

Procurement Guidelines for NSW Local Government



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1 Webpage content

**Consultation
Draft**

Procurement guidance for local government

The Procurement Guidelines for NSW Local Government (Guidelines) outline principles and processes that represent best practice in procurement. These principles and processes enable delivery of quality outcomes that provide value for money while effectively managing risks.

The Guidelines also provide clarification on the interpretation and application of the *Local Government Act 1993* (Act) and the Local Government (General) Regulation 2021 (Regulation) as they apply to procurement activities.

Local government operates within a devolved governance structure. Ultimately, councils are responsible for managing their procurement in compliance with law, guidelines, and council's policies. Legislation and these Guidelines should inform local government policies and strategies for procurement.

How to use these Guidelines

The Guidelines are issued under section 23A of the Act. Local councils, or entities acting on behalf of local councils, are required to consider the Guidelines when conducting procurement or procurement-related activities.

Users should refer to the Guidelines together with the Act and the Regulation.



The term 'must' and 'required' denotes mandatory rules based on requirements embedded in legislation.



The terms 'should', 'may' and 'recommended' indicate good practice.

Definitions of terms specifically used in procurement and relevant legislation are listed in the Glossary.

References to further information and resources that can be used to build awareness, increase knowledge and understanding, and relevant Government agencies and industry bodies specialist guidance are listed in Resources.

When the Guidelines reference NSW Government procurement policies or processes, these can be adapted to meet the specific needs and requirements of local governments.



References to organisations that are not NSW Government agencies that may provide resources or support does not in any way constitute endorsement of those organisations.

Structure

The Guidelines begin by outlining high-level best practice principles of procurement. They then provide increasingly specific guidance tailored to the local government sector, individual councils, and the procurement process itself.

Guideline content



The content and structure of the Guidelines will be finalised following collaboration with the Procurement Working Group and consultation with the sector.

The Guidelines are proposed to be divided into the following sections:

Procurement and local government

A high-level overview of the legislative framework, principles of best-practice procurement and key governance considerations.

Procurement activities, risk management and the tendering process

An overview of various procurement activities and tenders, including procurement under the threshold, natural disaster response and recovery, public private partnerships, joint procurement, specific types of tenders and the tendering process.

Plan

Details on what councils should consider during the planning phase of a procurement activity, including guidance on the requirements of the legislative framework.

Source

Details on what councils should consider during the sourcing phase of a procurement activity, including guidance on the requirements of the legislative framework.

Manage

Details on what councils should consider during the managing phase of a procurement activity, including guidance on the requirements of the legislative framework.

Glossary and Resources

Glossary – definitions of terms specifically used in procurement and relevant legislation.

Resources – references and links to relevant available published information, procurement training resources.

2 PDF documents content

Procurement and local government

Principles of best practice procurement and key governance considerations

Glossary and resources

**Consultation
Draft**

Procurement and local government

This section provides a high-level overview of the legislative context and principles of best-practice procurement.

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What is procurement for local government?

Procurement encompasses all activities involved in obtaining the goods, materials and services necessary to support an organisation's operations.

The process starts with identifying and defining business needs and extends through the whole life of arrangements. This includes planning for the procurement, approaching the market, selecting and engaging suppliers or service providers, monitoring and managing the contract and supplier performance, reviewing outcomes to assess the effectiveness of arrangements, and addressing any disposal or repurposing requirements. The whole lifecycle of products should be considered during the needs analysis and when developing procurement specifications.

Why is procurement important?

Councils manage significant finances on behalf of their communities and are responsible for making sure public money is directed to the assets and services most at need.

With over \$16 billion a year being spent by councils on procurement activities, the people of NSW expect councils to have in place procurement practices that led to quality outcomes, provide value for money and effectively manage risk.

The principles for local government outlined in Chapter 3 of the Act require councils to support the development of strong, healthy, and prosperous local communities. The principles also require councils to strategically plan for and responsibly provide services and assets for their communities both now and into the future.

To do this, councils need to have a robust framework in place that aligns procurement decisions with strategic planning, optimises value and minimises risk.

Legislative context

Overview

Procurement activities in local government are governed by several different legal instruments, policies and guidance, including but not limited to:

- *Local Government Act 1993*
- Local Government (General) Regulation 2021
- *Modern Slavery Act 2018*

- *Government Information (Public Access) Act 2009*
- *State Records Act 1998*
- these Guidelines.

Councils must comply with all legal obligations, as well as any NSW Government procurement policies relevant to the local government sector. If uncertain, councils should always refer directly to relevant legislation and seek their own independent legal advice.

Local Government Act 1993 and the Local Government (General) Regulation 2021

The Act and the Regulation outline the requirements for how councils should source goods, materials and services through tendering, along with other general applicable requirements.

The specific requirements applicable to the tendering process will be covered in detail in the Source section of the Guidelines.

A council's procurement activities must be carried out in accordance with sections 55 and 55A of the Act, and Part 7 of the Regulation.

Section 55 of the Act sets out the requirements for tendering and provides a value 'threshold' of \$250,000 for contracts. Contracts of this value or more, and otherwise not exempt under the Act, must follow the tendering requirements set out in Part 7 of the Regulation. These provisions also provide for some exemptions to tendering requirements in certain circumstances.

Note: This value threshold for contracts is inclusive of goods and services tax (GST).

Requirements for procurements under the regulated threshold

Procurements under the value threshold set out by section 55 of the Act are exempt from the legislated tendering requirements. However, the principles and processes outlined throughout these Guidelines apply to procurements of any value.

Councils are encouraged to refer to these Guidelines for procurements of any value and adapt to their individual circumstances and needs.

Modern Slavery Act 2018

The *Modern Slavery Act 2018* (MS Act) introduces obligations for councils relating to modern slavery. The Act requires councils to take reasonable steps to ensure that goods, materials and services procured by and for the council are not the product of modern slavery within the meaning of the MS Act (see section 438ZE of the Act).

Councils should refer to guidance issued by the NSW Anti-slavery Commissioner for more information about these requirements. Refer to the Resources section for further information and links.

Where relevant, further information about councils' modern slavery responsibilities is included throughout these Guidelines.

