



CONTRACTS AND TENDERING PROBITY POLICY

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CONTRACTS AND TENDERING PROBITY POLICY

TABLE OF CONTENTS

	<i>Page No.</i>
1. BACKGROUND	1
2. PURPOSE	1
3. SCOPE	1
3.1 USE OF AGGREGATED PURCHASING ARRANGEMENTS	2
4. OBJECTIVES	2
4.1 PROBITY.....	2
4.2 BEST VALUE PRINCIPLES	3
4.3 GOOD PROCESS	3
5. DEFINITIONS	4
6. POLICY STATEMENTS	4
6.1 PROBITY.....	4
6.1.1 USE OF EXTERNAL PROBITY PRACTITIONER.....	4
6.2 CONFIDENTIALITY.....	5
6.3 CONFLICT OF INTEREST	5
6.3.1 COUNCIL STAFF.....	5
6.4 COMPLIANCE	6
6.5 BREACHES OF THE PROCUREMENT PROCESS.....	6
6.6 EXPRESSION OF INTEREST.....	6
6.7 PREPARATION OF EXPRESSION OF INTEREST, TENDER AND QUOTATION DOCUMENTATION	6
6.8 ADVERTISING.....	8
6.9 COMMUNICATION	9
6.10 RECORDING DISCUSSIONS.....	9
6.11 CLOSING OF EXPRESSION OF INTEREST, TENDER AND QUOTATION	9
6.12 COLLECTION AND DISTRIBUTION OF EXPRESSION OF INTEREST, TENDER AND QUOTATION SUBMISSIONS.....	10
6.13 EVALUATION OF SUBMISSIONS	10
6.13.1 PROBITY RISKS	10
6.13.2 EVALUATION CRITERIA AND WEIGHTINGS.....	11
6.13.3 EVALUATION PANEL	12
6.13.4 EVALUATION PROCESS	12
6.13.5 NEGOTIATIONS DURING THE EVALUATION PERIOD	13
6.13.6 PREPARATION OF EVALUATION REPORT	14
6.13.7 EVALUATION REPORT SIGN OFF.....	14
6.13.8 PREPARATION OF COUNCIL REPORT	15
6.14 AUTHORITY TO AWARD	15
6.15 STORAGE AND SECURITY OF DOCUMENTS.....	15
6.16 NOTIFICATION TO RESPONDENTS	16

CONTRACTS AND TENDERING PROBITY POLICY

6.16.1	DEBRIEFING.....	16
6.17	PREPARATION AND DISTRIBUTION OF CONTRACT DOCUMENTS	16
6.18	PUBLIC CONTRACTS REGISTER	17
6.19	CONTRACTS QUARTERLY PERFORMANCE REPORT.....	17
6.20	CHECK OF DOCUMENTATION ON FILE	17
7.	FORMS AND CHECKLISTS.....	17
8.	POLICY RESPONSIBLE OFFICER AND CONTACT DETAILS	18

ATTACHMENT 1 ISSUES TO BE CONSIDERED DURING AN EVALUATION PROCESS

CONTRACTS AND TENDERING PROBITY POLICY

NOTE: *This Contracts and Tendering Probity Policy replaces the earlier Contracts and Tendering Probity Policy adopted by Executive Management Group (EMG) on 9 December 2008.*

1. BACKGROUND

Expressions of Interest, tenders and quotations are tools the City of Boroondara ("Council") uses to ensure goods, services and works are procured in a manner that achieves best quality and value for money.

Council is also committed to a procurement system that is carried out to the highest probity standards and which treats all respondents in a fair, equitable and impartial manner.

2. PURPOSE

This Contracts and Tendering Probity Policy provides guidance to Council staff in carrying out their duties pertaining to contracts and tendering in a transparent and fair manner in order to ensure staff practise good governance in dealing with suppliers, contractors or potential suppliers and respondents.

It is stressed that the general principles outlined in this Policy are applicable to all Council staff involved in any procurement activity and each individual is fully responsible for their own actions in ensuring that, for example, the probity requirements set out in this Policy are adhered to.

However, the more detailed processes and procedures are directed at procurements that are publicly advertised to ensure compliance with the Local Government Act or which are deemed to be of a high risk (refer section 3). These types of procurement must involve the Contracts Team in Financial Services Department and the detailed processes and procedures outlined in this Policy apply to the roles of the Contracts Team, the originating Department responsible for the procurement and any other areas of Council involved in the procurement process.

3. SCOPE

This Policy applies to the procurement of any goods or services or works by Council staff where:

- The procurement process is publicly advertised whether or not the public procurement process was required by the Local Government Act.
It should be noted that Section 186 (1) of the Local Government Act 1989 currently sets a value of:
 - (a) \$150,000 for contracts for the purchase of goods and services; and
 - (b) \$200,000 for contracts for the carrying out of works,and requires that Council must conduct a public tender before entering into contracts of these amounts or above. These values are effective as at 5 August 2008 but may be varied at any time by the Minister. Further, these values are inclusive of GST and must represent the value of the whole of term of the contract i.e. the initial term plus any options to extend the contract.

CONTRACTS AND TENDERING PROBITY POLICY

- Irrespective of value the procurement process is deemed to be of a high risk as identified by originating Department. The originating Department is responsible for analysing potential risks utilising the services of the Risk Management Team in Human Resources Department and the Contracts Team.

3.1 USE OF AGGREGATED PURCHASING ARRANGEMENTS

Where considered appropriate, Council may also utilise aggregated purchasing arrangements through other councils, Victorian State Government (eg. State Purchase Contracts, Whole-of-Government contracts etc), Procurement Australia, MAV (Municipal Association of Victoria) Procurement, or other bodies.

