




# COUNCIL POLICY

 <p><b>Adelaide Hills</b> COUNCIL</p>	<h2 style="margin: 0;">PROCUREMENT</h2>
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<b>Policy Number:</b>	<b>FIN-01</b>
<b>Responsible Department(s):</b>	<b>Financial Services</b>
<b>Relevant Delegations:</b>	<b>As per the Delegations Register and as detailed in this Policy</b>
<b>Other Relevant Policies:</b>	<i>Disposal of Assets Policy Fraud &amp; Corruption Prevention Policy Prudential Management Policy Mandatory Code of Conduct for Council Employees Risk Management Work Health and Safety and Return to Work</i>
<b>Relevant Procedure(s):</b>	<b>Procurement Framework Purchase Card Procedure</b>
<b>Relevant Legislation:</b>	<i>Local Government Act 1999 Independent Commissioner Against Corruption Act 2012 (SA) Competition and Consumer Act 2010 (Cth) Environment Protection Act 1993 Freedom of Information Act 1991</i>
<b>Policies and Procedures Superseded by this policy on its Adoption:</b>	<b>Procurement Policy, 01 October 2019, Res 215/19</b>
<b>Adoption Authority:</b>	<b>Council</b>
<b>Date of Adoption:</b>	<b>23 August 2022</b>
<b>Effective From:</b>	<b>06 September 2022</b>
<b>Minute Reference for Adoption:</b>	<b>Item 12.9, Res 215/22</b>
<b>Next Review:</b>	<b>No later than November 2025 or as required by legislation or changed circumstances</b>

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## Version Control

<b>Version No.</b>	<b>Date of Effect</b>	<b>Description of Change(s)</b>	<b>Approval</b>
1.0	01/10/2019	Updated Policy	Council - Res 215/19
2.0	06/09/2022	Defining of the exemptions from the Policy, as well as widening the definition of environmental sustainability and unsolicited proposals. Addition of Contract Management and pass through costs.	Council - Res 215/22

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## PROCUREMENT

### 1. INTRODUCTION

- 1.1** In compliance with Section 49 of the *Local Government Act 1999 (Act)*, the Adelaide Hills Council (Council) should refer to this policy (Policy) when acquiring goods, works or services.
- 1.2** Section 49 of the Act requires Council to prepare and adopt policies on contracts and tenders on:
- 1.2.1** the contracting out of services; and
  - 1.2.2** competitive tendering and the use of other measures to ensure that services are delivered cost-effectively; and
  - 1.2.3** the use of local goods and services.
- 1.3** Furthermore, Section 49 (a1) of the Act requires Council to develop and maintain policies, practices and procedures directed towards:
- 1.3.1** obtaining value in the expenditure of public money; and
  - 1.3.2** providing for ethical and fair treatment of participants; and
  - 1.3.3** ensuring probity, accountability and transparency in all operations.
- 1.4** This Policy seeks to:
- 1.4.1** define the methods by which Council can acquire goods, works or services;
  - 1.4.2** demonstrate accountability and responsibility of Council to ratepayers;
  - 1.4.3** be fair and equitable to all parties involved;
  - 1.4.4** enable all processes to be monitored and recorded; and
  - 1.4.5** ensure that the best possible outcome is achieved for the Council.

### 2. POLICY OBJECTIVE

Council aims to achieve advantageous procurement outcomes by:

- 2.1** enhancing value for money through fair, competitive, non-discriminatory procurement;
- 2.2** promoting the use of resources in an efficient, effective and ethical manner;
- 2.3** preserving, protecting and improving the natural environment;

- 2.4 making decisions with probity, accountability and transparency;
- 2.5 advancing and/or working within Council's economic, social and environmental policies;
- 2.6 providing reasonable opportunity for competitive local businesses to supply to Council;
- 2.7 appropriately managing risk; and
- 2.8 ensuring compliance with all relevant legislation.
- 2.9 assist Council to achieve its strategic objectives and other key strategies identified in Council's suite of corporate documents.

### 3. DEFINITIONS

**Acquisition Plan** is a document that outlines the procurement methodology and strategy to be undertaken in procuring the required goods, services or works. This plan also details the approval delegation before the procurement strategy is commenced

**Contract Management Transition** is the period between contract execution and service commencement / delivery. The key objective of transition is making the necessary preparations to ensure that both the supplier and Council are able to deliver the terms of the contract and specification.

