

Strategic Outcome Supported: 11 – Strong, visionary leadership.

## OBJECTIVE

1. To ensure all purchasing and procurement of goods, services and works on behalf of the Shire of Donnybrook Balingup is done through a consistent approach to market that is fair, equitable that align with the principles of transparency, probity and good governance and complies with the *relevant legislation*, while mitigating risk to the Shire and achieving the best value for money.

## SCOPE

2. The Shire is committed to applying the objectives, principles and practices outlined in this Policy, to all purchasing activity and to ensuring alignment with the Shire's strategic and operational objectives.

## DEFINITIONS

3. **Aboriginal Business** means a business which is majority owned by an Aboriginal or Torres Strait Islander person and is registered on the Aboriginal business directory WA or Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation).
4. **CEO** means Chief Executive Officer to the Shire of Donnybrook Balingup.
5. **Local Business** means a business registered within the boundaries of the Shire of Donnybrook Balingup.
6. **Regional Business** means A business registered within the boundaries of the South West Country Zone ((Regional) as defined by WALGA).
7. **Shire** means Shire of Donnybrook Balingup.
8. **WA Australian Disability Enterprise (ADEs)** means registered organisations which provide employment opportunities for Western Australians with disability.
9. **WALGA PSA** means Western Australian Local Government Association preferred supplier arrangement.
10. **WA State CUA** means Western Australia State Common Use Arrangement.

## POLICY STATEMENTS

### Ethics and Integrity

11. 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.

### Value for Money

12. Value for money is an overarching principle governing purchasing allowing for the best possible outcome to be achieved for Council. The Shire considers 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.

### Open and Effective Competition

13. Procurement activities should ensure competition through the seeking the number of quotations as required by the table in clause *Purchasing Thresholds* quotations requirements.
14. Where the purchasing activity is not being done as a public tender and only where required, the CEO or a Director may waive the quotation requirements, providing that written, justifiable reasons are appropriately recorded.

### Sustainable Procurement

15. Sustainable Procurement is defined as the procurement of goods and services with less environmental and social impacts than competing products and services.
16. 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.
17. Practically, sustainable procurement means Council shall endeavour at all times to identify and procure products and services which:
  - a. Demonstrate environmental best practice in energy efficiency / and or consumption which can be demonstrated through suitable rating systems and eco-labelling;
  - b. Demonstrate environmental best practice in water efficiency;
  - c. 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, free of toxic or polluting materials and consume minimal energy during the production stage;
  - d. Refurbished, reused, recycled or reclaimed products shall be given priority, and those that are designed for ease of recycling, re-manufacture or otherwise to minimise waste;
  - e. Motor vehicles – select vehicles featuring high fuel efficiency, based on vehicle type and within the designated price range;
  - f. New buildings and refurbishments – where available use renewable energy and technologies.

### Purchasing Requirements

18. 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.

19. Purchasing that is \$250,000 or below in total value (excluding GST) must be in accordance with the purchasing requirements under the relevant threshold as defined under section 12 of this Purchasing Policy.
20. Purchasing that exceeds \$250,000 in total value (excluding GST) must be put to public Tender when it is determined that a regulatory Tender exemption, as stated under section 61 (Delegation 1.2.18) of this Policy, is not deemed to be suitable.

### Purchasing Exemptions

21. Certain categories of expenditure are exempt from the requirement to seek public tenders under Regulation 11(2) of the *Local Government (Functions & General) Regulations 1996*, or are otherwise recognised as purchases where a competitive procurement process is not practical or necessary. These exemptions apply only where the Shire is satisfied that the circumstance meets the criteria of the relevant exemption and that appropriate due diligence, value-for-money assessment, and documentation have been undertaken.
22. Purchasing exemptions include, but are not limited to, the following categories:
  - a. Tenders refer to Regulation 11(2) of the *Local Government Act (Functions & General) Regulations 1996*.
  - b. Advanced or prior payment of services (accommodation, travel, seminars, training and conferences).
  - c. Annual renewals for software maintenance, support and licensing fees.
  - d. Annual professional subscriptions.
  - e. Provision of advertising services.
  - f. Provision of temporary personnel.
  - g. Utility Services.
  - h. Statutory licences or statutory registration fees (e.g. vehicle registration).
  - i. Banking fees and charges.
  - j. Insurance payments to Local Government Insurance Services (LGIS).
  - k. Legal Fees.
  - l. Performing artists, and
  - m. Purchases of small consumables such as stationery, groceries and meeting refreshments.

