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	POLICY TITLE:	Procurement
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POLICY

Council will give fair and equitable consideration in all its procurement activities and will use public funds to ensure the best return and performance is achieved through prudent evaluation. Council will in its evaluation, give preference to environmentally sensitive goods where price, performance, quality, suitability and other evaluation criteria are comparable, considering whole of life analysis.

When purchasing goods and services, Council Officers and Councillors will act impartially; maintain a high level of professionalism, confidentiality and accountability. The procurement must be in accordance with all relevant delegations.

The procurement of goods and services by Council must be in accordance with the legislative framework that is defined in the NSW Local Government Act 1993 (Section 55), Part 7 – Tendering of the NSW Local Government (General) Regulation 2005.

Council’s Code of Conduct, Statement of Business Ethics and Values will at all times be maintained in any procurement activity conducted by Council.

\$150,000 & Over - Tenders Are Required

In accordance with the Local Government Act and Local Government (General) Regulation 2005, Council will invite tenders before making a contract for carrying out works or the supply of goods or services, involving costs of \$150,000 and over. The acceptance of the tender is to be reported to, and approved by Council.

\$30,000 - \$149,999 – Three Written Quotations Are Required

Council may invite tenders or will obtain three written itemised quotations before making a contract for the carrying out of works or the supply of goods or services involving costs between \$30,000 and up to \$149,999. The acceptance of the tender/quotation is to be reported to Council.

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\$1,500 - \$30,000– Two Written Quotations Are Required

Council may invite tenders or will obtain two written quotations subject to the rates being considered reasonable and consistent with normal market rates for items of a like nature.

Under \$1500

Goods under the value of the \$1500 will be at the discretion of the relevant Manager and in line with their delegated authority and appropriate Purchasing and Risk Management procedures.

LOCAL TENDER/QUOTATION ADVANTAGE

Preference will be given to those who meet the requirements in local tenders utilising the following weighting:-

10%	<\$5,000
5%	\$5,000 - \$30,000
Nil	> \$30,000

Exemption from Requirement to Tender or Quote

Council can enter into an agreement without a tender or a contract above \$5,000 and less than \$150,000 without seeking quotations if:-

- Council resolves that the services being sought are of such a specialised or confidential nature that it would be impractical or disadvantageous to seek quotations or tenders
- A genuine emergency exists
- Quotations are provided by an approved procurement service provider such as Local Government Procurement

PURCHASE ORDERS

A purchase order is Councils official document used to purchase goods or services from an external supplier. A purchase order confirms the contractual relationship between Council and the supplier and must be issued before the procurement of the goods or service.

BACKGROUND

Clear procedures for the procurement of goods and services are required to assist Council in ensuring best value for money, good management practices, legislative compliance, transparency, probity and environmental performance.

DEFINITIONS

Local Preference: Within the constraints of this policy local suppliers may be given preference through fair and equitable evaluation where it is apparent that the procurement will directly or indirectly generate employment within Bourke Shire.

Procurement: is the acquisition of goods and/or services at the best possible cost, in the right quantity and quality, at the right time, in the right place for the direct benefit or use of Council - generally via a contract. Simple procurement may involve nothing more than repeat purchasing.

Tender: means a tender submitted or proposed to be submitted to Council in accordance with Part 7 – Tendering of the NSW Local Government (General) Regulation 2005.

OBJECTIVES

The Procurement Policy and associated procedures are designed to ensure that expenditure of public funds results in the best cost / value ratio, and to ensure compliance with the following principles:-

- Efficiency and effectiveness
- Value for money, being the benefits achieved compared to whole of life costs
- Probity and equity
- Environmental considerations
- Effective competition

RELATED POLICIES / DOCUMENTS

- Procurement Procedures
- Local Government Act 1993, Section 55
- Local Government (General) Regulations 2005. Part 7 Tendering. Sections 163 to 179
- Bourke Shire Council Tendering Guidelines
- Sale of Assets
- Sale of Plant
- Purchase of Plant Procedures

VARIATIONS

Council retains the right to review, vary or revoke this policy at any time.