**Procurement** is the complete action or process of acquiring or obtaining goods, works or services or property from outside Council at the operational level. For example, purchasing, contracting, and negotiating directly with the source of the supply through to acceptance and payment

**Procurement Framework / Procedures** are documents that support the Procurement Policy, and outlines the specific steps of Procurement Activity

**Probity** is the demonstrated ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process

**Strategic Purchasing Cooperative** are purchases made through strategic alliances and common use arrangements that are established and administered by other approved organisations such as Local Government Association Procurement (LGAP), Procurement Australia (PA), and state and federal government contracts and any other purchasing group available to local government

**Ethical Behaviour** involves demonstrating respect for key moral principles that include honesty, fairness, equality, dignity, diversity, individual rights and the rights of companies.

**Fair Dealing** The transacting of business in a manner characterised by candor and full disclosure to all stakeholders.

**Contract Administrator** Means the Council officer responsible for the management and administration of a contract. By default the Project Manager is the Contract Administrator

#### 4. SCOPE

**4.1** This Policy covers the required conduct for all procurement activities associated with the acquisition of Goods, Works or Services of any value by the Council. This includes tendering arrangements and the contracting of services and applies to all Council employees.

**4.2** Out of Scope:

**4.2.1** This policy does not cover expenditure or revenue related to asset disposals, and other non-Procurement expenditure including, but not limited to sponsorships, grants, incentive schemes, funding arrangements, donations, and direct employment contracts between Council and an employee. Controls related to these exceptions are covered in separate policies.

**4.2.2** Leases and licenses for the use of Council property and land are not covered under this policy except where such arrangements include the provision of goods and services forming part of leasing, licensing and other revenue contractual activities.

#### 5. PROCUREMENT PRINCIPLES

Council must have regard to the following principles in its acquisition of goods, works or services:

**5.1** *Encouragement of open and effective competition*

**5.1.1** Open and effective competition is the central operating principle in pursuit of the best outcome.

**5.1.2** Openness requires procurement actions that are visible to the Council, ratepayers and suppliers/contractors. The probability of obtaining the best outcome is generally increased in a competitive environment.

**5.1.3** Council will maintain confidentiality in regard to financial contractual arrangements with suppliers, subject to statutory obligations, the *Freedom of Information Act* and ICAC compliance requiring certain tender and contract information to be made publicly available.

**5.1.4** Council will create effective competition by maximising the opportunities for firms to do business with Council through the selection of procurement methods suited to market conditions, the nature of the procurement, and the objectives of the procurement overall.

**5.1.5** Council will offer and provide feedback, where sought, to unsuccessful bidders.

## **5.2** *Obtaining Value for Money*

**5.2.1** Value for money involves obtaining goods, works or services for the Council that best meet the end user's needs at the lowest whole of life cost with an acceptable contractual risk.

**5.2.2** This is not restricted to price alone.

**5.2.3** An assessment of value for money must include, where possible, consideration of fitness for purpose, fair market prices, local economic development and whole of life costs. 'Whole of life' includes purchase price, cost of spares, running costs, post-delivery support, effective warranties, cost of replacement, installation costs and disposal costs.

## **5.3** *Probity, Ethical Behaviour and Fair Dealing*

**5.3.1** Council will not use or disclose information that confers unfair advantage, financial benefit or detriment on a supplier.

**5.3.2** Officers engaged in purchasing should at all times undertake their duties in a professional, ethical, honest and impartial manner, act responsibly and exercise sound judgment by observing the highest standards of integrity and professional conduct

## **5.4** *Accountability, Transparency and Reporting*

**5.4.1** Accountability in procurement means being able to explain and demonstrate through evidence what has happened. An independent third party must be able to see clearly that a process has been followed and that the process is fair and reasonable.

**5.4.2** Delegations define the limitations within which Council employees are permitted to work. They ensure accountability and provide confidence to Council and the public that purchasing activities are dealt with at the appropriate level. As such, Council has delegated responsibilities to employees relating to the expenditure of funds and or entering into contracts for the purchase of goods, works or services and the acceptance of tenders.

**5.4.3** Employees must be able to account for all decisions and provide feedback on them. Additionally, all procurement activities will leave an audit trail for monitoring and reporting purposes.

