



## **Attachments**

### **Special Council Meeting**

**28 February 2024**

- 9.3.1(2) Shire of Donnybrook Balingup's Standards for CEO Recruitment, Performance and Termination.
- 9.3.2(2) Council Policy, FIN/CP-4-Purchasing

# STANDARDS FOR CEO RECRUITMENT, PERFORMANCE AND TERMINATION

[r. 18FA]



## Policy Purpose:

This Policy is adopted in accordance with section 5.39B of the Local Government Act 1995.

## DIVISION 1 — PRELIMINARY PROVISIONS

### 1. Citation

These are the *Shire of Donnybrook Balingup Standards for CEO Recruitment, Performance and Termination*.

### 2. TERMS USED

(1) In these standards —

**Act** means the *Local Government Act 1995*;

**additional performance criteria** means performance criteria agreed by the local government and the CEO under clause 16(1)(b);

**applicant** means a person who submits an application to the local government for the position of CEO;

**contract of employment** means the written contract, as referred to in section 5.39 of the Act, that governs the employment of the CEO;

**contractual performance criteria** means the performance criteria specified in the CEO's contract of employment as referred to in section 5.39(3)(b) of the Act;

**job description form** means the job description form for the position of CEO approved by the local government under clause 5(2);

**local government** means the *Shire of Donnybrook Balingup*;

**selection criteria** means the selection criteria for the position of CEO determined by the local government under clause 5(1) and set out in the job description form;

**selection panel** means the selection panel established by the local government under clause 8 for the employment of a person in the position of CEO.

(2) Other terms used in these standards that are also used in the Act have the same meaning as they have in the Act unless the contrary intention appears.

## DIVISION 2 — STANDARDS FOR RECRUITMENT OF CEOS

### 3. Overview of Division

This Division sets out standards to be observed by the local government in relation to the recruitment of CEOs.

### 4. APPLICATION OF DIVISION

(1) Except as provided in subclause (2), this Division applies to any recruitment and selection process carried out by the local government for the employment of a person in the position of CEO.

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- (2) This Division does not apply —
  - (a) if it is proposed that the position of CEO be filled by a person in a class prescribed for the purposes of section 5.36(5A) of the Act; or
  - (b) in relation to a renewal of the CEO's contract of employment, except in the circumstances referred to in clause 13(2).

## 5. DETERMINATION OF SELECTION CRITERIA AND APPROVAL OF JOB DESCRIPTION FORM

- (1) The local government must determine the selection criteria for the position of CEO, based on the local government's consideration of the knowledge, experience, qualifications and skills necessary to effectively perform the duties and responsibilities of the position of CEO of the local government.
- (2) The local government must, by resolution of an absolute majority of the council, approve a job description form for the position of CEO which sets out —
  - (a) the duties and responsibilities of the position; and
  - (b) the selection criteria for the position determined in accordance with subclause (1).

## 6. ADVERTISING REQUIREMENTS

- (1) If the position of CEO is vacant, the local government must ensure it complies with section 5.36(4) of the Act and the *Local Government (Administration) Regulations 1996* regulation 18A.
- (2) If clause 13 applies, the local government must advertise the position of CEO in the manner referred to in the *Local Government (Administration) Regulations 1996* regulation 18A as if the position was vacant.

## 7. JOB DESCRIPTION FORM TO BE MADE AVAILABLE BY LOCAL GOVERNMENT

If a person requests the local government to provide to the person a copy of the job description form, the local government must —

- (a) inform the person of the website address referred to in the *Local Government (Administration) Regulations 1996* regulation 18A(2)(da); or
- (b) if the person advises the local government that the person is unable to access that website address —
  - (i) email a copy of the job description form to an email address provided by the person; or
  - (ii) mail a copy of the job description form to a postal address provided by the person.

## 8. ESTABLISHMENT OF SELECTION PANEL FOR EMPLOYMENT OF CEO

- (1) In this clause —

**independent person** means a person other than any of the following —

  - (a) a council member;
  - (b) an employee of the local government;

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- (c) a human resources consultant engaged by the local government.
- (2) The local government must establish a selection panel to conduct the recruitment and selection process for the employment of a person in the position of CEO.
- (3) The selection panel must comprise —
  - (a) council members (the number of which must be determined by the local government); and
  - (b) at least 1 independent person.

## 9. RECOMMENDATION BY SELECTION PANEL

- (1) Each applicant's knowledge, experience, qualifications, and skills must be assessed against the selection criteria by or on behalf of the selection panel.
- (2) Following the assessment referred to in subclause (1), the selection panel must provide to the local government —
  - (a) a summary of the selection panel's assessment of each applicant; and
  - (b) unless subclause (3) applies, the selection panel's recommendation as to which applicant or applicants are suitable to be employed in the position of CEO.
- (3) If the selection panel considers that none of the applicants are suitable to be employed in the position of CEO, the selection panel must recommend to the local government —
  - (a) that a new recruitment and selection process for the position be carried out in accordance with these standards; and
  - (b) the changes (if any) that the selection panel considers should be made to the duties and responsibilities of the position or the selection criteria.
- (4) The selection panel must act under subclauses (1), (2) and (3) —
  - (a) in an impartial and transparent manner; and
  - (b) in accordance with the principles set out in section 5.40 of the Act.
- (5) The selection panel must not recommend an applicant to the local government under subclause (2)(b) unless the selection panel has —
  - (a) assessed the applicant as having demonstrated that the applicant's knowledge, experience, qualifications, and skills meet the selection criteria; and
  - (b) verified any academic, or other tertiary level, qualifications the applicant claims to hold; and
  - (c) whether by contacting referees provided by the applicant or making any other inquiries the selection panel considers appropriate, verified the applicant's character, work history, skills, performance, and any other claims made by the applicant.