The General Manager has the right to review or vary any related procedures.

Presented to MANEX: 7/04/2015

Policy Adopted by Council: 27/04/2015



BOURKE SHIRE COUNCIL

PROCUREMENT PROCEDURES

To assist better practice in the expenditure of public funds for public purposes, staff are to ensure that their purchasing activities are guided by the following considerations:-

- Legal obligations – these include the provisions of the Local Government Act 1993, and the Local Government (General) Regulation 2005.
- Policy frameworks and guideline documents – these include the Tendering Guidelines for NSW Local Government, October 2009, NSW Government Procurement Policy and Framework, the NSW Government Procurement Policy and Procedures Paper, NSW Government Code of Practice for Procurement and the NSW Government Tendering Procedures which are available from the NSW Department of Commerce website at <http://www.dpws.nsw.gov.au/Government+Procurement>.

Commonwealth Procurement Procedures are available from the Department of Finance and Administration website at http://finance.gov.au/ctc/commonwealth_procurement_guide.html.

- Value for money – value for public money to achieve positive outcomes for the community is the core principle underpinning procurement at all levels of government. It specifically involves a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement cycle.
- Probity – Council must conduct all tendering, procurement and business relationships with honesty, fairness and probity at all times
- Accountability and transparency – Council must ensure that the process for awarding contracts is open, clear, fully documented and defensible.
- Consistency – This means that all conditions of tendering must be the same for each tenderer on any particular tender and the evaluation of tenders must be based on the conditions of tendering and selection criteria as defined in the tender documents.
- No conflict of interests – A Councillor or Council employee with an actual or perceived conflict of interest must address that interest without delay in accordance with Council's Code of Conduct.
- No improper advantage – Council must not engage in any practices that aim to give a potential tenderer an advantage over others, nor engage in any form of collusive practice.

- Risk Management – the identification and management of risks should be built into Council’s procurement processes.
- Open to scrutiny – processes need to be based on clearly articulated and defensible evaluation criteria consistent with the legislative and policy framework. Actions must be robust and defensible to the public.

DEFINITIONS

Appropriate person: in relation to a tender submitted to Council, means a person designated by the General Manager to receive or deal with tenders submitted to Council and, if a person is not designated, means the General Manager.

Data storage device: has the same meaning as it has in the Electronic Transactions Act 2000

Electronic means: includes electronic communication within the meaning of the *Electronic Transactions Act 2000*

Formal tender document: means a standard form document issued by a council for completion by tenderers in connection with the submission of tenders to Council.

Goods: includes materials.

Instalment contract: means a contract requiring the payment of instalments by or to Council over a period of 2 or more years.

Public authority: includes Council.

Relevant newspapers: in relation to Council, means:-

- (a) Sydney Morning Herald or equivalent relevant statewide or regional newspapers for major contracts, and
- (b) Either or both of the following:
 - (i) Western Magazine
 - (ii) Western Herald

Tender: means a tender submitted or proposed to be submitted to Council in accordance with the Part 7 – Tendering of the NSW Local Government (General) Regulation 2005.

The Act: means the Local Government Act 1993 .

Quote: To state a price for securities, goods or services.

Register

Council will maintain a register of all contracts, tenders and quotations.

Risk Management-Contracts and procurement practices will be assessed for corruption risks and will include:

- informing potential contractors about Council's Values and Business Ethics
- assessing the purchasing procedures for expenditure under the tender threshold
- ensuring accurate documentation of formal procurement procedures for expenditure under the tender threshold
- assessing the approaches to tendering for contracts equal to and above the tender threshold
- avoiding competitive selection processes through relying on the extenuating circumstances provision in Section 55(3) of the Act
- evaluating quotations and tenders
- reviewing standard contract conditions
- ensuring audit and risk assessment mechanisms are in place
- thorough contract administration
- carrying out site inspections of contracts
- evaluating contractor's performances

Plant Hire (Standing Offer)

A Standing Offer is for the supply of services over a period of time which may be taken up at any time during the period of offer (e.g. plant hire).