Annual reporting on modern slavery actions and steps

The Act references requirements, in alignment with the MS Act, for a council to publish in their annual report a statement of:

- the action taken by the council in relation to any issue raised by the Anti-slavery Commissioner during the year concerning the operations of the council and identified by the Commissioner as being a significant issue (see section 428(4)(c) of the Act), and
- the steps taken to ensure that goods, materials and services procured by and for the council during the year were not the product of modern slavery within the meaning of the MS Act (see section 428(4)(d) of the Act).

Government Information (Public Access) Act 2009

The requirement to publish a register of Government contracts with the private sector in a register is set out in the *Government Information (Public Access) Act 2009* (GIPA Act) (see Part 3, Division 5 of the GIPA Act). This applies to all Government agencies, including councils.

Under the GIPA Act, councils are required to:

- keep a register of contracts (its government contracts register) that records information about each government contract to which the council is a party that has (or is likely to have) a value of \$150,000 (including GST), or more (class 1 contracts) (see section 27(1) of the GIPA Act), and
- enter information about a class 1 contract into the register within 45 working days after the contract becomes effective (see section 27(2) of the GIPA Act).

Refer to the GIPA Act for further information, including specific requirements about the information to be entered in the register for class 1 contracts, confidential information not

required to be included in the register, the minimum public access period for information on the register, and publishing of the register.

State Records Act 1998

The *State Records Act 1998* (SR Act) makes provision for the creation, management and protection of the records of public offices of NSW and to provide for public access to those records. A public office includes a council, county council or joint organisation under the Act (see section 3(1) public office (a)(iii) of the SR Act).

Councils must keep, manage and protect procurement related records in accordance with the requirements of the SR Act. Refer to the SR Act and the State Records Regulation 2024 for further information about these requirements.

State Records NSW also publishes several resources for local government to help councils understand and promote recordkeeping, disposal of records, privatisation of functions, access to records and defining high risk records.

Wider strategic context

Councils should recognise that the above legislative requirements are not the only requirements applicable to their procurement activities. Councils' procurement occurs in a broader strategic context and is affected by legislation, codes, policies, and guidelines from other NSW Government agencies.

Procurement activities should also be undertaken in accordance with councils' own community strategic plan (CSP), resolutions and procurement policies and guidance.

Councils are encouraged to recognise the public value of their procurement practices and commit to fostering broader societal benefits by promoting local businesses, social enterprises, and Aboriginal businesses.

This approach ensures that councils contribute meaningfully to community development, strengthen economic resilience, and promote sustainability to achieve improved social outcomes for their communities.

Further information about relevant legislation, NSW Government requirements and consideration of broader societal benefits is included in the relevant sections of the Guidelines.

Best-practice procurement (the plan, source, manage approach)

Overview

The plan, source, manage approach to procurement provides best practice methodology to deliver value for money, align with business needs, improve service delivery, and support a competitive economy.

It consists of three broad stages: Plan, Source and Manage. While every stage is important, councils may not have to spend the same time and resources on each. Councils should make their own assessment based on the size of the procurement activity, their situation and needs.

Risk management is essential for best-practice procurement, and risk management strategies should be in place at each stage of the procurement process.

Similarly, a whole of life approach should be taken regarding supplier due diligence.

Procurement methodologies and decisions made throughout the procurement lifecycle should be documented and filed to ensure transparency, accountability, and to demonstrate defensible processes and decision-making.

Plan

It is important to do the groundwork to plan for council's procurement to ensure a strategy is formulated that best meets council's requirements and the intended outcome for the procurement. This involves:

- a needs analysis
- determining availability of funds
- developing procurement documents that clearly articulate requirements and terms
- identifying risk and management measures
- understanding community and other stakeholder needs and expectations
- market analysis and early industry engagement to test for appetite to supply, capacity, capability, factors influencing supply, and innovation, and
- formalising or documenting the procurement strategy.

Source

This stage is about approaching the market for the required goods, materials or services, and selecting the suppliers that will deliver the best value for money. It involves:

- approaching the market
- selecting suppliers
- negotiating and awarding a contract
- debriefing unsuccessful proponents, and
- contract disclosure in compliance with legislation.

Manage

Management of contracts ensures suppliers deliver what they have committed to, good supplier relationships are developed, and all other obligations between buyer and supplier are met. This stage involves:

- agreement between buyer and supplier on systems, processes, risks, and responsibilities for key tasks (i.e. a contract management plan)
- ensuring a smooth transition of services (for new suppliers)
- developing a communication plan (especially where other stakeholders may be involved)
- ensuring governance and management of contractual obligations
- tracking supplier performance and delivery
- considering strategy for any contract renewal, extension, or variation that may be required (as needed)
- reviewing processes, outcomes, and supplier performance to inform future procurement processes.

Principles of best-practice procurement and key governance considerations

This section provides guidance on the principles of effective procurement management and key governance considerations relevant to all councils.

Councils should carry out all procurement activities in accordance with the principles that underpin best-practice procurement. These activities should be supported by a strong governance framework.

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What are the principles of procurement?

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Procurement activities should be carried out in alignment with a set of general principles that reflect best practice. These principles apply to every procurement, irrespective of the value, complexity and risk level involved. These are based on the legislative requirements that councils must adhere to and their efforts to achieve the best possible outcomes for their communities through their procurement processes.

The principles are:

- Value for money
- Fair and open competition
- Probity and transparency
- Innovation
- Economic development, social outcomes, and sustainability.

Value for money



Value for money is the crucial, overarching consideration in procurement.

Councils must act in the best interests of their residents, ratepayers, and wider community when handling public money. As such, achieving value for money in procurements is essential for councils in meeting their obligations to the community.

Factors involved in assessing value for money

When determining whether a procurement represents value for money, councils should assess a range of factors, both financial and non-financial. These factors are outlined in Table 1.

Table 1: Factors and evaluation criteria to assess value for money

Factor	Evaluation criteria
Justify the procurement need	<ul style="list-style-type: none">• Need• Alternatives• Ability to repurpose existing assets, equipment, materials or resources
Is the procurement required?	
Is there an alternative option available?	