Aggregated purchasing arrangements include, for example,

- Victorian State Government contracts that have been made available to Local Government and which Local Government can access without the need to comply with the requirements of section 186 (1) of the Local Government Act. However, it should be noted that not all State Government contracts are accessible by Local Government. As a result, Departments wishing to access a particular State Government contract must ensure that it can be accessed by Local Government and, if so, whether it has section 186 exemption. The Contracts Team will be able to assist with this enquiry;
- Contracts put into place as a result of a procurement process conducted by a third party as an agent for Council such as Procurement Australia and MAV Procurement. In this case the procurement process must still comply with the requirements of section 186 (1) of the Local Government Act. Further, Council must have made a decision to proceed with the procurement and have formally appointed the organisation as its agent prior to the tender process.

While these sorts of aggregated purchasing arrangements will to some extent be conducted at arms length, Council must be confident as to the probity of the procurement, the conduct of the procurement process by its agent and must exercise discretion in deciding to accept the agent's recommendation and not rely solely on the work undertaken by its agent.

4. OBJECTIVES

4.1 PROBITY

The Oxford English Dictionary defines "probity" as "honesty and decency". The government sector often uses the term "probity" as a definition for "good governance", encompassing all policies, practices and principles required to ensure governments practise ethical and responsible conduct, treat all constituents fairly, and maintain transparency. To extend this concept of good governance to Council's procurement strategies, Council staff must ensure that all Expressions of Interest (EOIs), tenders and quotations, including those publicly advertised and high risk, are carried out in accordance with the following principles:

- Administered through consistent and transparent processes;
- Ensure fair, equitable, and unbiased treatment of all parties;
- Embody the principles of sound financial and risk management;
- Use a competitive process;
- Provide security and confidentiality of respondent's information;

CONTRACTS AND TENDERING PROBITY POLICY

- Identify and resolve any conflicts of interest;
- Provide a process to ensure accountability and that all decisions are understood and can be subsequently justified; and
- Comply with all legal and policy requirements.

4.2 BEST VALUE PRINCIPLES

The Local Government Act also sets out Best Value Principles through which Council is required to determine the most effective means of providing a service to the community and identifies issues which should be taken into account including,

- The need to review services against the best on offer in both the public and private sectors;
- An assessment of value for money in service delivery;
- Community expectations and values;
- The balance of affordability and accessibility of services to the community;
- Opportunities for local employment growth or retention;
- The value of potential partnerships with other councils and State and the Commonwealth governments; and
- Potential environmental advantages for the Council's municipal district.

It should be noted that obtaining value for money does not mean that Council must accept the lowest price. Value for money is about obtaining the best quality and value for the price and that the quality of the goods/services/works meet Council's criteria and cost constraints.

4.3 GOOD PROCESS

In aiming for good procurement process, it may be appropriate that the program and project are reviewed at key decision points. This would generally be applicable for more major procurements but may also be considered for other smaller procurements. For example, the following reviews may be conducted and the intent of these reviews is briefly as follows:

- Program review - confirm the program's outcomes and objectives make the necessary contribution to the overall strategy of the organisation.
- Strategic assessment - confirm the program's outcomes and objectives contribute to the overall strategy of the organisation and effectively interface to broader policy objectives and initiatives.
- Business case - confirm the business case is robust ie. meets business needs, is affordable, achievable and likely to achieve value-for-money.
- Readiness for market - confirm the business case once the project is fully defined and ensure the procurement approach is robust, appropriate and approved.
- Tender decision - after evaluation of bids and selection of a preferred tenderer, confirm the business case and that the recommended contract decision is likely to deliver the specified outcomes on time, within budget and provide value-for-money.
- Readiness for service - confirm contract management arrangements are in place and current to manage the operational phase of the contract.

CONTRACTS AND TENDERING PROBITY POLICY

- Benefits evaluation - assess whether the benefits in the business case are being delivered.

5. DEFINITIONS

Publicly advertised EOIs, tenders or quotations refer to any EOI, tender, or quotation that is advertised publicly, whether or not the advertisement is required by the Local Government Act.

High risk EOIs, tenders or quotations refer to any EOI, tender, or quotation (irrespective of value and whether publicly advertised or not) that may carry high risk implications for Council. This may, for example, include procurements that are complex, have multiple stakeholders, have the potential for risk to Council's reputation, have a significant impact on subsequent procurements, etc.

6. POLICY STATEMENTS

6.1 PROBITY

Council places particular importance on the probity of all procurement processes (refer sections 2 and 4.1) undertaken by Council staff and stresses that each individual is fully responsible for their own actions in ensuring that the probity requirements set out in this Policy are adhered to.

For procurement processes involving the Contracts Team, one of the Team's roles is to also serve as an internal third party in the process overseeing the probity of the process.

6.1.1 USE OF EXTERNAL PROBITY PRACTITIONER

There may be circumstances where the use of an external probity practitioner (ie. from outside Council) would be considered appropriate. The decision as to the need for an external probity practitioner would normally be the responsibility of the originating Department Manager in consultation with the Manager Financial Services and the Contracts Team. The decision would normally be based on factors including:

- Complexity of the procurement project;
- Where the risk associated with the procurement process is considered very high;
- Where the procurement project has the potential for risk to Council's reputation; or
- The specialist nature of any potential issues.

The role of the probity practitioner is generally to provide one or more of the following:

- Independent assessment or advice throughout the procurement process as to whether processes are managed according to Council's policies and completed according to tender requirements;
- Ongoing independent advice on probity issues; and
- An independent and appropriate sign-off on probity requirements at designated milestones in the process.

CONTRACTS AND TENDERING PROBITY POLICY

Where a decision is made to appoint an external probity practitioner it is recommended that the appointment be made as early as possible in the procurement process.