Tenders for plant hire are to be called in accordance with the tendering regulations. Except as below, only those who tender are to be engaged for plant hire.

Where plant to meet council requirements (type, numbers etc.) is not available from those who tendered, quotations are to be called, in accordance with the procurement policy, and expenditure on any subsequent engagement is not to exceed \$150,000.

Where contractors, who have tendered change the item tendered, or procure new items they wish to have included in their contract the matter will be dealt with as a variation.

GOODS AND SERVICES TAX (GST)

Council will compare pricing of tenders or quotations on the basis of net cost to Council after input tax credits are claimed.

EVALUATION OF OFFERS

Council will accept the offer most advantageous to it. In deciding which offer is most advantageous, Council will have regard for the procurement principles and all offers will be evaluated on appropriate selection criteria. Typical selection criteria may include, but are not limited to: price, suitability for purpose, delivery, stock holding, quality and past performance of the supplier.

LATE TENDERS AND QUOTATIONS

Late tenders and quotations should not be considered, unless Council is satisfied that the integrity and competitiveness of the tendering process will not be compromised. Clause 177(5) of the Regulation provides that a Council must consider a tender received within a reasonable period after the close of tenders where the tenderer can satisfy the Council that the tender documents and all necessary information were lodged at a recognised delivery

agency in sufficient time to enable the documents to have been received before the deadline. Any decision to accept a later tender should be documented including the rationale for the decision.

DELEGATIONS

General Manager, Manager Corporate Services

Full delegation within Council's adopted budget within Council's Management Plan.

Managers – Roads, Services, Works, Environmental Services and Tourism & Development

To authorise and sign official orders of Council for own area of works and services required, in accordance with the adopted annual Council budget, up to a maximum of \$10,000.

Senior Finance Officer

To authorise and sign official orders of Council for own area of works and services required, in accordance with the adopted annual Council budget, up to a maximum of \$1,000.

During periods of absence by the Manager Corporate Services to utilise specific delegations as defined in the Delegations of Authority.

Library Manager

To authorise and sign official orders of Council for own area of works and services required, in accordance with the adopted annual Council budget, up to a maximum of \$1,000.

BOURKE SHIRE COUNCIL – ATTACHMENT TO PROCUREMENT POLICY & PROCEDURES
LOCAL GOVERNMENT ACT 1993, SECT 55

What are the requirements for tendering?

1. A council must invite tenders before entering into any of the following contracts:
 - a. contract to carry out work that, by or under any Act, is directed or authorised to be carried out by the council,
 - b. a contract to carry out work that, under some other contract, the council has undertaken to carry out for some other person or body,
 - c. a contract to perform a service or to provide facilities that, by or under any Act, is directed or authorised to be performed or provided by the council,
 - d. a contract to perform a service or to provide facilities that, under some other contract, the council has undertaken to perform or provide for some other body,
 - e. a contract for the provision of goods or materials to the council (whether by sale, lease or otherwise),
 - f. a contract for the provision of services to the council (other than a contract for the provision of banking, borrowing or investment services),
 - g. a contract for the disposal of property of the council,
 - h. a contract requiring the payment of instalments by or to the council over a period of 2 or more years,
 - i. any other contract, or any contract of a class, prescribed by the regulations.

2. Tenders are to be invited, and invitations to tender are to be made, by public notice and in accordance with any provisions prescribed by the regulations.
 - 2a. nothing in this section prevents a council from tendering for any work, service or facility for which it has invited tenders.

