT OF APPROVAL BY GENERAL MANAGER  
CALLING OF TENDERS**

**A. DETAILS OF PROPOSED TENDER**

**Items to be Purchased:**

**Estimated Value:**

**Items of Plant or Equipment to be sold or Traded-in:**

**Availability of Funds:**

**Tendering Method:**

**B. APPROVAL**

Approval is granted to the calling of tenders under Section 55 of the Local Government Act, 1993 in terms of the above and by the tendering method so stated. (If applicable add: Approval is also given to the sale or trade-in of the items indicated above.)

**M.WILLIS  
General Manager**

**Date:**

**EXAMPLE INVITATION TO TENDER**

**Environmental & Customer Services**

Reference File: CO6715

20 February 2002

Mr A Jones  
Jones Construction Pty Ltd  
49 Industrial Road  
PENRITH NSW 2750

**Subject: Expressions of Interest – Invitation to Tender for Construction of  
Roads at Katoomba – Contract No 1/02**

---

Reference is made to your application dated 3 February 2002 expressing an interest in tendering for the construction of Gold, Silver and Copper Streets, Katoomba comprising the construction of roads, drainage, concrete footpaths and kerb and gutter.

All applications received were considered by Council at its meeting held on 17 February 1998. I have to advise that your application has been successful and that you have been placed on a short list of tenders for the works.

You are accordingly invited to tender for the works. The closing date for tenders will be 2.00pm on Tuesday 2 March 2002.

Tender documents are available from Council's contact officer on telephone (02) 4780 5657 between 8.30am and 5.00pm on business days upon payment of a non-refundable fee of \$50.00.

Tenderers are required to comply with the Local Government (General) Regulation, 2005 and the NSW Government Code of Practice and Code of Tendering for the construction industry. The lowest or any tender will not necessarily be accepted.

Formal tenders must be submitted. The tenders must be placed in a sealed envelope endorsed "Tenders for Construction of Roads – Katoomba, Contract No 1/02" and either placed in the tender box located in the foyer on the ground floor of the Administrative Headquarters, Katoomba or posted to the address shown below.

Tenderers are invited to attend the opening of tenders immediately after the closing time.

Further information in relation to the proposed contract may be obtained from council's Roads Engineer, Mr William Smith on telephone (02) 4782 0535.

Yours faithfully,

MICHAEL EDGAR  
A/Group Manager, Environmental & Customer Services

**EXAMPLE NOTIFICATION TO UNSUCCESSFUL APPLICANT  
EXPRESSION OF INTEREST**

Environmental & Customer Services

Reference File: CO6715

20 February 2002

Mr G Green  
Green's Road Services Pty Ltd  
17 Pastures Road  
GREEN VALLEY NSW 2539

**Subject: Expressions of Interest – Tenders for Construction of Roads at  
Katoomba, Contract No 1/02**

---

Reference is made to your application dated 3 February 2002 expressing an interest in tendering for the above works.

All applications received were considered by Council at its meeting held on 17 February 2002 and I have to advise that your application has been unsuccessful. (or if applicable, Council has declined to invite tenders from any applicants).

I wish to thank you for your interest in this matter and trust you may care to respond to Council's requirements on some future occasion if the opportunity arises.

Yours faithfully,

NAME

Title

**NOTICE UNDER SECTION 16(3) / CLAUSE 16 3(A)**  
**LOCAL GOVERNMENT TENDERING REGULATION 1999**  
**BLUE MOUNTAINS CITY COUNCIL**

**Tender/Expression of Interest:**  
**Tender No:**  
**Contract Number:**  
**Group:**  
**Description of Work:**

**Closing Date:**  
**File Number:**  
**Branch or Unit:**  
**Contact Person:**

**Submissions Received:**

<b>CONTRACTOR'S NAME &amp; ADDRESS</b>
--

<b>APPARENTLY TENDERED AMOUNT</b>
---

The above list has been prepared in alphabetical order as the apparent order of price has not been determined at this stage.

