

## **CCL 13/12/2022 – ADOPTION OF COUNCIL POLICIES**

**ITEM-108 Attachment D:** Procurement Policy

Page 2 Attachment D.1: Summary of the Policy and proposed changes

Page 3 Attachment D.2: Procurement Policy (clean version)

Page 19 Attachment D.3: Procurement Policy (tracked changes)

**POLICY TITLE:** Procurement Policy

**POLICY OWNERS:** Executive Director Corporate Services / Manager Finance, Property & Performance

### **SUMMARY OF POLICY**

1. The Procurement Policy was adopted in December 2019. The purpose of the Policy is to provide a framework for all procurement at CN and to demonstrate that all public monies have been spent in line with community objectives and expectations.
2. The Procurement Policy ensures that CN complies with the tendering requirements under Section 55 of the *Local Government Act* and Part 7 of the *Local Government (General) Regulations*.
3. The proposed Policy is set out at **Attachment D.2** and a tracked changed version is set out at **Attachment D.3**.

### **SUMMARY OF PROPOSED CHANGES TO POLICY**

4. The key differences between the revised Policy and CN's current Policy are as follows:
  - i. adding an exemption to tendering, where procurement is in response to a declared natural disaster (see clause 17.2 of the Policy), as a result of amendments to Section 55(3) of the *Local Government Act*;
  - ii expanding upon sustainable procurement considerations when achieving value for money outcomes (see clauses 13.2 and 26 of the Policy);
  - iii in response to a Council Resolution (NOM 27/07/21), construction companies with registered Enterprise Agreements will be given preference, via a mandatory assessment criteria for all tenders involving construction works over \$1 million (see clauses 22 and 28 of the Policy);
  - iv expanding on Local Business definition in the Policy, whereby the intent is for CN to preference businesses that have a significant local presence and a significant investment in using local suppliers (see Annexure A of the Policy).
  - v Scope expanded to clarify role of Councillors in procurement activities. See clause 2.1
  - vi ESG added as a Mandatory Assessment Criteria. ESG will form a combined minimum weighting with WHS.

### **CONSULTATION**

5. Consultation undertaken during review/development of this Policy included key staff in Environment & Sustainability, Legal and Governance, and the Finance, Property & Performance Services Units.
6. The Asset Advisory Committee was consulted as part of the review of this Policy.
7. This Policy is not being placed on public exhibition because it is an internal operations policy that only directly affects CN staff.

# Procurement Policy

[Month] 2022

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## INTRODUCTION

### 1 Purpose

- 1.1 The purpose of the Policy is to provide a framework for all procurement at CN and to demonstrate that all public monies have been spent in line with community objectives and expectations.

### 2 Scope

- 2.1 The Policy outlines oversight responsibilities of the Elected Council in section 4.
- 2.2 The Policy applies to all staff who undertake any aspect of Procurement on behalf of CN as outlined in section 5 onwards.
- 2.3 The Policy does not apply to the acquisition, disposal or lease of land and property.
- 2.4 A breach of this Policy is a breach of CN's Code of Conduct.

### 3 Principles

- 3.1 City of Newcastle (CN) commits itself to the following:
- a) **Accountability and transparency** – procurement and tendering processes will be open, clear, fully documented and defensible.
  - b) **Honesty and fairness** - procurement and tendering processes and business relationships will be conducted with honesty, fairness and probity at all levels. Confidentiality of information will be maintained.
  - c) **Value for Money** – procurement and tendering processes will be objectively assessed to ensure value for money by taking into account both price and non-price factors (including supplier risk and return on investment).
  - d) **Consistency** – consistent processes must be used in all stages of the procurement and tendering process.
  - e) **Probity** – procurement and tendering processes will encourage competitive tendering and be open, fair, consistent and transparent and comply with the Local Government Act 1993, the Local Government (General) Regulation 2005, CN's Code of Conduct and ICAC's Managing Conflicts of Interest in the Public Sector.
  - f) **Ethical Procurement** – procurement and tendering processes will seek to:
    - purchase sustainable/green products and services that are designed for minimal, or positive, environmental impacts across their whole lifecycle;
    - comply with the Modern Slavery Act 2018; and
    - support the UN Sustainable Development Goals.
  - g) **Supplier Diversity** – procurement and tendering processes will seek to include suppliers from:
    - Local Businesses;
    - Aboriginal Owned Businesses; and
    - Disability Employment Organisations.
  - h) **Work Health & Safety** - procurement and tendering processes will ensure the protection of CN staff and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks.

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## ROLES AND RESPONSIBILITIES

### 4 Elected Council

- 4.1 Adopt CN's Operational Plan.
- 4.2 Accept tenders called by CN with a value of \$1M or greater where the tender is pursuant to s55(1) of the Act.
- 4.3 Comply with legislative, policy and procedural requirements when determining tenders.
- 4.4 Comply with the Councillor Expenses and Facilities Policy.

### 5 CEO and Directors

- 5.1 Make budgetary recommendations to the Council through CN's Operational Plan.
- 5.2 Oversee the development of program, project and strategic Procurement plans to support the delivery of projects within budget.
- 5.3 Ensure Service Units comply with legislative, policy and procedural requirements when undertaking Procurement and tendering.
- 5.4 Take appropriate action in response to instances of non-compliance with this Policy or relevant legislation.
- 5.5 Ensure probity principles and requirements are met.
- 5.6 Negotiate, review, execute and administer Procurement contracts in accordance with Financial Authorisation.

### 6 Service Unit Manager

- 6.1 Ensure all Procurement undertaken by their Service Unit complies with the principles and requirements of this Policy.
- 6.2 Ensure the Responsible Officer has completed relevant training and is suitably qualified in the area of procurement and contracts administration.
- 6.3 Ensure the Responsible Officer complies with legislative, Policy and procedural requirements when undertaking procurement and tendering.
- 6.4 Ensure that there is an approved budget before allowing the procurement to commence.
- 6.5 Completion of risk assessments in accordance with associated procedures to identify high risk procurement activities and escalate to the Legal and Governance Service Unit for advice as necessary.
- 6.6 Oversight of probity for tenders under \$1M and consultation and assistance to the Legal Service Unit (for tenders over \$1M) or external probity advisor (for tenders over \$5M).
- 6.7 Negotiate, review, execute and administer Procurement contracts in accordance with Financial Authorisation.
- 6.8 Identification of contract disputes and escalation to the Legal and Governance Service Unit in a timely manner.