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- (6) The local government must have regard to, but is not bound to accept, a recommendation made by the selection panel under this clause.

## 10. APPLICATION OF CL. 5 WHERE NEW PROCESS CARRIED OUT

- (1) This clause applies if the local government accepts a recommendation by the selection panel under clause 9(3)(a) that a new recruitment and selection process for the position of CEO be carried out in accordance with these standards.
- (2) Unless the local government considers that changes should be made to the duties and responsibilities of the position or the selection criteria —
  - (a) clause 5 does not apply to the new recruitment and selection process; and
  - (b) the job description form previously approved by the local government under clause 5(2) is the job description form for the purposes of the new recruitment and selection process.

## 11. OFFER OF EMPLOYMENT IN POSITION OF CEO

Before making an applicant an offer of employment in the position of CEO, the local government must, by resolution of an absolute majority of the council, approve —

- (a) the making of the offer of employment to the applicant; and
- (b) the proposed terms of the contract of employment to be entered into by the local government and the applicant.

## 12. VARIATIONS TO PROPOSED TERMS OF CONTRACT OF EMPLOYMENT

- (1) This clause applies if an applicant who is made an offer of employment in the position of CEO under clause 11 negotiates with the local government a contract of employment (the **negotiated contract**) containing terms different to the proposed terms approved by the local government under clause 11(b).
- (2) Before entering into the negotiated contract with the applicant, the local government must, by resolution of an absolute majority of the council, approve the terms of the negotiated contract.

## 13. RECRUITMENT TO BE UNDERTAKEN ON EXPIRY OF CERTAIN CEO CONTRACTS

- (1) In this clause —

**commencement day** means the day on which the *Local Government (Administration) Amendment Regulations 2021* regulation 6 comes into operation.
- (2) This clause applies if —
  - (a) upon the expiry of the contract of employment of the person (the **incumbent CEO**) who holds the position of CEO —
    - (i) the incumbent CEO will have held the position for a period of 10 or more consecutive years, whether that period commenced before, on or after commencement day; and

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- (ii) a period of 10 or more consecutive years has elapsed since a recruitment and selection process for the position was carried out, whether that process was carried out before, on or after commencement day;
  - and
  - (b) the incumbent CEO has notified the local government that they wish to have their contract of employment renewed upon its expiry.
- (3) Before the expiry of the incumbent CEO's contract of employment, the local government must carry out a recruitment and selection process in accordance with these standards to select a person to be employed in the position of CEO after the expiry of the incumbent CEO's contract of employment.
- (4) This clause does not prevent the incumbent CEO's contract of employment from being renewed upon its expiry if the incumbent CEO is selected in the recruitment and selection process referred to in subclause (3) to be employed in the position of CEO.

## 14. CONFIDENTIALITY OF INFORMATION

The local government must ensure that information provided to, or obtained by, the local government in the course of a recruitment and selection process for the position of CEO is not disclosed, or made use of, except for the purpose of, or in connection with, that recruitment and selection process.

## DIVISION 3 — STANDARDS FOR REVIEW OF PERFORMANCE OF CEOS

### 15. Overview of Division

This Division sets out standards to be observed by the local government in relation to the review of the performance of CEOs.

### 16. PERFORMANCE REVIEW PROCESS TO BE AGREED BETWEEN LOCAL GOVERNMENT AND CEO

- (1) The local government and the CEO must agree on —
  - (a) the process by which the CEO's performance will be reviewed; and
  - (b) any performance criteria to be met by the CEO that are in addition to the contractual performance criteria.
- (2) Without limiting subclause (1), the process agreed under subclause (1)(a) must be consistent with clauses 17, 18 and 19.
- (3) The matters referred to in subclause (1) must be set out in a written document.

### 17. CARRYING OUT A PERFORMANCE REVIEW

- (1) A review of the performance of the CEO by the local government must be carried out in an impartial and transparent manner.
- (2) The local government must —

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- (a) collect evidence regarding the CEO's performance in respect of the contractual performance criteria and any additional performance criteria in a thorough and comprehensive manner; and
- (b) review the CEO's performance against the contractual performance criteria and any additional performance criteria, based on that evidence.

## **18. ENDORSEMENT OF PERFORMANCE REVIEW BY LOCAL GOVERNMENT**

Following a review of the performance of the CEO, the local government must, by resolution of an absolute majority of the council, endorse the review.

## **19. CEO TO BE NOTIFIED OF RESULTS OF PERFORMANCE REVIEW**

After the local government has endorsed a review of the performance of the CEO under clause 18, the local government must inform the CEO in writing of —

- (a) the results of the review; and
- (b) if the review identifies any issues about the performance of the CEO — how the local government proposes to address and manage those issues.