Signed: ..... Group: Corporate Policy

**EXAMPLE 1 TENDER ADVERTISEMENT**

**BLUE MOUNTAINS CITY COUNCIL**

**TENDER FOR THE SUPPLY OF LABOUR AND MATERIALS FOR THE INSTALLATION OF ACOUSTIC CEILINGS, ALUMINIUM PANELS AND ASSOCIATED WORKS AT THE LOWER BLUE MOUNTAINS AQUATIC CENTRE, SPRINGWOOD**

**Contract 2003-116**

Tenders closing at 2pm on Tuesday 27 January 2004 are invited for the supply of labour and materials for the installation of internal suspended acoustic ceilings, mineral fibre tiles, aluminium panels internal and external, screw up cement board and associated works, Contract 2003-116.

Tender Documents are available from council's Project Management Administration Officers, Ms Anne Nadarajah or Ms Lisa Macqueen on telephone (02) 4780 5476, between 8.30am and 5pm on business days.

Tenders are required to comply with the Local Government (General) Regulation, 2005 and the NSW Government Code of Practice and Code of Tendering for the Construction Industry. The lowest or any Tender will not necessarily be accepted.

Formal Tenders must be submitted. Tenders must be placed in a sealed envelope, endorsed "Construction of Acoustic Ceilings, Aluminium Panels and Associated Works – Contract 2003-116" and either be placed in the tender box located in the foyer on the ground floor of the Administrative Headquarters, Katoomba or be posted to the address shown below.

Tenderers and members of the public are invited to attend the opening of submissions immediately after the closing time.

Further information in relation to the proposed contract, may be obtained from council's Construction Manager for this project, Ms Kaye Brennan, on (02) 4751 9073.

City of Blue Mountains  
Business & Information Centre  
2 Civic Place or  
Locked Bag 5  
Katoomba NSW 2780

Michael Willis  
General Manager

**EXAMPLE 2 TENDER ADVERTISEMENT**

**BLUE MOUNTAINS CITY COUNCIL**

**TENDER FOR –  
PROVISION OF KERBSIDE RECYCABLE MATERIALS COLLECTION SERVICE**

**Contract No. EM W01/2004**

Tenders closing at 2.00pm on Tuesday 14 October 2003 are invited for the provision of a kerbside recycling collection service for the City of Blue Mountains.

Tender documents are available from council's Administration Assistant, Ms Kerri Mergen on telephone (02) 4780 5588, between 8.30am and 5.00pm on business days upon payment of a non-refundable fee of \$50.00.

A Pre-Tender meeting will be held at 9.30am on Friday 3 October 2003 in the Council Chambers of the Council of the City of Blue Mountains at the address shown below. Attendance at this meeting is compulsory and Submissions will not be considered from a Tenderer who does not have a representative in attendance at this meeting.

Tenders are required to comply with the Local Government (General) Regulation, 2005 and the NSW Government Code of Practice and Code of Tendering for the Construction Industry. Council shall not be bound to accept the lowest or any Tender submitted.

Tenders must be placed in a sealed envelope, addressed to the General Manager, endorsed "Provision of Kerbside Recycling Collection Service – Contract No. EM W01/2004" and either placed in the tender box located in the foyer on the ground floor of the Administrative Headquarters, Katoomba or posted to the address shown below;

City of Blue Mountains  
Business & Information Centre  
2 Civic Place/  
Locked Bag 5  
Katoomba NSW 2780

Tenderers and members of the public are invited to attend the opening of submissions immediately after the closing time.

Further information, in relation to the proposed contract, may be obtained from council's Waste & Resources Engineer, Rachel Sutcliffe, on (02) 4780 5566 or email [rsutcliffe@bmcc.nsw.gov.au](mailto:rsutcliffe@bmcc.nsw.gov.au) (Monday, Wednesday & Friday only).

**Michael Willis**  
**General Manager**

**EXAMPLE EXPRESSION OF INTEREST ADVERTISEMENT**

**BLUE MOUNTAINS CITY COUNCIL**

**EXPRESSIONS OF INTEREST FOR PROVISION OF COMPANION ANIMAL  
IMPOUNDMENT FACILITY AND POUND OPERATOR**

**Reference Expressions of Interest No CA1**

Expressions of Interest closing at 2.00pm on Tuesday 3 February 2004 are invited for the provision of Companion Animal Management Facility and Pound Operator to serve the Blue Mountains Local Government Area.

Expressions of Interest Documents are available from council's Senior Environmental Ranger, Mr Jim Fishlock on telephone (02) 4780 5698 between 8.30am and 5.00pm on business days.