The appointment of an external probity practitioner does not reduce the accountability or responsibility of Council staff for managing a good process. Council staff may take advice and receive support from the external probity practitioner during or after a procurement process but they retain primary accountability for ensuring that policy requirements and high probity standards are met.

6.2 CONFIDENTIALITY

Staff must keep all information relating to Council business, including information from suppliers, contractors and respondents, confidential. Information required to be made public by policy; act or law, will be made public within prescribed timeframes.

Notwithstanding any assurances that Council provides on the disclosure of sensitive information, respondents may be concerned to ensure that information they provide does not leak out to competitors or pass into the public domain. A lack of respondent confidence on security may deter contractors from bidding or reduce the detail and volume of information provided in support of their submission; neither of which would be in Council's interest. The incorrect release of information may also cause an EOI, tender or quotation process to be aborted and the process recommenced in a manner affording equity to all parties.

A separate but related confidentiality issue in an EOI, tender or quotation process is the handling of proprietary business information. Respondents must be confident that ideas they consider to be proprietary will not be communicated to competitors, negating the advantage they might gain and compromising their ability to compete effectively in competitive tenders. The Contracts Team and other staff that have access to proprietary information are responsible for ensuring that information is maintained in compliance with the relevant act, trade practice, legislation or policy as is relevant.

6.3 CONFLICT OF INTEREST

A conflict of interest exists when a person has, or could be seen to have, a personal financial or other interest which may affect that individual carrying out their duties impartially, or where associates, friends or family relatives may gain a benefit or advantage, or be seen to gain a benefit or advantage.

A conflict of interest is also seen to exist if a person displays, or could be perceived as displaying, favouritism toward associates, friends or family relatives that may gain a benefit or advantage, or be seen to gain a benefit or advantage.

6.3.1 COUNCIL STAFF

Council staff directly involved in any part of the EOI, tender or quotation process covered by this Policy must report any actual or potential conflict of interest to the Contracts Department and the relevant Department Manager. This includes staff involved in any pre-tender discussions, decisions or activities that may, or may reasonably be seen, to not be impartial.

All staff involved in evaluating EOIs, tenders or quotations covered in this Policy are required to sign a "*Conflict of Interest Declaration*" stating that no conflict of interest currently exists and that they will disclose any actual or potential conflict of interest should it emerge in the

CONTRACTS AND TENDERING PROBITY POLICY

course of the evaluation. This "*Conflict of Interest Declaration*" should be signed prior to the commencement of the evaluation of the respondents' submissions but must be signed prior to the Evaluation Report being submitted to the Manager Financial Services for sign-off.

Staff should avoid any situation where their private interests conflict, or might reasonably be perceived to conflict, with their Council duties. Information gained by staff in the course of their Council duties must not be used to gain directly or indirectly any advantage for themselves, associates, friends or family relatives.

6.4 COMPLIANCE

EOI, tender or quotation processes must be carried out in compliance with any relevant act, trade practice, legislation or policy as is appropriate to the particular procurement activity.

6.5 BREACHES OF THE PROCUREMENT PROCESS

In spite of best endeavours to maintain a robust EOI, tender or quotation process, unfortunately some breaches may occur from time to time.

If staff become aware of any inappropriate and/or undocumented communication they should immediately report this to the Contracts Team or the Manager Financial Services as soon as possible. If a Probity Advisor or Auditor has been engaged, then that person is to be clearly briefed of the matter ASAP.

6.6 EXPRESSION OF INTEREST

The aim of an Expression of Interest (EOI) is not to elicit tenders but rather to assess the capacity of respondents to successfully deliver the required goods/services/works to the required standard. By its nature specifications issued with an EOI may be brief and less detailed than those normally issued with a Request for Tender (RFT). An EOI is primarily intended to pre-qualify a number of respondents and refine specifications where necessary. If the EOI then proceeds to the next stage of inviting tenders, tenders will only be requested from those pre-qualified respondents from the EOI process.

All respondents to an EOI must be formally advised in writing as to whether they were successfully pre-qualified or not.

6.7 PREPARATION OF EXPRESSION OF INTEREST, TENDER AND QUOTATION DOCUMENTATION

The Contracts Team will usually be able to provide appropriate templates to be used by the originating Department in putting together the documentation for EOIs, tenders and quotations governed by this Policy. These may include:

- Standard contract terms and conditions. Typically these will be either contracts provided by Council's Legal Services Department or available from third party organisations such as Standard Australia;
- A "Tender Conditions" template that provides a broad overview of the project, explains to potential respondents how the EOI, tender or quotation will be conducted and details a generic set of evaluation criteria against which respondents'

CONTRACTS AND TENDERING PROBITY POLICY

submissions will be assessed. These generic evaluation criteria will need to be customised by the originating Department;

- A "Response Schedules" template which contains a generic set of questions seeking information from respondents that will allow assessment of their credentials to undertake the project. The templates will generally match the generic evaluation criteria contained in the "Tender Conditions" template. Further, the template also contains additional schedules to seek information on issues such as the Respondent's company details, Occupational Health and Safety, Statutory Compliance (eg. Equal Opportunity Employment, Privacy Act Compliance), Quality Management, etc; and
- If available, a "Specification" template. Generally these are not a readily available template given the very specific nature of a specification but sometimes a similar specification from a previous project may be available from the Contracts Team.

The originating Department Manager is responsible for:

- Preparation of the specification describing the goods/services/works they are seeking to procure through the EOI, tender or quotation. It is important that the specification must be written clearly and unambiguously so potential respondents can offer goods/services/works as required by Council;
- Determination of the evaluation criteria specific to the EOI, tender or quotation against which the respondents' submissions will be evaluated by the Evaluation Panel and inclusion of those evaluation criteria in the EOI, tender or quotation documents to be issued; and
- Preparation of the response schedules specific to the EOI, tender or quotation that detail the information that respondents must provide.

