PROCUREMENT POLICY

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1. Introduction

Brewarrina Shire Council is committed to ensuring a fair, transparent and accountable process in its procurement of goods and services that it utilises in the delivery of services to the Brewarrina community.

The purpose of this policy is to document clear guiding principles for Council in its procurement of goods and services to assist in:

- ensuring best value for money and cost effectiveness,
- meeting the needs of the community,
- promoting good management practices,
- ensuring transparency and probity,
- promoting sustainability.

The policy also describes the legislative framework within which Council operates, procedures and practices within Council, staff responsibilities, and expected behaviour of both Council staff and suppliers and contractors to Council.

The policy applies equally to elected Councillors and Council staff.

2. Policy Objectives

The objectives of Brewarrina Shire Council's Procurement Policy are to:

- Ensure Council at all times, complies with the *NSW Local Government Act,* 1993 and the *NSW Local Government (General) Regulations,* 2021 and all other relevant laws and regulations, in relation to the procurement of goods and services.
- Clearly define Council's philosophy of fair, transparent and accountable procurement processes.
- Outline Council's procurement framework, responsibilities, and procedures for guidance of all Council Officers.
- Assist Council in achieving the most advantageous "value for money" procurement outcomes.
- Promote and ensure a sustainable approach to decisions around community, environment and financial aspects of procurement.
- Overcome duplication of effort and research throughout the organisation.
- Support local business where possible in procurement outcomes.
- Ensure suppliers and contractors to Council understand their responsibilities and what Council expects of them by defining a set of business ethics.
- Ensure cooperation and understanding from contractors and suppliers by fostering open engagement and demonstrating consistent and regulated procurement practices.
- Ensure Council's procurement, practices, and procedures are benchmarked and as such, meet the highest level of public scrutiny and probity.

3. Legislative and Other Requirements

3.1 Local Government Act and other Legislation

The procurement of goods and services by Council must be in accordance with the legislative framework defined in the *NSW Local Government Act,* 1993 and the *NSW Local Government (General) Regulation,* 2021.

Council also acknowledges and ensures the procurement of Goods and Services will be undertaken in accordance with the ***Modern Slavery Act 2018 No 30.***

3.2 Government Information (Public Access) Act, 2009 (GIPA)

The *Government Information (Public Access) Act,* 2009 (NSW) (the GIPA Act) makes it mandatory for agencies to make certain information publicly available on their web sites, and in any other way they choose, unless there is an overriding public interest against disclosure of the information. The type of information that must be made publicly available is set out in Section 18 of the Act.

3.3 Independent Commission against Corruption

The NSW Independent Commission against Corruption (ICAC) has produced a number of publications with recommended practices and guidelines governing procurement. These have been considered in formulating this policy.

3.4 Brewarrina Shire Council Requirements

Brewarrina Shire Council has a number of internal documents which are relevant to procurement processes. These are:

- Council's *Code of Conduct* which applies to all activities of elected Councillors and staff in the day to day conduct of their activities at Council.
- A *Statement of Business Ethics* which outlines the moral standards that will guide the organisation in carrying out its business.
- Council also has varying levels of delegation to staff for purchasing and procurement and these are to be applied by staff in conducting procurement activities and processes.

3.4.1 Statement of Business Ethics

Council's officers, staff and representatives will perform their duties and conduct themselves in a manner which ensures that they maintain a reputation for fair dealing, and that the integrity of the procurement function is beyond reproach. A *Statement of Business Ethics* has been developed to assist in this process.

Council officers are to inform potential contractors and suppliers of the *Statement of Business Ethics* as part of the procurement process and provide them with a copy of the document. The method of disclosure of the statement will be dependent upon the circumstances of the tender or quotation.

Contractors and suppliers and their employees, including subcontractors, are expected to comply with the provisions of the *Statement of Business Ethics.*

3.4.2 Exclusion of Applicants to Tender

The General Manager has delegated authority to exclude the consideration of quotations or tenders from businesses where he is of the view that the business is unable to demonstrate compliance with the Council's Code of Conduct or Statement of Business Ethics.

4. Risk Management

All suppliers must comply with current Environmental, Work Health and Safety and Workers Compensation legislative requirements where applicable in the delivery of goods and services to Council. They are therefore expected to be aware of and consider these requirements in preparing quotations or tenders for Council. Suppliers are also required to have appropriate insurance policies to cover their activities undertaken on behalf of Council.

4.1 Trades and Services Directory

Council's primary risk management tool in procurement of small, one off type services is the *Trades and Services Directory*. It is a register of contractors that have been pre-approved to undertake work for Council. All contractors on the list have been subject to an assessment process regarding relevant insurances, workers compensation, WH&S compliance practices, and in some instances quality management systems, in order to gain a certificate of compliance. A register of pre-approved contractors is kept and made available to all staff on Council's computer systems.

4.2 Quality Assurance

Quality assurance is an integral part of risk management in the procurement of all goods and services to Council. Council encourages contractors and suppliers where appropriate and relevant to have quality assurance accreditation under Australian Standard 3902 or International Standards ISO 9002 for manufacturers and distributors, and Australian Standard 3901 or International Standard ISP 9001 for design and manufacture and systems.

5. Local Content in Procurement

The Brewarrina Shire Council forms an integral part of the local economy in the region. One of Council's key strategic priorities is economic development with stated initiatives to support business and assist in job creation. Council seeks to meet these initiatives by measuring the amount of local content in its procurement activities.

The use of local content in the selection criteria within tendering and procurement is an appropriate way to make an informed assessment of a submission's direct benefit to the local economy. The amount and/or type of local content is assessed using the selection criteria framework, coupled with the standard weighted score system of assessment.

The objectives of Council's local content considerations are to:

- Provide benefits to the local economy in Council's procurement processes.
- Allow tenderers to easily and simply demonstrate the benefits of their bid to the local economy by using a standard tender schedule format.
- Allow easy assessment by Council within the tender evaluation system.

- Encourage suppliers from outside the Brewarrina Shire Council area to submit tenders by providing a transparent method of assessing local content.
- Promote the use of local contractors, materials and services.
- Have a fair and transparent system that addresses probity.
- Ensure tenders are evaluated on an equal footing.

5.1 Application of Local Content in Procurement

Within tendering and purchasing activities, local content will be one of the selection criteria assessed. See Section 9 for the standard selection criteria to be applied to procurement processes.

Details in relation to Council's Local Content / Purchasing consideration are contained in Appendix 1.
To assist with ensuring locals are notified of quotations and tenders, a generic email with local contractors and suppliers is to be used where applicable in accordance with ***Local Government General Regulations 2021 Tendering Guidelines.***

6. Sustainable Procurement

The *Local Government Act,* 1993 contains specific requirements and direction for councils in relation to sustainability. Brewarrina Shire Council promotes sustainability in its procurement processes.

The objectives of Council's sustainability considerations are to:

- Eliminate unnecessary inefficiency, waste and expenditure.
- Contribute to the combined purchasing power of local government to stimulate demand for sustainable products, including materials collected through Council's kerbside collection service.
- Advance sustainability by participating in "closing the life-cycle loop".
- Increase awareness about the range and quality of sustainable products available.
- Deliver Council's commitments in relation to ecologically sustainable development (ESD) and other environmental and social objectives.
- Demonstrate leadership in advancing long term social and environmental sustainability.

7. Methods used in Procurement

7.1 Petty Cash

Petty cash is used to meet the need for the procurement of small incidental goods and urgent situations and is limited to $50 per individual transaction. Council has a separate procedure governing petty cash transactions.

7.2 Account System

Council may operate an account system with various local businesses to facilitate the procurement of goods in excess of $50 in value that would be regarded as day to day items necessary for the carrying out of work or to provide services. For these items it would generally be impractical for Council to obtain multiple quotations. These would typically be items such as stationery, food and grocery supplies for general catering purposes, general building supplies such as PVC pipe, plumbing fittings, etc., small hardware items such as nails, screws, etc.

Relevant staff members are delegated authority (including financial limits) to make purchases in this manner as part of their work activities.

7.3 Purchase Orders

A Purchase Order is Council's official document used to procure goods or services from an external supplier and is used for the purchase of goods or services up to $250,000 in value. All purchasing transactions other than those covered by petty cash, Council's account system with local businesses, a contract arrangement or a written letter of engagement are dealt with by way of a Purchase Order.