### 7 Finance, Property & Performance Service Unit: Procurement

- 7.1 Oversight of purchase orders in the OneCouncil system.
- 7.2 For Procurement under \$250,000 (excluding Consultants), undertake compliance checks with this Policy and associated procedures.
- 7.3 Procurement of all inventory for CN's Depot Store.
- 7.4 Oversight of strategic procurement of goods.
- 7.5 Communicate to CN staff which suppliers qualify under the definition of Local Businesses, Aboriginal Owned Businesses and Disability Employment Organisations.
- 7.6 Monitor and provide advice to Responsible Officer(s) on Established Panels for Procurement under \$250,000.

## **8 Finance, Property & Performance Service Unit: Contracts**

- 8.1 Provide specialist contract advice on:
- tenders and expressions of interest (with an estimated value of \$250,000 or more) to ensure compliance with legislative, policy and procedural requirements;
  - engagement of Consultants (regardless of value); and
  - other procurement processes where the Service Unit Manager considers the nature of the procurement to be high risk and seeks advice from the Legal Service Unit.
- 8.2 Undertake corporate-wide tenders where the goods, works and services span one or more CN's Service Units and where the expenditure levels exceed the \$250,000 tender threshold.
- 8.3 Notify the NSW Indigenous Chamber of Commerce whenever CN is advertising a tender for goods, works or services with an estimated value of over \$250,000.
- 8.4 Manage a centralised contracts register and maintain a contractor performance reporting system.
- 8.5 Provide advice on the negotiation of contracts when requested by Service Unit Managers.
- 8.6 Provide advice on contract disputes when requested by Service Unit Managers.
- 8.7 Conduct audits to confirm compliance with this Policy, as well as its associated procedures, and report any non-compliance to Directors and Service Unit Managers.
- 8.8 Act as probity advisors for tenders between \$1M and \$5M in value.

## **9 Responsible Officer**

- 9.1 Complete relevant and required training.
- 9.2 Undertake Procurement in accordance with this Policy, its associated procedures and legislative requirements
- 9.3 Ensure all program/project approvals and documentation as well as budget are in place prior to commencing Procurement.
- 9.4 Retain complete and comprehensive records of all Procurement activities and processes using CN's corporate system (OneCouncil).
- 9.5 Explore options to engage suppliers that meet the definitions of:
- Aboriginal Owned Businesses;
  - Disability Employment Organisations; and
  - Local Businesses.
- 9.6 Specify requirements having regard to CN's Risk Management Framework, WHS Management System, supplier diversity principles, environmental standards, technical standards and insurance requirements.
- 9.7 Accept the procured goods, works or services (acceptance may include verifying compliance with the specified requirements, standards, codes or the like).
- 9.8 Administer contracts including maintaining effective relationships with suppliers, ensure contract milestones are met and schedule regular contractor management/performance meetings.
- 9.9 Undertakes procurement planning, ensuring continuity of supply/service and implements transition plans for multi-year contracts over \$250,000.

## **10 Probity Advisor**

- 10.1 Advise and report on compliance (or any non-compliance) with this Policy, its associated procedures and legislative requirements.
- 10.2 The Probity Advisor will be:

- Tenders under \$1M – the Service Unit Manager will be responsible for probity reporting to their Director;
- Tenders between \$1M and \$5M – A member of the Legal Service Unit reporting to the responsible Director, and, where appropriate, the elected Council; or
- Tenders over \$5M – Externally appointed Probity Advisor reporting to the responsible Director and, where appropriate, the elected Council. For projects assessed as being of low risk the responsible Director, or a Project Control Group if one is in place, may request in writing that a member of the Legal Service Unit should act as the Probity Advisor.

## **11 Tenderer**

- 11.1 Act ethically and in accordance with CN's business ethics statement.
- 11.2 Report suspected corrupt conduct in accordance with tender and contract requirements.

## **12 All Staff**

- 12.1 Comply with this Policy, other relevant CN policies and legislative requirements in undertaking Procurement.
- 12.2 Ensure that all purchases made using a CN corporate credit card comply with this Policy and the Purchasing Procedure.



## REQUIREMENTS

### 13 Value for Money

- 13.1 All Procurement must demonstrate how value for money is achieved regardless of the method of procurement. Value for money does not automatically mean the 'lowest price' and is a comparison of the benefits in the proposed contract with the whole-of-life costs of the proposed contract or project
- 13.2 Value for money factors, include but are not limited to:
- experience, quality, reliability and timeliness;
  - service and risk profiles; lifecycle costs (including operating, maintenance, end-of-life management and replacement); and
  - opportunities for repurposing existing resources in lieu of purchasing new materials/items.

### 14 Probity and Conflicts of Interest

- 14.1 Directors, Service Unit Managers and Responsible Officers are responsible for oversight of probity including monitoring and/or managing any conflicts of interest, ensuring compliance with processes and procedures, checking completeness of documentation and records and providing a final probity checklist or report.
- 14.2 CN's Code of Conduct establishes standards of behaviour expected of staff and Councillors. All conflict of interests in relation to Procurement activity must be declared to the staff member's supervisor. Conflicts of interest must be managed in accordance with the requirements of the Code of Conduct.

### 15 Confidentiality

- 15.1 Confidentiality of information relating to quotes and tenders such as intellectual property, proprietary information or commercial-in-confidence information must be maintained and not be disclosed without prior consent of a contractor or where disclosure is required under the NSW Government Information (Public Access) Act 2009.