Factor	Evaluation criteria
Fit for purpose Does the procurement meet council's needs?	<ul style="list-style-type: none"> • Quality • Quantity • Cost quoted
Supplier capability How capable is the supplier?	<ul style="list-style-type: none"> • Relevant experience • Performance history • Capacity • Support and service provided
Broader council and government objectives Does the contract fit with wider policies and strategies?	<ul style="list-style-type: none"> • Council priorities and strategy • Economic, social, environmental, and ethical objectives
Total cost of ownership What are other costs affecting the procurement?	<ul style="list-style-type: none"> • All costs borne by council over the lifecycle of the procurement
Timeliness How urgently is the procurement needed?	<ul style="list-style-type: none"> • Key dates • Urgency
Risk What uncertainties may affect or arise from the procurement?	<ul style="list-style-type: none"> • Risks • Controls

Key takeaways:

- All principles of procurement relate to achieving value for money.
- Value for money does not mean obtaining the lowest price for a procurement.
- A big picture view is required. This involves assessing a range of factors to get the greatest total benefit for a community.

Fair and open competition



Competition and non-discrimination are crucial for effective procurement.

Councils must promote fair and open competition by ensuring an even playing field and equal treatment for all potential suppliers or vendors. Fair and open competition is important as it promotes innovation, improves efficiency, and increases opportunities for suppliers, including those new to the market. Encouraging competition is also a way for councils to manage corruption risks when procuring.

Councils can encourage fair and open competition by thoroughly reviewing long-term contracts and contracts that need to be renewed, providing an opportunity for a variety of suppliers to compete for procurements and continue to maintain probity.

Councils should:

- **be open, transparent and fair:** take a balanced approach between contracting with reliable suppliers and considering reviewing contracts to improve accessibility for new entrants.
- **encourage new suppliers:** through the review of contracts and providing opportunities for different types of suppliers.

All suppliers to procurements must be treated (and seen to be treated) in an open, fair and transparent manner, having access to the same information about the procurement, and clear information on the procurement process, for them to be able to make submissions on equitable terms.

Key takeaways:

- Councils should procure in a fair and competitive way.
- Encourage new suppliers.
- Corruption risks are lower in competitive procurements.

Probity and transparency



Councils must always procure with probity and transparency.

Probity refers to complete honesty and integrity in a particular process, that can be confirmed and evidenced to observers. For councils, this means being able to demonstrate integrity, accountability, and fairness in a way that withstands external scrutiny in all procurement activities.

Councils with good governance are more likely to succeed in implementing strong probity practices in their procurement activities.

Probity is important as it allows councils to safeguard their procurements and achieve optimal community outcomes. It is important for managing risks, as procurement activities can be susceptible to corruption.

Key aspects of probity

While processes may vary between councils depending on the specific procurement requirements, all councils should ensure they have considered the key aspects of probity outlined in Table 2 below.

Table 2: Key aspects of probity

Key aspect	Councils must
Impartiality and fairness	<ul style="list-style-type: none"> • Treat all suppliers fairly and consistently during selection and evaluation. For example, market participants must all be provided with the same information at the same time, and submissions must be given fair and equal consideration in accordance with tender documents issued to the market, legislation, and council policies. • Ensure suppliers are aware of council's procurement processes. • Only approach the market with the intention, capacity, and funding to execute a procurement contract. • <u>Not</u> engage in collusive practices or give improper advantages to certain suppliers.
Defensible documents	<ul style="list-style-type: none"> • Ensure full and clear documentation of procurement processes, sourcing requirements, submission conditions, evaluation criteria and decisions.
Managing conflicts of interest	<ul style="list-style-type: none"> • Have a register of interests (for each procurement project). • Comply with conflict-of-interest obligations.
Confidentiality	<ul style="list-style-type: none"> • Ensure appropriate arrangements are in place to protect confidential information. • Consider the use of legally binding confidentiality agreements, such as confidentiality or non-disclosure clauses in contracts.
Management of disputes and misconduct	<ul style="list-style-type: none"> • Provide a mechanism for dispute resolution. • Provide a way to report misconduct. • Manage corruption and lobbying risks.

Key aspect	Councils must
General compliance	<ul style="list-style-type: none"> Comply with all other legal and policy obligations relevant to local government.

Probity advisors or probity auditors

Councils may consider engaging a probity advisor or probity auditor where a procurement activity is particularly complex or high-risk.

However, using an external probity advisor or auditor should be the exception and not the rule. They are not a substitute for good probity and governance practices, and do not remove the ultimate accountability for probity from council.

Probity advisors: provide advice on probity matters, and act as part of the procurement team. They can assist in finding solutions to probity issues that may arise and may be engaged just to oversee the procurement process, or to oversee the procurement contract for the life of the contract.

Probity auditors: act separately from a procurement team and check whether a procurement complies with probity-related obligations.

Councils should include the threshold of risk that triggers the involvement of a probity advisor or auditor in their risk management framework.

If electing to use a probity advisor or auditor, councils may wish to utilise the Performance and Management Services Scheme, a prequalification scheme provided by the NSW Government (see section 55(3)(g) of the Act). If using this scheme, councils must adhere to rules associated with its use.

Buyers registered with this prequalification scheme must adhere to the rules associated with its use, including rules associated with selection of listed probity services personnel (see section 55(3)(g) of the Act).

Key takeaways:

- Probity is essential at every stage of the procurement process.
- Each person involved in the procurement process is accountable for ensuring probity.
- Probity reduces council's exposure to risks (financial, legal, reputational).

Innovation



Innovation involves coming up with new ideas that result in better outcomes.

Councils should innovate where possible to drive better outcomes when procuring goods, materials, or services. Innovation can benefit councils and communities by stimulating the economy, increasing cost efficiency, and expanding supplier networks and diversity.

Innovation can occur at any stage of the procurement process. It can encourage improvements to internal procurement processes as well as strengthen and grow supplier advancement.