### Purchasing Value Definition

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

## Purchasing from Existing Contracts

- 24. 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.

## Approach to Market Priority

Priority	Requirement
Priority 1	<b>Existing Prequalified Supplier Panel or other Shire Contract/s</b> Current contracts, including a Panel of Prequalified Supplier or contracted suppliers, must be used where the Shires requirements can be met through an existing contract.
Priority 2	<b>Local /Regional Supplier</b> Where the purchasing value does not exceed the tender threshold and a relevant supplier is capable of providing the required service/supply
Priority 3	<b>Tender Exempt – WALGA PSA or WA State CUA</b> Use a relevant WALGA PSA or a WA State CUA, regardless of whether or not the purchasing value will exceed the Tender threshold.
Priority 4	<b>Other Tender Exempt Arrangements</b> Regardless of whether or not the purchasing value will exceed the tender threshold, the Shire will investigate and seek quotations from WA Disability Enterprises that are capable of providing the required supply.  Where the purchasing value does not exceed the tender threshold, the Shire will investigate and seek quotations from Aboriginal businesses that are capable of providing the required supply.
Priority 5	<b>Other Suppliers</b> Where there is no relevant existing Shire contract or the Shire believes value for money is best achieved outside of the other listed priorities, purchasing activity from any other supplier is to be in accordance with the relevant purchasing value threshold specified in the table below.

## Purchasing Thresholds

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

Purchase Threshold	Value	Purchasing Requirement	Sourcing Options
Up to \$9,999		Purchase directly from a supplier after obtaining at least one (1) oral or written quotation from a supplier from the sourcing options.	<ul style="list-style-type: none"> <li>a. Shire established panel of pre-qualified suppliers in accordance with the contract documentation;</li> </ul>
\$10,000 to \$34,999		Seek a minimum two (2) written quotation from a suitable supplier from the sourcing options.	<ul style="list-style-type: none"> <li>b. Local or Regional market supplier's;</li> <li>c. WALGA Preferred Supply Program; or</li> <li>d. State Government Common Use Arrangement (CUA);</li> <li>e. WA Disability Enterprise;</li> <li>f. Aboriginal Owned Business;</li> <li>g. Open Market.</li> </ul>
\$35,000 to \$84,999		Seek a minimum of three (3) written quotations from suppliers following a brief outlining the specified requirement, from the sourcing options.	<ul style="list-style-type: none"> <li>a. Shire established panel of pre-qualified suppliers in accordance with the contract documentation;</li> <li>b. Local or Regional market supplier's;</li> <li>c. WALGA Preferred Supply Program; or</li> <li>d. State Government Common Use Arrangement (CUA);</li> <li>e. WA Disability Enterprise;</li> <li>f. Aboriginal Owned Business;</li> <li>g. Open Market.</li> </ul>

<p>\$85,000 to \$249,999</p>	<p>Seek a minimum of three (3) written quotations from suppliers by formal invitation under a Request for Quotation, containing price and detailed specification of goods and services or works 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, via the sourcing options</p>	<ul style="list-style-type: none"> <li>a. Shire established panel of pre-qualified suppliers in accordance with the contract documentation;</li> <li>b. Local or Regional market supplier's;</li> <li>c. WALGA Preferred Supply Program; or</li> <li>d. State Government Common Use Arrangement (CUA);</li> <li>e. WA Disability Enterprise;</li> <li>f. Aboriginal Owned Business;</li> <li>g. Open Market.</li> </ul>
<p>Over \$250,000</p>	<p>A process shall be undertaken in accordance with Division 2 – Section 11 of the <i>Local Government (Functions and General) Regulations 1996</i> except if purchasing from a WALGA PSA, CUA or other tender exempt arrangement, where a minimum of three written quotations are to be sought, where that arrangement allows.</p> <p>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>	<ul style="list-style-type: none"> <li>a. Public Tender process;</li> </ul>
<p>Emergency Purchases (Within budget)</p>	<p>Where goods or services are required for an emergency response and are within scope of an existing Panel of Pre-Qualified Suppliers or an existing contract, the emergency supply must be obtained from the Panel or existing contract using relevant unallocated budgeted funds. If there is no existing Panel or contract, then the Supplier Order of Priority will apply wherever practicable.</p>	