It is contingent upon the staff involved in issuing Purchase Orders to ensure that they comply with Council's purchasing procedures and their own delegations.

7.4 Quotations

Quotations are an external supplier's bid or offer to provide goods or services and are utilised to assist in ensuring that Council receives value for money based on fair competition in its procurement processes. The type of quotation used will vary depending on the circumstances and is subject to financial limits. All quotations received by Council should be submitted in writing or email where a supplier has been asked for a quotation and fails to provide one this should be recorded.

Quotation documentation must be retained for audit purposes.

Method of Procurement	Monetary Range	Advertise Period	No. of Quotes sought	Procedure Type
Verbal Instruction for Quotation	$10,000-$30,000	N/A	Two	Purchasing Procedure
Written Instruction for Written Quotation	$30,000 to $250,000	N/A	Three	Purchasing Procedure

7.5 Long term Supply Contracts

Council may choose to enter long term supply contracts to achieve security of supply and value for money. It can also provide advantages in the form of discounts for volume over a period of time that would otherwise not be available for a shorter term arrangement. A written specification and formal instrument will always be used where Council enters into long term contract arrangements.

7.6 Government Contracts and Prescribed Entities Tendering

Section 55(3) of the *Local Government Act* allows Council to undertake a procurement activity via one of the prescribed entities mentioned in Section 163 (1A) I, (i) (ii) of the *Local Government (General) Regulation,* 2021, without the need for Council to formally call for tenders.

Both the NSW State Government and Local Government Procurement (LGP), have in place a variety of contracts for the supply of goods and services. To leverage the cost of tendering councils are able to access these contracts in certain circumstances.

7.7 Contracting

Council utilises contracts to secure various goods and services. Contracts are generally used for major purchases or activities of Council, or where it is important to identify risk and apportion risk. A written specification and formal instrument appropriate to the nature of the contract will be used where Council enters into contract arrangements.

8. Types of Procurement

Procurement of all goods, materials, equipment, works and services by Council will occur by one of the following methods and are subject to financial limits and conditions. Council has separate procedures which apply to each of these methods.

8.1 Direct Purchase

Staff in the conduct of their day to day duties may on occasion need to purchase small items. It is not practical for Council to obtain a number of separate quotations for such purchases.

To facilitate the purchase of these items staff can utilise the petty cash system or make use of the accounts Council has established at various businesses in Brewarrina, subject to their own financial authorisations and delegations as issued separately by Council.

Staff may also utilize Council credit cards for purchases online or suppliers who will not provide account services. The use of Credit cards is in accordance with Council's policy.

The maximum value of goods to be purchased in this manner is $50 using the petty cash system, or $10,000 using the account based or credit card system on any one occasion.

8.2 Verbal Instruction for Written Quotation

Where the value of goods or services to be provided lies between $10,000 and $30,000, a verbal instruction will be issued to the supplier and at least two quotations will be sought. The successful supplier will be engaged either by way of a written letter, email or by the use of a Purchase Order.

8.3 Written Instruction for Written Quotation

Where the value of goods or services to be provided lies between $30,000 and $150,000, a written instruction will be issued to the supplier and three written quotations will be sought.

8.4 Expressions of Interest (EOI)

An Expression of Interest (EOI) is less specific and has a broad specification and description of the project outcomes. An EOI is pitched at attracting alternative submissions or specialists in an area of expertise. An EOI may be called for a project of any value depending on the particular circumstances and will generally be followed by a subsequent process of negotiation or request for tender depending on the value of the work.

8.5 Annual Schedule of Rates

Council has a need to procure services for various activities in the conduct of its business where it is not easy or practical to accurately estimate the actual quantity of work that will be required e.g. plant hire. These activities are governed by a schedule of rates contract. Council will call open tenders for those activities managed under a schedule of rates contract where the total annual expenditure on those activities is expected to exceed $50,000.

8.6 Request for Tender (RFT)

A Request for Tender (RFT) will be used when the value of works is expected to be in excess of $250,000, or alternatively, if there is doubt as to whether the value of the work will exceed $250,000. It may also be used in other circumstances for works of a lesser value where Council determines that it would be an effective method of procurement.

8.7 Summary of Procurement Types

Method of Procurement	Monetary Range	Advertise Period	No. of Quotes obtained	Procedure Type
Direct Purchase	Up to $10,000	N/A	N/A	Purchasing Procedure
Verbal Instruction for Written Quotation	$10,000-$30,000	N/A	Two	Purchasing Procedure
Written Instruction for Written Quotation	$30,000 to $250,000	N/A	Three	Purchasing Procedure
Expression of Interest	Any value	28 days	N/A	Tendering Procedure
Annual Schedule of Rates	$50,000 and above	28 days	N/A	Tendering Procedure
Request for Tender	Above $150,000	28 days	N/A	Tendering Procedure

8.8 Variations to Types of Procurement

There may arise from time to time circumstances where it is not practical or possible for Council to adhere to its stated policy e.g. emergency situations, unable to source the required number of quotations. Wherever there is a variance from the stated policy, the reasons for such variance will be documented and the approval to proceed with the procurement must be authorised by the General Manager.

9. The Tendering/ Quotation Process

Council has a set of procedures / guidelines which outline the measures that Council will undertake to ensure an open and transparent process in all matters the subject of written

quotations, tenders or expressions of interest. Copies of these procedures / guidelines are included as Appendix 2.

9.1 Selection Criteria in Tendering/Quotations

The following set of five standard selection criteria will be used in all quotations, tenders and expressions of Interest:

- Total Cost
- Capability and Experience
- WH&S, Risk Management and Quality Systems
- Environment and Community
- Local Content

A range of sub-criteria will be applied to each of these selection criteria to assist in assessing tenders and quotations depending on the varying circumstances. Council's procurement procedure outlines what these criteria are and how they will be applied.

Staff may choose to use any or all of the sub-criteria in assessing bids received. Generally, the assessment process and the number of sub-criteria will be more complex as the value of works increases. This approach provides Council with:

- A broad spectrum of elements used universally throughout procurement.
- The ability to vary the weightings for each Request for Tender (RFT) or Expression of Interest (EOI).
- Opportunity to customise the schedules for each type of RFT or EOI.

9.2 Assessment of Submissions

During the assessment of submissions, all elements of the advertised selection criteria must be addressed equally; only then will the appropriate goods or services be selected representing the best 'value for money' solution from the submissions received.

If the overall assessment process results in more than one supplier being ranked equal, the supplier with the highest score for local content will be the preferred submission, quote or supplier.

9.2.1 Assessment of Quotations for Goods and Services under $250,000

All quotations received for goods and services to a value less than $250,000 will be assessed using the five standard selection criteria by the relevant staff member involved in the procurement process. A recommendation will be formulated and is then subject to Council's financial approval limits contained in delegations to staff. The process will be fully documented.

Council's procurement procedure contains further details on the assessment of quotations, for goods and services under $250,000.

9.2.2 Tender and Expression of Interest Assessment

A Tender Panel will be formed to evaluate tender and EOI responses and preferably will consist of at least three (3) representatives. There can be more than three (3) representatives on any Tender Panel. The relevant manager will choose whom the Tender Panel representatives should be, dependent on the type of goods and services tendered for. It is imperative that the Tender Panel remains representative of the entire Council. In some circumstances Council may have expert members on the Tender Panel from outside Council.

Council's procurement procedure contains further details on the assessment of tenders and EOIs.

9.3 E-Procurement

The term "Electronic Procurement or e-procurement" can be defined as the usage of e-Government platform over the electronic resources (Internet and Web-based applications) to conduct transactions for purchasing products and services from suppliers.

Council outsources tender and quote advertising services to hosted web sites such as *ICN (Industry Capacity Network*) & *Tenderlink*, which deploys the tender documentation to the market place. *Tenderlink* also implements and tracks changes to the RFT documentation, maintains the tender process and encourages the electronic lodging of submissions via the web portal. Subsequently *Tenderlink* provides a high level of probity for the procurement process.

