

ORD13

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SUBJECT: PURCHASING AND PROCUREMENT POLICY - REVISED
FROM: Director Growth and Finance
EDMS #: 23/274599

PURPOSE OF REPORT

The purpose of this report is for Council to consider the revised draft Purchasing and Procurement Policy. It is recommended that Council endorse the Policy to be placed on public exhibition.

BACKGROUND

Council adopted its Purchasing and Procurement Policy (the Policy) in its current format in September 2017. The Policy was last reviewed and updated in June 2020 to include a local preferencing system aimed at supporting local businesses, which was promoted as part of Council's broader response to the COVID-19 pandemic.

In line with Council's policy review requirements, the Policy has been reviewed with a number of proposed changes. The proposed changes are summarised in this report.

A Councillor briefing in relation to the proposed changes to the Policy was held on 25 July 2023.

MAIN REPORT

The purpose of the Policy is to set out the principles and framework for Council's purchasing and procurement activities and to ensure Council is at all times compliant with legislation, the Tendering Guidelines for NSW Local Government and Council's Code of Conduct in relation to the procurement of goods and services.

A summary of the proposed changes to the Policy is outlined in this report.

Modern Slavery Act 2018 (NSW)

The *Modern Slavery Act 2018* (The Act) requires NSW government bodies, local councils and state-owned corporations to undertake a review of their supply chains and establish a form of modern slavery reporting. The Act establishes an Anti-Slavery Commissioner and a parliamentary Modern Slavery Committee.

From 1 July 2022, Council has been required to take reasonable steps to ensure that goods and services purchased are not the product of modern slavery. Council's Policy has been updated to reflect Council's commitment to eliminating / minimising modern slavery practices through its supply chain.

In addition to the proposed Policy changes outlined in this report, Council has also undertaken the following initiatives to ensure compliance with this legislation:

- A training package was delivered to all staff involved in the procurement of goods and/or services to ensure they were aware of their responsibilities under Modern Slavery legislation;
- Council's Tender documentation has been updated to include returnable schedules providing tender respondents the opportunity to demonstrate they do not benefit from modern slavery practices;
- Contract clauses that support Council's position on modern slavery have been developed for inclusion in Council's contract templates; and
- Existing suppliers have received a modern slavery survey so that a risk assessment can be conducted on suppliers who already provide goods and/or services to Council.

These initiatives are complemented by work that Local Government Procurement (LGP) and VendorPanel are also undertaking to ensure that all prescribed contracts (and appointed suppliers) demonstrate that their goods and services are not associated with modern slavery practices. This will also apply to existing suppliers engaged by Council through LGP.

Review of Local Preferencing (Buy Local) System

The last review of this Policy included an additional policy position on local preferencing. The Policy position was introduced with the aim of supporting local businesses and was also promoted as an initiative during the COVID-19 pandemic.

The Policy was updated to include the following assessment criteria, which assumes a total weighting of 100 points (or 100%):

- Award 5 points (or 5%) to suppliers located physically within Camden LGA;
- Award 0 points (or 0%) to suppliers located outside Camden LGA.

The weighting applied to all tenders and request for quotations over \$100,000 (incl. GST).

Performance of Local Preferencing System

A review has been conducted of all tenders approved by Council over the 2021 and 2022 calendar years. A total of 19 tenders were awarded across this period. A summary of the outcome of these tenders is provided below:

Tenders	Number of Tenders	Tenders Awarded to Local Business	Value of Works Awarded to Local Business
2021	7	1	\$300,000
2022¹	12	2	\$1,770,000
Total	19	3	\$2,070,000

¹In 2022, Council approved a panel arrangement tender for electrical services, which included the appointment of three local businesses to this tender. The contract was based on a pricing schedule therefore the value of works in relation to this tender is not included above.

Council also uses VendorPanel as its centralised system for requesting and obtaining quotations over \$15,000. This includes all quotations greater than \$100,000, to which

the local preferencing system applies. A summary of the outcome of these quotations is provided below:

Quotations	Number of Quotations	Quotations Awarded to Local Business	Value of Works Awarded to Local Business
2021	92	11	\$5.493 million
2022	66	9	\$4.512 million
Total	158	20	\$10.005 million

Note: the above quotations include tenders greater than \$250,000 that have been awarded utilising Local Government Procurement contracts.

One observation taken from the review was that a significant number of the projects, works and services Council sought to procure over the 2021 and 2022 calendar years were not able to be delivered by local businesses either as a result of the scale of the project (e.g. Oran Park Leisure Centre construction) or the specialist services required (e.g. specific planning studies requiring a high level of specialisation).

After undertaking a benchmarking review of local preferencing systems in place at other councils, it is recommended that Council enhance the current system to place a greater emphasis on large contractors engaging local businesses (sub-contractors) in projects delivered for Council, essentially making an indirect contribution towards the local economy and local businesses.