3. This section does not apply to the following contracts:
 - a contract entered into by a council with the Crown (whether in right of the Commonwealth, New South Wales or any other State or a Territory), a Minister of the Crown or a statutory body representing the Crown
 - a contract entered into by a council with another council
 - a contract for the purchase or sale by a council of land
 - a contract for the leasing or licensing of land by the council, other than the leasing or licensing of community land for a term exceeding 5 years to a body that is not a non-profit organisation (see section 46A)
 - a contract for purchase or sale by a council at public auction
 - a contract for the purchase of goods, materials or services specified by the State Contracts Control Board or the Department of Administrative Services of the Commonwealth, made with a person so specified, during a period so specified and at a rate not exceeding the rate so specified
 - a contract for the employment of a person as an employee of the council
 - a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by not inviting tenders

- contract for which, because of provisions made by or under another Act, a council is exempt from the requirement to invite a tender
 - a contract made in a case of emergency
 - a contract involving an estimated expenditure or receipt of an amount of less than \$150,000 or such other amount as may be prescribed by the regulations.
4. A council that invites tenders from selected persons only is taken to comply with the requirements of this section if those persons are selected:
- a. from persons who have responded to a public advertisement for expressions of interest in the particular contract for which tenders are being invited, or
 - b. from persons who have responded to a public advertisement for recognition as recognised contractors with respect to contracts of the same kind as that for which tenders are being invited.
5. Subject to the regulations, a council must comply with the requirements of this section even though the contract concerned involves something being done to or by an entity that the council has formed or participated in forming.
6. However, if the entity concerned is formed under a public-private partnership, subsection (5) has effect only to the extent that the contract is not part of a project that has been assessed or reviewed in accordance with Part 6 of Chapter 12.
7. For the purposes of subsections (5) and (6):
"entity" means any partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated), but does not include any such entity that is of a class prescribed by the regulations as not being within this definition.
"this section" includes the regulations made for the purposes of this section.

BOURKE SHIRE COUNCIL – ATTACHMENT TO PROCUREMENT POLICY & PROCEDURES
PROCUREMENT
LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - REG 163, PART 7 - TENDERING

Division 1 - Preliminary

163. Application of Part

This Part applies to all contracts for which a council is required by section 55 of the Act to invite tenders. **Note:** This Part does not apply to other kinds of contracts. However, a council may apply provisions of this Part (with any necessary alterations) to other kinds of contracts if it wishes to do so.

(1A) For the purposes of the first bullet point paragraph of section 55 (3) of the Act, Local Government Procurement Partnership (ABN 34 578 553 267) is prescribed.

(1B) To avoid doubt, a reference to Local Government Procurement Partnership includes for the purposes of subclause (1A) a reference to any duly appointed agent of Local Government Procurement Partnership.

(2) For the purposes of the final bullet point paragraph of section 55 (3) of the Act, section 55 does not apply to a contract involving an estimated expenditure or receipt of an amount of less than \$150,000

165. Requirements for contracts to which this Part applies

(1) A council may enter into a contract to which this Part applies only in accordance with the provisions of this Part.

(2) A contract to which this Part applies, and any variation or discharge of the contract, must be in writing and must be executed by or on behalf of the council.

Division 2 - Prerequisites for tendering

166. Council to decide whether tenders are to be by open tendering or selective tendering

Whenever a council is required by section 55 of the Act to invite tenders before entering into a contract, the council must decide which of the following tendering methods is to be used:

- (a) the open tendering method by which tenders for the proposed contract are invited by public advertisement,
- (b) the selective tendering method by which invitations to tender for a particular proposed contract are made following a public advertisement asking for expressions of interest,
- (c) the selective tendering method by which recognised contractors selected from a list prepared or adopted by the council are invited to tender for proposed contracts of a particular kind.

167. Open tendering

A council that decides to use the open tendering method for a proposed contract must publish an advertisement in the relevant newspapers inviting tenders for the proposed contract.

(2) The advertisement must:

- (a) express the purpose of the proposed contract, and
- (b) give details of where and when tender documents relating to the proposed contract can be obtained and the purchase price of those documents, and
- (c) specify the name of a person to whom requests for information concerning the proposed contract may be addressed and how the person can be contacted, and
- (d) invite any person willing to fulfil the requirements of the proposed contract to submit a tender to the council by the deadline specified in the advertisement.