10. Exemptions

The following is a list of circumstances where there is an exemption from the requirement to seek tenders or quotes for purchase contracts:

(a) a contract entered into 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;

(b) a contract entered into with another council;

(c) a contract for the purchase or sale of land;

(d) a contract for the leasing of land, other than the leasing of community land for a term exceeding 5 years to a body that is not a non-profit organisation (see section 46A Local Government Act 1993 as amended)

(e) a contract for purchase or sale at public auction;

(f) a contract for the purchase of goods, materials or services specified by the NSW Procurement 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,

(g) subject to the regulations, a contract for the purchase of goods, materials or services specified by a person prescribed by the regulations made with another person so specified, during a period so specified and at a rate not exceeding the rate so specified,

(h) a contract for the employment of a person as an employee;

(i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders;

(j) contract for which, because of provisions made by or under another Act, council is exempt from the requirement to invite a tender;

(k) a contract made in a case of emergency.

(l) the undertaking of tendering for products where there is a contract between the Council and Local Government Procurement.

(m) if a council has entered into a public-private partnership—a contract entered into by the council for the purposes of carrying out a project under the public-private partnership (but only to the extent that the contract is part of the project that has been assessed or reviewed under Part 6 of Chapter 12),

(n) a contract involving an estimated expenditure or receipt of an amount of less than $250,000 or such other amount as may be prescribed by the regulations,

(o) a contract that is an environmental upgrade agreement (within the meaning of Part 2A of the Local Government Act),

(p) a contract or arrangement between a council and the Electoral Commissioner for the Electoral Commissioner to administer the council's elections, council polls and constitutional referendums.

(q) a contract made with a person or body approved as a disability employment organisation under the Public Works and Procurement Act 1912 for the purchase of goods or services in relation to which the person or body is so approved.

11. Procurement Documentation

Council will document its procurement processes in accordance with its adopted procurement procedures for all goods and services greater than $10,000 in value.

12. Definitions

Request for Tender (RFT) – A competitive process used to seek the provision of materials, equipment, works and services at the most cost effective price.

Tendering – A competitive process used to seek the provision of materials, equipment, works and services at the most cost effective price.

Responsible Officer - Staff - Representative – Is the person with responsibility for the administration of the contract.

Expression of Interest (EOI) – A less formal tender process where the specification is broader and Council is looking for ideas, alternatives, information and indication of budget pricing.

Intranet – Council's internal web based information system restricted to Council users only.

Tender Assessment Panel – A minimum group of three (3) relevant representatives set up to assess a tender submission.

Consultant – A person or business engaged under contract to provide high level specialist or professional advice to Council.

Tenderlink – A web based, hosted site, outside of Council, for advertisement and access to tender documentation and management of the tender process.

Appendix 1 – Procurement Policy

Objective

To support the Shire's economic development by ensuring Brewarrina Shire Council seeks to source a high level and range of goods and services from local suppliers.

Definitions

The following definitions are used in this document unless inappropriate to the particular context:

Goods
"Goods" include tangible, quantifiable material requirements usually capable of being moved or transported that are purchased, rented, leased or hired by a public authority.

Only goods directly acquired by government agencies are included in this definition. Goods acquired by any service contractor are not directly acquired and therefore are excluded, except where the goods are acquired by a private sector provider for a government agency.

Services or Provision of Services
"Services" or "provision of services" means any task, consultancy, work or advice to be performed or provided that is procured by a government agency. Included are services such as management consultancies, outsourcing, maintenance contracts and agreements, cleaning, waste removal, equipment repairs, external auditors, utilities and services acquired by a private sector for a government agency. Excluded are payments made directly to employees, superannuation and pension payments, statutory or involuntary payments, grants, subsidies and transfer payments.

Construction (including works)
For the purpose of this Policy a work (construction) is defined as:

- The carrying out of any improvement on or over any area of land, lake, river or ocean, and any services related to the activity of Brewarrina Shire Council.

- This includes the construction of buildings, housing and other public infrastructure, as well as related services such as architectural, surveying, facilities management and general maintenance.

Local Contractor / Supplier
To be eligible to claim a Price Preference, a business must:

- Have had a permanent office and permanent staff in Brewarrina Shire for a period of six (6) months prior to bids being sought, and;

- Be either registered or licensed in Brewarrina Shire.

Local Purchase
A local purchase is determined to have taken place if purchased from a supplier that meets the above criteria.

Local Content

Local content is defined as the proportion of the contract that this undertaken locally in the Shire i.e. the majority of the contract outcomes must be managed, supplied and or delivered from within the Shire. Local content includes the source of goods, materials and services offered and the degree which local suppliers and subcontractors are used in the delivery of purchase or outcomes.

Policy

Brewarrina Shire Council recognises it has a role in the economic development of the community and is committed to assisting local industry to do business with the Shire.

In order to assist local industry to do business with the Council, will as far as is practical and permitted by law:

- Ensure a 'Buy Local' culture within the shire.
- Advertise all tenders, contracts and expressions of interest in local newspapers and by other means as deemed appropriate.
- Where possible, make all tenders, contracts and expressions of interest available to access and download through the Shire's website.
- Disseminate contract and tender information to local industry, in a manner deemed appropriate.
- Ensure that buying practices, procedures and specifications do not disadvantage local suppliers and ensure transparency in quotation, tendering and contract management practices.
- Encourage local businesses to promote their goods and services to Council.
- Encourage the use of local distributors within the delivery chain whenever goods, materials or services have to be sourced from outside the Shire.
- Apply a price preference to locally based suppliers and contractors with a permanent office and staff based within the Shire.

Value for Money Considerations

Value for money is a key policy objective. It ensures that the Shire achieves the best possible outcome for the amount of money spent. This does not necessarily mean selecting the bid that offers the lowest initial price.

Purchasing decisions will be assessed on a value for money basis, giving full consideration to:

1. The advantages of dealing with local businesses;
2. Local content;
3. The purchase or contract whole-of-life costs;
4. Compliance with specifications, guidelines and requirements;
5. Supplier capability to fulfil the specified requirements; legal, financial, experience etc;

6. The supplier's commitment to supporting other local businesses through their subcontracting and supplier arrangements;

7. Net benefits to the Shire including the benefits of maintaining an ongoing, innovative and competitive local business environment;

8. Environmental management, supply of recycled/recyclable products and waste reduction;

9. Job creation potential.

Overall, the value for money assessment must deliver quality outcomes at competitive prices, while recognising the impact of procurement decisions on the Shire's industry and economic development.

Any canvassing of Councillors will disqualify businesses seeking to do business with the Council.

Price Preference

A preference is applicable to locally based suppliers and contractors with a permanent office and staff located within the Shire.

Goods and Services

A preference margin will be given to local goods and services on the following basis, with the local price to be the benchmark.

Up to $30,000	10%
$30,000 to $50,000	5%
In excess of $50,000	2.5%

When council is purchasing assets and the consideration is made by way of a combination of goods and cash, then the Local Preference Policy is to be applied as above to the cash and net changeover component of the transaction only.

Local Content Preference

The above preferences may also apply to suppliers based outside the Shire as follows:

- Who use goods, materials or services of a significant amount in local contracts that are sourced within the Shire. The preference applies to the value of the goods, materials or services sourced and used.

- Who can demonstrate that they are suppliers of materials made from recycled products or materials that could be recycled if the recycled products or materials are not available locally.

- A preference will be given to local suppliers who can demonstrate the use of locally sourced products and services as opposed to using products and services from outside of the Shire.

Grievances

If a supplier has concerns with the application of this Policy it should be taken up in writing with the General Manager.

Appendix 2 – Tendering Procedures Guidelines

Definitions and Commonly Used Terms in relation to the Document

Council Official	includes councillors, members of staff of council and delegates of council
The Act	the *Local Government Act 1993*
The Regulation	the Local Government (General) Regulation 2005
Bid Shopping	The practice of trading off one tenderer's price against another's in order to obtain lower prices.
Client	Party calling for tenders and/or awarding a contract.
Construction	All organized activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering.
Employee	Person whose employment is governed by a contract of service, or a person deemed to be an employee under Australian or NSW industrial law.
Employer	Entity that employs a person or persons under a contract of service or a person deemed to be an employer under Australian or NSW industrial law.
Fair	Being unbiased, reasonable and even-handed. Being fair does not mean satisfying everyone or not reasonably pursuing one's legitimate interests. A fair decision may still adversely affect parties.
Infrastructure	Fixed assets that support economic and social development in a fundamental way.
Instalment Contract	A contract under which the balance of the purchase price is payable by separate fixed amounts at successive fixed periods.
Intellectual Property	Inventions, original designs, and practical applications of good ideas protected by law through copyright, patents, registered designs, circuit layout rights and trademarks. Also includes trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by law and through additional contractual obligations, such as confidentiality agreements, contracts and conditions of tendering.
Monitor	Regularly collect information to review performance against specified criteria.
Party	Client, tendered or service provider. An entity's role in a procurement will determine whether it is a client, tenderer or service provider for that procurement.
Procurement	All activities involved in acquiring goods or services either outright or by lease (including disposal and lease termination). Includes acquiring consumables, capital equipment, real property, infrastructure, and services under consultancies, professional services, facilities management and construction.
Service Provider	Includes contractors, subcontractors, suppliers and consultants that contract to provide goods or services.