## **DIVISION 4 — STANDARDS FOR TERMINATION OF EMPLOYMENT OF CEOS**

### **20. Overview of Division**

This Division sets out standards to be observed by the local government in relation to the termination of the employment of CEOs.

### **21. GENERAL PRINCIPLES APPLYING TO ANY TERMINATION**

- (1) The local government must make decisions relating to the termination of the employment of a CEO in an impartial and transparent manner.
- (2) The local government must accord a CEO procedural fairness in relation to the process for the termination of the CEO's employment, including —
  - (a) informing the CEO of the CEO's rights, entitlements and responsibilities in relation to the termination process; and
  - (b) notifying the CEO of any allegations against the CEO; and
  - (c) giving the CEO a reasonable opportunity to respond to the allegations; and
  - (d) genuinely considering any response given by the CEO in response to the allegations.

### **22. ADDITIONAL PRINCIPLES APPLYING TO TERMINATION FOR PERFORMANCE-RELATED REASONS**

- (1) This clause applies if the local government proposes to terminate the employment of a CEO for reasons related to the CEO's performance.

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- (2) The local government must not terminate the CEO's employment unless the local government has —
  - (a) in the course of carrying out the review of the CEO's performance referred to in subclause (3) or any other review of the CEO's performance, identified any issues (the **performance issues**) related to the performance of the CEO; and
  - (b) informed the CEO of the performance issues; and
  - (c) given the CEO a reasonable opportunity to address, and implement a plan to remedy, the performance issues; and
  - (d) determined that the CEO has not remedied the performance issues to the satisfaction of the local government.
- (3) The local government must not terminate the CEO's employment unless the local government has, within the preceding 12-month period, reviewed the performance of the CEO under section 5.38(1) of the Act.

## 23. DECISION TO TERMINATE

Any decision by the local government to terminate the employment of a CEO must be made by resolution of an absolute majority of the council.

## 24. NOTICE OF TERMINATION OF EMPLOYMENT

- (1) If the local government terminates the employment of a CEO, the local government must give the CEO notice in writing of the termination.
- (2) The notice must set out the local government's reasons for terminating the employment of the CEO.

<b>Related Policies:</b>	[Policy number & name]	<b>Related Procedure:</b>	[Procedure number & name]
<b>Responsible Department:</b>	[Department Name]	<b>Reviewer:</b>	[Officer Position title]
<b>Initial Adoption Date:</b>	[DD/MM/YYYY]	<b>Review Frequency:</b>	[A/B/T]
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[Link to saved doc in PDF]	[OCM Date & Resolution number]	[brief description of the adoption/changes approved]	
<b>Date Live:</b>	[Date document saved as .pdf & loaded on Shire website]	<b>Synergy #</b>	[Record No.]



# COUNCIL POLICY FIN/CP-4 PURCHASING



## STRATEGIC OUTCOME SUPPORTED: 11 - Strong, visionary leadership

### 1. OBJECTIVE

- 1.1. The objectives of this Policy are to ensure that all purchasing activities:
- demonstrate that best value for money is attained for the Shire
  - are compliant with relevant legislations, including the Act and Regulations;
  - are recorded in compliance with the State Records Act 2000 and associated records management practices and procedures of the Shire;
  - mitigate probity risk, by establishing consistent and demonstrated processes that promotes openness, transparency, fairness and equity to all potential suppliers;
  - ensure that the sustainable benefits, such as environmental, social and local economic factors are considered in the overall value for money assessment; and
  - are conducted in a consistent and efficient manner across the Shire and that ethical decision making is demonstrated.

### 2. SCOPE

- 2.1. This policy is applicable to all purchases made by the Shire of Donnybrook Balingup.

### 3. DEFINITIONS

- 3.1. Nil

### 4. POLICY STATEMENT

- 4.1. The Shire of Donnybrook Balingup is committed to delivering best practice in the purchasing of goods, services and works that align with the principles of transparency, probity and good governance and complies with the *relevant legislation*.

#### **Ethics and Integrity**

- 4.2. All officers and employees of the Shire undertaking purchasing activities must have regard for the Code of Conduct requirements and shall observe the highest standards of ethics and integrity. All officers and employees of the Shire must act in an honest and professional manner at all times which supports the standing of the Shire.

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- 4.3. The following principles, standards and behaviours must be observed and enforced through all stages of the purchasing process to ensure the fair and equitable treatment of all parties:
- a. full accountability shall be taken for all purchasing decisions and the efficient, effective and proper expenditure of public monies based on achieving value for money;
  - b. all purchasing practices shall comply with relevant legislation, regulations, and requirements consistent with the Shire's policies and Code of Conduct;
  - c. purchasing is to be undertaken on a competitive basis where all potential suppliers are treated impartially, honestly and consistently;
  - d. all processes, evaluations and decisions shall be transparent, free from bias and fully documented in accordance with applicable policies, audit requirements and relevant legislation;
  - e. any actual or perceived conflicts of interest are to be identified, disclosed and appropriately managed; and
  - f. any information provided to the Shire's by a supplier shall be treated as commercial-in-confidence and should not be released unless authorised by the supplier or relevant legislation.