<p>Emergency Purchases (No budget allocation available)</p>	<p>Where no relevant budget allocation is available for an emergency purchasing activity then, in accordance with 6.8 of the <i>Local Government Act 1995</i>, the President must authorise, in writing, the necessary budget adjustment prior to the expense being incurred. The CEO is responsible for ensuring that an authorised emergency expenditure under 6.8 is reported to the next ordinary Council Meeting. The purchasing practices prescribed for Emergency Purchases (within budget) above, then apply.</p>
<p>LGIS Services Section 9.58(6)(b) Local Government Act</p>	<p>The suite of LGIS insurances are established in accordance with s.9.58(6)(b) of the <i>Local Government Act 1995</i> and are provided as part of a mutual, where WALGA Member Local Governments are the owners of LGIS. Therefore, obtaining LGIS insurance services is available as a member-base service and is not defined as a purchasing activity subject to this Policy.</p> <p>Should Council resolve to seek quotations from alternative insurance suppliers, compliance with this Policy is required.</p>

## Tender Exemptions

26. Public tenders are not required under the *Local Government (Functions and General) Regulations 1996*, Regulation 11(2) when:
- 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 *Act*; or
  - the supply of the goods or services is associated with a state of emergency; or
  - goods or services are obtained through the WALGA Preferred Supplier Program (PSA) or government of State or the Commonwealth..
  - 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
  - the goods or services are to be supplied by an Australian Disability Enterprise; or
  - the contract is for petrol, oil, or other liquid or gas used for internal combustion engines; or
  - the provision of goods or services is provided under warranty or relates to specific manufacturer repairs; or
  - when any of the other exclusions under Regulation 11 apply (refer section 22).

## Inviting Tenders Under the Tender Threshold

27. 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.
28. If a decision is made to undertake a public Tender for contracts expected to be \$250,000 or less in value, the Shire's tendering procedures must be followed in full.

### Sole Source of Supply (Monopoly Suppliers)

29. An arrangement with a supplier based on the unique nature of the goods or services required or for any other reason, where it is unlikely that there is more than one potential supplier may be approved where the;
- purchasing value is estimated to be over \$10,000 and less than \$249,999;
  - purchasing requirement has been documented in an appropriate specification;
  - specification has been market tested and only one potential supplier has been identified as being capable of meeting the specified purchase requirement; and
  - rationale for why the supply is determined as unique and why quotations or tenders cannot be sourced through more than one potential supplier is documented and approved by a Manager, Director or the CEO.

### Anti-Avoidance

30. 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

31. An emergency purchase is defined as an unanticipated and unbudgeted purchase which is required in response to an emergency situation as stipulated under s.6.8 of the *Local Government Act 1995*.
32. the President must authorise, in writing, the necessary budget adjustment prior to the expense being incurred. In such instances, quotes and tenders are not required to be obtained prior to the purchase being undertaken.
33. The CEO is responsible an authorised emergency expenditure under s.6.8 is reported to the next ordinary council meeting
34. A State of Emergency declared under the *Emergency Management Act 2005* and therefore, Functions and General Regulations 11(2)(aa), (ja) and (3) apply to vary the application of this policy.
35. An emergency purchase does not relate to purchases not planned for due to time constraints, administrative omissions and errors. 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.

### Local Economic Benefit

36. The Shire promotes economic development through the encouragement of competitive participation in the delivery of goods and services by local suppliers within the boundaries of the Shire. As much as practicable, the Shire will:
- consider buying practices, procedures and specifications that encourage the inclusion of local businesses and the employment of local residents;

- b. consider indirect benefits that have flow on benefits for local suppliers, such as servicing or support;
  - c. explore the capability of local businesses to meet requirements and ensure that quotations and tenders are designed accommodate the capabilities of local businesses where possible; and
  - d. in the event the local supplier is not available or unable to provide the required goods or services the Shire will extend the buying practices to include suppliers located in the regional zone.
37. To this extent, weighted qualitative criteria may be applied in the selection criteria for quotations and tenders, where suppliers are located within the boundaries of the Shire, or located in the regional zone.
38. A regional price preference may be afforded to locally based businesses or business based in the regional zone for the purposes of assessment Provisions are detailed within the Shire's Regional Price Preference Policy.

### **Purchasing from Disability Enterprises**

39. 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. This is contingent on the demonstration of value for money.

### **Purchasing from Aboriginal Businesses**

40. 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 where the expected consideration under contract is worth \$250,000 or less. This is contingent on the demonstration of value for money.