Further, the documents must list the type and value of insurances required to be held by the respondent. A minimum of \$10M public liability insurance cover and \$5M professional indemnity insurance cover is required but high value and/or high risk contracts will require higher levels of insurance cover. The Risk Management Team in Human Resources Department should be consulted in this regard.

The Contracts Team will review the documents provided by the originating Department and will advise the originating Department of any modifications it recommends be made to the proposed EOI, tender or quotation documents.

The Contracts Team may also provide or seek advice on any potential risks that it may identify in the documents. If an identified risk cannot be resolved through discussion between the Contracts Team and the originating Department, the issue will be escalated to the relevant Managers and, if required, to the appropriate Director. Specialist advice from Legal Services Department and the Risk Management Team in Human Resources Department will also be obtained where considered appropriate.

The Contracts Team is responsible for assigning an identifying contract number for each EOI, tender or quotation process governed by this Policy. The Contracts Team will also keep copies of appropriate documentation on file regarding any administrative, policy and legal issues as are relevant to each EOI, tender or quotation. This Contracts Team will also keep copies on file of relevant documentation up to the time of finalisation of the evaluation process and award of the Contract.

CONTRACTS AND TENDERING PROBITY POLICY

After award of the Contract a separate file will be created by the Department managing the contract and this file will be used by that Department to store all post-award documentation, correspondence etc.

6.8 ADVERTISING

Advertisements will always be placed in newspapers (normally Saturday's Melbourne "Age"), and on Council's website at www.boroondara.vic.gov.au/your_council/tenders. Advertisements may also be placed in other media at the discretion of the originating Department Manager.

The placement of public advertisements for EOIs, tenders and quotations governed by this Policy will be administered through the Contracts Team.

The Manager Financial Services is responsible for authorising placement of all advertisements. This authorisation will usually only be provided when all documentation is available in its final form and this documentation should be made available to the Contracts Team by the originating Department at least two (2) weeks prior to the proposed advertisement date.

The Contracts Team will also provide a "*Contract Number Request Form*" and a "*Pre-Advertisement Checklist*" for completion by the originating Department and return to the Contracts Team. The completed form and checklist will then be provided to the Manager Financial Services for his review and approval.

The "*Contract Number Request Form*" must be completed by the originating Department prior to an EOI, tender or quotation being advertised. This form must be sighted by the Manager Financial Services before approving placement of the advertisement as it provides details of the budget for the project and the appropriate account numbers.

The "*Pre-Advertisement Checklist*" must be completed by the originating Department, reviewed by the Contracts Team and then submitted to the Manager Financial Services for sign-off and formal approval for the Contracts Team to place the advertisement. This checklist provides confirmation that issues crucial to a successful procurement have been adequately considered and appropriately addressed in the EOI, tender or quotation documentation to be issued. For example, these issues include the following:

- Has the originating Department assessed the need for its draft documentation to be reviewed by other Council areas and, where required, when was this review undertaken? For example, dependent on the project in question specialist input may be required from Council's Legal Services Department, Risk Management Team, Environment and Sustainable Living Team etc.
- Does the project impact on and require involvement from any other Council areas?
- Have the appropriate insurances, bank guarantees etc been determined and the requirements included in the documents?
- Is there an incumbent contractor and, if so, has sufficient time been allowed to place the new contract in advance of expiry of the existing contract, and have appropriate transitional arrangements been put in place?
- Has a timetable for the project and its associated procurement process been prepared?
- Have the most current templates been used to develop the documents?

CONTRACTS AND TENDERING PROBITY POLICY

- Have the evaluation criteria and the specific issues to be addressed under each evaluation criterion, been determined?
- Has the composition of the Evaluation Panel been determined?
- Etc.

6.9 COMMUNICATION

Council staff should ensure all potential respondents receive fair and equal access to substantially the same information at substantially the same time during the EOI, tender or quotation process. Staff must also recognise the need to send consistent and internally agreed messages to all respondents and act accordingly.

Staff should not engage in communication with potential respondents, either prior to or during the EOI, tender or quotation process, where that communication may provide, or could be seen to provide, an unfair advantage to that party.

To facilitate the abovementioned principles the Contracts Team will usually coordinate communication with potential respondents both prior to and during any EOI, tender and quotation process governed by this Policy. In this regard, the Contracts Team must coordinate all written correspondence with respondents and, where practicable, should also have the opportunity to be present during oral discussions. Where the latter is not practicable, Council staff involved must ensure that all oral discussions are fair, equitable, and fully comply with the abovementioned principles. Further, the Contracts Team must be provided with copies of any minutes prepared to document oral discussions.

6.10 RECORDING DISCUSSIONS

It is important that written records are prepared and filed for each EOI, tender or quotation process documenting key issues raised in discussions or meetings with respondents. These written records should be prepared by either the Contracts Team or Evaluation Panel member as appropriate.

6.11 CLOSING OF EXPRESSION OF INTEREST, TENDER AND QUOTATION

Potential respondents should generally be given a minimum of 21 days from the date on which the EOI, tender or quotation was advertised in which to prepare and submit a response. This period may be varied depending on the nature and complexity of the EOI, tender or quotation.

Unless agreed otherwise, EOIs, tenders and quotations governed by this Policy must be received in the locked Tender Box located in the foyer of the Council offices at 8 Inglesby Road, Camberwell.

Under special circumstances, Council may accept the receipt of submissions via email. Special circumstances may include, for example, where a tender is to be advertised interstate or outside Australia and submission into the Tender Box is not seen as practicable. If submissions are to be accepted via email then this must be agreed between the Manager Financial Services and the originating Department Manager beforehand and be clearly documented in the EOI, tender or quotation documents issued.

CONTRACTS AND TENDERING PROBITY POLICY

Submissions received by facsimile will not be accepted under any circumstances.