### **Value for Money**

- 4.4. Value for money is an overarching principle governing purchasing that allows the best possible outcome to be achieved for Council. It is important to note that compliance with the specification is more important than obtaining the lowest price, particularly taking into account user requirements, quality standards, sustainability, life cycle costing, and service benchmarks.
- 4.5. An assessment of the best value for money outcome or any purchasing should consider:
- a. all relevant whole-of-life costs and benefits whole of life cycle costs (for goods) and whole of contract life costs (for services) including transaction costs associated with acquisition, delivery, distribution, as well as other costs such as but not limited to holding costs, consumables, deployment, maintenance and disposal;
  - b. the technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality, including but not limited to an assessment of levels and currency of compliances, value adds offered, warranties, guarantees, repair and replacement policies, ease of inspection, ease of after sales service, ease of communications etc.

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- c. financial viability and capacity to supply without risk of default (competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history);
  - d. a strong element of competition in the allocation of orders or the awarding of contracts. This is achieved by obtaining a sufficient number of competitive quotations wherever practicable;
  - e. the safety requirements associated with both the product design and specification offered by suppliers and the evaluation of risk when considering purchasing goods and services from suppliers;
  - f. purchasing of goods and services from suppliers that demonstrate sustainable benefits and good corporate social responsibility; and
  - g. providing opportunities for businesses within the Shire's boundaries to be given the opportunity to quote for providing goods and services wherever possible.
- 4.6. Where a higher priced conforming offer is recommended, there should be clear and demonstrable benefits over and above the lowest total priced, conforming offer.

### **Sustainable Procurement**

- 4.7. Sustainable Procurement is defined as the procurement of goods and services that have less environmental and social impacts than competing products and services.
- 4.8. Council is committed to sustainable procurement and where appropriate shall endeavour to design quotations and tenders to provide an advantage to goods, services and/or processes that minimise environmental and negative social impacts. Sustainable considerations must be balanced against value for money outcomes in accordance with Council's sustainability objectives.
- 4.9. Practically, sustainable procurement means that Council shall endeavour at all times to identify and procure products and services that:

- a. Have been determined as necessary;
- b. Demonstrate environmental best practice in energy efficiency / and or consumption which can be demonstrated through suitable rating systems and eco-labelling.
- c. Demonstrate environmental best practice in water efficiency.
- d. Are environmentally sound in manufacture, use, and disposal with a specific preference for products made using the minimum amount of raw materials from a sustainable resource, that are free of toxic or polluting materials and that consume minimal energy during the production stage;
- e. Products that can be refurbished, reused, recycled or reclaimed shall be given priority, and those that are designed for ease of recycling, re-manufacture or otherwise to minimise waste.
- f. For motor vehicles – select vehicles featuring high fuel efficiency, based on vehicle type and within the designated price range;
- g. For new buildings and refurbishments – where available use renewable energy and technologies.

### **Purchasing Requirements**

- 4.10. The requirements that must be complied with by the Shire, including purchasing thresholds and processes, are prescribed within the Regulations, this Policy and associated purchasing procedures in effect at the Shire.
- 4.11. Purchasing that is \$150,000 or below in total value (excluding GST) must be in accordance with the purchasing requirements under the relevant threshold as defined under section 4.3 of this Purchasing Policy.
- 4.12. Purchasing that exceeds \$150,000 in total value (excluding GST) must be put to public Tender when it is determined that a regulatory Tender exemption, as stated under 5.4 of this Policy, is not deemed to be suitable.

### **Purchasing Value Definition**

- 4.13. Determining purchasing value is to be based on the following considerations:
  - a. Exclusive of Goods and Services Tax (GST);
  - b. The actual or expected value of a contract over the full contract period, including all options to extend; or the extent to which it could be reasonably expected that the Shire will continue to purchase a particular category of goods, services or works and what total value is or could be reasonably expected to be purchased. A best practice suggestion is that if a purchasing threshold is reached within three years for a particular

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category of goods, services or works, then the purchasing requirement under the relevant threshold (including the tender threshold) must apply.

## Purchasing from Existing Contracts

4.14. Where the Shire has an existing contract in place, it must ensure that goods and services required are purchased under these contracts to the extent that the scope of the contract allows. When planning the purchase, the Shire must consult its Contracts Register in the first instance before seeking to obtain quotes and tenders on its own accord.