Tender	Includes a price, bid, offer, quotation, consultant proposal or expression of interest lodged in response to an invitation or request for tender.
Tendered	Entity submitting a tender
Value for Money	The benefits, compared to whole-of-life costs

Introduction

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

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

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

These guidelines shall be followed in all instances involving contracts for expenditure of $250,000 or more, when otherwise required to call tenders under Section 55 of the Local Government Act, 1993 and when it is decided to call tenders with a view to obtaining the most benefit for Council.

Legislation Impacting on the Tendering Process

The legislative requirements applicable in respect of Tendering for New South Wales Councils are detailed under Section 55 of the Local Government Act 1993 and the Local Government (General) Regulation 2005 (Part 7 – Clause 163 and following) and these should be referred to as part of undertaking tender processes.

Ethical Considerations

In the application of these guidelines Council, staff and contractors are expected to comply with Brewarrina Shire Council's Statement of Business Ethics Policy.

Confidentiality

Council must not disclose tender information received from Tenderers that is intellectual property, proprietary, commercial-in-confidence or otherwise confidential. In addition, council staff or councillors must not disclose information regarding the specific details of a tendering process, including a recommendation of the tender evaluation or assessment panel before the council has made a resolution on the matter at a council meeting.

Section 10A of the Local Government Act outlines the circumstances under which a council or council committee meeting may be closed to the public. This includes information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business. This also includes commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it or confer a commercial advantage on a competitor of the council or reveal a trade secret.

Within the tendering process, council must also ensure that their responsibilities are met in regard to the relevant provisions of legislation such as s.12 of the Local Government Act, the *Government Information (Public Access) Act 2009* and the *Privacy and Personal Information Protection Act 1998*.

Conflict of Interest

The NSW Government established the ICAC to protect the public interest, prevent breaches of public trust and guide the conduct of public officials. ICAC investigations have identified a number of examples that highlight the need for all public agencies, including councils, to ensure that they adhere to high standards of probity in tendering.

Conflict of interest may occur when an individual could be influence, or a reasonable person would perceive an individual could be influenced, by a personal interest when carrying out public duties. There is a reasonable community expectation that where such a conflict occurs, it will be declared, assessed and resolved in favour of the public interest.

Council officials have an obligation to disclose potential or actual conflict of interests between their public duties and their personal or private interests. The benefit or loss may be financial or non-financial. The objective of disclosing interests that are or could be in conflict with official duties is to ensure prompt consideration, comprehensive assessment and, where necessary, the implementation of alternative working arrangements or other action by the council concerned.

A conflict of interest can be of two types:

- Pecuniary – an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as defined by Section 442 of the Act.

- Non-Pecuniary – a private or personal interest the council official has that does not amount to a pecuniary interest as defined by the Act. For example, a non-pecuniary interest could be a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature.

The Council's code of conduct based on the Model Code of Conduct for Local Councils in NSW, which was adopted by Brewarrina Shire Council, provides further information regarding conflict of interests and the requirements of the Act in relation to conflict of interests.

Records Maintenance

To ensure that the tender process will withstand the closest scrutiny, it is important that a comprehensive record is kept on all aspects of the tender process and that these are kept on file.

The file in relation to tenders should at all times be kept secure.

The types of records that should be kept are detailed in Checklist 3 and whilst most would seem relatively obvious, it is particularly important that records of all communications with Tenderers and potential Tenderers are documented and, where deemed necessary, clarified in writing.

In-House Tenders

Section 55 (2A) of the Act clarifies that a council may tender for any work, service or facility for which it has invited tenders.

The following strategies should be used when tenders from council business units are involved:

- Engagement of an independent assessor or probity adviser
- Ensuring that potential Tenderers know that in-house tenders are involved
- Ensuring that procedures are followed closely to avoid perceptions of bias and that comprehensive records are kept
- Ensuring that there is clear physical and operational separation between staff responsible for the tender and those tendering
- Careful management of access to information – ensure stringent measures are applied so that in-house tenderers do not have the opportunity to access confidential tender information.

In addition, Council should provide copies relating to any policy and procedures in relation to in-house tenders to potential Tenderers as part of the tender documents.

Identification and Planning

It is critical to any effective tendering process that the need for the purchase of goods or services or the disposal of property is accurately identified, scoped and planned. Successful tendering requires effective planning and performance monitoring to ensure all parties' expectations are met and value for money is achieved.

The following principles should be applied:

- Planning adds value to Council's operations, programs, projects and purchases
- The effort expended in planning is consistent with the significance of what is planed
- Planning ensures fairness of process
- Planning is used to assist the budgeting process to account for the annual costs of works, goods, and services to be used in Council programs
- Planning includes background scoping and benchmarking of relevant service levels
- Plans are reviewed and, if necessary, revised during the tendering process, without compromising that process
- Planning for tendering includes planning of probity checks and other anti-corruption measures. This may include the establishment of a tender review or evaluation panel or the identification of the staff member responsible for evaluating tenders prior to calling tenders.

Staff need to recognize the lead time and costs involved in the tendering process and these timeframes and costs need to be budgeted for and incorporated into council planning.

Developing the Evaluation Criteria

It is essential that the evaluation methodology and criteria be established and the time specifications are prepared so that the tender documents can specify all the information and data needed for a comprehensive evaluation.

In addition to fees, prices or charges tendered, evaluation criteria should contain the factors critical to achieving a successful outcome from the tendering process (refer to Clause 9.1 of the Procurement Policy). These factors may include, but are not limited to:

- Whole-of-life costs, including costs of disposal
- Innovation offered
- Delivery times offered
- Quality offered
- Previous performance of tenderer
- Experience of tenderer and their personnel
- Capability of tenderer, including technical, management staff, organizational and financial capability and capacity
- Tenderers WHS Management practices and performance
- Tenderers workplace and industrial relations management practices and performance
- Tenderers environmental management practices and performance
- Tenderers community relations practices and performance
- Value adding components such as economic, social and environmental development initiatives, if appropriate and relevant to the procurement
- Conformity of tender with requirements.

The evaluation criteria should be consistent with the proposed contract requirements and aim to identify the tenderer offering the best value for money. "Value for money" is determined by considering all the factors that are relevant to a particular purpose. For example, experience, quality, reliability, timeliness, service and initial and ongoing costs are all factors that can make a significant impact on benefits and costs. Value for money does not automatically mean the "lowest price". It is important to be clear, and document, how value for money will be determined in any particular set of circumstances prior to assessing tenders.

Evaluation criteria should be included in the tender documents, although not the weighting for each criterion as this may influence a potential tenderers response. The weighting of the evaluation criteria and the evaluation methodology should be determined prior to calling of tenders and must not be determined later than close of tenders.

Evaluation of Tenders

Evaluation or consideration of tenders should be based on the conditions of tendering and the evaluation criteria provided in the tender documents. Tenders should be evaluated by people with the necessary skills and knowledge, and who are free of any conflict of interest that might undermine the fairness of the process. Any tender that does not adequately comply with the conditions of tendering may be passed over. Councils are not required to consider tenders that are incomplete or not received by the deadline.