Councils can innovate by:

- **engaging with the market** – using the broader industry and conducting market analysis which can enable creation of better ideas. Also, finding suppliers who can deliver new and better products and services, faster and more cost-effective.
- **encouraging businesses** – that are creative and stimulate ideas that grow the economy and develop more effective supply sources. Also, make it easy to do business and understand and comply with contractual terms and requirements.
- **considering unsolicited proposals** – so long as all associated risks are managed effectively. Any unsolicited proposal should be considered with reference to these Guidelines.

Key takeaways:

- Innovation can occur at any stage of the procurement process.
- Councils should innovate where possible, but not at the expense of other principles.

Economic development, social outcomes, and sustainability



Councils are encouraged to support positive social, environmental, and economic outcomes in their procurements, especially where there are supplier options available.

Purchasing from social and sustainable enterprises supports economic and social change and positively impacts the environment. While not mandatory, it is recommended to consider these suppliers when options are available for the goods, materials, or services council needs. The key benefits of considering such suppliers are outlined in Table 3 below.

Table 3: Key benefits

Supplier type	Key benefits
Social enterprises	<ul style="list-style-type: none">• Social enterprises are businesses that trade with the goal of achieving social and environmental outcomes that benefit the public, community, and environment, while addressing societal problems.• Social enterprises may benefit disadvantaged Australians by providing training and employment opportunities, community and social services, or ethical products and services, with a significant portion of profits reinvested into social causes.
Indigenous businesses and participation of Aboriginal people	<ul style="list-style-type: none">• Councils are encouraged to identify Aboriginal businesses within their local areas they may source from.• The NSW Government identifies an Aboriginal business as one that has at least 50% Aboriginal ownership and that is recognised through an appropriate organisation, such as:<ul style="list-style-type: none">○ Supply Nation○ NSW Indigenous Chamber of Commerce, or○ Office of the Registrar of Indigenous Corporations.• These organisations maintain lists of Aboriginal businesses that are audited and undergo quality assurance.• Councils may consider adapting information from the NSW Government's Aboriginal Procurement Policy to promote opportunities, skills development, and economic participation of Aboriginal people, while valuing their social and cultural contributions.
Australian Disability Enterprises (ADEs)	<ul style="list-style-type: none">• ADEs are not-for-profit organisations that employ people living with a disability, empowering them to contribute to their community. ADEs operate across several industries including hospitality, retail, manufacturing, recycling and horticulture.

Supplier type	Key benefits
	<p><i>Note:</i> An open tender process is not required when procuring from a person or body approved as a disability employment organisation under the <i>Public Works and Procurement Act 1912</i> where the total cost of the procurement is likely to equal or exceed \$250,000 (see section 55(3)(q) of the Act).</p>

Councils can also choose to support Government policy initiatives that promote positive social, environmental and economic outcomes. Some of the Government policy initiatives include:

- supporting small and medium-sized enterprises (SMEs)
- supporting regional or local businesses
- encouraging groups of businesses and collaborations between smaller suppliers
- encouraging supplier diversity, Aboriginal businesses and ADEs, and
- procuring sustainably, considering environmental, human, social and economic factors.

Some optional resources and principles for social and sustainable sourcing are listed under the Resources section.

Key takeaways:

- Procuring from social and sustainable enterprises supports economic and social change as well as having a positive effect on the environment.
- Councils may choose to adapt NSW Government initiatives, strategies, policies and guidance materials where appropriate and permissible under law.

Internal governance



Sound internal governance enables better procurement outcomes.

Code of conduct

Council staff involved in the procurement process must adhere to the same ethical and behavioural standards as other council officials, including compliance with the council's adopted code of conduct.

Any concerns about breaches of the council's code of conduct by staff must be reported to the general manager, or, in the case of breaches by the general manager, to the mayor, as required by the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (Procedures).

Conflicts of interest

Conflicts of interest can arise at any stage of the procurement process. They occur when an individual could be influenced, or a reasonable and informed person would perceive that an individual could be influenced, by a personal interest when carrying out public duties.

These interests can be of either pecuniary (financial) or non-pecuniary (non-financial), and the resulting benefit or loss may also be financial or non-financial.

All code of conduct complaints alleging a breach of the pecuniary interest provisions set out in Part 4 of the *Model Code of Conduct for Local Councils in NSW* (Model Code of Conduct) must be referred to the Office of Local Government under the Procedures.

Managing conflicts of interest

Council officials and third parties acting on behalf of councils, including suppliers engaged during the procurement process, must ensure they have no real or perceived bias or conflict of interests that could affect their ability to act independently.

If a conflict is identified, it must be promptly addressed, declared, and assessed. If necessary, alternative working arrangements or other actions should be implemented to resolve the conflict in favour of the public interest. The Independent Commission Against Corruption (ICAC) recommends identifying, disclosing, and managing all conflicts of interests (actual, perceived, or potential).

The Model Code of Conduct outlines mandatory requirements for managing pecuniary and non-pecuniary conflicts of interests.

Register of interests

Councils should keep a register of all conflict of interests that have been disclosed by staff and representatives of any contracted entities for all procurement activities.

A register helps ensure that conflicts are declared and managed as they arise and assists in managing conflicts in any subsequent procurement with a supplier.

Financial controls

Councils must implement and regularly review their financial controls related to procurement activities to minimise and mitigate risks to the council.

Segregation of duties

Ensuring clear physical and operational separation between staff responsible for each stage of a procurement activity is crucial for minimising risk. Without this separation, transparency is limited, and the council is more exposed to potential fraud.

Implementing a procurement process with appropriate segregation of duties is necessary. This may include having different staff responsible for:

- evaluating submissions and recommending potential suppliers, and
- approving the expenditure of relevant funds.

Councils should regularly review staff responsibilities and procurement processes, including liaising with internal teams, to identify each type of risk and ensure systems are in place to manage any exposures appropriately.

Delegations and approvals

Delegations are a vital part of council controls that ensure appropriately skilled staff perform key functions or tasks and provide approvals of expenditure or financial commitments. Well implemented delegations can save costs while minimising the risk of fraud or error resulting from the inappropriate approval of transactions. Delegations are also used to increase the efficiency of authorisation and decision-making.