## Purchasing Thresholds

4.15. Where the value of procurement for the value of the contract over the full contract period (including options to extend) is, or is expected to be:

Purchase Value Threshold	Purchasing Requirement
Up to \$2,000	<p>Where the Shire has established a panel of pre-qualified suppliers, the purchase can be made directly from a supplier on the panel, in accordance with the contract documentation.</p> <p>Where the purchasing requirement is not suitable to be met through a panel of pre-qualified suppliers, purchase directly from a supplier using a Purchase Order.</p>
Over \$2,000 and up to \$5,000	<p>Where the Shire has established a panel of pre-qualified suppliers, the purchase can be made directly from a supplier on the panel, in accordance with the contract documentation.</p> <p>Where the purchasing requirement is not suitable to be met through a panel of pre-qualified suppliers, seek at least one (1) written quotation from a suitable supplier, either from:</p> <ol style="list-style-type: none"> <li>a. a pre-qualified supplier on the WALGA Preferred Supply Program or State Government Common Use Arrangement (CUA); or</li> <li>b. from the open market.</li> </ol>
Over \$5,000 and up to \$20,000	<p>Where the Shire has established a panel of pre-qualified suppliers, the purchase can be made directly from a supplier on the panel, in accordance with the contract documentation.</p> <p>Where the purchasing requirement is not suitable to be met through a panel of pre-qualified suppliers, seek at least two (2) written quotation from a suitable supplier, either from:</p> <ol style="list-style-type: none"> <li>a. a pre-qualified supplier on the WALGA Preferred Supply Program or State Government Common Use Arrangement (CUA); or</li> <li>b. from the open market.</li> </ol>

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<p>Over \$20,000 and up to \$40,000</p>	<p>Where the Shire has established a panel of pre-qualified suppliers, the purchase can be made directly from a supplier on the panel, in accordance with the contract documentation.</p> <p>Where the purchasing requirement is not suitable to be met through a panel of pre-qualified suppliers, seek at least three (3) written quotations from suppliers following a brief outlining the specified requirement, either from:</p> <ul style="list-style-type: none"> <li>a. a pre-qualified supplier on the WALGA Preferred Supply Program or State Government CUA; or</li> <li>b. from the open market.</li> </ul>
<p>Over \$40,000 and up to \$150,000</p>	<p>Where the Shire has established a panel of pre-qualified suppliers, the purchase can be made directly from a supplier on the panel, in accordance with the contract documentation.</p> <p>Where the purchasing requirement is not suitable to be met through a panel of pre-qualified suppliers, seek at least three (3) written quotations from suppliers by formal invitation under a Request for Quotation, containing price and detailed specification of goods and services required. The procurement decision is to be based on pre-determined evaluation criteria that assesses all value for money considerations in accordance with the definition stated within this Policy.</p> <p>Quotations within this threshold may be obtained from:</p> <ul style="list-style-type: none"> <li>a. a pre-qualified supplier on the WALGA Preferred Supply Program or State Government CUA; or</li> <li>b. from the open market.</li> </ul> <p>Requests for quotation from a pre-qualified panel of suppliers (whether administered by the Shire through the WALGA preferred supply program or State Government CUA) are not required to be invited using a Request for Quotation form, however at least three written quotes are still required.</p>
<p>Over \$150,000</p>	<p>Where the purchasing requirement is not suitable to be met through a panel of pre-qualified suppliers, or any other tender-exempt arrangement as listed under section 5.4 of this Policy, conduct a public Request for Tender process in accordance with Part 4 of the <i>Local Government (Functions and General) Regulations 1996</i>, this policy and the Shire's tender procedures. The procurement decision is to be based on pre-determined evaluation criteria that assesses all value for money considerations in accordance with the definition stated within this Policy.</p>

## Tender Exemptions

- 4.16. Public tenders are not required under the *Local Government (Functions and General) Regulations 1996*, Regulation 11(2) when:

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- a. the supply of goods or services is to be obtained from expenditure authorised in an emergency as defined in section 6.8(1)(c) of the *Local Government Act 1995*; or
- b. goods or services are obtained through the WALGA Preferred Supplier Program (eQuotes). If procuring through the WALGA Preferred Supplier Program, the over \$40,000 and up to \$150,000 purchasing requirement is to be complied with; or
- c. within the last 6 months:
  - i. The local government has publicly invited tenders for the supply of the goods or services but no tender was submitted that met the tender specifications or satisfied the value for money assessment; or
  - ii. The local government has sought expressions of interest but no person was listed as an acceptable tenderer;
- d. the contract is to be entered into by auction which has expressly been authorised by Council; or
- e. the goods or services are to be supplied by a person registered on the Aboriginal Business Directory WA and the contract is worth \$250,000 or less; or
- f. the goods or services are to be supplied by an Australian Disability Enterprise; or
- g. the contract is for petrol, oil, or other liquid or gas used for internal combustion engines; or
- h. the provision of goods or services is provided under warranty or relates to specific manufacturer repairs; or
- i. when any of the other exclusions under Regulation 11 apply.
- j. It is also not necessary to invite public submissions if the term of the original contract is being renewed or extended where:
  - i. the original contract was entered into after a public submission period
  - ii. the invitation to tender included the option for a renewal or extension
  - iii. the original contract contained an option to renew or extend; and
  - iv. the supplier's tender included a requirement for such an option.

### **Inviting Tenders Under the Tender Threshold**

- 4.17. Where considered appropriate and beneficial, the Shire may consider publicly advertising Tenders in lieu of undertaking a Request for Quotation for purchases under the tender threshold. This decision should be made after considering the benefits of this approach in comparison with the costs, risks, timeliness and compliance requirements.
- 4.18. If a decision is made to undertake a public Tender for contracts expected to be \$150,000 or less in value, the Shire's tendering procedures must be followed in full.

