

Policy

Procurement

March 2020

Table of Contents

Part A - Preliminary	1
1 Purpose	1
2 Scope	1
3 Principles.....	1
Part B - Responsibilities.....	2
4 Elected Council.....	2
5 CEO and Directors.....	2
6 Service Unit Manager	2
7 Legal Service Unit.....	2
8 Finance Service Unit.....	3
9 Responsible Officer.....	3
10 Probity Advisor.....	4
11 Tenderer	4
12 All Staff	4
Part C - Requirements	5
13 Value for Money.....	5
14 Probity and Conflicts of Interest.....	5
15 Confidentiality	5
16 Thresholds.....	5
17 Exemptions from Thresholds.....	6
18 Compliance and Breach	7
19 Procedures	7
20 Contracts	7
21 Major Projects.....	7
22 Mandatory Assessment Criteria.....	7
Part D - Supplier Diversity.....	8
23 Local Preference.....	8
24 Indigenous Procurement	8
25 Disability Employment Organisations.....	8
Part E - Sustainable and Ethical Considerations	9
26 Sustainable Procurement	9
27 Modern Slavery.....	9
Part F - Financial Authorisations	9
28 Approved Levels	9
Annexure A - Definitions	10
Annexure B - Policy Authorisations	11
Document Control	12

Part A - Preliminary

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 the Elected Council and staff who undertake any aspect of Procurement on behalf of CN.
- 2.2 The Policy does not apply to the acquisition, disposal or lease of land and property.

3 Principles

- 3.1 In conducting Procurement, CN commits itself to the following principles:
- 3.1.1 **Accountability and transparency** - procurement and tendering processes will be open, clear, fully documented and defensible.
 - 3.1.2 **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.
 - 3.1.3 **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).
 - 3.1.4 **Consistency** – consistent processes must be used in all stages of the procurement and tendering process.
 - 3.1.5 **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.
 - 3.1.6 **Ethical Procurement** – procurement and tendering processes will seek to:
 - purchase sustainable/green products and services;
 - comply with the Modern Slavery Act 2018; and
 - support the UN Sustainable Development Goals.
 - 3.1.7 **Supplier Diversity** – procurement and tendering processes will seek to include suppliers from:
 - Local Businesses;
 - Aboriginal Owned Businesses; and
 - Disability Employment Organisations.
 - 3.1.8 **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.

Part B - 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 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 Service Unit in a timely manner.

7 Legal Service Unit

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 Manage a centralised contracts register and maintain a contractor performance reporting system.
- 7.5 Provide advice on the negotiation of contracts when requested by Service Unit Managers.
- 7.6 Provide advice on contract disputes when requested by Service Unit Managers.
- 7.7 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.
- 7.8 Act as probity advisors for tenders between \$1M and \$5M in value.

8 Finance Service Unit

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

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.

Part C - 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
- initial and ongoing costs.

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);
- 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 (excluding Consultants) - CN's Purchasing Procedure.
 - Procurement over \$250,000 (or engaging Consultant services of any value) – 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 \$50,000 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	minimum 10%

Part D - 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 Local Business 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 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 consider obtaining quotes from Aboriginal Owned Businesses and will include Aboriginal Owned Businesses as an evaluation criteria for assessing quotes.

Over \$250,000

24.2 When undertaking tenders over \$250,000:

- the Legal Service Unit will notify the NSW Indigenous Chamber of Commerce of the tender; and
- the Responsible Officer in conjunction with the Service Unit Manager, will include Aboriginal Owned Businesses as a tender assessment criteria.

25 Disability Employment Organisations

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 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 Disability Employment Organisation as a tender assessment criteria.

Part E - Sustainable and Ethical Considerations

26 Sustainable Procurement

- 26.1 CN will pursue and implement effective ways of minimising waste 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 safe and are value for money over the lifetime of the product.
- 26.3 In assessing quotes and tenders, the Responsible Officer may 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 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.

Part F - Financial Authorisations

28 Approved Levels

- 28.1 The Responsible Officer/Service Unit Manager must only undertake Procurement responsibilities within their limits of Financial Authorisation (see CN's Register of Financial Authorisations).
- 28.2 Where there are changes to the original contract value/cost of the Procurement, approval must be sought in accordance with Financial Authorisations.
- 28.3 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.

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 1912* (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 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).

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 into 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.

Annexure B - Policy Authorisations

Function	Position Number / Title
Refer to Financial Authorisations	

Document Control

Policy title	Procurement Policy
Policy owner	Chief Financial Officer and Manager Legal
Policy expert/writer	Manager Business Finance and Contracts Management Specialist
Associated Procedure Title (if applicable)	- Tendering and Contracts Procedure - Purchasing Procedure
Procedure owner (if applicable)	Chief Financial Officer and Manager Legal
Prepared by	Finance / Legal
Approved by	Council
Date approved	10/12/2019
Policy approval form reference	ECM# 6217089
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Details of previous versions	Procurement Policy 2015 Version 3 - ECM #4747834
Legislative amendments	Section 55, Local Government Act – amended 25 June 2019
Relevant strategic direction	Open and Collaborative Leadership
Relevant strategy	Open and Transparent Governance Strategy
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 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
Required on website	Yes
Authorisations	Functions authorised under this Policy at Annexure B