### 16 Thresholds

- 16.1 **Procurement of Goods, Works and Services** - The following minimum number of quotes must be obtained prior to purchasing or entering into a contract for goods, works and services:

Estimated value	Requirement
under \$3,000	No written quote required
between \$3,000 and \$150,000	Two written quotes
between \$150,000 and \$250,000**	Three written quotes
\$250,000 or more**	Tender or approved exemption

\*\* Note: see Section 20.1 (Contracts)

16.2 **Procurement of Consultants** - The following minimum number of quotes must be obtained prior to engaging a Consultant:

<b>Estimated value</b>	<b>Requirement</b>
under \$30,000**	One written quote
between \$30,000 and \$150,000**	Two written quotes
between \$150,000 and \$250,000**	Three written quotes
\$250,000 or more**	Tender or approved exemption

\*\* Note: see Section 20.1 (Contracts)

16.3 Measures which intentionally seek to avoid the requirement to tender or seek quotes, for example contract splitting, placing multiple orders, seeking multiple quotations with a single supplier or engaging in effect a single supplier under different guises, are considered to breach this Policy.

## 17 Exemptions from Thresholds

17.1 Where an exemption is provided for under section 55(3) of the Act for a contract more than \$150,000 involving the provision of services which are currently being provided by employees of CN, then the requirement is to call tenders.

17.2 Procurement is exempt from the thresholds set out in clause 16:

- where an exemption is provided for under section 55(3) of the Act (including but not limited to Procurement from a Disability Employment Organisation, an Approved Agency, an emergency or for extenuating circumstances); or
- where the Procurement is in response to a declared natural disaster, the \$250,000 threshold shall become \$500,000; or
- where the supplier is on an Established Panel (see clause 17.4 below); or
- where a single quote acceptance has been approved (see clause 17.5 below).

17.3 Notwithstanding the above, the Service Unit Manager, Director or CEO must approve an exemption having regard to the Procurement being value for money, meeting probity principles and ensuring the Procurement is in compliance with this Policy and associated procedures.

17.4 When purchasing from an Established Panel, the Responsible Officer must demonstrate how the procurement is achieving value-for-money. If the Procurement is more than \$150,000 the Responsible Officer is still required to obtain 3 quotes.

17.5 A single quote acceptance exemption will only apply in the following circumstances:

- if the Procurement is under \$250,000; and
- if CN is required to use to a single supplier because of existing proprietary goods or services at CN; or
- the specialist nature of the Procurement means that there is only one demonstrated supplier that meets the requirements.

## 18 Compliance and Breach

18.1 Compliance with this Policy and associated procedures will be audited. Breaches will be taken seriously and dealt with in accordance with CN's Code of Conduct.

18.2 Concerns of non-compliance with this Policy should be reported to Legal Service Unit. Alternatively, the Responsible Officer may choose to report a non-compliance under the Public Interest Disclosures Act.

## 19 Procedures

19.1 All Procurement must be undertaken in accordance with:

- Procurement under \$250,000 - CN's Purchasing Procedure.
- Procurement over \$250,000 - CN's Tendering & Contracts Procedure.

## 20 Contracts

20.1 The following types of Procurement are required to have a formal CN contract in place:

- the engagement of any Consultant
- any Procurement over \$250,000 in value;
- any Procurement that has been assessed as being high risk; or
- any works on public infrastructure over \$150,000 in value.

## 21 Major Projects

21.1 All projects that require a Project Management Plan (as set out in the CN Project Management Procedure) must consider and plan for Procurement as a specific phase in the project delivery.

21.2 As such, the Project Management Plan for major projects will address the following Procurement requirements:

- governance and probity;
- procurement planning and timeframes; and
- procurement budget and resourcing.

## 22 Mandatory Assessment Criteria

22.1 In assessing quotes or tender submissions, the following assessment criteria and weightings will apply:

<b>Assessment Criteria</b>	<b>% Weighting</b>
Supplier Diversity	minimum 5%
Work Health & Safety <sup>1</sup> and Environmental Social and Governance <sup>2</sup>	Combined minimum 10% (where applicable)
Enterprise Agreements <sup>3</sup>	minimum 5% (where applicable)

### Note:

1. WHS assessment criteria applies for any tender involving building and construction works (or services on a CN site).
2. ESG assessment criteria applies for any tender involving building and construction works.
3. Enterprise Agreements assessment criteria only applies for tenders involving construction works over \$1 million.

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## **SUPPLIER DIVERSITY**

### **23 Local Preference**

#### **Under \$250,000**

23.1 When undertaking Procurement under \$250,000, the Responsible Officer will consider obtaining quotes from Local Businesses and will include Supplier Diversity as an evaluation criteria for assessing quotes.

#### **Over \$250,000**

23.2 When undertaking tenders over \$250,000, the Responsible Officer, in conjunction with the Service Unit Manager, will include Supplier Diversity as a tender assessment criteria.

### **24 Indigenous Procurement**

#### **Under \$250,000**

24.1 When undertaking Procurement under \$250,000, the Responsible Officer should first consider obtaining quotes from Aboriginal Owned Businesses and will include Supplier Diversity as an evaluation criteria for assessing quotes

#### **Over \$250,000**

24.2 When undertaking tenders over \$250,000:

- governance and probity;
- the Responsible Officer in conjunction with the Service Unit Manager, will include Supplier Diversity as a tender assessment criteria.

### **25 Disability Employment Organisation**

#### **Under \$250,000**

25.1 When undertaking Procurement under \$250,000, the Responsible Officer will consider obtaining quotes from Disability Employment Organisations and will include Supplier Diversity as an evaluation criteria for assessing quotes.,

#### **Over \$250,000**

25.2 When undertaking tenders over \$250,000:

- in accordance with section 55 (3) (q) of the Act, the Responsible Officer may procure from a Disability Employment Organisation without the need to call tenders; or
- the Responsible Officer, in conjunction with the Service Unit Manager, will include Supplier Diversity as a tender assessment criteria.