EOIs, tenders and quotations would normally be closed at 4pm on a nominated Tuesday or Thursday. The closing day, date and time may be altered dependent on circumstances relevant to a particular EOI, tender or quotation.

Under special circumstances, the date and time for closing of EOIs, tenders and quotations may be changed after advertisement. An example would be an extension to the closing date to allow all respondents additional time to complete their submissions in the event that significant supplementary information had been provided by Council subsequent to the issue of the original EOI, tender or quotation documents.

Adherence to closing deadlines is important in maintaining the integrity of the procurement process. Respondents may be seen to obtain an unfair advantage if they are permitted to have additional time to prepare bids. Similarly, if submissions are received, opened and distributed ahead of the closing deadline, it is possible that details of those bids could be passed to other respondents. Accordingly, late submissions cannot be accepted under any circumstances.

6.12 COLLECTION AND DISTRIBUTION OF EXPRESSION OF INTEREST, TENDER AND QUOTATION SUBMISSIONS

The Contracts Team is responsible for the collection from the Tender Box and registration of all EOI, tender and quotation submissions received. The Contracts Team will maintain a "*Register of Submissions Received*" which lists the companies who have provided a submission and other salient details such as the number of submission copies provided by each respondent.

The Contracts Team will retain the original of each respondent's submission and is responsible for the distribution of copies of each respondent's submission, either directly to individual members of the Evaluation Panel or to the leader of the Evaluation Panel. In the latter case, the leader of the Evaluation Panel is, in turn, responsible for the distribution of those submission copies to other members of the Evaluation Panel as required. It should be noted that the Contracts Team will not distribute copies of any submissions to the Evaluation Panel until the Evaluation Panel advises the Contracts Team in writing of the evaluation criteria weightings to be used in the evaluation of respondents' submissions (refer section 6.13.2).

The Contracts Team will maintain a "*Register of Submission Copies*" which lists the number of submission copies distributed and to whom. All submission copies distributed must be signed for on the "*Register of Submission Copies*". At the conclusion of the evaluation process all copies signed for must be returned to the Contracts Team who will note the return on the Register and arrange for the secure destruction of all submission copies. Further, the Contracts Team will arrange for the original of each submission to be retained long-term for records purposes.

6.13 EVALUATION OF SUBMISSIONS

6.13.1 PROBITY RISKS

Potential probity risks may arise during the evaluation of EOI, tender or quotation submissions when, for example,

CONTRACTS AND TENDERING PROBITY POLICY

- Evaluations are delayed and extend over an excessive period of time;
- There are significant changes to detail contained in the original specification;
- There has been a deviation from the nominated evaluation criteria or the proposed method of evaluation contained within the EOI, tender or quotation documentation;
- Information has been provided to one or more respondents but not to all respondents;
- There has been an acceptance of significant changes to proposals originally submitted by respondents including repricing;
- There is a likelihood that respondents may have gained information inappropriately; or
- The composition of the Evaluation Panel has changed.

The Contracts Team is responsible for assessing probity risks in the above or similar circumstances and, in the first instance, bringing such concerns to the attention of the Manager Financial Services. The Manager Financial Services may escalate the probity concerns to the relevant Director or Legal Services Department if considered appropriate in the circumstances.

Each case is to be assessed on individual merits. Probity risks may necessitate risk mitigation strategies, including cancelling and re-advertising an EOI, tender or quotation to ensure compliance with probity requirements.

6.13.2 EVALUATION CRITERIA AND WEIGHTINGS

The evaluation criteria and the specific issues to be assessed as part of each evaluation criterion shall be determined by the originating Department prior to advertising and be included in the EOI, tender or quotation documents issued.

Weightings applicable to each criterion shall be determined by the Evaluation Panel prior to commencement of the evaluation of respondents' submissions. To facilitate probity in this regard, the Evaluation Panel must advise the Contracts Team in writing of the evaluation criteria weightings before the Contracts Team will distribute copies of any respondents' submissions to the Evaluation Panel (refer section 6.12).

The evaluation criteria are determined so as to be specific to the goods/services/works being sought and there are likely to be different evaluation criteria applicable to different types of goods/services/works including, for example, construction projects; infrastructure maintenance services, Information Technology service providers, consultancies, etc.

EOIs, tenders or quotations must be evaluated in accordance with the evaluation criteria contained in the issued EOI, tender or quotation documents, and with the evaluation criteria weightings agreed by the Evaluation Panel prior to the commencement of any evaluation.

Typical evaluation criteria may include the following. It should be noted that the following list is generic only and will need to be customised, added to, deleted from, etc depending on the project in question.

- Total cost and financial benefit to Council;
- Ability to comply with the tender and contract requirements;
- Financial soundness and capacity of the company to undertake the contract;

CONTRACTS AND TENDERING PROBITY POLICY

- Proven past experience in successfully completing similar contracts;
- Occupational Health and Safety systems of the company;
- Project delivery, contract administration, costing control etc;
- Skills, experience and availability of appropriate personnel and, if applicable, subcontractors;
- Quality management systems of the company;
- Environmental management systems of the company, any appropriate environmental issues such as recycling, green products, etc;
- Property, plant and equipment;
- Adequacy of transitional arrangements for commencement of the contract works;
- Any other factors considered relevant.

6.13.3 EVALUATION PANEL

An Evaluation Panel must evaluate any EOI, tender or quotation governed by this Policy.