The Act provides that a council may, by resolution, delegate certain functions to its general manager or any other person or body (not including another employee of the council). However, decisions to accept tenders to provide services currently provided by members of staff of the council, (i.e. decisions to outsource services currently provided inhouse by council staff), cannot be delegated and must be made by a resolution of the council (see section 377(1)(i) of the Act, and for joint organisations section 397K of the Regulation).

Councils should clearly document which functions of the tendering process are to be delegated, any limitations based on financial amount or resourcing impact, and to whom or the position the delegation is to be made. Each council must review all its delegations during the first 12 months of each term of office (see section 380 of the Act).

Auditing and process reviews

All councils are required to appoint an Audit, Risk and Improvement Committee that must review aspects of the council's operations including compliance, risk management, fraud control, financial management, and governance.

Including an audit of the council's procurement practices in the council's internal audit work plan and linking it to the council's strategic objectives will help to identify and mitigate current and emerging risks and challenges.

For councils with larger procurement budgets and higher risks, more frequent general reviews of procurement policies and processes, in addition to an audit, may be appropriate to ensure that purchased goods and services meet expectations. However, this may not be necessary for smaller councils with significantly lower size and risk profiles.

Procurement staff

Procurement staff may have various duties and responsibilities depending on the size of the council, the available staff supporting procurement activities, and the complexity and number of procurement activities. However, all procurement staff play a crucial role in ensuring that sourced products and services provide the best value for money and meet the needs of the council.

Councils should regularly review whether its procurement resources are adequate and appropriate for the procurement needs of the council. This may include considering:

- requirements for achieving councils' goals as set out in its CSP and operational plan.
- who is the go-to person or team for procurement?
- what are the primary responsibilities of that person or team? This may be researching key suppliers and options for delivering a desired outcome, negotiating purchase agreements, and ensuring all products and materials meet council's standards.
- does the person or team have the right knowledge and skills or is additional training required? Can this be coordinated with other councils or done online to reduce costs?
- is a specialist person or team essential and appropriate for the council's size and needs?
- does the council need to engage contingent labour or external expertise?

Specialist teams

Forming a specialist team of skilled procurement professionals can help to reduce costs, streamline processes and improve procurement outcomes. This team can handle the

purchasing of goods, materials or services while ensuring the purchases are smart, align with the council's strategic and long-term goals, and are cost-effective.

A specialist team that oversees all procurement can also improve overall efficiency by:

- consolidating purchasing activities
- developing strong relationships with other groups within council such as finance, marketing, and engineering
- developing strong relationships with other councils
- developing strong relationships with suppliers
- identifying opportunities where, for example, a joint purchasing arrangement with other councils could be entered into to maximise the councils purchasing power.

Contingent labour or external professional expertise

When a council lacks in-house expertise and resources, such as for a significant and complex project or for specific expertise like a probity advisor or probity auditor (see Probity and transparency), it may consider engaging contingent workers or external professionals to provide independent procurement services. This can include contractors, freelancers, consultants, advisors, auditors or other outsourced workers hired on a per-job or non-permanent basis.

If a council engages contingent labour or external professional expertise to enhance its procurement staff or for specific expertise, it must ensure that appropriate systems are in place to protect confidentiality and mitigate any potential risks.

Procurement training

It is crucial that staff involved in or overseeing procurement activities have the appropriate knowledge and skills to perform their duties effectively. Councils should conduct an audit of staff to assess if council has the right knowledge and skills mix across the procurement lifecycle and provide training to address any identified gaps.

Some of the key areas and topics councils may want to consider when assessing whether staff have the required knowledge or skills include:

- procurement legislation and policies
- communicating effectively, including influencing and negotiating
- analysis and implementation of improvements for better outcomes
- strategic sourcing and procurement objectives
- commercial negotiation

- contract law
- contract management
- cost management, budgeting
- supplier relationship management
- project management
- procurement risk management, including foreign exchange risk, and risk mitigation
- probity principles, including corruption prevention
- governance, including reporting, open access information, confidentiality, and records management.

Documentation, information and records management



Keeping, managing and protecting procurement related records must be done in compliance with the SR Act.

Council staff should familiarise themselves with their obligations and the standards and codes of best practice records management under the SR Act (see Part 2 of the SR Act).

The processes, requirements of what is being sourced, conditions for submission, evaluation criteria, contracts and decisions for procurement activities are examples of some relevant records that must be clear, fully documented, transparent, and defensible.

Protection of confidential information

Appropriate security and confidentiality arrangements must be put in place and any information that is intellectual property, proprietary, commercial-in-confidence or otherwise confidential must not be disclosed or made accessible without binding confidentiality agreements in place. This includes arrangements for protection from cyber-security attack.

Councils should have clear procedures controlling how all information and documents relating to a tender and the procurement of goods, material and services are stored, handled and accessed. Access to tender documents should be restricted to only those persons involved in the tender process including the tender evaluation panel. The procedures should also state how access to tenders submitted by secure electronic means would be controlled.

Tendering documents

In conducting the tendering process councils should ensure record keeping as follows:

- maintain full records of the entire tendering process. This includes:
 - the council's decision to tender
 - a copy of the public advertisement
 - a complete copy of the tender documents provided to tenderers
 - the policy or procedure regarding the operation of the tender evaluation panel including the tender evaluation plan which includes the tender evaluation methodology, criteria and weightings and the names of staff involved
 - a copy of any variation to the tender documents which should be in the form of an addendum
 - the names of all parties who received tender documents
 - a record of all subsequent dealings with tenderers and information provided to them
 - the names of all tenders submitted and their amounts
 - where a council submits a tender, any policy or procedure regarding the management of in-house tenders and the names of staff involved in an in-house tender
 - the policy or procedure regarding the operation of tender evaluation panels and the names of staff involved
 - a record of any amendments to the tender documents and the persons informed of those amendments (see section 170(2) of the Regulation)
 - a record of any extension or shortening of the tender period (see sections 171 and 172 of the Regulation)
 - a record of any variations to tenders made in accordance with section 176 of the Regulation
 - the tender evaluation methodology, criteria and weightings
 - the evaluation of tenders and the reasons for selecting the successful tender or not accepting any of the submitted tenders (see section 178 of the Regulation)
 - the notification to all tenderers of the outcome of the tendering process (see section 179 of the Regulation).
- document policies, procedures and decisions regarding risk assessment and management (Refer to 2.3 for further information regarding risk management).
- comprehensively document all communications with potential tenderers.
- separately document the recommendation, review and final approval stages to ensure the process is transparent.

