

## Procurement (Contracting & Tendering) Policy

**Keywords:** *Contract, Tendering, Purchasing, Procurement*

<b>Corporate Plan:</b>	Goal 5 – Strong Internal Capability and Capacity Objective 1 – We will embed strategic procurement practices
<b>Classification:</b>	Executive Services – Statutory Policies – “Procurement Policy (Contracting & Tendering)”
<b>First Issued/Approved:</b>	27 August 2002
<b>Review Frequency:</b>	<u>Regulatory Requirement:</u> Within 12 months of a General Election <u>Good Governance Practice:</u> Annually
<b>Last Reviewed:</b>	August 2023
<b>Next Review Due:</b>	August 2024
<b>Responsible Officer(s):</b>	Manager Corporate Services
<b>Council File Reference:</b>	7.63.1; 9.63.1
<b>Applicable Legislation:</b>	Competition and Consumer Act 2012 Competition Policy Reform (SA) Act 1996 Criminal Law Consolidation Act 1935 Disability Discrimination Act 1992 Freedom of Information Act 1991 Independent Commission Against Corruption Act 2012 Industry Advocate Act 2017 Local Government (Elections) Act 1999 – Caretaker Provision Local Government Act 1999 (SA) Local Government (Financial Management) Regulations 1999 Modern Slavery Act (Cth) 2018 Ombudsman Act, 1972 State Records Act 1997 Trades Practices Act 1972 Work Health and Safety Act 2012 and Regulations 2012
<b>Relevant Policies:</b>	Code of Conduct - Council Employees; Fraud & Corruption Prevention Policy; Asset Accounting Policy; Credit Card Purchasing Policy
<b>Related Procedures:</b>	Public Consultation <b>not</b> required prior to adoption or alteration Procurement Procedures, Credit Card Purchasing Procedures
<b>Delegations:</b>	Berri Barmera Council Delegations Register

## 1. Purpose

The responsible and publicly accountable expenditure of funds by Berri Barmera Council is to be conducted efficiently and effectively to achieve optimum overall value for Council and its ratepayer's whilst ensuring that all expenditure is:

- Conducted in a consistent and controlled manner.
- Compliant with legislation and best practice principles.
- Undertaken with high levels of probity and transparency.
- Aligned to the values and related policies of Council and its community.

This policy has been developed to align with the requirements of section 49 of the *Local Government Act 1999* (the Act) and is not intended to conflict with any other legislative requirements.

## 2. Definitions

- Council the Berri Barmera Council
- Contracts Register a register of all procurement contracts entered into by Council
- Direct purchasing means going directly to the source of supply.
- Emergency purchases means emergency procurement, or situations threatening life or property. Expression of interest (EOI) refers to the documentation submitted by potential suppliers in response to a Request for Expressions of Interest (REOI).
- Goods is a physical or tangible item that does not include a labour component
- Local business or supplier means a business or supplier who has its principal business within the Berri Barmera region.
- Open Tender means undertaking a formal tendering process for a specific service in the open market.
- Probity means a risk management approach to ensure the selection and decision-making process will be found to be honest, fair, transparent and defensible if scrutinised. A process conducted with regard to proper standards of probity will achieve both accountability and transparency and provide parties to the procurement process with fair and equitable treatment.
- Procurement is a series of activities that are undertaken when purchasing goods and services, based on key phases: planning, purchasing, contract management. Each phase must be completed to ensure success.
- Quotation means a proposal, bid or offer that is submitted either verbally (informal) or in writing (written) in response to a Request for Quotation (RFQ)
- Request documentation collectively includes response schedules for request for quotes, request for tenders, expressions of interest.
- Select tendering means a process in which selected potential suppliers are invited to submit offers or proposals for goods or services. It can be used as a second stage of a two-staged procurement process.
- Service is the performance of a task, duties or work for another, by an individual or an organisation, which normally involves the provision of labour and/or professional services.
- Supplier is a person or entity that provides goods, works or services to the Council.
- Tender means a proposal, bid, or offer that is submitted in response to a Request for Tender. It is one of several different market-approach strategies.
- Worker – A person is a worker (as defined in the Work Health & Safety Act 2012), if the person carries out work in any capacity for a person conducting a business undertaking, including work as:
  - An employee

- contractor or subcontractor
- employee of a contractor or sub-contractor
- employee of a labour hire company who has been assigned to work in the person's business or undertaking
- outworker
- apprentice or trainee
- student gaining work experience
- volunteer
- person of a prescribed class.

### **3. Principles**

The policy provides a basis for Council to provide best value to its customers and the community in the way it carries out its duties, functions, responsibilities and obligations in the purchasing and provision of goods and services, and the sale and/or disposal of land, assets etc.