The Evaluation Panel should comprise at least two members and, dependent on circumstances, it may be appropriate that one member of the Panel is independent and from outside the originating Department running the EOI, tender or quotation process. It is also preferable that at least one of the Evaluation Panel members has specialist expertise knowledge relating to the specific goods/services/works being procured. If the required level of specialist expertise cannot be sourced from within Council, the Evaluation Panel may use an external specialist to assist during the evaluation process. In the event that an external specialist is used during the evaluation process:

- A *"Conflict of Interest Form"* must be completed by the specialist concerned;
- The Evaluation Report will declare that external specialist expertise was utilised to assist Council staff during the evaluation and the Evaluation Report will include the name, organisation and reasons for the selection of that external expertise; and
- The Evaluation Report recommendation will be signed-off by all members of the Evaluation Panel including any external specialist used.

All evaluation processes must be fair and impartial, and must be seen to be fair and impartial. Further, submissions received must be evaluated in accordance with any process or procedure outlined to potential respondents in the issued EOI, tender or quotation documentation and any relevant Council policy or procedure.

The Contracts Team serves as a third party in the evaluation process whose role includes overseeing the probity of the evaluation process. The Contracts Team also advises the Evaluation Panel on probity, contractual or tendering risk management issues that may arise during the evaluation. However, the Contracts Team does not select the successful respondent.

Where possible, the Contracts Team should attend all meetings of the Evaluation Panel. Records are to be kept of any key issues raised in meetings of the Evaluation Panel and these records are to be retained on file.

6.13.4 EVALUATION PROCESS

CONTRACTS AND TENDERING PROBITY POLICY

Evaluation involves a formal process of assessing submissions received in response to a Council EOI, tender or quotation. Attachment 1 outlines the typical issues that need to be considered in such an evaluation.

Submissions are to be assessed against appropriate evaluation criteria and these may include:

- Compliance criteria that must be met and which would be scored simply as a pass or fail;
- Qualitative criteria which will be scored out of maximum total and which aim to assess the quality of each submission comparative to other submissions; and
- Quantitative issues like price, value for money, financial benefit to Council, program for delivery of the contract requirements, etc.

The evaluation criteria and the specific issues to be assessed as part of each evaluation criterion shall be determined prior to advertising and be included in the EOI, tender or quotation documents issued.

The method by which all these factors are to be considered in an evaluation may vary for each procurement process taking into account factors as the relative importance of these issues to a particular evaluation. Staff should consult with the Contracts Team to discuss possible evaluation methods to ensure the method proposed is appropriate to the circumstances, uses a consistent and transparent process, ensures the fair, equitable, and unbiased treatment of all parties, and meets all other probity requirements.

It should be noted that, following the determination of the preferred respondent, there are further checks that must be completed, in particular:

- An Occupational Health and Safety (OH&S) review of the preferred respondent's submission is to be undertaken by the Risk Management Team in Human Resources Department. The intent of this review is to confirm that the preferred respondent has appropriate and satisfactory OH&S systems and procedures in place. Any issues identified by the Risk Management Team will be discussed with the originating Department to determine what further information is required from the preferred respondent either before award of the contract can proceed or, following award, before the commencement of any work under the contract; and
- Independent reviews of the financial standing of the preferred respondent and their capability to undertake the work of the particular tender or quotation.

6.13.5 NEGOTIATIONS DURING THE EVALUATION PERIOD

The objective of negotiations after the closing date and before the selection of the preferred submission(s) is primarily to clarify issues. Such matters may include specific contract management arrangements, the personnel a respondent proposes to use during the contract, service/supply arrangements, etc.

While the Evaluation Panel may negotiate with respondents it must have regard to the scope of the EOI, tender or quotation at all times and negotiations must not alter the scope or intent of the original documents. Any such deviation from the original scope or intent would likely make the process void. The Evaluation Panel must not trade the price of one respondent against another.

CONTRACTS AND TENDERING PROBITY POLICY

Post tender negotiations must only be undertaken with the preferred respondent or the shortlisted respondents. The same general questions and propositions must be put to all short listed respondents noting that this does not exclude questions of clarification that may be specific to a particular respondent. A detailed record must be kept of the negotiation process for audit purposes and details of meetings are to be treated as Commercial-In-Confidence.

6.13.6 PREPARATION OF EVALUATION REPORT

The Contracts Team will provide templates to be used as the basis for the preparation of the Evaluation Report and, where required, an associated Council Report (refer section 6.13.8).

The Evaluation Panel is responsible for the preparation of an Evaluation Report and, where required, a Council Report, outlining the recommendation arising from the evaluation and explaining the rationale behind the recommendation in a manner that clearly identifies how the evaluation was consistent with the evaluation criteria set out in the EOI, tender or quotation documents.

The Contracts Team is responsible for reviewing the Evaluation Report and ensuring that the report is complete, consistent and satisfactory before forwarding it to the Manager Financial Services for sign off (refer section 6.13.7). If the Contracts Team identifies any areas requiring attention, these will be referred to the Evaluation Panel for consideration and updating.

6.13.7 EVALUATION REPORT SIGN OFF

The Evaluation Report must be fully signed off by all associated parties prior to the award of the contract. The following signatures are required on the front page of the Evaluation Report:

- Each member of the Evaluation Panel must sign the Evaluation Report endorsing the recommendation of the Evaluation Report.
- The Contracts Team will then endorse the Evaluation Report as a probity sign-off indicating they are satisfied that the submissions were evaluated in accordance with documented evaluation criteria, criteria weightings and evaluation method.

The Contracts Team is also responsible for preparation of a "*Sign-off Checklist*" for the Manager Financial Services. This form provides confirmation that a number of important issues have all been fully addressed during the evaluation process and the form must be signed off by the Manager Financial Services;

- The Manager Financial Services will then endorse the Evaluation Report as a financial sign-off that they are satisfied that the anticipated contract expenditure for the current financial year can be funded from within the constraints of the currently approved Council budget.