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## SUSTAINABLE AND ETHICAL CONSIDERATIONS

### 26 Sustainable Procurement

- 26.1 CN will, in its procurement of goods, works and services pursue and implement effective ways of minimising waste, avoiding raw material extraction, and ensure efficient and sustainable use of energy and natural resources in support of the UN Sustainable Development Goals.
- 26.2 The Responsible Officer will preference environmentally and socially responsible materials, products and services whenever they perform satisfactorily, are deemed safe and demonstrate value for money over their lifecycle. The consumption of virgin and/or non-renewable materials is to be avoided whenever feasible.
- 26.3 In assessing quotes and tenders, the Responsible Officer shall (where applicable) incorporate considerations to address significant environmental and social impacts and/or risks into their assessment criteria, alongside other factors such as quality, cost, reliability etc.

### 27 Modern Slavery

- 27.1 CN will ensure it complies with its obligations under the Commonwealth Modern Slavery Act 2018 and any other Modern Slavery legislation that may come into effect.
- 27.2 The CN will undertake ongoing due diligence to minimise or eliminate the risk of Modern Slavery occurring in its supply chain.
- 27.3 As part of its due diligence, CN will undertake an annual risk assessment of all CN suppliers. CN will not participate in any Procurement with a supplier that is found to be engaging in Modern Slavery.

### 28 Enterprise Agreements

- 28.1 CN will, as far as practicable, procure services for its major construction projects from organisations with current Enterprise Agreements registered with the Fair Work Commission.
- 28.2 For all tenders involving construction works over \$1 million, the Responsible Officer, in conjunction with the Service Unit Manager, will include Enterprise Agreements as a tender assessment criteria.

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## FINANCIAL AUTHORISATIONS

### 29 Approved Levels

- 29.1 The Responsible Officer/Service Unit Manager must only undertake Procurement responsibilities within their limits of Financial Authorisation (see CN's Register of Financial Authorisations) and the CN Legal Services Policy.
- 29.2 Where there are changes to the original contract value/cost of the Procurement, approval must be sought in accordance with Financial Authorisations.
- 29.3 The CEO, Director or Service Unit must take in account the following when approving variations:
- Financial Authorisations for variations;
  - Budget availability;
  - Ensuring the variation continues to achieve value for money; and
  - Significance of the change from the original scope or specification and consideration as to whether a new Procurement process is more appropriate.

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## ANNEXURE A - DEFINITIONS

**Aboriginal Owned Business** means a business that is recognised/accredited by the NSW Indigenous Chamber of Commerce or the First Australians Chamber of Commerce and Industry.

**Act** means Local Government Act 1993 (NSW).

**Approved Agency** means an agency approved as exempt from tendering under s55 of the Act. For the avoidance of doubt this means the NSW Procurement Board, Commonwealth Dept. of Administrative Services, Local Government Procurement or Procurement Australia.

**CEO** means Chief Executive Officer of the City of Newcastle and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the *Local Government Act 1993* (NSW).

**City of Newcastle (CN)** means Newcastle City Council.

**Consultant** means a person or company engaged to provide advice or recommendations and/or creates any intellectual property (i.e. creating new designs/ drawings/ reports/ images/ specifications/ etc.). For example, a consultant includes engineers, architects, environmental specialists, surveyors, planners, lawyers, doctors, auditors, IT software programmers, graphic designers, photographers, accountants, project managers and artists.

**Council** means the elected Council.

**Enterprise Agreement** means an agreement made at the enterprise level that contains terms and conditions of employment, including wages, that has been registered/approved by the Fair Work Commission.

**Established Panel** means a panel of suppliers or Consultants with whom CN has entered into a contract with subsequent to a tendering process.

**Disability Employment Organisation** means a business that is approved as a disability employment organisation under the *Public Works and Procurement Regulation 2019* (NSW).

**Financial Authorisation** means CN's *Register of Financial Authorisations*, which lists the relevant financial authority limits delegated to each staff member.

**Local Business** means a business that either has its head office or a branch office physically located within the Newcastle Local Government Area or an adjoining council Local Government Area (for the avoidance of doubt, this means Lake Macquarie, Port Stephens, Cessnock or Maitland). Note, the intent is for CN to preference businesses that have a significant local presence and a significant investment in using local suppliers (subcontractors). **Modern Slavery** means any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply of goods, works or services.

**Procurement** means:

- all expenditure payable by CN to Consultants or for goods, works and services
- income payable to CN from contracted services; or
- entering contracts, whether through a contract agreement and/or quote, acceptance and purchase order.

**Project Control Group** means a project-specific group of key CN stakeholders who are responsible for oversight and governance of a CN major project.

**Responsible Officer** means the CN staff member tasked with undertaking the Procurement. (The Responsible Officer may include a Specific Talent Contractor, Service Unit Manager or Director).

**UN Sustainable Development Goals** means the 17 sustainable development goals adopted on 1 January 2016 as part of the 202 Agenda for Sustainable Development.

Unless stated otherwise, a reference to a section or clause is a reference to a section or clause of this Policy.

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**ANNEXURE B - POLICY AUTHORISATIONS**

Title of authorisation	Description of authorisation	Position Number & Title
Nil		

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## DOCUMENT CONTROL

Policy title	Procurement Policy
Policy owner	Chief Financial Officer
Policy expert/writer	Contracts Coordinator
Associated Guideline or Procedure Title	- Tendering and Contracts Procedure - Purchasing Procedure
Guideline or Procedure owner	Chief Financial Officer
Prepared by	Finance, Property and Performance
Approved by	Council
Date approved	To be completed by Legal and Governance
Policy approval form reference	ECM#
Commencement Date	To be completed by Legal and Governance
Next review date	1/09/2024
Termination date	1/09/2025 (one year post revision date)
Version #	Version number 5
Category	Choose an item.
Details of previous versions	Version 4a – 2 September 2021 - ECM #6277818
Keywords	Procurement, Purchasing, Contracts, Tendering, Supply
Relevant Newcastle 2040 Theme/s	Achieving Together
Relevant legislation/codes (reference specific sections)	This Policy supports CN's compliance with the following legislation: Government Information (Public Access) Act 2009 Local Government Act 1993 Local Government (General) Regulation 2005 Modern Slavery Act 2018 Public Interest Disclosures Act 1994 State Records Act 1998
Other related documents	Other related policies/ documents/ strategies; Code of Conduct Fraud & Corruption Strategy Records Management Policy Tendering and Contracts Procedure Purchasing Procedure Register of Financial Authorisations Managing Conflicts of Interest in the Public Sector (ICAC) Tendering Guidelines for NSW Local Government (OLG) Preparing, Reviewing and signing Legal Documents WHS Procurement of Goods (OP 3.6.26) WHS Procurement of Services (OP 3.6.27)
Related forms	See Tendering and Contracts Procedure and Purchasing Procedure