- prepare an evaluation report on each tender.
- prepare a final report that documents the reasons, based on the tender criteria, for selecting the successful tender or, not accepting any of the submitted tenders.
- retain complete and comprehensive records of all tenders, evaluations and any negotiations as well as the contract itself.

Contract documents

Good contract and records management systems can help councils to organise and maintain records related to contracts, improve efficiency in tracking and monitoring executed contracts and reduce risks for the council with clear reporting and alerts.

Councils should ensure record keeping of contracts as follows:

- Initiation – needs, goals and expectations.
- Creation and negotiation – version tracking, negotiation of terms.
- Approval – ensuring alignment with initiation and other requirements.
- Execution – signatures and implementation of agreed terms.
- Monitoring and management – ongoing monitoring/auditing, compliance and deviations addressed or variation approvals.
- Renewal or termination – review of performance against terms and council needs, goals and expectations for renewal or termination.
- Reporting – supplier conformance, changes to contract requirements or needs, goals and expectations for tender for the continued requirement for the goods, materials or services.

Information, communication and technology

Councils should ensure that ICT systems they procure are compatible with the NSW Government platforms they are required to use. This requirement should be clearly stated in their tendering specifications. Additionally, councils are encouraged to incorporate this requirement into their procurement policies.

Systems purchased should also be protected from cyber-security attack (see Cyber-security Guidelines).

Council procurement strategy, policies and procedures

Procurement strategy

Councils should require a well-considered and documented procurement strategy to be approved before starting any procurement, regardless of value. This promotes a more robust process by addressing the procurement need, outlining the procurement process, conducting risk analysis, determining the sourcing approach, setting evaluation criteria, planning contract management, and considering whole-of-life factors.

Policies and procedures

Councils are encouraged to develop and maintain their own best practice policies and internal procedures to support councils' procurement strategy.

These policies should:

- reflect and align requirements of the Act, the Regulation and these guidelines, and any other legislation and policies relevant to individual procurements
- reflect councils' own requirements
- reflect councils Integrated Planning and Reporting framework and community expectations
- reflect and promote the principles of best-practice procurement
- reflect best-practice procurement – the plan, source, manage approach
- identify how council may drive public value through promotion of local business, social enterprises and Aboriginal businesses
- identify councils' policy on social, environmental and economic procurement
- identify how procurement activities will be conducted, communicated, reported, monitored and reviewed
- identify documentation, information and record management requirements, including document retention, security and confidentiality
- identify control of associated risk, including the development of containment strategies to mitigate loss/liability and contingency planning to respond to risks that may emerge
- set out what constitutes a breach, and the actions needed to be taken. It is essential that councils have in place systems and processes to avoid such breaches, and the mechanisms to report as required within their own policy, and
- identify the delegations in place for the procurement of goods, materials and services.

These policies and procedures should be routinely updated to reflect legislation and requirements and opportunities of the time. This allows processes and procedures to be continually improved without the need to amend the policy for each change.

Councils' policies should also be published as this assists in informing suppliers about council's processes, increases confidence in the council's procurement activities and thereby improves the relationship between council and their current and prospective suppliers.

Local preference policies

Procurement policies can reflect a council's local circumstances, such as an objective to support local, small to medium enterprises and regional businesses, Aboriginal and Torres Strait Islander businesses, Australian Disability Enterprises, social enterprises, or any other economic and environmental development goals and objectives.

Many councils recognise that local businesses are integral to their communities and are committed to promoting the benefits of locally sourced goods, materials or services. However, it is crucial to ensure that value for money and fair and open competition principles are upheld during procurements as part of a probity-rich process.

Councils often face challenges when implementing policies that prioritise local purchasing, particularly in defining what constitutes a 'local' supplier or product. Traditionally, 'local' has been defined by business location or employment opportunities. However, even if a business is locally based, the economic benefits may not remain within the area due to factors like business ownership, where employees reside, or where the goods are sourced from. To address this, councils should clearly define what 'local' means in their policy, aligning it with their Community Strategic Plan.

Additionally, objectives aimed at minimising whole-of-life or life-cycle costs when engaging local businesses can sometimes conflict if local businesses cannot meet the minimum cost requirements. For example, placing whole-of-life or life-cycle cost requirements for all expenses, including upfront costs, operating expenses, maintenance, and eventual disposal may create unachievable expectations for local businesses.

There may be situations that arise from unforeseen events, unpredictable maintenance needs, or difficulty in valuing long-term environmental and social impacts, where it is impossible to accurately predict or account for all expenses associated with an asset throughout its entire lifespan.

To manage these tensions, councils should:

- Clearly define what 'local' means in their context.
- Acknowledge the potential conflict between local support and life-cycle cost objectives.

- Explicitly state how they will balance these priorities in their procurement policies.

By doing so, councils can support local economic development while maintaining transparency, fairness, and financial responsibility in procurement.

Risk considerations

All procurement carries some level of risk, including a heightened risk of corruption at any stage of the process and throughout the contract's duration. It is important for councils to be aware of potential risks and to develop a risk management framework that ensures risks are identified and appropriately managed.

For general guidance on preparing a risk management framework, councils may refer to the International Organisation for Standardisation (ISO) document 'Risk Management – Guidelines (ISO 31000:2018)'.

All procurements should incorporate risk management practices proportional to their value and risk level. For low value, low risk procurements, a simple mechanism may suffice, whereas high value and high-risk procurements require a more structured plan. A council's procurement policy should establish the trigger point for when a more complex risk management plan is necessary.

ICAC's website provides guidance and various publications on corruption prevention and managing procurement related risks. Councils should consult this information for more details.

Further information on risk assessment frameworks can be found in the Glossary and resources section.

Glossary and Resources

This section includes a glossary and links to resources relevant to local government procurement practices.

Glossary – definitions of terms specifically used in procurement and relevant legislation.