Councils should form a tendering review or evaluation panel for each tendering process, which may include an independent member and/or probity adviser. The role of the tender panel should include:

- Approving the conditions of tender, in particular the details brief or specifications

- Ensuring that appropriate performance measures are included in the conditions of tender
- Conducting the review and assessment of tenders
- Preparing a detailed and accessible financial analysis of the tenders and comparison on the basis of unit price, service price, annual cost, total cost or other appropriate measures depending on the nature of the tender. Calculations made by tenderers will need to be checked for accuracy in preparing the financial analysis.
- Preparing an analysis of tenderers performance against the criteria
- Formulating a recommendation to Council to award a contract to a successful tenderer or to not award the contract to any of the tenderers
- Ensuring that appropriate contract documents are prepared and kept with Council's legal documents
- General oversight of the management of the contract
- Ensuring there is a proper complaints handling process established
- Maintaining minutes of tender panel meetings and documenting decisions

All members of the panel should be suitably qualified and experienced. They should make every effort to maintain fairness and probity when planning and conducting the evaluation of the tender. Some techniques to ensure this are:

- Have a separate team, with no involvement in the procurement establish evaluation criteria weightings
- Have separate teams for cost analysis and technical evaluation so that establishing a technical merit score is not influenced by prior knowledge of the cost
- Have staff not involved in the evaluation communicate with tenderers. This minimizes the opportunity for any direct contact between evaluators and tenderers
- Fully document the evaluation methodology, criteria and weightings before calling for tenders

Communication with Tenderers

All communications with potential tenderers should be conducted within strict probity and risk management frameworks to ensure accountability and transparency. Records should be kept of all communications with all tenderers. Council should ensure that:

- A register for all requests for tender documents and a register of all requests for information regarding the tender and requests for clarification are maintained.
- Communication with potential tenderers is only undertaken by the contact person who must be listed in the public advertisement of the tender and the tender documents under clauses 167, 168, 169 and 170 of the Regulation.
- Unless impractical, all communication to tenderers be provided in writing and simultaneously to all tenderers in respect of a question asked of the tender. A copy of the question, but not the asker, should be circulated with the answer.
- Information or clarification provided to potential tenderers is consistent and documented. Where the information is not readily or immediately available, the contact person obtains the relevant information and then follows up the request.
- Any amendment to the tender documents and the steps taken to inform all potential tenderers of the amendments, as per clause 170 of the Regulation, are documented.
- Where briefings or site visits are offered by the council in regard to a particular tender, an attendance register and minutes or notes of the proceedings, including questions asked and answers provided, is maintained and forwarded to all attendees following the briefing or site visit.

- During briefings or site visits, council officials avoid one to one communication. Requests for information by one potential tenderer should be repeated and the response provided to all in attendance.

The Tendering Process

Note all references to the Clauses refer to Clauses of the Local Government (General) Regulation 2005.

1. Responsible Officer

The Responsible Officer for each tender will be the Manager of the Department which is responsible for the function or service for which the tender is being called.

The Responsible Officer will convene a small sub-committee of three (3) persons including themselves and one from the Finance Department to oversee the initial tender process including clarification of financial capacity, etc. (see Checklist 1).

2. Records and Financial Data

The Responsible Officer shall ensure that the necessary action is instituted to ensure the proper records kept are commenced and the accounting systems able to handle any cost allocations (See Checklist 2).

3. Type of Tendering

The Responsible Officer shall prepare a report for Council, or in the case that the General Manager has delegated authority to the General Manager to decide on the type of tenders to be called (Clause 166).

Tenders can either be called under the provisions of Clause 166 – Open Tendering or Clauses 167-168 selective tendering.

4. Shortened Tender Period

Council can reduce the tender period in exceptional circumstances and a minimum tender period of 6 days is permitted by Clause 171 (1).

Clause 171 (2) specifies that the reasons behind the decision to adopt a shortened tender period should be documented, including the name of the person who made the decision.

5. Extended Tender Period

Clause 172 (1) provides that after advertising a deadline for a tender, circumstances arise that show the deadline may not allow enough time for tenders to be prepared or not allow enough time or submitted, the tender period may be extended.

When the tender period is extended, Council should take all reasonably practical steps to ensure that each person who has received a copy of the tender documents is aware of the change - Clause 171 (2).

If the decision is made to extend the deadline, the reasons behind the decision and of the person making the decision should also be recorded on file – Clause 172 (3).

6. Appropriate Person

The Regulation refers to an appropriate person who would generally be responsible for ensuring that the correct tender processes are followed and probity maintained.

For Brewarrina Shire Council it is deemed that the Manager, Finance and Administration be the designated Appropriate Person.

7. Tender Closing Day

The closing day for tenders should be selected by the manager to enable sufficient time for the required 21 days advertising as required and the evaluations of tenders to be considered prior to reporting to Council when required.

8. Closing Time

The common closing time shall be 3.00 pm on the day to enable tenders to be opened and recorded in the Council register of tenders received prior to end of day.

9. Contact Person

The contact person to who all queries will be directed will be the Manager, who initiated the tender process or a person designated by that person.

10. Advertisement

The advertisement will be in accordance with the provisions of Clauses 168 (2) or 169 (2).

Advertisements should be placed in the following;

a. Where required in State Newspapers and/or on Tenderlink or similar State wide public electronic tendering platform
b. Western Herald (Bourke)
c. Brewarrina News
d. In addition, the advertisement will be placed on Council's web site www.brewarrina.nsw.gov.au. (See Checklist 4)
e. A copy to be placed on front of Tender Box with date and time of close highlighted.

11. Designated Persons

For the purpose of the tendering opening procedures, the designated persons shall be as nominated by the General Manager in accordance with this policy.

12. Tender Documentation

Tender documents will be prepared in accordance with the provisions of Clause 170 and detailed in Checklist 5.

13. Weighting of Assessment Criteria

Assessment criteria shall be ranked in order of importance and a weighting applied to each criteria. The two highest ranked evaluation criteria should be given the most weight and the total of their weighting should be at least 80% of the combined total for all weighted criteria. The weightings applied to criteria shall be determined by the Manager overseeing the tender in consultation with

the tender panel convened to assess and select a tender. This should be done prior to the opening of tenders at the latest.

14. Post Advertisement and Tender Document Release

A listing should be kept of all enquiries made in response to the advertisement and an additional listing of those to whom tender documents were sent.

It is important that any information supplied to one tenderer in response to a query is also provided to all others who have required tender documents and this is fully recorded as detailed in Checklists 3 and 6.

15. Receipt of Tenders

All tenders submitted to Council are to be deposited in the Tender Box located in the foyer of the Council Chambers on or before the closing date. Keys to the Tender Box are to be secured in the Council key safe and/or secured by the Administrative Staff Unless sent by electronic means, tenders must be sent or delivered in a sealed envelope.

- Tenders received through the post or by courier should be placed in the Tender Box by a Council officer (with the envelope stamped with date of receipt).

- Tenders delivered by the submitter may be placed in the Tender Box personally.

- Tenders lodged electronically by facsimile or email should be complete and complying and retrievable prior to the closing time. Tenders submitted by electronic means must be maintained in the original electronic form in a secure electronic tender box until opening.

  Tenders lodged electronically are subject to Clause 173 of the Local Government (General) Regulation 2021 which specifies when a tender may not be submitted by electronic means.

16. Custody of Tenders after Receipt

Council's tender box must be available to allow tenderers who wish to do so place their tenders personally in the tender box - Clause 174 (2). The tender box should be kept in a safe and secure place at all times until envelopes containing the tenders are opened in accordance with Clause 175 – Clause 174 1 (b) (ii).

Note
If a tender that is not marked as a tender is opened, then that tender shall be placed into a new envelope by the Appropriate Person. The new envelope shall be marked with "Tender" with the name of the tenderer. The reason why the tender was opened shall be recorded on the original envelope.

17. Procedures for Late Tenders

This procedure is the same for all methods of delivery (fax, post or courier). If a tender is received after the nominated closing time, the following actions are to take place:

- The person receiving the tender shall mark on the envelope the time and date that the tender was received.
- The tender shall be handed to the Appropriate Person.
- The Appropriate Person shall determine whether there are valid reasons for that tender to be considered.

The criteria for the consideration for tenders received after the deadline are contained in Clause 177 (5).

18. Tender Box Keys

The key to the tender box is held by the Executive Assistant..

19. Opening of Tenders

At the time specified for the close of tenders, the Appropriate Person must remove the tenders from the tender box. The Appropriate Person must then open the tenders in the presence of at least two (2) persons designated by the General Manager, and any tenderers and members of the public who wish to attend the opening. This includes Email tenders which must be printed out on the time and date of opening.

All tenders opened are date stamped and then initialled by the three staff members required to be present. All tenders received are to be recorded in the Council's records management system and tender register.