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Required on website	Yes
Authorisations	Functions authorised under this Policy at Annexure B

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# Procurement Policy

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## INTRODUCTION

### 1 Purpose

- 1.1 The purpose of the Policy is to provide a framework for all procurement at CN and to demonstrate that all public monies have been spent in line with community objectives and expectations.

### 2 Scope

~~2.1~~ The Policy ~~applies to~~ outlines oversight responsibilities of the Elected Council in section 4. - the Elected Council Councillors and staff who undertake any aspect of Procurement on behalf of CN.

~~2.12.2~~ The Policy applies to all staff who undertake any aspect of Procurement on behalf of CN as outlined in section 5 onwards.

~~2.22.3~~ The Policy does not apply to the acquisition, disposal or lease of land and property.

~~2.32.4~~ A breach of this Policy is a breach of CN's Code of Conduct.

### 3 Principles

- 3.1 City of Newcastle (CN) commits itself to the following:
- a) **Accountability and transparency** – procurement and tendering processes will be open, clear, fully documented and defensible.
  - b) **Honesty and fairness** - procurement and tendering processes and business relationships will be conducted with honesty, fairness and probity at all levels. Confidentiality of information will be maintained.
  - c) **Value for Money** – procurement and tendering processes will be objectively assessed to ensure value for money by taking into account both price and non-price factors (including supplier risk and return on investment).
  - d) **Consistency** – consistent processes must be used in all stages of the procurement and tendering process.
  - e) **Probity** – procurement and tendering processes will encourage competitive tendering and be open, fair, consistent and transparent and comply with the Local Government Act 1993, the Local Government (General) Regulation 2005, CN's Code of Conduct and ICAC's Managing Conflicts of Interest in the Public Sector.
  - f) **Ethical Procurement** – procurement and tendering processes will seek to:
    - purchase sustainable/green products and services that are designed for minimal, or positive, environmental impacts across their whole lifecycle;
    - comply with the Modern Slavery Act 2018; and
    - support the UN Sustainable Development Goals.
  - g) **Supplier Diversity** – procurement and tendering processes will seek to include suppliers from:
    - Local Businesses;
    - Aboriginal Owned Businesses; and
    - Disability Employment Organisations.
  - h) **Work Health & Safety** - procurement and tendering processes will ensure the protection of CN staff and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks.

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## ROLES AND RESPONSIBILITIES

### 4 Elected Council

- 4.1 Adopt CN's Operational Plan.
- 4.2 Accept tenders called by CN with a value of \$1M or greater where the tender is pursuant to s55(1) of the Act.
- 4.3 Comply with legislative, policy and procedural requirements when determining tenders.
- 4.4 Comply with the Councillor Expenses and Facilities Policy.

### 5 CEO and Directors

- 5.1 Make budgetary recommendations to the Council through CN's Operational Plan.
- 5.2 Oversee the development of program, project and strategic Procurement plans to support the delivery of projects within budget.
- 5.3 Ensure Service Units comply with legislative, policy and procedural requirements when undertaking Procurement and tendering.
- 5.4 Take appropriate action in response to instances of non-compliance with this Policy or relevant legislation.
- 5.5 Ensure probity principles and requirements are met.
- 5.6 Negotiate, review, execute and administer Procurement contracts in accordance with Financial Authorisation.

### 6 Service Unit Manager

- 6.1 Ensure all Procurement undertaken by their Service Unit complies with the principles and requirements of this Policy.
- 6.2 Ensure the Responsible Officer has completed relevant training and is suitably qualified in the area of procurement and contracts administration.
- 6.3 Ensure the Responsible Officer complies with legislative, Policy and procedural requirements when undertaking procurement and tendering.
- 6.4 Ensure that there is an approved budget before allowing the procurement to commence.
- 6.5 Completion of risk assessments in accordance with associated procedures to identify high risk procurement activities and escalate to the Legal [and Governance](#) Service Unit for advice as necessary.
- 6.6 Oversight of probity for tenders under \$1M and consultation and assistance to the Legal Service Unit (for tenders over \$1M) or external probity advisor (for tenders over \$5M).
- 6.7 Negotiate, review, execute and administer Procurement contracts in accordance with Financial Authorisation.
- 6.8 Identification of contract disputes and escalation to the Legal [and Governance](#) Service Unit in a timely manner.

### 7 Finance, [Property & Performance](#) Service Unit: [Procurement](#)

- 7.1 Oversight of purchase orders in the OneCouncil system.
- 7.2 For Procurement under \$250,000 (excluding Consultants), undertake compliance checks with this Policy and associated procedures.
- 7.3 Procurement of all inventory for CN's Depot Store.
- 7.4 Oversight of strategic procurement of goods.
- 7.5 Communicate to CN staff which suppliers qualify under the definition of Local Businesses, Aboriginal Owned Businesses and Disability Employment Organisations.
- 7.6 Monitor and provide advice to Responsible Officer(s) on Established Panels for Procurement under \$250,000.