Expressions of Interest must be placed in a sealed envelope, endorsed "Expressions of Interest for Companion Animal Management Facility and Pound Operator" and be placed in the tender box located in the foyer on the ground floor of the Administrative Headquarters, Katoomba prior to advertised closing date and time.

Applicants and members of the public are invited to attend the opening of submissions immediately after the closing time.

Further information in relation to the Expressions of Interest, may be obtained from council's Branch Manager Environmental Health and Regulatory Compliance, Michael Edgar on (02) 4780 5707 or [medgar@bmcc.nsw.gov.au](mailto:medgar@bmcc.nsw.gov.au).

Blue Mountains City Council  
Business & Information Centre  
2 Civic Place/  
Locked Bag 5  
KATOOMBA NSW 2780

Michael Willis  
General Manager



**EXAMPLE LETTER OF ACCEPTANCE**

Environmental & Customer Services

Reference File: CO6715

20 March 2002

Mr A Jones  
Jones Constructions Pty Ltd  
49 Industrial Park  
PENRITH NSW 2750

**Subject: Contract 1/02 – Construction of Gold, Silver and Copper Streets,  
Katoomba. Letter of Acceptance of Tender**

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Reference is made to your tender dated 2 March 2002 for the above contract.

Council at its meeting held on 17 March 2002 considered all tenders received and resolved in the following terms:

“That the conforming tender submitted by Jones Construction Pty Ltd in the sum of \$757,000.00 be accepted and that the necessary contract documents be executed under the seal of Council”.

Accordingly you will be contacted in the near future so that the necessary contract documents may be completed. It should be noted in that regard that it will be necessary to affix the company seal to the documents and if a person other than the Managing Director or the Company Secretary is to sign the documents, that person will require an authority signed by both of those officers.

In accordance with Clause SC27 of the Specification please supply a security deposit in the form of a Bank Guarantee in the terms and form of Clause 5 of the General Conditions of Contract. This security shall be equal to five percent (\$37,850.00) of the contract sum.

Ten percent (10%) of the certified value of the work executed at each progress claim shall be retained to a maximum of 5 percent (\$37,850.00) of the contract sum.

Copies of all insurances required under Clause SC09 of the Specification shall be submitted prior to signing of the Contract. Could you please fill out the attached forms in regard to insurance requirements.

In accordance with the Annexure to the General Conditions of Contract, you are granted possession of the site as from 30 March 2002. The agreed time for practical completion shall be 30 June 2002.

Council is appreciative of your interest in this project and looks forward to your involvement in the creation of such assets for the people of the City of Blue Mountains.

Yours faithfully,

NAME  
Title

**EXAMPLE NOTIFICATION TO UNSUCCESSFUL TENDER**

**Environmental & Customer Services**

Reference File: CO6715

20 March 2002

Mr G Green  
Greens Road Services Pty Ltd  
17 Pastures Road  
GREEN VALLEY NSW 2539

**Subject: Tender for Construction of Roads at Katoomba – Contract No 1/02**

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Dear Sir,

Reference is made to your tender dated 3 March 2002 for the above works and have to advise that your tender has been unsuccessful.

After considering all tenders received, Council resolved at its meeting held on 17 March 2002 to accept the tender submitted by Jones Constructions Pty Ltd.

I wish to thank you for your interest in this matter and trust you may wish to tender for Council's requirements on some future occasion.

Yours faithfully,

NAME  
Title

**EXAMPLE NOTIFICATION OF NON-ACCEPTANCE OF ANY TENDERS**

Environmental & Customer Services

Reference File: CO6715

20 March 2002

Mr A Jones  
Jones Constructions Pty Ltd  
49 Industrial Road  
PENRITH NSW 2750

**Subject: Tenders for Construction of Roads at Katoomba – Contract No 1/02**

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Dear Sir,

Reference is made to your tender dated 2 March 2002 for the above works.

Council considered all tenders at its meeting held on 17 March 2002 and resolved not to accept any of the tenders submitted and to postpone the works (or cancel the works or carry out the works itself or call fresh tenders as the case may be).

I wish to thank you for your interest in this matter and trust you may wish to tender for Council's requirements on some future occasions.