**5.5** *Ensuring compliance with all relevant legislation*

**5.5.1** Employees must ensure purchasing activities are conducted in accordance with legislative and common law responsibilities. These include but are not limited to the *Local Government Act 1999*, *Work Health and Safety Act 2012*, *Competition and Consumer Act 2010*, the *Independent Commissioner Against Corruption Act 2012*, the *Freedom of Information Act 1991*, National Competition Policy and other relevant legislation, industrial awards and agreements and international trade agreements.

**5.6** *Sustainable Procurement*

**5.6.1** Sustainable procurement is defined as a process whereby Council meets its procurement needs in a way that achieves value for money whilst generating benefits not only to council, but also to our community, local economy, and the environment.

**5.6.2** Council will consider, where deemed appropriate, of sustainable and social inclusion elements such as:

- Creating employment and training opportunities (particularly among disadvantaged groups such as people with disability or mental illness, migrants, Indigenous) thus providing social inclusion and an opportunity for those to participate in the local community;
- Diversity and equality in the supplier market – encouraging a diverse base of suppliers (e.g. minority or under-represented suppliers); and
- Local sustainability – building and maintaining healthy, strong communities, support social inclusion and enhancing wellbeing of local residents by striving to generate local employment.
- A commitment to maximising the skills, development and employment opportunities available in the Adelaide Hills area. Consideration may be given, where practicable and appropriate, to incorporate strategies in the procurement process that support local employment and training, which may include Contractors engaging apprentices, trainees and cadets in their work practices.
- Council will endeavour to provide support to local enterprises by holding briefings to encourage development of capacity to meet the needs of Council



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- Promote the purchase of environmentally friendly goods and services that satisfy value for money criteria;
  - Council will actively promote suppliers to comply with the Single-use and Other Plastic Products (Waste Avoidance) Act 2020;
  - Council recognises the need to act in an environmentally sound manner in relation to procurement activities undertaken and its ability to drive sustainable outcomes through contributing to local and national markets for recycled goods and adhering to circular economy principles.
  - Align the Council's procurement activities with principles of ecological sustainability;
  - Purchase recycled and environmentally preferred products where possible;
  - Integrate relevant principles of resource recovery and waste minimisation and consider those products that can be recycled at the end of life where resources allow;
  - Select energy, fuel and water efficient products by considering star ratings and other consumption measures
  - Purchase goods that minimise lifecycle costs and carbon emissions from manufacture to disposal
  - Foster the development of products and services which have a low environmental impact;
  - Provide leadership to business, industry and the community in promoting the use of environmentally sensitive goods works or services.

### **5.7** Work Health & Safety

Council will only engage suppliers and/or contractors who can demonstrate they have:

- The ability to work within legislative requirements and any additional information requested by the organisation, based on the hazards associated with the task or activity to be undertaken;
- Provided documented information relating to the management of reasonably foreseeable site-specific activities and hazards;
- The commitment to appropriately communicate on processes between the organisation and the contractor that demonstrate the

consultation, cooperation and coordination between shared duty holders occurs, so far as is reasonably practicable;

- Are willing to participate in the ongoing monitoring and review of WHS requirements.

Contracts will contain the requirement for contractors to have safe systems of work in place and that they will effectively manage WHS requirements throughout the contract period.

## **6. PROCUREMENT METHODS**

**6.1** The determination of the method of procurement will be typically documented by the preparation of an Acquisition Plan, detailing the most appropriate method for the purchase and the delegated officers involved.

**6.2** The appropriate method of procurement will be determined by reference to a number of factors, including value of the purchase, risks associated with the purchase and aspects relating to the availability of supply and other market conditions.

**6.3** Persons with financial delegated authority to procure will be responsible for ensuring appropriate procurement practices and procedures including the identification of risk are observed.

**6.4** The Council having regard to its Procurement Principles and any other factors considered relevant by Council will utilise either Direct or Competitive Sourcing.

**6.4.1** Direct Sourcing is a procurement process undertaken by directly approaching and negotiating with one supplier without testing the market. This method may only be used for the purchase of low value, low risk goods and services under \$10,000 (excluding GST). Consideration must be given to ensure Value for Money is achieved.