## **8 Legal Service Unit–Finance, Property & Performance Service Unit: Contracts**

- 8.1 Provide specialist contract advice on:
- tenders and expressions of interest (with an estimated value of \$250,000 or more) to ensure compliance with legislative, policy and procedural requirements;
  - engagement of Consultants (regardless of value); and
  - other procurement processes where the Service Unit Manager considers the nature of the procurement to be high risk and seeks advice from the Legal Service Unit.
- 8.2 Undertake corporate-wide tenders where the goods, works and services span one or more CN's Service Units and where the expenditure levels exceed the \$250,000 tender threshold.
- 8.3 Notify the NSW Indigenous Chamber of Commerce whenever CN is advertising a tender for goods, works or services with an estimated value of over \$250,000.
- 8.4 Manage a centralised contracts register and maintain a contractor performance reporting system.
- 8.5 Provide advice on the negotiation of contracts when requested by Service Unit Managers.
- 8.6 Provide advice on contract disputes when requested by Service Unit Managers.
- 8.7 Conduct audits to confirm compliance with this Policy, as well as its associated procedures, and report any non-compliance to Directors and Service Unit Managers.
- 8.8 Act as probity advisors for tenders between \$1M and \$5M in value.

## **9 Responsible Officer**

- 9.1 Complete relevant and required training.
- 9.2 Undertake Procurement in accordance with this Policy, its associated procedures and legislative requirements
- 9.3 Ensure all program/project approvals and documentation as well as budget are in place prior to commencing Procurement.
- 9.4 Retain complete and comprehensive records of all Procurement activities and processes using CN's corporate system (OneCouncil).
- 9.5 Explore options to engage suppliers that meet the definitions of:
- Aboriginal Owned Businesses;
  - Disability Employment Organisations; and
  - Local Businesses.
- 9.6 Specify requirements having regard to CN's Risk Management Framework, WHS Management System, supplier diversity principles, environmental standards, technical standards and insurance requirements.
- 9.7 Accept the procured goods, works or services (acceptance may include verifying compliance with the specified requirements, standards, codes or the like).
- 9.8 Administer contracts including maintaining effective relationships with suppliers, ensure contract milestones are met and schedule regular contractor management/performance meetings.
- 9.9 Undertakes procurement planning, ensuring continuity of supply/service and implements transition plans for multi-year contracts over \$250,000.

## **10 Probity Advisor**

- 10.1 Advise and report on compliance (or any non-compliance) with this Policy, its associated procedures and legislative requirements.
- 10.2 The Probity Advisor will be:

- 
- Tenders under \$1M – the Service Unit Manager will be responsible for probity reporting to their Director;
  - Tenders between \$1M and \$5M – A member of the Legal Service Unit reporting to the responsible Director, and, where appropriate, the elected Council; or
  - Tenders over \$5M – Externally appointed Probity Advisor reporting to the responsible Director and, where appropriate, the elected Council. For projects assessed as being of low risk the responsible Director, or a Project Control Group if one is in place, may request in writing that a member of the Legal Service Unit should act as the Probity Advisor.

## **11 Tenderer**

- 11.1 Act ethically and in accordance with CN's business ethics statement.
- 11.2 Report suspected corrupt conduct in accordance with tender and contract requirements.

## **12 All Staff**

- 12.1 Comply with this Policy, other relevant CN policies and legislative requirements in undertaking Procurement.
- 12.2 Ensure that all purchases made using a CN corporate credit card comply with this Policy and the Purchasing Procedure.



## REQUIREMENTS

### 13 Value for Money

13.1 All Procurement must demonstrate how value for money is achieved regardless of the method of procurement. Value for money does not automatically mean the 'lowest price' and is a comparison of the benefits in the proposed contract with the whole-of-life costs of the proposed contract or project

13.2 Value for money factors, include but are not limited to:

- experience, quality, reliability and timeliness;
- ~~service and risk profiles; and lifecycle~~
- ~~initial and ongoing costs (including operating, maintenance, end-of-life management and replacement); and~~
- ~~opportunities for repurposing existing resources in lieu of purchasing new materials/items.~~

### 14 Probity and Conflicts of Interest

14.1 Directors, Service Unit Managers and Responsible Officers are responsible for oversight of probity including monitoring and/or managing any conflicts of interest, ensuring compliance with processes and procedures, checking completeness of documentation and records and providing a final probity checklist or report.

14.2 CN's Code of Conduct establishes standards of behaviour expected of staff and Councillors. All conflict of interests in relation to Procurement activity must be declared to the staff member's supervisor. Conflicts of interest must be managed in accordance with the requirements of the Code of Conduct.

### 15 Confidentiality

15.1 Confidentiality of information relating to quotes and tenders such as intellectual property, proprietary information or commercial-in-confidence information must be maintained and not be disclosed without prior consent of a contractor or where disclosure is required under the NSW Government Information (Public Access) Act 2009.

### 16 Thresholds

16.1 **Procurement of Goods, Works and Services** - The following minimum number of quotes must be obtained prior to purchasing or entering into a contract for goods, works and services:

Estimated value	Requirement
under \$3,000	No written quote required
between \$3,000 and \$150,000	Two written quotes
between \$150,000 and \$250,000**	Three written quotes
\$250,000 or more**	Tender or approved exemption

\*\* Note: see Section 20.1 (Contracts)

16.2 **Procurement of Consultants** - The following minimum number of quotes must be obtained prior to engaging a Consultant:

Estimated value	Requirement
under \$30,000**	One written quote
between \$30,000 and \$150,000**	Two written quotes
between \$150,000 and \$250,000**	Three written quotes
\$250,000 or more**	Tender or approved exemption

\*\* Note: see Section 20.1 (Contracts)

16.3 Measures which intentionally seek to avoid the requirement to tender or seek quotes, for example contract splitting, placing multiple orders, seeking multiple quotations with a single supplier or engaging in effect a single supplier under different guises, are considered to breach this Policy.

## 17 Exemptions from Thresholds

17.1 Where an exemption is provided for under section 55(3) of the Act for a contract more than \$150,000 involving the provision of services which are currently being provided by employees of CN, then the requirement is to call tenders.