It will outline the principles and procedures that the Berri Barmera Council will follow in addressing competitive tendering processes, contracting, purchasing and the sale/disposal of land and/or assets.

### **4. Policy Statement**

The Berri Barmera Council is committed to ensuring a fair, transparent, and accountable process, in the provision of services, purchasing of goods and services and in the disposal of land and other assets.

The Berri Barmera Council aims to ensure that its methods of:

- service provision, including the carrying out of works,
- purchasing goods; and,
- the sale and disposal of land and or other assets are cost effective and meet the needs of the community and represent best value for money.

The Berri Barmera Council's Asset Management Policy addresses the key elements of the conduct of Council affairs in these areas and the principles that will guide its decision-making processes.

#### Service Provision

In fulfilling Council's service provision role, the following principles will apply:

- Consistency with and relevance to Council's Strategic Management Plans.
- Determination of service delivery approaches on the basis of best short- and long-term value (i.e. quality and cost standards will be met, the service will be responsive to the needs of the community and will be accessible to those for whom it is intended).
- Adoption of efficiency, effectiveness, accountability, and transparency measures.
- Consideration of the impact of service delivery approaches on local businesses.
- The desire to retain an appropriate level of staffing.
- Adoption of principles of human resource management and compliance with industrial awards and relevant enterprise agreements has regard to Council's employee relations objectives.
- The appropriateness and necessity for Council to retain control over the way in which services are provided and its response to emergency situations.
- Compliance with statutory obligations and the National Competition Policy.

- Opportunities for creating or maintaining economic development and growth in the area and participation with other spheres of government, community groups and the private sector in service delivery.
- Other relevant factors.

#### Service Provision Options

Council has identified the following options for the provision of services:

- Competitive tendering - exposing the provision of Council services to competition through a formal tendering process irrespective of whether the service has been traditionally provided by Council employees or an external provider. The tendering process may involve "in house" staff tendering with external providers for specific projects, services, and activities.
- Contracting out or outsourcing - to an external provider.
- Contestability - involving staff in identifying and adopting productivity improvements in service delivery designed to meet service standards determined through performance measurement, benchmarking, and market testing.
- Subsidiaries - where Council establishes an incorporated body for the delivery of services, or it co-operates with other Councils to establish such a body. The Local Government Act provides for single Council Subsidiaries or Regional (more than one Council) Subsidiaries.
- Collaborative ventures - where council joins with another organisation, Local Government authority, State Government authority or private sector company to jointly deliver a service.
- Commercial activities – projects which may involve the establishment of joint ventures, trusts, or partnerships.

In identifying the circumstances in which to apply the above options Council will consider:

- Council's Strategic Management Plan goals and objectives.
- Council's Enterprise Agreement.
- Maintenance of control of specific services by Council.
- The risks to Council in adopting the various options.
- The number of competitors in the marketplace.
- The Council's current service delivery arrangements.
- Council's existing resources.
- Council's desire to enter into commercial activities or projects.

#### Purchase of Goods and Services

In fulfilling Council's purchasing role, the following principles will apply:

- Consistency with and relevance to Council's Strategic Management Plan.
- Transparency and accountability in purchasing procedures and practices to ensure that Council purchases at the best price and that all potential suppliers are given equal opportunity to provide the required goods and services.
- Opportunities to enhance local economic development and growth.
- Compliance with statutory and other obligations.
- Commercial confidentiality.
- The Procurement Form will be used for confirmation by CEO and in cases of variation.
- Other relevant factors.

#### Environmental Sustainability

Council is committed to adopting a green procurement approach by supporting the principles of circular economy and sustainable procurement. Environmental

sustainability involves the inclusion of relevant environmental factors in a decision to purchase goods, services and/or tenders with a view to maintain the health and quality of the environment, conserve resources, minimise waste and protect human health.

Environmentally friendly products are goods that through their design and/or manufacture, or for a service through its delivery are:

- Wholly, or in part recyclable, biodegradable, or compostable
- Offer repeat or multi usage over a period of time and not single-use
- Conserve of natural resources
- Integrate principles of waste minimisation and energy reduction
- Provide leadership to local business and the community in promoting the use of environmentally sensitive goods, works or services.

When evaluating suppliers for a particular procurement, weighting can be applied to support suppliers who can supply more environmentally friendly products.

#### Social Impact on Procurement Outcomes

Berri Barmera Council supports the intentional generation of social value through procurement processes that can occur through engaging with minority or under-represented suppliers such as:

- Indigenous Suppliers.
- People with a disability or supporting organisations.
- Small to medium enterprises particularly if locally based.