**6.4.2** Competitive Sourcing is process which will test the market and re-evaluate the purchasing activity to gain value. It differs from direct sourcing because it places emphasis on the entire life cycle of a good or service, not just its initial purchase price. This requires a more stringent planning approach and a better understanding of the competitive marketplace. In undertaking competitive sourcing:

- Council will seek to obtain at least three quotes for all procurements estimated gross value exceeds \$10,000(excluding GST).
- For purchases where the estimated gross value of expenditure over the life of the contract or purchase price of the goods and services

exceeds \$100,000 (excluding GST), the Council's practice will be to call for tenders unless circumstances preclude this from occurring

**6.4.3** The value of the purchase will be calculated as follows:

- Single one-off purchase – the total amount, or estimated amount, of the purchase (excluding GST);
- Multiple purchases – the gross value, or the estimated gross value, of the purchases (excluding GST); or
- Ongoing purchases over a period of time – the annual gross value, or the estimated annual gross value, of the purchases (excluding GST).
- Splitting of amounts to bring expenditure within lower limits is not permitted.
- The estimated gross value (excluding GST) of the contract. (Yearly spend multiplied by initial contract term)
- Where appropriate, the gross value of the procurement can be adjusted downwards to take into account regulatory and other third-party pass-through costs.

**6.4.4** Council in approaching the market utilises a number of procurement tools including: Request for Quotes, Request for Expressions of Interest, Request for Proposal and Request for Tenders or Strategic Purchasing Cooperatives.

**6.4.5** Where the Council accesses a contract from a Strategic Purchasing Cooperatives, established in accordance with transparent competitive tendering processes, it is deemed that these are contracts resulting from a tender process. Such contracts do not require a further tender process and are not required to be recorded as an exemption from this policy.

## **7. NEGOTIATION**

When requests for quotations, tenders or proposals have been invited for a contract for the carrying out of work or the supply of goods or services then council may negotiate with acceptable preferred providers to improve outcomes. Any negotiation process should be transparent, recorded and conducted in a manner that does not disadvantage other respondents.

The Procurement Principle of Probity, Ethical Behaviour and Fair Dealing requirements must be considered in respect to any negotiation undertaken.

The Council may close down a tender (shut down) if there are no suitable tender submissions received. In these circumstances the evaluation panel are to consider other

options for procuring the goods, services or works including negotiating with any one or more of the previous tenderers or any other provider.

## **8. PROCUREMENT CONSIDERATIONS**

The appropriate method of procurement will be determined by reference to a number of factors, including:

- 8.1** *Value of the Purchase*
- 8.2** *Cost of an open market approach versus the value of the acquisition and the potential benefits;*
- 8.3** *The particular circumstances of the procurement activity;*
- 8.4** *The objectives of the procurement;*
- 8.5** *The size of the market and the number of competent suppliers;*
- 8.6** *The Council's leverage in the marketplace;*
- 8.7** *An assessment of the risks associated with the relevant activity and /or project, including the risk profile of the procurement and any risks associated with the preferred procurement method.*

## **9. ACQUISITION OF LAND**

- 9.1** A decision to purchase or acquire land is made by resolution of Council, unless specifically delegated as per the *Local Government Act 1999* or another act.
- 9.2** Due to its unique nature, the acquisition of land is considered separate from the requirement of Direct or Competitive Sourcing methods.
- 9.3** The provision of services and activities supporting the acquisition of land, such as specialist advisors or contractors, are to be undertaken in accordance with this Policy.

## **10. EXEMPTIONS FROM THIS POLICY**

- 10.1** This Policy contains general guidelines to be followed by the Council in its procurement activities. There may be emergencies, or procurements in which a tender process will not necessarily deliver best outcome for the Council, and other market approaches may be more appropriate.

- 10.2** In certain circumstances, the Chief Executive Officer (or where this power is delegated to a Procurement Committee) may waive application of a competitive quoting or tender process and pursue a method which will bring the best outcome for the Council. The Council must record its reasons in writing for waiving application of this Policy.
- 10.3** Emergency - where the Chief Executive Officer or Council Commander activates Council's Incident Management Team (CIMT). This exemption is only in relation to purchases relating to the emergency.
- 10.4** The occurrence of an event such as flooding, fire or other significant damage to a Council asset which may require the immediate procurement of goods, services or works to ensure business continuity and or public safety.

Where possible this exemption should be authorised by a Manager or Director within their authorised Financial Delegation.