Resources – references and links to relevant available published information, procurement training resources.

Contents

Glossary

Resources

Glossary

Following are definitions of terms specifically used in procurement and relevant legislation.

- **Council** – means a council, county council or joint organisation as defined under the *Local Government Act 1993*.
- **Open approach to market (OAM)** – The invitation to supply required goods, materials or services is publicly advertised and any supplier can submit a response. An open approach encourages healthy market competition and greater comparison for value for money.
- **Tendering** – A process in which an organisation invites suppliers to submit a formal written proposal, bid, or response to a set of requirements relating to the provision of goods, materials or services that match their requirements. It covers all forms of tendering, including RFT, RFQ, EOI, RFP, RFI.
- **Request for Tender (RFT)** – Inviting offers to supply goods, materials or services in response to a detailed description of requirements where the successful tenderer will be awarded a contract. Suppliers may be selected either from the open market, or from established supplier lists.
- **Limited Request for Tender** – Invitations to tender are sent to one or more suppliers that have been assessed to be most capable, rather than to the open market. Suppliers may be selected either from the open market, or from an established supplier list.
- **Selective Request for Tender** – Inviting a limited number of suppliers to submit a response. The RFT usually follows a discovery stage as part of a multi-stage procurement process. The RFT is issued to all or some of the proponents of the discovery phase when council is confident of the solution and supply need.
- **Requests for quote (RFQ)** – Requirements are simple and for fairly standardised goods, materials or services. The successful supplier will be awarded a contract (either detailed or a simple purchase order depending on the value and level of risk).
- **Expression of interest (EOI)** – The process of seeking capability and interest of service providers to undertake specific work, or to test the market to find out whether a good or service exists. It may invite a detailed proposal. Suppliers respond to a broad set of criteria which generally does not include pricing. It is useful when council is unsure of what it is procuring or not clear on the best way to supply. EOI's are usually the first stage of a multi-stage tender process and do not result in a contract being awarded.
- **Request for proposal (RFP)** – Used to elicit a detailed supplier response to a specific need, idea or business solution, or to explore multiple solutions to one problem. Requirements are specific and detailed and include indicative pricing. Can be used as the

first step in a multi-stage procurement process or to negotiate directly with a proponent of the RFP process where the proposal satisfies the buyer's needs.

- **Request for information (RFI)** – A precursory request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies available, or how a project might be undertaken. It may be used to inform a future tender.
- **Direct negotiation** – Also called direct dealing or sole sourcing. Exclusive dealing between a buyer and a supplier over a commercial proposal without first undertaking a competitive process. It may include a limited request for tender.
- **Reverse auction** – A type of auction in which sellers bid for the price they are willing to sell at, where bids reduce rather than increase.
- **Unsolicited proposal** – An approach to government from a proponent with a proposal to negotiate directly with that government entity over a commercial proposition, where council has not requested the proposal. The focus of unsolicited proposals is the proponent's claim to be able to provide a unique and innovative project or service.
- **Standing offer** – An arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specific goods, materials and services, to an eligible buyer for a specified period.
- **Order splitting** – Breaking up what would be a single contract with a single supplier (including purchase order contracts) into purchases of smaller quantities and amounts or dividing the award of what would be a single contract into artificial phases or smaller contracts, for the purpose of circumventing procurement or financial thresholds, competitive tendering for a single contract, or governance requirements.
- **Two envelope system** – in a two-envelope submission the first package is for tender schedules and other documents containing information responding to non-price evaluation criteria and must not include any price information. The second package is for other tender schedules and any other components of the submission which contain price information. A two-envelope system minimises the influence of cost on the evaluation of the technical response.

Resources

Any links provided in this section are current at the time of publication of these Guidelines. Links and document versions may change over time. Users will need to refer to the source agency/entity for updated links and document versions.

Published information available

Risk Management – Guidelines (ISO 31000:2018) (The International Organisation for Standardisation)

ISO 31000 is an international standard that provides principles and guidelines for risk management. It outlines a comprehensive approach to identifying, analysing, evaluating, treating, monitoring and communicating risks across an organisation.

Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains (NSW Anti-slavery Commissioner, Department of Communities and Justice)

The Guidance aims to assist covered entities in applying clear policies, consistent procedures and effective risk management strategies for modern slavery risks in their operations and supply-chains.

[https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner/duediligence-and-reporting.html#:~:text=Guidance%20on%20Reasonable%20Steps%20\(GRS\),-The%20centre%20of&text=The%20Guidance%20aims%20to%20assist,their%20operations%20and%20supply%2Dchains](https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner/duediligence-and-reporting.html#:~:text=Guidance%20on%20Reasonable%20Steps%20(GRS),-The%20centre%20of&text=The%20Guidance%20aims%20to%20assist,their%20operations%20and%20supply%2Dchains)

Corruption prevention publications (Independent Commission Against Corruption)

Various publications relating to corruption prevention and risks in procurement and other procurement publications.

<https://www.icac.nsw.gov.au/prevention/corruption-prevention-publications>

Model Code of Conduct for Local Councils in NSW (Office of Local Government)

The Model Code of Conduct sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in local government.

<https://www.olg.nsw.gov.au/councils/governance/model-code-of-conduct/>

Lobbying local government councillors (Independent Commission Against Corruption)

Guidelines for councillors on the appropriate way to handle lobbying from constituents.

https://www.icac.nsw.gov.au/ArticleDocuments/631/Lobbying_local_government_councillors_-_a_guide_for_councillors_constituents_and_other_interested_parties.pdf.aspx

Procurement training resources

Procurement skills

Procurement Skills Booster (Buy NSW, NSW Government)

Free training for anyone working in, or seeking, procurement roles in the NSW public sector.

<https://www.info.buy.nsw.gov.au/training/procurement-skills-booster>

Comperio – NSW Government's procurement training platform – Secure login:

<https://training.buy.nsw.gov.au/account/login/?LP=21988>

Nationally recognised training in Procurement and Contracting (NSW Environmental Protection Authority and Local Government Procurement)

It is open to officers in NSW councils, Regional Waste Groups, Joint Organisation of Councils and Regional Organisations of Councils.