The public who are present at the opening are entitled to request the following information:

a. whether a particular tender has been received.
b. the number of tenders received.

No other information is to be given out (Clause 175 (2).

20. Procedure Once Tenders are Opened

As soon as practicable after the tenders for a proposed contract have been opened, the Appropriate Person must perform the following tasks:

a. Record the amounts that appear to have been tendered for the contract.
b. Prepare a tender list, specifying in apparent order of those amounts, the names of the tenderers.
c. Immediately after preparing the tender list, display the list in a place where it can be readily seen by members of the public. The Appropriate Person may add to the list other information (Clause 175 (4)).

21. Varying Tenders

Tenders may be varied at any time prior to acceptance of the tender by Council. The tender may be varied:

a. by providing the council with further information to explain or clarify the tender submitted
b. by correcting a mistake or anomaly

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 council reasonable to allow the tenderer to provide the information or correct the mistake or anomaly.

If a tender is varied, 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.

A variation of a tender must not be considered if the variation would substantially alter the original tender.

Council must keep a record of the circumstances and the staff member handling the matter (Clause 176).

22. Tender Report

The person initiating the tender will, prior to the tender evaluation, prepare a tender report. The tender report is a summary of each tender and is to include a summary of how the tender complies with reach of the assessment criteria. This summary will be used as a base for the analysis of the assessment criteria. If a tender does not comply with the tender documents, the extent and effect of the non-compliance should be highlighted. The tender evaluation panel may use any other information as they require.

23. Tender Evaluation

As soon as practical after the tenders have been opened, Council should assess the tenders (Clause 177 (1)). This will be done by an evaluation panel to be established for the purpose.

The panel will consist of the Manager of the Department initiating the tender, a member of staff with the necessary technical expertise to assist in the evaluation process and another person nominated by the General Manager.

In the case where Council has submitted an “in-house tender”, the Council Manager may appoint an independent person to serve on the panel.

Assessment of the tenders must be in line with the established assessment criteria.

24. Probity

To ensure the probity of the tender evaluation, a declaration of interests of all members of the tender evaluation panel is required. Should any member of the evaluation panel have a conflict of interest, that member shall declare the interest, and shall only take part in the evaluation with the written permission of the General Manager.

25. Acceptance of Tender

Clause 178 of the Regulation details the tender acceptance procedure and for the ease of reference is reproduced.

After considering the tenders submitted for a proposed contract, Council or the General Manager under delegated authority 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

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 is 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.

If council decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract, Council must 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

If council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:

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

26. Notification of Acceptance of Tender

Clause 179 of the Regulations states that 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, 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.

27. Post Tender Review

At the completion of the tender process, a post tender review is to be conducted. The tender evaluation panel is to prepare a report on the tender process and highlight any element of the tender process that could be improved in the future, or procedures that could be introduced to overcome any problems encountered.

Communication with Tenderers after Close of Tender

The following protocol should apply to contact between the tenderers and tender evaluators, and other council officials, after the tender closes and prior to announcement of the successful tender:

- Tenderer initiated contact is not to be allowed. Councils should have clear procedures regarding how to respond to tenderer contact, which should be included in the tender documents, and should document all instances of tenderer initiated contact.

- Council initiated contact is only for the purposes of clarification. The decision to contact a tenderer should be made by all the tender evaluators. Again, clear procedures and documentation are required.
- Where the tender evaluators decide to request clarification from a tenderer, all tenderers are to be given the opportunity to provide clarification on that aspect of the tender if necessary
- Clarification is sought if information received in a tender is open to interpretation or is not clear and where this information is necessary to identify the successful tender
- Council initiated contact does not result in any tenderer gaining an advantage over the other tenderers, for example the tenderer is not allowed to revise or enhance the original tender
- All contact must be well documented and records maintained.

Tender Negotiation

If after the tendering process none of the tenders are acceptable, either due to the level of non-conformance or because they do not represent sufficient value for money, the council may, under Clause 178 of the Regulation, decide to enter into negotiations with any person with the intention to enter a contract. The council must state the reasons for declining to advertise and invite fresh tenders. Council should not use such tender negotiations as an opportunity to trade-off one tenderer's prices against other tenderer's prices in order to obtain lower prices.

As a general rule, direct negotiations should be avoided due to the risks associated with the process.

When the decision to undertake direct negotiation with one supplier, buyer or proponent has been made, council should demonstrate commitment to a fair and accountable process by ensuring the following:

- Council officials conducting the negotiations have high level skills, training and experience in commercial negotiations
- A team approach is taken to the negotiations, led by a suitably qualified, experienced senior person and consideration is given to including an independent observer or probity auditor
- The negotiation process is adequately resourced
- Preparation of a negotiation plan and strategy includes aims, objectives, constraints and agreed minimum bargaining positions
- Conflict of interest, both pecuniary and non-pecuniary, of team members are disclosed and addressed
- A formal communication protocol is adopted and agreed by both parties, which covers regular meetings, written exchanges, document exchanges, dealing with urgent matters, "critical" issues meetings, recording of meetings and the roles and responsibilities of all team members
- Expert technical and legal advisers are involved at the appropriate times
- Council's General Manager is informed of progress as appropriate

- Appropriate confidentiality is maintained
- Following completion of the negotiations, an evaluation is conducted to assess whether the aims of the negotiations were achieved
- Comprehensive documentation of the planning, process and results of the negotiations is maintained.

Appendix 1- Checklists

CHECKLISTS

1. Funding Availability and Financial Issues

1.	Has funding been allowed in the Operational Plan?	Yes/No
2.	Will a supplementary vote be required?	Yes/No
3.	Has a fee been set for the supply of tender documents?	Yes/No

2. Records and Financial Data Requirements

1.	Has the records staff allocated a File and / or Reference Number?	Yes/No
2.	Has the Manager of Administration allocated a Contract Number?	Yes/No
3.	Has a trust fund number been allocated by the Finance Manager for the receipt of any deposits and/or retentions?	Yes/No
4.	Has the Finance Manager allocated Expenditure Codes for the proposed tender, including costing for documentation preparation, etc.	Yes/No

3. Information that Should be Kept on File

1.	A copy of Council's decision to tender, including minute number and copy of report including any reason for adopting a selective or open tendering process.	Yes/No
2.	A copy of the advertisement	Yes/No
3.	A complete copy of the tender documents supplied to tenders	Yes/No
4.	Record of all requests for tender documents on file	Yes/No
5.	Record of staff involved in the preparation and issue of tender documents	Yes/No
6.	Copy of any letters sent to Tenderers to clarify any issues raised	Yes/No
7.	A copy of the advertisement as it appears in the required publications	Yes/No
8.	Declaration of interest for all staff involved on file	Yes/No

9.	Written records of all communications between tenders and Council staff, including records of advertising, attendance and information provided at briefing sessions	Yes/No
10.	Full documentation of any changes to tender specifications (incl. who made the change and why)	Yes/No
11.	Evidence that any changes to tendering specifications communicated to all tenderers or potential tenderers and that tenderer or potential tender was disadvantaged	Yes/No
12.	If the time for tenders is extended, evidence on file that Council took all reasonable steps to inform tenderers or potential tenderers of the later closing date together with the name of the person making the decision	Yes/No
13.	Record of the name of the appropriate person and other two (2) designated officers present at the opening of tenders	Yes/No
14.	Record of the receipt of late tenders and the reasons as to why or why not the tenders were accepted	Yes/No
15.	Assessment criteria	Yes/No
16.	Weighting of Assessment Criteria	Yes/No
17.	Names of the tender assessment panel together with their declarations of interest	Yes/No
18.	Any record of communication between potential tenderers and the tender assessment panel	Yes/No
19.	Report of Assessment Panel	Yes/No
20.	Report to Council	Yes/No
21.	Copy of Council Resolution	Yes/No
22.	Where Council intends to submit a tender, any policy or procedure regarding the management of in-house and the names of staff involved in the in-house tender	Yes/No
23.	The evaluation of tenders and the reasons for selection the successful tender or not accepting any of the submitted tenders (Clause 178 of the Regulation)	Yes/No
24.	The notification to all tenderers of the outcome of the tendering process (Clause 179 of the Regulation)	Yes/No

4. Advertisement Guidelines

The advertisement should:

1.	Express the purpose of the proposed Contract	Yes/No
2.	Give details of where and when tender documents relating to the proposed contract can be obtained and the purchase price of those documents	Yes/No
3.	Specify the name of the person to whom requests for information concerning the proposed contract may addressed and how the person can be contacted	Yes/No
4.	Invite any person willing to fulfill the requirements of the proposed contract to submit a tender to the Council by the deadline specified in the advertisement.	Yes/No
5.	Is the deadline specified for the closing date for the Receipt of tenders at least 21 days from the date of publication or first publication of the advertisement?	Yes/No
6.	Did the advertisement specify where the tenders were to be lodged and the method by which tenders are able be lodged?	Yes/No
7.	Was the advertisement placed in the following:	
	i. A Sydney Metropolitan Daily Newspaper or other State wide electronic register for adverting of tenders.	Yes/No
	ii. Either or both a newspaper circulating in Council's area or a newspaper circulating in the district where potential Tenderers are likely to be carrying on business or residing	Yes/No
	iii. It should also be put on Council's website www.brewarrina.nsw.gov.au	Yes/No
8.	Specify the location, time and date of any compulsory pretender meeting	Yes/No
9.	The tender validity period	Yes/No
10.	If it is proposed that an in-house tender is to be lodged, this should be also stated in the advertisement	Yes/No

5. Tender Documentation Guidelines

Did the tender documentation include:

1.	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 contract is an instalment contract:	Yes/No
	i. give details of the installments to be paid by Council, and	Yes/No
	ii. specify the period over which the installments are to be paid; and	Yes/No
	iii. the intervals over which the installments are to be paid	Yes/No
2.	Specify the criteria on which the assessment of tenders will be based	Yes/No
3.	Specify he name of a person to whom requests for information concerning the proposed contract may be and how the person may be contacted	Yes/No
4.	Indicate whether formal tender documents must be submitted in relation to the tender and, if so, how may be obtained	Yes/No
5.	Specify the validity period of the tender	Yes/No
6.	Have attached a copy of the advertisement which contained other relevant dates	Yes/No
7.	Indicate any additional information that is required from Tenderers	Yes/No
8.	A electronic link or copy of Council's Code of Conduct	Yes/No
9.	A link or copy of Council's "Statement of Business Ethics"	Yes/No

6. Post Advertisement/Document Release

1.	All requests for clarification from potential tenders documented	Yes/No
2.	All other potential Tenderers notified of the query and resultant answer if needed but not the enquirer	Yes/No
3.	All changes to documentation noted on file	Yes/No
4.	All changes notified to all potential Tenderers	Yes/No
5.	Any variation to closing date noted on file including the reasons behind the decision and the person making the decision	Yes/No
6.	Evidence on file to indicate that Council took all reasonable steps to inform tenderers or potential Tenderers of the later closing date	Yes/No

7. Receipt of Tenders

1.	Tender box is located so that Tenderers can lodge their own tender and electronic tender box established.	Yes/No
2.	Staff are made aware that tenders are to be placed in the tender box and electronic tender box established	Yes/No
3.	Staff are made aware that any tenders received by fax are placed in an envelope and put into the tender box	Yes/No
4.	Staff are made aware of the need for confidentiality tenders	Yes/No
5.	A record of the time and date of all tenders received electronically or by facsimile is kept	Yes/No

8. Opening of Tenders

1.	At the time and date advertised for the closing of tenders, the appropriate person should be available to open the tenders	Yes/No
2.	At the opening of the tenders, 2 persons designated by the General Manager should also be present	Yes/No
3.	Accommodation should be made available for of the public who would like to attend	Yes/No
5.	A schedule of name of tenderers and the amount their tender should be prepared	Yes/No
6.	A listing in alphabetical order of all tenders should be prepared	Yes/No
7.	The listing should be displayed with any other information deemed appropriate by the appropriate person in a location so that it can be readily seen by the public	Yes/No

9. Tender Evaluation

1.	A listing is made of non-complying tenders and the reason for assessing them as not complying	Yes/No
2.	If any anomalies in the tenders are identified, the tenderer should be given the opportunity to correct such anomaly – Clause 176 (2).	Yes/No
3.	If the opportunity to correct an anomaly is given to one tenderer, all tenderers should be given a similar opportunity – Clause 187 (3).	Yes/No
4.	Tenders assessed against the advertised assessment criteria	Yes/No
5.	Clarification with Tenderers is undertaken if necessary and documented	Yes/No
6.	Tenders are assessed as soon as practicable after they have been opened (Clause 177 (1))	Yes/No
7.	A tender assessment panel is established to review the tenders	Yes/No
8.	Late tender has been subject to determination under Section 177 (5)	Yes/No
9.	Incomplete tenders have been identified	Yes/No
10.	Weighting of assessment criteria determined prior to the close of tenders	Yes/No

Note Weighting should not be disclosed as this may impact on the compilation of individual tenders

10. Tender Recommendation

1.	Following the assessment process, the recommended is identified	Yes/No
2.	The recommended tenderer is again checked against all criteria	Yes/No
3.	The report goes to Council and or General manager which includes:	
a.	Background information on the calling of tenders history of decision to go to tender	Yes/No
b.	Background information on the performance of the previous contractor, if any	Yes/No
c.	Advice on whether, for continuing contracts, the terms of the contract have been reviewed	Yes/No
d.	A summary of the tender process	Yes/No
e.	Details of tenders received and details of any non-complying tenders	Yes/No
f.	Financial analysis of the comparative tenders based unit price/service price/annual cost/total contract cost	Yes/No
g.	Details of assessment criteria used together with weightings	Yes/No
h.	Details of post-tender communication with Tenderers	Yes/No
i.	Conclusion and recommendation based on analysis of assessment criteria results	Yes/No
j.	If recommendation is not to accept any tender, the reasons for that recommendation	Yes/No

11. Council Decision

1.	If Council resolves to accept a tender, it is recorded and a copy put on the tender file, including the full name of the tenderer and the amount tendered	Yes/No
2.	If Council resolved not to accept any of the tenders, then the reason behind the decision is clearly spelt out in the resolution and put on file	Yes/No
4.	If Council decides to enter into negotiations with one or more of the unsuccessful Tenderers, then this is clearly documented, together with the reasons behind the decision and a copy placed on the file	Yes/No

12. Post Council Decision

1.	Formal Contracts have been prepared with the tenderer	Yes/No
2.	Contracts have been signed	Yes/No
3.	All documentation including certificates of currency insurance have been received	Yes/No
4.	Any bonds or deposits are received	Yes/No
5.	All unsuccessful Tenderers have been notified by post	Yes/No
6.	A notice indicating the successful tenderer and the amount tendered is prepared and displayed where the public can readily view it	Yes/No
7.	Any deposits lodged by unsuccessful tenderers have been refunded	Yes/No

Appendix 2- Example Forms & Letters
Example Form 1- Example Advertisement- Expression of Interest

BREWARRINA SHIRE COUNCIL

Expressions of Interest – Tenders for Construction of Roads at Gongolgon Contract No 1/13

Expressions of interest closing at 3.00pm on …….. 2013 are invited from contractors interested in tendering for the construction of Gold, Silver and Copper Streets, Gongolgon. The work will comprise construction of roads, drainage, concrete footpaths and kerb and gutter.

It is expected that tenders will be called during …… 2013 and the work completed by the end of ……. 2014.

Expressions of interest documents are obtainable from Council's Offices Bathurst Street Brewarrina, telephone (02) 6830 5100 between 8.30am and 4.30pm on business days when payment of a non-refundable fee of $…….Applicants are required to provide all details requested in those documents.

Applications must be in a sealed envelope endorsed "Expressions of Interest – Construction of Roads – Gongolgon, Contract No 1/13" and either placed in the tender box located in the foyer of the Councils Offices, Bathurst Street Brewarrina, posted to the address shown above or emailed to tender@brewarrina.nsw.gov.au

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

A short list of applicants will be selected and invited to tender for the works.

Further information in relation to the proposed contract works may be obtained from Council's Engineer, Mr ****** on telephone (02) 6830 5100

Yours faithfully

****
GENERAL MANAGER

Example Form 2- Example Advertisement – Tender

BREWARRINA SHIRE COUNCIL

Tender for Construction of Roads at Gongolgon
Contract No 1/13

Tenders closing at 3.00pm on …. 2013 are invited for the construction of Gold, Silver and Copper Streets, Gongolgon. The works comprise construction of roads, drainage, concrete footpaths and kerb and gutter.