#### Use of Local Goods and Services

Wherever appropriate, local suppliers are to be given the opportunity to tender and quote for the supply of goods and services. With regard to all other matters set out in this Policy and when deciding on the purchase of goods and services, consideration to the following priority will be given:

1. Berri Barmera Council area
2. Riverland
3. South Australia
4. Australia

#### Purchasing Options

Generally, Council will purchase goods through adoption of the following approaches:

- Direct purchase - where there is only a single supplier, or the particular circumstance means the involvement of only one potential supplier.
- Quotation – seeking quotations from two or more suppliers.
- Selected Tender - seeking tenders from a limited number of suppliers based on, for example, location, previous performance, the result of an Expression of Interest process.
- Open Tender – seeking tenders from the market at large through an open invitation process e.g., advertisement.

The need for selected or open tenders will be determined in the first instance by the value and limits of the purchase as detailed below. Conditions of tendering will be in accordance with Council's Procurement Procedures.

In identifying the circumstances in which to apply these options, Council will consider a number of issues, e.g.

- The number of known suppliers of the goods or services.

- The existence of local suppliers of the goods or services and the impact on the local economy if the goods or services were purchased from outside the council area.
- The total estimated value of the purchase.
- Organisational capacity and attitude to elected Council/staff roles and responsibilities in purchasing.
- Delegation limits taking into consideration accountability, responsibility, operational efficiency and urgency of supply.
- Previous experience with suppliers.
- Compliance with statutory obligations.

Goods and services will be obtained by use of an official order. Official Council orders will be authorised by an Officer delegated to sign such orders.

Before the purchase order is authorised it will include, the cost (or reasonable estimation) of the goods and services so ordered

#### Procurement Matrix:

The Procurement Matrix demonstrates the procurement process to be followed by Purchasers based on the level of expenditure and risk.

Category 1: Expenditure up to \$10,000

After a risk assessment is conducted, a purchaser needs to obtain only one quote (Could be verbal).

Category 2: Expenditure between \$10,001 and \$25,000

After a risk assessment is conducted, a purchaser should obtain a minimum of two written quotes.

Category 3: Expenditure in excess of \$25,001 and \$100,000

After risk assessment is conducted, a purchaser should obtain three written quotes.

Category 4: Expenditure above \$100,001

Purchasers are strongly advised to contact the procurement team for over \$100,000 as a tender process (open / select) will need to be completed.

In categories 1 and 2, if risk assessment registers as high/extreme, purchasers must contact procurement before the quoting process.

#### Purchasing Methods and Limits

<b>Method</b>	<b>Limit</b>
Petty Cash	Less than \$100
Direct Purchase	Less than \$1,000
1 Quotation	\$1,001 - \$10,000
Two Quotations	\$10,001 - \$25,000
Three written quotes	\$25,001 – \$100,000
Tender (Select or Open)	Greater than \$100,000
Municipal Purchasing Contract*	No limit
**Credit Card	Refer Credit Card Purchasing Policy regarding spending caps and transaction limits

- \* A Municipal Purchasing Contract is an industry or state-wide purchasing agreement that has been established by a tender process, examples include State Government Contracts, Council purchasing arrangements and regional contracts such as those negotiated under the G3 purchasing group.

The Berri Barmera Council is a member of the G3 Purchasing Group which aims to achieve uniformity in specification of goods, works and services purchased commonly across the G3 Purchasing Group membership. The objectives of this purchasing alliance are to attract more suppliers, improve bargaining power, reduce costs and improve efficiency. Membership of the G3 Purchasing Group includes the Berri Barmera Council, Renmark Paringa Council and the District Council of Loxton Waikerie.

- \*\* Council operates a corporate credit card purchasing system which permits an appropriate level of cards to be issued to operational staff throughout the organisation. The purpose of the corporate credit card purchasing system is to augment, not replace, existing procurement practices. Credit card transactions are used for minor, frequent purchases or 'one off' purchases or payments where time is of the essence and when obtaining 'sale' prices for goods and services. Credit cards may also be used generally for accommodation, travel; minor library purchases on-line, conference fees, training course fees and hospitality. – Refer to Credit Card Purchasing Policy for register of cardholders and to Credit Card Purchasing Procedures for procedural matters.

Requests to vary the above options, methods or limits must be forwarded in writing to Council's Chief Executive Officer providing sufficient reason and information for variation. Council's Chief Executive Officer may authorise procurement policy variation based on information provided and within delegated authority.

Some examples of when it may be appropriate for the CEO to waive application of this Policy are –

- Emergency situations threatening life and property
- the supply market is known
- where better value can be achieved by an alternative method
- availability of vendors
- timing constraints
- any other exemptions as documented for probity.