EPA also provide an online library of training and guidance material to equip councils with

Cyber Security Guidelines – Local Government (Cyber Security NSW)

The Guidelines outline cyber security standards recommended for NSW Local Government by Cyber Security NSW.

The Guidelines should form the basis of an internally developed cyber security policy for NSW Councils.

<https://www.olg.nsw.gov.au/wp-content/uploads/2025/01/Cyber-Security-Guidelines-Local-Government-2024.pdf>

the skills needed to navigate their procurement considerations regarding waste management services.

<https://www.epa.nsw.gov.au/Your-environment/Waste/local-council-operations/Joint-procurement-facilitation-service>

Corruption prevention

Independent Commission Against Corruption (ICAC)

Information about free training workshops run by ICAC, including some procurement-related, can be found on the ICAC web site.

<https://www.icac.nsw.gov.au>

Corruption Prevention Network (CPN)

CPN run regular webinars with speakers from ICAC. These are recorded and previous webinars can be viewed on the CPN web site.

<https://corruptionprevention.net/>

Resources for social and sustainable resourcing

Optional resources and principles for social and sustainable sourcing include, but are not limited to, those listed below.

Note: References to organisations that may provide support does not in any way constitute endorsement of those organisations.

Small to medium, and regional businesses

Small and Medium Enterprise and Regional Procurement Policy (NSW Government)

This policy aims to increase small and medium business enterprise participation in procurement opportunities and improve economic, ethical, environmental and social outcomes through a range of initiatives.

<https://buy.nsw.gov.au/>

Small Business Shorter Payment Terms Policy and guidance (NSW Government)

This policy aims to support the important role of small businesses in the NSW economy by promoting the faster payment of small businesses on contracts.

<https://buy.nsw.gov.au/>

Local procurement toolkit (Small Business Commissioner, NSW Government)

The toolkit contains information and tools for councils on ways to provide opportunities and encourage their local businesses to tender successfully for local Government work, and tools and templates to assist them to become 'tender ready'.

<https://www.smallbusiness.nsw.gov.au/resource-s-for-councils/local-procurement-toolkit-for-councils>

Social enterprises

Indigenous businesses and participation of Aboriginal people

Specifications and evaluation criteria may stipulate that a business must be at least 50% or 51% owned, controlled and managed by Aboriginal people, as per recognised standards for classification as an Indigenous business. In conjunction with or separate to encouraging Indigenous businesses, a council may also choose to specify a requirement for participation of Aboriginal people in the supply of the goods, materials or services to be delivered.

The following organisations maintain lists of Indigenous businesses that are audited and undergo quality assurance:

1. New South Wales Indigenous Chamber of Commerce (NSWICC) – suppliers that have been prequalified through the NSWICC Assured Program are listed on the NSW Aboriginal Business Portal. NSWICC Assured Businesses are Aboriginal owned and Contract Ready. The NSW Aboriginal Business Portal makes purchasing easy for Procurement Teams and other Buyers.
2. Supply Nation – provides Australia's leading database of verified Indigenous businesses: search by business name, product, service, area, or category.

<https://nswicc.com.au/nsw-aboriginal-business-portal/>

<https://supplynation.org.au/>

Aboriginal Procurement Policy (NSW Government)

This policy promotes opportunities, skills development and economic participation of Australia's Aboriginal people, placing value on social and cultural contribution.

<https://buy.nsw.gov.au/>

Australian Disability Enterprises (ADE)

BuyAbility – the BuyAbility web site helps to identify, connect and source ADEs.

<https://buy.nsw.gov.au/>

Guidance on the 'Australian Disability Enterprises' page on the Buy.NSW web site.

<https://buy.nsw.gov.au/>

Note: Section 55(3)(q) of the Act states an open tender process is not required when procuring from a person or body approved as a disability employment organisation under the *Public Works and Procurement Act 1912* where the total cost of the procurement is likely to equal or exceed \$250,000.

Other resources for social enterprises

General information on social enterprises (NSW Government)

General information including:

- Understand what a social enterprise is
- Social enterprises operate in every industry
- Social enterprises are supported by policies
- Find a social enterprise

<https://buy.nsw.gov.au/>

Environmental impact

Some social enterprises may offer products or services that meet a council's requirements for environmental considerations and would be able to participate in competitive procurement opportunities.

Councils may consider circular economy and resource efficiency principles in their procurement policies and/or in individual procurements. Councils may choose to include a policy position through their CSP, or through planning controls. Specifications written for procurement or market research purposes should clearly state any standards required. Where specifications relate to policy, copies of any relevant policy documents should be made available.

NSW Circular Economy Policy Statement: Too Good to Waste (NSW Government)

The statement sets the ambition and approach for a circular economy in NSW and provides principles to guide resource use and management.

<https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/response-to-china-national-sword/circular-economy-policy>

NSW Waste and Sustainable Materials Strategy 2041 (NSW Government)

The strategy outlines the actions the NSW Government will take to deliver on long-term objectives to transition to a circular economy.

<https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/strategic-direction-for-waste-in-nsw/waste-and-sustainable-materials-strategy>

NSW Government Resource Efficiency Policy (NSW Government)

The policy applies to NSW government agencies. It requires agencies to implement

resource efficiency measures and to report on their progress against GREP to the Office of Energy and Climate Change.

<https://www.energy.nsw.gov.au/nsw-plans-and-progress/regulation-and-policy/sustainability-government/government-resource>

Joint Procurement Facilitation Service (NSW Environment Protection Authority)

Find out how councils can access the best expertise, information and guidance to jointly plan, negotiate and contract for waste services.

<https://www.epa.nsw.gov.au/your-environment/waste/local-council->

[operations/joint-procurement-facilitation-service](#)

Sustainable Procurement Guide for local government in NSW (Local Government NSW)

This document provides practical guidance which is specific to NSW local government organisations. It outlines information on key concepts, certifications, standards and processes and is designed for all council staff involved in any purchasing.

<https://lgnsw.org.au/common/Uploaded%20files/PDF/esstam-sustainable-procurement-guide-30.05.17.pdf>