17.2 Procurement is exempt from the thresholds set out in clause 16:

- [where an exemption is provided for under section 55\(3\) of the Act \(including but not limited to Procurement from a Disability Employment Organisation, an Approved Agency, an emergency or for extenuating circumstances\); or](#)
- [where the Procurement is in response to a declared natural disaster, the \\$250,000 threshold shall become \\$500,000; or](#)
- where the supplier is on an Established Panel (see clause 17.4 below); or
- where a single quote acceptance has been approved (see clause 17.5 below).

17.3 Notwithstanding the above, the Service Unit Manager, Director or CEO must approve an exemption having regard to the Procurement being value for money, meeting probity principles and ensuring the Procurement is in compliance with this Policy and associated procedures.

17.4 When purchasing from an Established Panel, the Responsible Officer must demonstrate how the procurement is achieving value-for-money. If the Procurement is more than \$150,000 the Responsible Officer is still required to obtain 3 quotes.

17.5 A single quote acceptance exemption will only apply in the following circumstances:

- if the Procurement is under \$250,000; and
- if CN is required to use to a single supplier because of existing proprietary goods or services at CN; or
- the specialist nature of the Procurement means that there is only one demonstrated supplier that meets the requirements.

## 18 Compliance and Breach

18.1 Compliance with this Policy and associated procedures will be audited. Breaches will be taken seriously and dealt with in accordance with CN's Code of Conduct.

18.2 Concerns of non-compliance with this Policy should be reported to Legal Service Unit. Alternatively, the Responsible Officer may choose to report a non-compliance under the Public Interest Disclosures Act.

## 19 Procedures

19.1 All Procurement must be undertaken in accordance with:

- Procurement under \$250,000 - CN's Purchasing Procedure.
- Procurement over \$250,000 - CN's Tendering & Contracts Procedure.

## 20 Contracts

20.1 The following types of Procurement are required to have a formal CN contract in place:

- the engagement of any Consultant
- any Procurement over \$250,000 in value;
- any Procurement that has been assessed as being high risk; or
- any works on public infrastructure over \$150,000 in value.

## 21 Major Projects

21.1 All projects that require a Project Management Plan (as set out in the CN Project Management Procedure) must consider and plan for Procurement as a specific phase in the project delivery.

21.2 As such, the Project Management Plan for major projects will address the following Procurement requirements:

- governance and probity;
- procurement planning and timeframes; and
- procurement budget and resourcing.

## 22 Mandatory Assessment Criteria

22.1 In assessing quotes or tender submissions, the following assessment criteria and weightings will apply:

Assessment Criteria	% Weighting
Supplier Diversity	minimum 5%
Work Health & Safety <sup>1</sup> and Environmental Social and Governance <sup>2</sup>	Combined minimum 10% (where applicable)
Enterprise Agreements <sup>32</sup>	minimum 5% (where applicable)

### Note:

- [1. WHS assessment criteria applies for any tender involving building and construction works \(or services on a CN site\).](#)
- [2. ESG assessment criteria applies for any tender involving building and construction works.](#)
- [3. Enterprise Agreements assessment criteria only applies for tenders involving construction works over \\$1 million.](#)

## SUPPLIER DIVERSITY

### 23 [Local Preference Major Projects](#)

#### Under \$250,000

23.1 When undertaking Procurement under \$250,000, the Responsible Officer will consider obtaining quotes from Local Businesses and will include [Local Business Supplier Diversity](#) as an evaluation criteria for assessing quotes.

#### Over \$250,000

23.2 When undertaking tenders over \$250,000, the Responsible Officer, in conjunction with the Service Unit Manager, will include [Supplier Diversity Local Business](#) as a tender assessment criteria.

### 24 Indigenous Procurement

#### Under \$250,000

24.1 When undertaking Procurement under \$250,000, the Responsible Officer ~~will~~ [should first](#) consider obtaining quotes from Aboriginal Owned Businesses and will include Supplier Diversity [Aboriginal Owned Businesses](#) as an evaluation criteria for assessing quotes

#### Over \$250,000

24.2 When undertaking tenders over \$250,000:

- governance and probity;
- the Responsible Officer in conjunction with the Service Unit Manager, will include [Supplier Diversity Aboriginal Owned Businesses](#) as a tender assessment criteria.

### 25 Disability Employment Organisation

#### Under \$250,000

25.1 When undertaking Procurement under \$250,000, the Responsible Officer will consider obtaining quotes from Disability Employment Organisations and will include [Supplier Diversity Disability Employment Organisations](#) as an evaluation criteria for assessing quotes.,

#### Over \$250,000

25.2 When undertaking tenders over \$250,000:

- in accordance with section 55 (3) (q) of the Act, the Responsible Officer may procure from a Disability Employment Organisation without the need to call tenders; or
- the Responsible Officer, in conjunction with the Service Unit Manager, will include [Supplier Diversity Disability Employment Organisation](#) as a tender assessment criteria.

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## SUSTAINABLE AND ETHICAL CONSIDERATIONS

### 26 Sustainable Procurement

- 26.1 CN will, in its procurement of goods, works and services pursue and implement effective ways of minimising waste, avoiding raw material extraction, and ensure efficient and sustainable use of energy and natural resources in the procurement of goods, works and services, in support of the UN Sustainable Development Goals.
- 26.2 The Responsible Officer will preference environmentally and socially responsible materials, products and services whenever they perform satisfactorily, are deemed safe and are demonstrate value for money over their lifetime of the product lifecycle. The consumption of virgin and/or non-renewable materials is to be avoided whenever feasible.
- 26.3 In assessing quotes and tenders, the Responsible Officer may shall (where applicable) incorporate considerations to address significant environmental and social impacts and/or risks into their assessment criteria, alongside other factors such as quality, cost, reliability etc.

### 27 Modern Slavery

- 27.1 CN will ensure it complies with its obligations under the Commonwealth Modern Slavery Act 2018 and any other Modern Slavery legislation that may come into effect.
- 27.2 The CN will undertake ongoing due diligence to minimise or eliminate the risk of Modern Slavery occurring in its supply chain.
- 27.3 As part of its due diligence, CN will undertake an annual risk assessment of all CN suppliers. CN will not participate in any Procurement with a supplier that is found to be engaging in Modern Slavery.