Yours faithfully,

NAME  
Title

**EXAMPLE NOTIFICATION OF NON-ACCEPTANCE OF ANY TENDERS  
WHERE NEGOTIATIONS ARE PROPOSED**

**Environmental & Customer Services**

Reference File: CO6715

29 March 2002

Mr G Green  
Greens Road Services Pty Ltd  
17 Pastures Road  
GREEN VALLEY NSW 2539

**Subject: Tenders for Construction of Road at Katoomba – Contract No 1/02**

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Dear Sir,

Reference is made to your tender dated 3 March 2002 for the above works.

After considering all tenders, Council resolved at its meeting held on 17 March 2002 not to accept any of the tenders submitted but to enter into negotiations with the preferred tenderer Jones Constructions Pty Ltd. Council also resolved not to call fresh tenders in view of the urgency of the works and the possibility of obtaining a conforming tender by negotiation.

I wish to thank you for your interest in this matter and trust you may wish to tender for Council's requirements on some future occasion.

Yours faithfully,

NAME  
Title

**TENDERER'S DECLARATION**

TENDER .....No .....

I,; and

The company I represent; and

That company's directors, shareholders, officers and employees

- (a) Have not offered or given and will not offer or give any financial reward or other inducement of any kind to any council officer and/or any council staff member, with respect to any of my dealings or the dealings of the aforesaid company with council in relation to this tender/contract
- (b) Have not since publication of council's tender, been in contact with other tenderer(s) for any purpose whatsoever, including without limitation the circumvention of the competitive objective of council's tendering process
- (c) Am not in any way connected with and do not have any actual or potential conflict of interest with any council officer and/or council staff member (whether employed on a permanent, casual or contractual basis), council delegate or Councillor (other than as disclosed in accordance with the attached sheet if applicable).

I have read and I understand the concept of conflict of interest as set out on the attached page.

I understand and accept that Council reserves the right to terminate any contract, transaction or agreement that Council may enter into with me or the aforesaid company as a result of this tender, should it subsequently be shown that I have failed to disclose herein any matter or contravene any statement relevant to this Declaration. I also accept Council's right to reject any future tenders from me or the aforesaid company, if I am shown to have made any false declaration herein or otherwise.

.....  
Name & signature of person making declaration

.....  
Date

.....  
Name & signature of witness

## CONFLICT OF INTEREST

Conflicts of interest occur when a council officer/staff (employed on a permanent, casual or contractual basis) could be seen to be influenced by a personal interest in carrying out their public duty. They can be divided in two parts.

### 1) Non-Pecuniary Interest

A 'non-pecuniary interest' is any private or personal interest with a council officer/staff delegate or Councillor which does not relate to financial gain (e.g. kinship, friendship, membership in an association, society etc), or involvement or interest in an activity.

### 2) Pecuniary Interest

A 'pecuniary interest' is a financial interest that a person has in a matter because of a likelihood or expectation of financial gain or loss. This may apply to a person or to any other person in Blue Mountains City Council with whom tenderers are associated such as relatives, partners and associates.

Some related interests that may give rise to a conflict of interest include:

- Tenderer's financial interest (other than that relating to a tender submission) in a matter that a council or council officers/staff deal with or the tenderer having friends or relatives with such an interest
- Tenderer's co-ownership or co-interest in any asset, business, transaction etc with any council officer/staff, delegate or Councillor
- Personal relationship with council officers/staff, delegate or Councillors that go beyond the level of a professional relationship.

### 3) Dealing with Conflict of Interest

A tenderer may often be the only person aware of the potential for conflict of interest. It is their responsibility to avoid any financial or other interest with any council officer/staff, delegate or Councillor. It is also their responsibility to disclose any potential or actual conflicts of interest.

**Where a tenderer has any doubts as to whether a conflict of interest exists, the tenderer should err on the side of caution by disclosing the potential conflict.**

Tenderer's disclosure of any potential conflict of interest will be evaluated by council's Tender Review Committee to determine their impact on the overall probity of the tenderer's submission. Disclosure of a potential conflict of interest will not necessarily result in the disqualification or non-consideration of the tenderer's submission.

Any tenderer wishing to disclose a potential conflict of interest as described above should attach the disclosure to this document prior to returning it to council.