### **Sole Source of Supply (Monopoly Suppliers)**

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- 4.19. Where the purchasing requirement is over the value of \$5,000 and of a unique nature that can only be supplied from one supplier, the purchase is permitted without undertaking a tender or quotation process. This is only permitted in circumstances where the Shire is satisfied and can evidence that there is only one source of supply for those goods, services or works.
- 4.20. The Shire must use its best endeavours to determine if the sole source of supply is genuine by exploring if there are any alternative sources of supply. Once determined, the justification must be endorsed by the Chief Executive Officer, prior to a contract being entered into. Written confirmation must be kept on file for later audit.
- 4.21. From time to time, the Shire may publicly invite an expression of interest to effectively determine that one sole source of supply still genuinely exists.

### **Anti-Avoidance**

- 4.22. The Shire shall not enter into two or more contracts or create multiple purchase order transactions of a similar nature for the purpose of "splitting" the value of the purchase or contract to take the value of the consideration of the purchase below a particular purchasing threshold, particularly in relation to Tenders and to avoid the need to call a public Tender.

### **Emergency Purchases**

- 4.23. An emergency purchase is defined as an unanticipated and unbudgeted purchase which is required in response to an emergency situation as provided for in the *Local Government Act 1995*. In such instances, quotes and tenders are not required to be obtained prior to the purchase being undertaken.
- 4.24. An emergency purchase does not relate to purchases not planned for due to time constraints. Every effort must be made to anticipate purchases required by the Shire in advance and to allow sufficient time to obtain quotes and tenders, whichever may apply.

### **Tender Criteria**

- 4.25. Council shall, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.
- 4.26. The evaluation panel shall be established prior to the advertising of a tender and include a mix of skills and experience relevant to the nature of the purchase.
- 4.27. Requests with a total estimated (Ex GST) price of:
- a. Over \$40,000 and up to \$150,000, the evaluation panel must contain a minimum of 2 members; and
  - b. Over \$150,000, the evaluation panel must contain a minimum of 3 members.



### **Advertising Tenders**

- 4.28. Tenders are to be advertised in a state wide publication e.g. “The West Australian” newspaper, Local Government Tenders section, preferably on a Wednesday or Saturday. Advertising may also be carried out locally.
- 4.29. The tender must remain open for at least 14 days after the date the tender is advertised. Care must be taken to ensure that 14 full days are provided as a minimum.
- 4.30. The notice must include;
- a. A brief description of the goods or services required;
  - b. Information as to where and how tenders may be submitted;
  - c. The date and time after which tenders cannot be submitted;
  - d. Particulars identifying a person from who more detailed information as to tendering may be obtained;
  - e. Detailed information shall include;
    - i. such information as Council decides should be disclosed to those interested in submitting a tender;
    - ii. detailed specifications of the goods or services required;
    - iii. the criteria for deciding which tender should be accepted;
    - iv. whether or not Council has decided to submit a tender; and
    - v. whether or not tenders can be submitted by facsimile or other electronic means, and if so, how tenders may so be submitted.

### **Issuing Tender Documentation**

- 4.31. Tenders will not be made available (counter, mail, internet, referral, or other means) without a robust process to ensure the recording of details of all parties who acquire the documentation.
- 4.32. This is essential as if clarifications, addendums or further communication is required prior to the close of tenders, all potential tenderers must have equal access to this information in order for Council not to compromise its duty to be fair.

### **Tender Deadline**

- 4.33. A tender that is not received in full in the required format by the advertised Tender Deadline shall be rejected.

### **Opening of Tenders**

- 4.34. No tenders are to be removed from the tender box, or opened (read or evaluated) prior to the Tender Deadline.
- 4.35. If tenders are received by email, a separate email inbox is created and no tenders are opened until the application period has closed.
- 4.36. Tenders are to be opened in the presence of the Chief Executive Officer or the Chief Executive Officer's delegated nominee and at least one other Council Officer. The details of all tenders received and opened shall be recorded in the Tenders Register.
- 4.37. Tenders are to be opened in accordance with the advertised time and place. There is no obligation to disclose or record tendered prices at the tender opening, and price information should be regarded as commercial-in-confidence to the Shire of Donnybrook-Balingup. Members of the public are entitled to be present.
- 4.38. The Tenderer's Offer form, Price Schedule and other appropriate pages from each tender shall be date stamped and initialled by at least two Council Officers present at the opening of tenders.

### **No Tenders Received**

- 4.39. Where Council has invited tenders, however no compliant submissions have been received, direct purchases can be arranged on the basis of the following:
  - a. a sufficient number of quotations are obtained;
  - b. the process follows the guidelines for seeking quotations over \$40,000 and up to \$150,000;
  - c. the specification for goods and/or services remains unchanged;
  - d. purchasing is arranged within 6 months of the closing date of the lapsed tender.

### **Tender Evaluation**

- 4.40. Tenders that have not been rejected shall be assessed by means of a written evaluation against the pre-determined criteria. The tender evaluation panel shall assess each tender that has not been rejected to determine which tender is most advantageous.

### **Addendum to Tender**

- 4.41. If, after the tender has been publicly advertised, any changes, variations or adjustments to the tender document and/or the conditions of tender are required, Council may vary the initial information by taking reasonable steps to give each person who has sought copies of the tender documents notice of the variation.