### 28 Enterprise Agreements

- 28.1 CN will, as far as practicable, procure services for its major construction projects from organisations with current Enterprise Agreements registered with the Fair Work Commission.
- 28.2 For all tenders involving construction works over \$1 million, the Responsible Officer, in conjunction with the Service Unit Manager, will include Enterprise Agreements as a tender assessment criteria.

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## FINANCIAL AUTHORISATIONS

### 28.29 Approved Levels

28.129.1 The Responsible Officer/Service Unit Manager must only undertake Procurement responsibilities within their limits of Financial Authorisation (see CN's Register of Financial Authorisations) [and the CN Legal Services Policy](#).

28.229.2 Where there are changes to the original contract value/cost of the Procurement, approval must be sought in accordance with Financial Authorisations.

28.329.3 The CEO, Director or Service Unit must take in account the following when approving variations:

- Financial Authorisations for variations;
- Budget availability;
- Ensuring the variation continues to achieve value for money; and
- Significance of the change from the original scope or specification and consideration as to whether a new Procurement process is more appropriate.

## ANNEXURE A - DEFINITIONS

**Aboriginal Owned Business** means a business that is recognised/accredited by the NSW Indigenous Chamber of Commerce or the First Australians Chamber of Commerce and Industry.

**Act** means Local Government Act 1993 (NSW).

**Approved Agency** means an agency approved as exempt from tendering under s55 of the Act. For the avoidance of doubt this means the NSW Procurement Board, Commonwealth Dept. of Administrative Services, Local Government Procurement or Procurement Australia.

**CEO** means Chief Executive Officer of the City of Newcastle and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the *Local Government Act 1993* (NSW).

**City of Newcastle (CN)** means Newcastle City Council.

**Consultant** means a person or company engaged to provide advice or recommendations and/or creates any intellectual property (i.e. creating new designs/ drawings/ reports/ images/ specifications/ etc.). For example, a consultant includes engineers, architects, environmental specialists, surveyors, planners, lawyers, doctors, auditors, IT software programmers, graphic designers, photographers, accountants, project managers and artists.

**Council** means the elected Council.

**Enterprise Agreement** means [an agreement made at the enterprise level that contains terms and conditions of employment, including wages, that has been registered/approved by the Fair Work Commission.](#)

**Established Panel** means a panel of suppliers or Consultants with whom CN has entered into a contract with subsequent to a tendering process.

**Disability Employment Organisation** means a business that is approved as a disability employment organisation under the *Public Works and Procurement Act-Regulation 2019+912* (NSW).

**Financial Authorisation** means CN's *Register of Financial Authorisations*, which lists the relevant financial authority limits delegated to each staff member.

**Local Business** means a business that either has [its head office or a branch or office physically located within the Newcastle Local Government Area or has its head office located within the Newcastle Local Government Area](#) or an adjoining council Local Government Area (for the avoidance of doubt, this means Lake Macquarie, Port Stephens, Cessnock or Maitland). [Note, the intent is for CN to preference businesses that have a significant local presence and a significant investment in using local suppliers \(subcontractors\).](#)

**Modern Slavery** means any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply of goods, works or services.

**Procurement** means:

- all expenditure payable by CN to Consultants or for goods, works and services
- income payable to CN from contracted services; or
- entering contracts, whether through a contract agreement and/or quote, acceptance and purchase order.

**Project Control Group** means a project-specific group of key CN stakeholders who are responsible for oversight and governance of a CN major project.

**Responsible Officer** means the CN staff member tasked with undertaking the Procurement. (The Responsible Officer may include a Specific Talent Contractor, Service Unit Manager or Director).

**UN Sustainable Development Goals** means the 17 sustainable development goals adopted on 1 January 2016 as part of the 202 Agenda for Sustainable Development.

Unless stated otherwise, a reference to a section or clause is a reference to a section or clause of this Policy.

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**ANNEXURE B - POLICY AUTHORISATIONS**

Title of authorisation	Description of authorisation	Position Number & Title
<a href="#">Refer to Financial Authorisations_Nil</a>		

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**DOCUMENT CONTROL**

Policy title	Procurement Policy
Policy owner	Chief Financial Officer <del>and Manager Legal</del>
Policy expert/writer	<del>Manager Business Finance and Contracts</del> <del>Coordinator Management Specialist</del>
Associated Guideline or Procedure Title	- Tendering and Contracts Procedure - Purchasing Procedure
Guideline or Procedure owner	Chief Financial Officer <del>and Manager Legal</del>
Prepared by	Finance, <del>Property and Performance</del> <del>Property / Legal</del>
Approved by	Council
Date approved	To be completed by Legal and Governance
Policy approval form reference	ECM#
Commencement Date	To be completed by Legal and Governance
Next review date	1/09/2024
Termination date	1/09/2025 (one year post revision date)
Version #	Version number 5
Category	Choose an item.
Details of previous versions	Version 4a – 2 September 2021 - ECM #6277818
Keywords	Procurement, Purchasing, Contracts, Tendering, Supply
Relevant Newcastle 2040 Theme/s	Achieving Together
Relevant legislation/codes (reference specific sections)	This Policy supports CN's compliance with the following legislation: Government Information (Public Access) Act 2009 Local Government Act 1993 Local Government (General) Regulation 2005 Modern Slavery Act 2018 Public Interest Disclosures Act 1994 State Records Act 1998
Other related documents	Other related policies/ documents/ strategies; Code of Conduct Fraud & Corruption Strategy Records Management Policy Tendering and Contracts Procedure Purchasing Procedure Register of Financial Authorisations Managing Conflicts of Interest in the Public Sector (ICAC) Tendering Guidelines for NSW Local Government (OLG) Preparing, Reviewing and signing Legal Documents WHS Procurement of Goods (OP 3.6.26) WHS Procurement of Services (OP 3.6.27)

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Related forms	See Tendering and Contracts Procedure and Purchasing Procedure
Required on website	Yes
Authorisations	Functions authorised under this Policy at Annexure B

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