Tender documents are available from Council's Offices Bathurst Street Brewarrina telephone (02) 6290 5100 between 8.30am and 4.30 p.m. on business days upon payment of a non-refundable fee of $……..

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

Formal tenders must be submitted. The tenders must be placed in a sealed envelope endorsed "Tenders for Construction of Roads – Gongolgon, Contract No 1/06" and either placed in the tender box located in the foyer of Councils Offices Bathurst Street Brewarrina, posted to the address shown above or emailed to tender@brewarrina.nsw.gov.au

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

Further information in relation to the proposed contract may be obtained from Council's …… …….. on telephone (02)6830 5100.

Bathurst Street,
Brewarrina NSW 2160

****
General Manager

Example Form 3- Example Invitation to Tender

BREWARRINA SHIRE COUNCIL (letterhead)

…….2013

Mr. D Jones
Jones Construction Pty Ltd
143 Smith Street
Brewarrina NSW 2839

Dear Mr Jones

EXPRSSIONS OF INTEREST – INVITATION TO TENDER FOR CONSTRUCTION OF ROADS AT GONGOLON - CONTRACT NO 1/13

Reference is made to your application dated …..2013 expressing an interest in tendering for the construction of Gold, Silver and Copper Streets, Gongolgon comprising the construction of roads, drainage, concrete footpaths and kerb and gutter.

All applications received were considered by Council at its meeting held on …….2013 have to advise that your application has been successful and that you have been placed on a short list of tenders for the works.

You are accordingly invited to tender for the works. The closing date for tenders will be 3.00pm on ……..2013.

Tender documents are available from Council's Offices, Bathurst Street, Brewarrina or phone (02) 6830 5100 between 8.30am and 4.30pm on business days upon payment of a non-refundable fee of $……..

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

Formal tenders must be submitted. The tenders must be placed in a sealed envelope endorsed "Tenders for Construction of Roads – Gongolgon, Contract No 1/13" and either placed in the tender box located in the foyer of Council's offices at Bathurst Street, Brewarrina NSW 2839, posted to the address shown above or emailed to tender@brewarrina.nsw.gov.au

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

Further information in relation to the proposed contract may be obtained from Council's Engineer, Mr ……..on telephone (02) 6830 5100.

Yours faithfully

****

General Manager

Example Form 4- Example Notification to Unsuccessful Applicant

BREWARRINA SHIRE COUNCIL (letterhead)

……..2013

Mr David J ones
Jones Constructions
143 Smith Street
Brewarrina 2839

Dear Mr Jones

EXPRESSIONS OF INTEREST – TENDERS FOR CONSTRUCTION OF ROADS AT GUNGOLON - CONTRACT NO 1/13

Reference is made to your application dated ……2013 expressing an interest in tendering for the above works.

All applications received were considered by Council at its meeting held on …..2013 and I have to advise that your application has been unsuccessful *(or if applicable, Council has declined to invite tenders from any applicants).*

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

Yours faithfully,

****

General Manager

Example Form 5- List Of Tenders Received – for public display

BREWARRINA SHIRE COUNCIL

Notice Under Section 175(4)
Local Government (General) Regulation 2005

LIST OF TENDERS RECEIVED

Tender Number / Description: _____

Date: ____ / ____ / ____ Time: ____ : ____ am / pm

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____

Example Form 6- List of Tenders received-including amounts tendered to council use only

BREWARRINA SHIRE COUNCIL

Summary of Tenders/Expressions of Interest Received
Clause 175 (3) of the Local Government (General) Regulation 2005

Tender/Expressions of Interest: _____

Contract Number: *(if applicable)* **_____ File Number: _____**

Date: _____ Department: _____Section: _____

Contact Person: _____

Name & Address of Tenderer	Amount Tendered

****

General Manager

Example Form 7- Results of Tender- for public display

BREWARRINA SHIRE COUNCIL

Example Notice Under Clause 179(b)
Local Government (General) Regulation 2005

RESULT OF TENDER

1. **Tender:**

2. **Council Meeting Date:**

3. **Item No:**

4. **Minute No:**

5. **Name of Successful Tenderer(s):**

6. **Amount of:** **$**
(If no tenders are accepted by Council a statement in or to the effect of the following must be included in lieu of 5 and 6 above).

7. **Decision of Council:**

Council resolved not to accept any of the tenders and to postpone the works (or cancel, or carry out the works itself or call fresh tenders as the case may be)
or
Council resolved not to accept any of the tenders but to enter into negotiations with the preferred tenderer (name of tenderer). Council's reason for not calling fresh tenders is (explanation).

****
General Manager

Example Form 8 - Letter of Acceptance

BREWARRINA SHIRE COUNCIL (letterhead)

……2013

Mr D Jones
Jones Constructions Pty Ltd
143 Smith Street
Brewarrina 2839

Dear Mr Jones

ACCEPTANCE OF TENDER – CONSTRUCTION OF GOLD, SILVER & COPPER STREETS, GONGOLON - CONTRACT 01/13

After considering all tenders received for the construction of the above works, it was resolved by Council at the Ordinary Meeting on ……..2013 that:

"Contract No. *** for the construction and completion of *** at *** be awarded to *** in the amount of $***.

For the purpose of administering the Contract, the date of acceptance shall be considered as the date of this letter and you are therefore required to commence work within the next fourteen days.

Prior to commencing on the site you are to provide Council with the following:

1. Notice in writing of the date of commencement of work on the site.
2. Name of Site Supervisor representing your Company.
3. A letter from your Insurance Company confirming the currency of both your public liability and workers' compensation insurance.
4. Security Deposit

In accordance with Clause …. of the General Condition of Contract, you are to lodge a security deposit of $*** (being 5% of the Contract Sum).

This deposit shall be lodged within fourteen days of the date of this letter, in accordance with Clause … of the General Conditions of Contract. The security deposit may be an approved Bank Guarantee, as detailed in Clause 5.3 of the General Conditions of Contact.

Council is currently holding a Preliminary Deposit of $*** which will be refunded following your company's execution of the Formal Instrument of Agreement.

We look forward to working with you on this project.

Yours faithfully

****
General Manager

Example Form 9 - Notification to Unsuccessful Tender

BREWARRINA SHIRE COUNCIL (letterhead)

……2013

Mr David Jones
Jones Constructions
143 Smith Street
Brewarrina 2839

Dear Mr Jones

TENDER FOR CONSTRUCTION OF ROADS AT GONGOLON – CONTRACT NO 1/13

Reference is made to your tender dated, …..2013 for the above works and I have to advise that your tender has been unsuccessful.

After considering all tenders received, Council resolved at its meeting held on ....2006 to accept the tender submitted by Smith Constructions Pty Ltd.

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

Yours faithfully

****
General Manager

Example Form 10 - Notification of Non-acceptance of any Tenders

BREWARRINA SHIRE COUNCIL (letterhead)

…….2013

Mr David Jones
Jones Constructions
143 Smith Street
Brewarrina 2839

Dear Mr Jones

TENDERS FOR CONSTRUCTION OF ROADS AT GONGOLGON

– CONTRACT NO 01/13

Reference is made to your tender dated …..2013 for the above works.

Council considered all tenders at its meeting held on …2013 and resolved not to accept any of the tenders submitted and to postpone the works (or cancel the works or carry out the works itself or call fresh tenders as the case may be).

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

Attached is a cheque for $ being the refund of your tender deposit.

Yours faithfully,

****
General Manager

Example Form 11 - Notification of Non-acceptance of any Tenders where Negotiations are Proposed

BREWARRINA SHIRE COUNCIL (letterhead)

…….2013

Mr David Jones
Jones Constructions
143 Smith Street
Brewarrina NSW 2839

Dear Mr Jones

TENDERS FOR CONSTRUCTION OF ROAD AT GONGOLON – CONTRACT NO 01/13

Reference is made to your tender dated ……..2013for the above works.

After considering all tenders, Council resolved at its meeting held on …….2013 not to accept any of the tenders submitted but to enter into negotiations with the preferred tenderer Smith Constructions Pty Ltd. Council also resolved not to call fresh tenders in view of the urgency of the works and the possibility of obtaining a conforming tender by negotiation.

Attached is a cheque for $ being the refund of your tender deposit.

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

Yours faithfully

****
General Manager