### **Minor Variation**

- 4.42. If after the tender has been publicly advertised and a successful tenderer has been chosen but before Council and tenderer have entered into a Contract, a minor variation may be made by Council, provided:
- a. The variation is necessary in order for the goods or services to be supplied and does not change the scope of the contract; or
  - b. The variation is a renewal or extension of the original term of the contract (in accordance with Regulation 11(2)(j)).

### **Notification of Outcome**

- 4.43. Each tenderer shall be notified of the outcome of the tender following Council resolution. Notification shall include:
- a. The name of the successful tenderer;
  - b. The total value of consideration of the winning offer.
- 4.44. The details and total value of consideration for the winning offer must also be entered into the Tenders Register at the conclusion of the tender.

### **Records Management**

- 4.45. Records of all purchasing activity must be retained in compliance with the *State Records Act 2000 (WA)*, the Shire's Records Management Plan and associated procurement procedures.
- 4.46. For a tender process this includes:
- a. Tender documentation;
  - b. Internal documentation;
  - c. Evaluation documentation;
  - d. Enquiry and response documentation;
  - e. Notification and award documentation.
- 4.47. For a direct purchasing process this includes:
- a. Quotation documentation;
  - b. Internal documentation;
  - c. Order forms and requisitions.

### **Buy Local Policy**

- 4.48. As much as practicable, the Shire must:
- a. where appropriate, consider buying practices, procedures and specifications that do not unfairly disadvantage local businesses;

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- b. consider indirect benefits that have flow on benefits for local suppliers (i.e. servicing and support);
  - c. ensure that procurement plans address local business capability and local content;
  - d. explore the capability of local businesses to meet requirements and ensure that Requests for Quotation and Tenders are designed to accommodate the capabilities of local businesses;
  - e. avoid bias in the design and specifications for Requests for Quotation and Tenders – all Requests must be structured to encourage local businesses to bid; and
  - f. provide adequate and consistent information to potential suppliers.
- 4.49. To this extent, a qualitative weighting may be afforded in the evaluation of quotes and tenders where suppliers are located within the boundaries of the Shire, or substantially demonstrate a benefit or contribution to the local economy.
- 4.50. A regional price preference may be afforded to locally based businesses for the purposes of assessment. Provisions are detailed within the Shire's Regional Price Preference Policy.

### **Purchasing from Disability Enterprises**

- 4.51. Pursuant to Part 4 of the *Local Government (Functions and General) Regulations 1996*, the Shire is not required to publicly invite tenders if the goods or services are to be supplied from an Australian Disability Enterprise, as registered on [www.ade.org.au](http://www.ade.org.au). This is contingent on the demonstration of value for money.

### **Purchasing from Aboriginal Businesses**

- 4.52. Pursuant to Part 4 of the *Local Government (Functions and General) Regulations 1996*, the Shire is not required to publicly invite tenders if the goods or services are to be supplied from a person registered on the Aboriginal Business Directory published by the Small Business Development Corporation on [www.abdwa.com.au](http://www.abdwa.com.au), where the expected consideration under contract is worth \$250,000 or less. This is contingent on the demonstration of value for money.

### **Panels of pre-qualified suppliers**

- 4.53. In accordance with Regulation 24AC of the *Local Government (Functions and General) Regulations 1996*, a Panel of Pre-qualified Suppliers ("Panel") may be created where most of the following factors apply:
- a. the Shire determines that a range of similar goods and services are required to be purchased on a continuing and regular basis;

- b. there are numerous potential suppliers in the local and regional procurement-related market sector(s) that satisfy the test of 'value for money';
  - c. the purchasing activity under the intended Panel is assessed as being of a low to medium risk;
  - d. the Panel will streamline and will improve procurement processes; and
  - e. the Shire has the capability to establish, manage the risks and achieve the benefits expected of the proposed Panel.
- 4.54. The Shire will endeavour to ensure that Panels will not be created unless most of the above factors are firmly and quantifiably established.

### **Establishing a Panel**

- 4.55. Should the Shire determine that a Panel is beneficial to be created, it must do so in accordance with Part 4, Division 3 the *Local Government (Functions and General) Regulations 1996*.
- 4.56. Panels may be established for one supply requirement, or a number of similar supply requirements under defined categories within the Panel.
- 4.57. Panels may be established for a minimum of two (2) years and for a maximum length of time deemed appropriate by the Shire.
- 4.58. Evaluation criteria for deciding which applications will be accepted for placement onto the panel must be determined and communicated in the application process by which applications will be assessed and accepted.
- 4.59. Where a Panel is to be established, the Shire will endeavour to appoint at least two (2) suppliers to each panel or panel category, on the basis that best value for money is demonstrated. Where less than two (2) suppliers are to be appointed to the panel or panel category, the panel or panel category may not be established.
- 4.60. In each invitation to apply to become a pre-qualified supplier (through a procurement process advertised through a state-wide notice), the Shire must state the expected number of suppliers it intends to put on the panel.
- 4.61. Should a Panel member leave the Panel, they may be replaced by the next ranked Panel member determined in the value for money assessment should the supplier agree to do so, with this intention to be disclosed in the detailed information set out under Regulation 24AD(5)(d) and (e) when establishing the Panel.