### **Establishing and Managing a Panel of pre-qualified suppliers**

41. If the Shire decides that a Panel of Pre-Qualified Suppliers is to be created, it will establish the panel in accordance with the requirements of Division 3 of the Regulations.
42. Panels can be established for one supply requirement, or a number of similar supply requirements under defined categories. This will be undertaken through an invitation procurement process advertised via a state-wide notice including advertising in local and regional news outlets to notify potential local and regional suppliers.
43. Selection criteria will be determined and communicated in the application process by which applications will be assessed and accepted.
44. In each invitation to apply to become a pre-qualified supplier, the Shire will state the expected number of suppliers it intends to put on the panel.
45. Should a Panel member leave the Panel, the Shire will consider replacing that organisation with the next ranked supplier that meets or exceeds the requirements in the value for money assessment – subject to that supplier agreeing. The Shire will disclose this approach in the detailed information when establishing the Panel.

### Information to be provided to Panel of pre-qualified Suppliers

46. 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 will also prescribe references to:
- the length of time the panel will operate for, including any available extension options.
  - how members of the panel may be replaced should the requirement arise.
  - whether the Shire intends to buy the goods or services exclusively from the pre-qualified suppliers on the panel.
  - a statement to the effect that there is no guarantee that the Shire will purchase any volume of goods or services from the pre-qualified suppliers on the panel.
47. In every instance, a contract must not be formed with a pre-qualified supplier for an item of work beyond 12 months, which includes any options to extend the contract.

### Distributing Work Amongst Panel Members

48. In considering the distribution of work among Panel members, the detailed information must also prescribe whether:
- 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
  - 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
  - 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 60 (Delegation 1.2.17).
49. 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

50. 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.

### Contract Renewals, Extensions and Variations

51. Where a contract has been entered into as a result of a publicly invited tender process, then Functions and General Regulation 21A applies.

52. For any other contract, the contract must not be varied unless:
  - a. the variation is necessary in order for the goods or services to be supplied and does not significantly change the scope of the contract; or
  - b. the variation is an extension of the term of the contract where the extension options were included in the original contract.
53. Upon expiry of the original contract, and after any options for renewal or extension included in the original contract have been exercised or declined, the Shire will review the purchasing requirements and commence a new competitive purchasing process in accordance with this Policy.

### Contract Novation

54. The Shire has the ability to novate contracts in accordance with the Delegation Register and the Shire's Purchasing Authority limits.
55. The Shire is not obligated to agree to a novation or assignment and must consider the details, risks and contractual obligations of such requests.

### Records Management

56. All purchasing activity, communications related to purchasing activity and transactions must be evidenced and retained as local government records in accordance with the *State Records Act 2000* and the Shire's Record Management Policy.
57. In addition, the Shire should consider and include in each contract for the provision of goods or services, the contractor's obligations for creating, maintaining and where necessary the transferral of records to the Shire relevant to the performance of the contract.

## DELEGATION AND AUTHORISATION

58. Delegation 1.2.15 Tenders for Goods and Services – Call Tenders
59. Delegation 1.2.16 Tenders for Goods and Services – Accepting and Rejecting Tenders; Varying Contracts; Exercising Contract Extension Options
60. Delegation 1.2.17 Tenders for Goods and Services - Exempt Procurement
61. Delegation 1.2.18 Expressions of Interest for Goods and Services
62. Delegation 1.2.19 Panels of Pre-Qualified Suppliers for Goods and Services
63. Delegation 1.2.20 Application of Regional Price Preference Policy
64. Delegation 1.2.34 Renewal or Extension of Contracts during a State of Emergency
65. Delegation 1.2.35 Procurement of Goods or Services required to address a State of Emergency
66. Delegation 1.3.6 Appoint Persons (other than employees) to Open Tenders

## LEGISLATION

- Local Government Act 1995
- Local Government (Functions & General) Regulations 1996
- State Records Act 2000

## APPENDIX

67. Nil.

## GOVERNANCE

### Related Policy(s):

- FIN/CP-5 Regional Price Preference
- ADM/CP-1 Record Management.

### Related Procedure(s):

- Code of Conduct for Employees, Contractors and Volunteers

### Revision Requirements and Version Control:

<b>Responsible Department(s):</b>	Finance and Corporate			
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1	Initial adoption of Policy	08/02/2017	-	-
2	No review done - Only renumbered from 2.48 Purchasing, Tendering and Buy Local	21/12/2021	213/21	NPP8065
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