#### Sale and Disposal of Land and Other Assets

For the sale and disposal of land and other assets, the following principles will apply regarding decisions of Council:

- Consistency with and relevance to Council's Strategic Management Plan.
- Transparency and accountability in sale and disposal procedures and practices to ensure that Council obtains the best price and that all potential purchasers are given equal opportunity to purchase the land or assets.
- Opportunities to enhance local economic development and growth.
- Compliance with statutory and other obligations.
- Commercial confidentiality.
- Other relevant factors.

### Sale and Disposal Options

Generally, Council will sell or dispose of land and other assets through adoption of the following practices:

- Direct sale - advertisement for sale and the nature of the advertisement i.e. public notice, local paper etc.
- Quotation - seeking quotations for the sale of land and other assets.
- Selected Tender - seeking tenders from a selected group of persons/companies etc.
- Open Tender - openly seeking, through advertisement, tenders, or buyers for Council, land and other assets.
- Auction - by selecting an Agent to conduct the sale by auction.

In identifying the circumstances in which to apply these options, Council will consider a number of issues, e.g.

- The number of known potential purchasers of the land or assets.
- The original intention for the use of the land or asset when purchased, where relevant.
- The current and possible preferred future use of the land or assets.
- The existence of local purchasers of the land or asset.
- The opportunity to promote local economic growth and development.
- The total estimated value of the sale.
- Delegation limits taking into consideration accountability, responsibility, operational efficiency and urgency of the sale.
- Compliance with statutory and other obligations.

### Consultation

The Berri Barmera Council recognises its responsibilities under Section 50 of the Local Government Act 1999 and its Public Consultation Policy.

Council also recognises its Enterprise Agreement, Industrial Awards and other employee relations obligations and, consistent with the requirements of these documents, the CEO will consult with staff on decisions that will significantly impact on their employment with Council.

### The Decision-Making Process

Council recognises that the community, local businesses and contractors will from time to time have an interest in the manner and approach adopted by Council when determining service delivery, purchasing and disposing of land and other assets.

Council delegates authority to the CEO to make decisions regarding the matters covered in this policy is follows:

- the budgeted purchase of services or goods is less than \$200,000.
- the disposal of land is not delegated
- the disposal of other assets is less than \$50,000.

Where the CEO deems necessary for the Council to be made aware of decisions regarding the above delegations, the CEO will bring the matter before Council for consultation prior to authorisation.

Council or its officers with delegated authority will, when making decisions under this Policy, act in accordance with the Council's budget, relevant policies, plans, industrial awards, agreements, resolutions etc.

Council acknowledges that the CEO may sub-delegate matters related to this policy to staff or other persons employed or engaged by Council.



Council may also delegate matters covered by this policy to its Committees or Subsidiaries.

### Contracts and Tenders

When undertaking contract and tender activities Council's decision-making process will reflect the following:

- whether tendering will assist Council to achieve its strategic objectives and strategies.
- customers of the service will not be disadvantaged.
- responsibility of Council for the provision of the service will not be adversely affected.
- it is practical and possible to specify the quality and quantity of the service required to be delivered.
- it is deemed appropriate for Council to continue to ensure the service is provided.
- following the completion of a market analysis, there is scope for the provision of the service by an external provider and there is potential to gain savings not currently available to Council.
- gains (financial and non-financial) are greater than what could be achieved through direct provision of the service by Council.
- the relationship between the service to be contracted or tendered to other related services in the Council.

Where Council determines it will use a contract or tender arrangement under this Policy, it will decide whether:

- to adopt a selective or open tender process.
- prepare appropriate documentation to inform potential providers of the service of the necessary information to formulate their tender and the manner in which to submit an offer.
- offer an opportunity to "in house" teams to bid for the service and make it known to all external bidders that an "in house" team may be competing for the delivery of the service.
- form a selection panel to consider offers made for the provision of the service.
- the selection panel will make a recommendation to the Council or the CEO, depending upon delegations.
- manage any complaints arising from the decisions taken by Council consistent with its Internal Review of Decisions Procedures required under the Act.
- Council will make available procedures relevant to specific tendering activities.

### Documentation

To assist in demonstrating that its service provision, purchasing and disposal processes are cost effective, fair, transparent and accountable, and meet community needs, Council will document the reasons for entering into contracts other than those resulting from a tender process.

### Risk Management

All procurement activities conducted by Berri Baramba Council must be mindful of inherent and associated risks at all levels. The purchasing process must consider the following:

- A formal Risk Assessment must be completed where there are deemed to be high residual procurement risks.
- Risk management involves the systematic identification, analysis, evaluation, treatment, monitoring and, if appropriate, acceptance of risks.
- A probity advisor and/or auditor may be appointed to advise on or review the procurement activity.

## **5. Confidentiality**

*Any information provided will be treated as strictly confidential. Information provided to the Council's CEO will be securely retained within Council's records.*

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