Where the proposed contract value exceeds amounts set out in the currently approved Council budget, the Manager Financial Services will refer the issue to the relevant Department Manager or Director for resolution. Under some circumstances the Director may elect to refer the matter to the Executive Management Group (EMG) for discussion and decision;

- The leader of the Evaluation Panel is then responsible for arranging sign-off of the Evaluation Report by the respective Department Manager (if the respective Manager was not a member of the Evaluation Panel) and the appropriate Director. If required

CONTRACTS AND TENDERING PROBITY POLICY

under the delegation authorities (refer section 6.14) the leader of the Evaluation Panel shall also be responsible for coordinating submission of the Report and other associated documentation to Council.

The leader of the Evaluation Panel must also ensure that the original fully signed-off Evaluation Report is returned to the Contracts Team for filing as soon as possible after acceptance of the Evaluation Report recommendation by the Director or Council as appropriate.

While members of the Evaluation Panel are required to sign a "*Conflict of Interest Declaration*" (refer section 6.3), it is also essential that officers endorsing or approving the Panel's recommendation declare any actual or potential conflict of interest that may affect, or may be perceived to affect, their impartiality. This requirement is applicable to the respective Department Manager, the appropriate Director and the Manager Financial Services. In the event that a conflict of interest is declared it must be satisfactorily resolved by the officer with their next level of management.

6.13.8 PREPARATION OF COUNCIL REPORT

Where an Evaluation Report recommendation exceeds a Director's approved delegation level (refer section 6.14), the Director shall endorse the Evaluation Report only and then submit the Evaluation Report to Council for consideration. Where an Evaluation Report is required to go to a Council meeting for approval, it must be accompanied by an associated Council Report that summarises the salient details of the Evaluation Report. The Contracts Team will provide a template to be used as the basis for preparation of the Council Report.

The Evaluation Panel is responsible for the preparation of the Council Report and the Contracts Team is responsible for reviewing the Council Report.

6.14 AUTHORITY TO AWARD

Council's approved delegations at the time define whether a Director or Council has the authority to make a final decision to accept or reject a recommendation provided by the Evaluation Panel and award a contract.

If a Director has the authority to make the final decision, the Evaluation Panel shall submit their report, including the probity and financial management signoffs, to the Director for approval.

If Council has the authority to make the final decision, the Director shall endorse the recommendation only before the Evaluation Report and the associated Council Report are submitted to Council for consideration.

Council's current delegation thresholds effective as at 1 March 2010 are as follows:

- Directors and CEO up to \$500,000 excluding GST; and
- Council in excess of \$500,000 excluding GST.

6.15 STORAGE AND SECURITY OF DOCUMENTS

CONTRACTS AND TENDERING PROBITY POLICY

The storage and security of all documentation relating to an EOI, tender or quotation process is a joint responsibility between both the Contracts Team and the Evaluation Panel.

During the evaluation process the Contracts Team retains the original of each respondent's submission, while copies of each submission are distributed either directly to individual members of the Evaluation Panel or to the leader of the Evaluation Panel. In the latter case, the leader of the Evaluation Panel is responsible for the distribution of submission copies to members of the Evaluation Panel as required. This may include making a submission copy available to any external specialist on the Evaluation Panel who has been engaged to assist in the evaluation process.

As detailed in section 6.12, the Contracts Team will maintain a "*Register of Submission Copies*" which lists the number of submission copies distributed and to whom.

All parties holding copies of respondents' submissions must ensure that the documentation is securely stored in an environment that minimises the likelihood of unauthorised access.

After the process of awarding the Contract has been completed the Contracts Team and the Evaluation Panel are responsible for appropriately filing their respective documentation associated with the EOI, tender or quotation process. All documentation is filed so as to accessible to allow any investigation undertaken in review of the EOI, tender or quotation process to clearly understand why and when key decisions were made.

6.16 NOTIFICATION TO RESPONDENTS

After the final decision to award has been made, by either the Director or Council as appropriate, all respondents are to be notified promptly of the result of the procurement process and the notification to all respondents should be at substantially the same time.

A letter of award to the successful respondent and letters of notification to the unsuccessful respondents will be prepared by the Contracts Team for the originating Department to sign. The originating Department must ensure that the originals of the signed letters are returned to the Contracts Team for distribution.

6.16.1 DEBRIEFING

Respondents are to be given the opportunity for a more detailed debrief.

The leader of the Evaluation Panel is the person most knowledgeable about the details of the evaluation process including the reasons behind the selection of the successful respondent and is usually the person responsible for providing any debriefing of respondents. Council staff conducting a debrief are to avoid revealing information in a debrief which might compromise the commercial interests of Council or any other respondent.

6.17 PREPARATION AND DISTRIBUTION OF CONTRACT DOCUMENTS

The Contracts Team is responsible for preparing the final contract documents with assistance from the originating Department as required. The Contracts Team shall ensure that the final contract documents incorporate the final outcomes of all negotiations with the successful respondent. The Contracts Team is responsible for circulating the final contract documents for signing by the successful respondent and the appropriate Director, ensuring

CONTRACTS AND TENDERING PROBITY POLICY

the contract documents are executed and returned in a timely manner and distributing the three (3) executed original copies of the final contract documents as follows:

- One executed copy to be sent to the Contractor;
- One executed copy to be sent to Council Project Manager managing the Contract; and
- One executed copy to be held by Council's Corporate Information Department.

6.18 PUBLIC CONTRACTS REGISTER

Council is required to maintain a public register of any contracts that were not publicly tendered, where a public tender or expression of interest was required under Section 186 of the Local Government Act. The Governance Team is responsible to maintain and make this register available to the public.

Each Director is required to provide information to the Governance Team annually on contracts awarded in contravention of the *Local Government Act*, or information stating that all contracts awarded conformed to the requirements.