- 10.5** Where a Funding Agreement specifies that Council must follow a prescribed tendering process which differs from the process outlined in this Policy to the extent that only the prescribed inconsistencies shall be followed.
- 10.6** The following Procurement categories are exempt from the requirement of the Quote or Tender process:
- Government Departments or Government Bodies including Worker's Compensation, Mutual Liability Scheme, and Vehicle Registrations;
  - Statutory payments eg legislative or statutory requirements such as payments to the Australian Taxation Office, emergency services and EPA and/or fines
  - Utility services such as water, sewerage charges, Australia Post charges, whereby the infrastructure or service is owned or managed by a single or particular entity.
  - Court related costs;
  - Payments to Local Government Association or associated entities;
  - Insurance claims;
  - Leasing Property (Due Diligence principles must be applied to ensure Value for Money)
  - Regional Subsidiaries

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## **11. UNSOLICITED PROPOSAL**

- 11.1** In some circumstances Council may receive a proposal to deal directly with the Council over a commercial proposition, where the Council has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.
- 11.2** Assuming the Council wants to procure the services provided by the proposal Council's position on Unsolicited Offers is that if the proposal can be delivered by competitors, then the proposal must be put through a competitive process.
- 11.3** If unsolicited proposal cannot be delivered by other providers it should be assessed in accordance with the Council's Unsolicited Proposals Policy (if any), and in the absence of an Unsolicited Proposals Policy, using the following criteria:
- Does the proposal align with the Council's Strategic Plan objectives;
  - What are the community benefits to the proposal; and
  - Whether the proposal represents value for money for the Council; and
  - Whether the proponent has the skills, experience and resources required to enable it to deliver the proposal
- 11.4** Unsolicited proposals will be approved by the CEO or the Executive Leadership Team (ELT) where relevant.

## **12. Contract Management**

- 12.1** When the procurement process ends, the responsibility of the project is transferred to the Contract Administrator who ensures the management of the contract including appropriate contract management transition.
- 12.2** Contract management key requirements include:
- Contract administration complies with Adelaide Hills Council policies, procedures, and delegations.
  - Foreseeable WHS risks relevant to contract work (including any specific WHS requirements of the contract) are identified and communicated to the Contractor.
  - Technical aspects of the work (including risk assessments, job safety environmental analysis, and safe work method statements) are reviewed and confirmed.
  - Key environmental aspects are identified prior to construction activity and communicated to the Contractor.

- Contractor training and/or induction is completed prior to work commencing.
- Appropriate monitoring is undertaken of WHS and environmental management systems and work practices undertaken by Contractors.
- Appropriate monitoring of contractor performance throughout the contract by the use of Key Performance Indicators (KPI) and/or performance metrics.
- Contractor and Adelaide Hills Council obligations are met under the contract.
- Contract variations or extensions are authorised strictly in accordance with the relevant delegated authority process. Approval is gained for contract variations that are outside of the original scope; have the effect of varying the contract sum; or alter the terms and conditions of the contract.
- Claims for payment are in accordance with the contract.
- Approved budget funds are available to authorise payment of invoices

### **13. DELEGATIONS**

**13.1** Council makes the following delegations:

**13.1.1** The Chief Executive Officer has the delegation to approve, amend and review any procedures that shall be consistent with this Policy.

**13.1.2** The Chief Executive Officer has the delegation to enter into contracts to a value of \$500,000 (excluding GST)

**13.1.3** The Chief Executive Officer may sub-delegate the authority to Council Officers to enter into contracts to a value of \$300,000 (GST exclusive).

**13.1.4** The Chief Executive Officer and one other Council Officer at Director Level may jointly enter into contracts to a value of \$1,000,000 (excluding GST)

### **14. PRUDENTIAL REQUIREMENTS**

**14.1** In some circumstances a procurement process may require additional due diligence in accordance with the *Local Government Act 1999* prudential requirements. If this occurs the process will be subject to the Council's Prudential Management Policy.

**15. DELEGATION**

**15.1** The Chief Executive Officer has the delegation to:

- Approve, amend and review any procedures that shall be consistent with this Policy; and
- Make any legislative, formatting, nomenclature or other minor changes to the Policy during the period of its currency.

**16. AVAILABILITY OF THE POLICY**

**16.1** This Policy will be available via the Council's website [www.ahc.sa.gov.au](http://www.ahc.sa.gov.au).