The deadline must be a specified time on a date that is at least 21 days after the date of publication or first publication of the advertisement.

(3) The tender documents relating to the proposed contract must comply with clause 170.

168. Selective tendering method by which invitations to tender for proposed contract are made following public advertisement asking for expressions of interest

(1) A council that decides to use the selective tendering method referred to in clause 166 (b) for allocating a particular proposed contract must publish in the relevant newspapers an advertisement inviting applications from persons interested in tendering for the proposed contract.

(2) Every such advertisement must include:

- (a) a brief description of the work, goods, facilities, services or property concerned, and
- (b) the name of a person to whom requests for information concerning the proposed contract may be addressed and how the person can be contacted, and
- (c) the deadline for submitting applications.

The deadline must be a specified time on a date that is at least 21 days after the date of publication or first publication of the advertisement.

(3) A council must consider all applications made in response to such an advertisement and, in so doing, must take into account:

- (a) the experience of the applicants in fulfilling the requirements of similar contracts, and
- (b) the capacity of the applicants to fulfil the requirements of the proposed contract.

(4) After considering the applications, the council may either:

- (a) send invitations in writing to all applicants, or such of them as the council thinks will be able to fulfil the requirements of the proposed contract, to tender for the proposed contract, or
- (b) decline to invite tenders from any of the applicants.

- (5) In inviting tenders from applicants, the council must:
- (a) invite them to submit tenders to the council by the deadline specified in the invitations, and
 - (b) give details of where and when tender documents relating to the proposed contract can be obtained and the purchase price of those documents.
- The deadline must be a specified time on a date that is at least 21 days after the date of the invitation.
- (6) The tender documents relating to the proposed contract must comply with clause 170.

169. Selective tendering method by which recognised contractors listed by council are invited to tender for particular kinds of proposed contracts

(1) A council that decides to use the selective tendering method referred to in clause 166 (c) for the allocation of proposed contracts of a specified kind must publish in the relevant newspapers an advertisement inviting applications from persons interested in tendering for proposed contracts of that kind so that the council may prepare a list of suitable tenderers.

- (2) Every such advertisement must include:
- (a) a brief description of the kind of work, goods, facilities, services or property concerned, and
 - (b) the name of a person to whom requests for information concerning the proposed contracts may be addressed and how the person can be contacted, and
 - (c) the deadline for submitting applications.

(3) A council must consider all applications made in response to such an advertisement and, in so doing, take into account the experience of the applicants in fulfilling the requirements of, and their capacity to undertake, similar contracts.

- (4) After considering an application under this clause, the council may either:
- (a) list the applicant as a recognised contractor for some or all of the kinds of work, goods, facilities, services or property specified in the application, or
 - (b) reject the application in whole or part.

(5) In seeking tenders for a particular proposed contract, a council may invite some or all of the recognised contractors listed by it under this clause to tender for that contract and may do so on the basis of:

- (a) their capacity to fulfil the requirements of that contract, and
- (b) the number of occasions on which each contractor has previously been invited to tender for similar proposed contracts.

(6) In inviting tenders for a proposed contract from recognised contractors listed by the council under this clause, the council must:

- (a) invite them to submit tenders to the council by the deadline specified in the invitations, and
- (b) give details of where and when tender documents relating to the proposed contract can be obtained and the purchase price of those documents.

The deadline must be a specified time on a date that is at least 21 days after the date of the invitation.

(7) The tender documents relating to the proposed contract must comply with clause 170.

(8) As an alternative to listing persons as recognised contractors in accordance with subclauses (1)–(4), a council may adopt a list of contractors prepared by another public authority, but only if the list was prepared by the authority following the publication of an advertisement similar to that provided for under subclause (1).

(9) If a council adopts such a list, the persons whose names appear on the list are taken to be recognised contractors for the kinds of work, goods, facilities, services or property specified in the list.