### **Distributing Work Amongst Panel Members**

- 4.62. To satisfy Regulation 24AD(5) of the Regulations, when establishing a Panel of pre-qualified suppliers, the detailed information associated with each invitation to apply to join the Panel must either prescribe whether the Shire intends to:

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- a. Obtain quotations from each pre-qualified supplier on the Panel with respect to all purchases, in accordance with Clause 10.4; and/or
  - b. Purchase goods and services exclusively from any pre-qualified supplier appointed to that Panel, and under what circumstances; and/or
  - c. Purchase goods and services on a rotational basis from each pre-qualified supplier and endeavour to provide an even amount of work amongst pre-qualified suppliers.
- 4.63. In considering the distribution of work among Panel members, the detailed information must also prescribe whether:
- a. each panel member will have the opportunity to bid for each item of work under the Panel, with pre-determined evaluation criteria forming part of the invitation to quote to assess the suitability of the supplier for particular items of work. Contracts under the pre-qualified panel will be awarded on the basis of value for money in every instance; and/or
  - b. service requests that are not possible to obtain a fixed price may be rotated between pre-qualified supplier(s) to obtain the most advantageous result for the Shire which may take into account the existing familiarity with a suppliers previous work on a specific Council asset; and/or
  - c. should the list of panel members be exhausted with no panel member accepting the offer to provide goods/services under the Panel, the Shire may then invite suppliers that are not on the panel to provide the goods/services in line with the purchasing thresholds as listed in section 5.3.
- 4.64. In every instance, a contract must not be formed with a pre-qualified supplier for an item of work beyond 12 months, which includes options to extend the contract.

### **Purchasing from the Panel**

- 4.65. The invitation to apply to be considered to join a panel of pre-qualified suppliers must state whether quotations are either to be invited to every member (within each category, if applicable) of the Panel for each purchasing requirement, whether a ranking system is to be established, or otherwise.

### **Recordkeeping**

- 4.66. Records of all communications with Panel members, with respect to the quotation process and all subsequent purchases made through the Panel, must be kept.
- 4.67. For the creation of a Panel, this includes:

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- a. The Procurement initiation document such as a procurement business case which justifies the need for a Panel to be created;
  - b. Procurement Planning and approval documentation which describes how the procurement is to be undertaken to create and manage the Panel;
  - c. Request for Applications documentation;
  - d. Copy of public advertisement inviting applications;
  - e. Copies of applications received;
  - f. Evaluation documentation, including clarifications sought;
  - g. Negotiation documents such as negotiation plans and negotiation logs;
  - h. Approval of award documentation;
  - i. All correspondence to applicants notifying of the establishment and composition of the Panel such as award letters;
  - j. Contract Management Plans which describes how the contract will be managed; and
  - k. Copies of framework agreements entered into with pre-qualified suppliers.
- 4.68. The Shire is also to retain itemised records of all requests for quotation, including quotations received from pre-qualified suppliers and contracts awarded to Panel members. A unique reference number shall be applied to all records relating to each quotation process, which is to also be quoted on each purchase order issued under the Contract.
- 4.69. Information with regards to the Panel offerings, including details of suppliers appointed to the Panel, must be kept up to date, consistent and made available for access by all officers and employees of the Shire

### **5. DELEGATION AND AUTHORISATION**

- 5.1. Delegation 1.2.14 Tenders for Goods and Services – Call Tenders
- 5.2. Delegation 1.2.15 Tenders for Goods and Services – Accepting and Rejecting Tenders; Varying Contracts; Exercising Contract Extension Options
- 5.3. Delegation 1.2.16 Tenders for Goods and Services - Exempt Procurement
- 5.4. Delegation 1.2.17 Expressions of Interest for Goods and Services
- 5.5. Delegation 1.2.18 Panels of Pre-Qualified Suppliers for Goods and Services
- 5.6. Delegation 1.2.19 Application of Regional Price Preference Policy
- 5.7. Delegation 1.2.32 Renewal or Extension of Contracts during a State of Emergency

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5.8. Delegation 1.2.33 Procurement of Goods or Services required to address a State of Emergency

5.9. Delegation 1.3.5 Appoint Persons (other than employees) to Open Tenders

## 6. LEGISLATION

1.1. *Local Government Act 1995*

1.2. *Local Government (Functions and General) Regulations 1996*

1.3. *State Records Act 2000*

## 7. POLICY VERSION

<b>Related Policies:</b>	N/A		
<b>Related Procedure:</b>	N/A		
<b>Responsible Department:</b>	Corporate Services		
<b>Reviewer:</b>	Executive Manager Corporate Community		
<b>Review Frequency:</b>	Annual	<b>Next Due:</b>	2022
<b>Version Date:</b>	21/12/21	<b>Synergy #:</b>	NPP8065
<b>Decision Reference:</b>	213/21		
<b>Version Synopsis:</b>	No review done - Only renumbered from 2.48 Purchasing, Tendering and Buy Local		
<b>Policy Version Details</b>			
<b>Initial Adoption Date:</b>	8/02/2017	<b>Decision Reference:</b>	N/A