The revised assessment criteria would be as follows:

- Award 5% to suppliers located physically within Camden LGA;
- Award between 1% to 4% to suppliers who engage sub-contractor firms or material supply firms located physically within Camden LGA;
- Award 0% to suppliers located outside Camden LGA who do not use subcontractors and/or material supply firms within the Camden LGA.

The remaining financial and non-financial assessment criteria will continue to be scored out of 95%.

A scenario where this would be beneficial for local businesses is where Council is to build a new multi-purpose facility and where the scale of the work would require a large principal contractor not available in the Camden LGA. If a contractor was able to demonstrate that components of the projects, such as electrical, plumbing, and air-conditioning works were to be undertaken by local contractors, this would result in a percentage of the local preference system being applied (between 1%-4% depending on value).

Internal controls have been considered to ensure this system is applied fairly and consistently as part of the tender /quotation evaluation process. This will also ensure that Council's local preferencing system continues to meet the guidelines issued by ICAC in relation to local preferencing.

In addition to the changes proposed above, it also considered more appropriate to re-title the Local Preference System to the Strengthening Local Capacity Program.

Proposed Changes - General Manager's Delegations

The review of the Policy provides the opportunity to consider operational efficiencies which could be achieved through proposed changes to the General Manager's delegations.

The Acceptance of Tenders

In 2019, changes to the *Local Government Act 1993* permitted councils to delegate the acceptance of tenders to the General Manager. This change has the capacity to introduce enhanced efficiencies into the tendering process, including saving valuable time in the procurement process.

There is one restriction on this delegation, which is contained under Section 377(1)(i) of the *Local Government Act 1993*, which states that Council cannot delegate its power to accept tenders for the provision of services currently provided by members of staff of the Council.

Council, to this point, has not chosen to delegate the acceptance of tenders function to the General Manager.

A summary of the value of tenders submitted to Council for approval over the 2021 and 2022 calendar years is provided in the following table:

Value (GST Incl.)	Number
\$0 - \$500,000	3
\$500,000 - \$1,000,000	8
\$1,000,000 - \$2,000,000	4
\$2,000,000 - \$5,000,000	1
>\$5,000,000	1
Panel Arrangement	1
Tenders Declined	1
Total Number of Tenders	19

It is recommended that Council delegate authority to the General Manager for the acceptance of tenders up to a maximum value of \$2 million (incl. GST) including panel arrangements.

The General Manager would still have the capacity to submit tenders to Council which are of lower value, if there was a view that the tender was contentious or of significant importance to Council and the broader community.

The Rejection of Tenders

The *Local Government (General) Amendment Regulation 2022* was published in December 2022. The majority of the changes are considered minor and technical in nature, however one amendment relating to the rejection of Tenders is recommended for Council's consideration.

The amendment allows for decisions to decline all tenders to be made under delegation. Previously, the decision to decline all tenders required a formal Council resolution. It is important to note that the decision to enter direct negotiations in relation to the subject matter of the tender would still require a formal resolution of Council to ensure transparency and accountability.

It is recommended that Council delegate authority to the General Manager to reject all tenders, noting that the decision to enter direct negotiations with a preferred tenderer will still require a formal Council resolution.

Strengthening Environmental & Social Sustainability Considerations

It is proposed to include a new section in the Policy demonstrating Council's commitment to environmental and social sustainability. This will complement a range of sustainability programs and projects, which are currently being undertaken including Council's participation in the Sustainability Advantage Program.

Housekeeping Amendments & Minor Improvements

Other minor housekeeping adjustments have been included in the draft revised Policy to improve the Policy structure and to introduce simplified language.

FINANCIAL IMPLICATIONS

There are no direct financial implications in relation to this report.

CONCLUSION

The revised draft Purchasing and Procurement Policy has been reviewed and updated to reflect Council's modern slavery obligations, the strengthening of environmental and social sustainability considerations and the inclusion of additional measures aimed at encouraging the use of local suppliers and businesses.

A review of the current General Manager's delegations has also been undertaken to provide greater efficiencies in Council's tendering processes.

If endorsed by Council, the Policy will be placed on public exhibition for a period of 28 days. In the event that no submissions are received, it is recommended that the Policy be adopted from the day after the close of the exhibition period.

RECOMMENDED

That Council:

- i. endorse the revised draft Purchasing and Procurement Policy for public exhibition purposes;**
- ii. place the draft policy on public exhibition for period of 28 days;**
- iii. if no submissions are made, adopt the Purchasing and Procurement Policy effective from the day after the close of the exhibition period or, if submissions are made, be provided a further report following the exhibition period to review submissions made and consider adopting a**

final version of the Policy;

- iv. **delegate authority to the General Manager to accept tenders up to a value of \$2,000,000 (inc. GST), noting the restrictions placed on this delegation under Section 377(1)(i) of the *Local Government Act 1993*; and**
- v. **delegate authority to the General Manager to reject all tenders, noting that the decision to enter direct negotiations with a preferred tenderer will still require a formal Council resolution.**

ATTACHMENTS

- 1. Purchasing and Procurement Policy - P3.0161 (Marked Up)
- 2. Purchasing and Procurement Policy - P3.0161 (Clean)