(10) A person who is a contractor recognised by a council ceases to be so recognised if the person informs the council in writing that the person no longer wishes to be listed as a recognised contractor for the purposes of this clause.

(11) Nothing in this clause requires a council to take the action referred to in subclause (1) on each occasion that it decides to invite tenders under this clause.

170. Tender documents

(1) The tender documents relating to a proposed contract must:

(a) give details of the work to be carried out, the goods or facilities to be provided, the services to be performed or the property to be disposed of and, if the proposed contract is an instalment contract:

(i) give details of the instalments to be paid by or to the council, and

(ii) specify the period over which the instalments are to be paid, and

(iii) specify the intervals between payment of the instalments, and

(b) specify the criteria on which the assessment of tenders will be based, and

(c) specify the name of a person to whom requests for information concerning the proposed contract may be addressed and how the person can be contacted, and

(d) indicate whether formal tender documents must be submitted in relation to the tender and, if so, how they may be obtained.

(2) If a council amends tender documents after they have been issued to persons, it must take all reasonably practicable steps to inform those persons of the amendments.

171. Shortened tender period

(1) A council that believes there are exceptional circumstances rendering inappropriate a deadline that would, but for this clause, be required to be specified in an advertisement under clause 167, 168 or 169 or an invitation under clause 168 (4) or 169 (6) may decide on an earlier deadline. However, the earlier deadline must be a specified time on a date that is at least 7 days after:

(a) the date of the publication or first publication of the advertisement, or

(b) the date of the invitation.

- (2) A council must keep a record of:
- (a) the circumstances requiring an earlier deadline to be specified in such an advertisement or invitation, and
 - (b) the name of the staff member who made the decision to change the deadline (if not made by the council).

172. Extended tender period

(1) If, having specified or included a deadline in an advertisement under clause 167, 168 or 169 or an invitation under clause 168 (4) or 169 (6), a council becomes aware of circumstances that show that the deadline may not allow enough time for meaningful tenders or applications to be submitted, it may extend the deadline by specifying a later deadline.

(2) If, at the time of extending the deadline, the council has issued invitations to persons under clause 168 (4) or 169 (6) or has issued tender documents to persons, it must take all reasonably practicable steps to inform those persons of the later deadline.

- (3) A council must keep a record of:
- (a) the circumstances requiring a later deadline to be specified in an advertisement or invitation, and
 - (b) the name of the staff member who made the decision to change the deadline (if not made by the council).

Division 3 - Submission and opening of tenders

173. Submission of tenders

- (1) Tender must be submitted in writing, by facsimile transmission or (subject to subclause (2)) by electronic means.

- (2) A tender may not be submitted by electronic means:
- (a) if procedures are in force under section 23A of the Act with respect to the transmission of tenders by electronic means—unless its submission by electronic means is authorised by, and effected in accordance with, those procedures, and
 - (b) in any other case—unless its submission by electronic means is effected by a secure mechanism (such as an encryption-based technology) that ensures that it cannot subsequently be altered.

(3) Unless sent by facsimile transmission or electronic means, a tender must be sent or delivered in a sealed envelope.

(4) If a tender is sent by facsimile transmission or electronic means (other than the means referred to in subclause (2) (b)), it must be printed out on receipt, and an appropriate person must place the tender in a sealed envelope immediately after it is printed out.

174. Custody of tenders after receipt

- 1) A council must:
- (a) provide a secure tender box, and

(b) ensure that:

- (i) all tenders (except the tenders received by electronic means that have not been printed out, but including those received by facsimile transmission) submitted to it for a proposed contract are kept in the tender box, and
- (ii) the tender box, when containing tenders, is kept in a safe and secure place, until the envelopes containing the tenders are opened in accordance with clause 175.

(2) A council must ensure that, whenever the council's office is open for business, its tender box is kept in a place that allows tenderers who wish to do so to deposit their tenders personally.

(3) Tenders received by electronic means as referred to in clause 173 (2) (b) must be stored on an information system (within the meaning of the *Electronic Transactions Act 2000*) in such a manner (whether by means of password protection or otherwise) that they are accessible only to an appropriate person.

175. Opening of tenders

(1) At the time specified for the close of tenders, the appropriate person must open the tenders in the presence of:

- (a) at least 2 persons designated by the general manager for the purpose, and
- (b) such tenderers and members of the public as wish to attend the opening.

(2) A member of the public who attends the opening of tenders for a proposed contract is entitled, on request, to be informed as to whether the council has received a particular tender and the number of tenders received.

(3) As soon as practicable after the tenders for a proposed contract have been opened, the appropriate person:

- (a) must record the names of the tenderers and the amounts that appear to have been tendered for the contract, and
- (b) must prepare a tender list specifying the names of the tenderers in alphabetical order.

(4) Immediately after preparing a tender list, the appropriate person must display the list in a place where it can be readily seen by members of the public. That person may add to the list such information as he or she considers appropriate.

176. Tenders may be varied in certain circumstances

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

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

(2) Such a variation may be made either:

- (a) at the request of the council, or

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

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

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

(5) A council must keep a record of:

- (a) the circumstances requiring the variation of a tender, and
- (b) the name of the staff member handling the matter.

Division 4 - Determination of successful tenderer

177. Consideration of tenders

(1) As soon as practicable after the tenders for a proposed contract have been opened, the council must assess the tenders.

- a. A committee of three designated by the General Manager is formed to assess the tenders accordingly to assessment criteria

(2) A council must not consider a tender that is not submitted to the council by the deadline for the closing of tenders. This subclause is subject to subclauses (4) and (5).

(3) A council must consider a tender transmitted to it by facsimile machine or electronic means, but only if:

- (a) in the case of transmission by electronic means, that means of transmission was specified in the relevant tender documents, and
- (b) the transmission was received before the deadline for the closing of tenders, and
- (c) the tender is complete.

(4) However, if a council has specified in the relevant tender documents issued by the council that a tender will not be considered unless formal tender documents are submitted to the council, then (despite subclause (3)), the council is not obliged to consider a tender transmitted to it in accordance with that subclause (being a tender that does not include formal tender documents) unless:

- (a) the tenderer is able to satisfy the council that formal tender documents and all other requisite essential information were posted or lodged at a Post Office or other recognised delivery agency before the deadline for the closing of tenders, and
- (b) the council actually receives those documents within such period as it decides to be reasonable in the circumstances.

(5) A council must also consider a tender received within such period after the deadline for the closing of tenders as it decides to be reasonable in the circumstances if the tenderer satisfies the council that the tender documents and all other requisite essential information

were posted or lodged at a Post Office or other recognised delivery agency in sufficient time to enable the documents to have been received by the council in the ordinary course of business before that deadline.

178. Acceptance of tenders

1) After considering the tenders submitted for a proposed contract, the council must either:

- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or
- (b) decline to accept any of the tenders.

(2) A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in section 55 (2A) of the Act), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.

(3) A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:

- (a) postpone or cancel the proposal for the contract,
- (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,
- (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,
- (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
- (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
- (f) carry out the requirements of the proposed contract itself.

(4) If a council resolves to enter into negotiations as referred to in subclause

(3) (e), the resolution must state the following:

- (a) the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),
- (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).

179. Notification of acceptance of successful tender

As soon as practicable after entering into a contract in accordance with clause 178 or deciding not to accept any of the tenders for a proposed contract, a council must:

- (a) send to all tenderers whose tenders were not accepted notices to the effect that their tenders were unsuccessful or, as the case may be, that none of the tenders for the proposed contract was accepted, and
- (b) display in a conspicuous place that is accessible to members of the public a notice specifying the name of the tenderer whose tender was accepted and the amount of the successful tender or, if none of the tenders was accepted, a notice to that effect.