6.19 CONTRACTS QUARTERLY PERFORMANCE REPORT

Each quarter the Contracts Team is responsible for preparing a report of contracts valued at or over the limits set out in Section 186 (1) of the Local Government Act that were awarded in that quarter. The report also includes key information relating to the associated EOI or tender process.

This report is included in Council's overall Quarterly Performance Report.

6.20 CHECK OF DOCUMENTATION ON FILE

The Manager Financial Services will periodically spot check a contract and complete the *Spot-Check Checklist* in respect of the documentation required to be held on file as part of the overall procurement process.

7. FORMS AND CHECKLISTS

The following is a summary of the forms and checklists that are associated with the administration of this Policy.

- Conflict of Interest Declaration - refer sections 6.3 and 6.13.3.
- Contract Number Request Form - refer section 6.8.
- Pre-Advertisement Checklist - refer section 6.8.
- Register of Submissions Received - refer section 6.12.
- Register of Submission Copies - refer section 6.12.

CONTRACTS AND TENDERING PROBITY POLICY

- Sign-Off Checklist for Manager Financial Services - refer section 6.13.7.
- Spot-Check Checklist - refer section 6.20.

8. POLICY RESPONSIBLE OFFICER AND CONTACT DETAILS

The Manager Financial Services is the designated responsible Council officer of this Policy. The responsible officer coordinates the implementation, maintenance and review of this Policy and ensures that stakeholders are aware of their accountabilities.

For further information or queries or feedback on this Policy, please contact the above responsible officer via email chris.hurley@boroondara.vic.gov.au or telephone (03) 9278 4320.

CONTRACTS AND TENDERING PROBITY POLICY

ATTACHMENT 1: ISSUES TO BE CONSIDERED DURING AN EVALUATION PROCESS

The following outlines the issues that need to be considered in an evaluation of submissions received in response to a Council Expression of Interest (EOI), tender or quotation.

Respondents' submissions are to be assessed against appropriate agreed evaluation criteria which may include compliance criteria that must be met, qualitative criteria aimed at assessing the quality of each submission compared to other submissions and quantitative issues like price, value for money, financial benefit to Council, program for delivery of the contract requirements, etc.

The method by which all these factors are considered in an evaluation may vary for each procurement process taking into account factors as the relative importance of these issues to a particular evaluation. Staff should consult with the Contracts Team to discuss possible evaluation methods to ensure the method proposed is appropriate to the circumstances, uses a consistent and transparent process, ensures the fair, equitable, and unbiased treatment of all parties, and meets all probity requirements.

DETERMINATION OF EVALUATION CRITERIA AND WEIGHTINGS

Evaluation criteria must be determined prior to issue of the EOI, tender or quotation documents and are to be included in the issued documents. Specific details relating to the requirements of the individual evaluation criteria are usually provided to the respondent in the Response Schedules document.

Prior to the commencement of the evaluation, the Evaluation Panel must:

- Agree on elements to be considered under each of the evaluation criteria. These will have already been set to a large degree by the information requirements listed in the Response Schedules that the respondents were required to address in their submission;
- Where appropriate, determine weightings to be applied to each evaluation criterion;
- Where appropriate, set a minimum quality standard for each individual qualitative evaluation criterion; and
- Based on the weightings and the minimum acceptable scores for each individual qualitative evaluation criterion, a minimum acceptable overall qualitative score can be determined. The Contracts Team can provide an evaluation spreadsheet matrix template to facilitate this process.

COMPLIANCE CHECK

A compliance check of submissions will consider those evaluation criteria that must be met and which are scored simply as a pass or fail eg. insurances held by a respondent must at least meet Councils' minimum insurance requirements.

Any submission which does not meet the minimum compliance criteria would not normally be considered further unless the respondent can satisfy the Evaluation Panel that the respondent will be able to meet the criterion requirements before the commencement of the contract eg. increase their insurance cover.

QUALITATIVE EVALUATION

CONTRACTS AND TENDERING PROBITY POLICY

Qualitative evaluation usually involves a formal process of scoring the submissions. Scoring of each qualitative evaluation criterion is nominally a score out of 5, where typically the scores are interpreted as follows;

- 5 / 5 - excellent.
- 4 / 5 -very good.
- 3 / 5 - adequate.
- 2 / 5 - poor.
- 1 / 5 - unsatisfactory.

Where finer graduations in scoring are seen as appropriate the scoring may be tailored accordingly.

Scoring can be undertaken either individually by each member of Evaluation Panel and the individual scores averaged or, alternatively, the Evaluation Panel can convene and determine an agreed score. If individual members of the Evaluation Panel initially score separately, it is important that Evaluation Panel subsequently meets as a group to consider and resolve any variations in scores between individual members. For example, it would be unacceptable for a submission to be scored 1 out of five (unacceptable) by one Evaluation Panel member and 5 out of 5 (excellent) by a second member resulting in an overall averaged score of 3 out of 5 (adequate). At the end of the evaluation process an agreed overall score out of 5 is to be given for each evaluation criterion.

It is desirable to set up an individual evaluation sheet for each respondent where the scoring and supporting brief notes listing the salient reasons behind the scoring can be documented by the Evaluation Panel for each respondent. A template for this purpose is available from the Contracts Team.

The qualitative criteria scores for a respondent can then be summarised and the weightings applied to determine an overall quality score. The respondent's individual qualitative scores for each evaluation criterion can then be compared to the minimum quality standard set for that criterion, and the respondent's total overall quality score can be compared to the minimum acceptable overall qualitative score.

Respondents must meet the minimum acceptable overall qualitative score set and should also meet the minimum individual qualitative score set for each individual evaluation criterion. If a respondent fails to achieve the minimum score for a particular evaluation criterion it may still be possible to consider them if the respondent is able to convince the Evaluation Panel that it will be able to meet the required standard either before the commencement of the contract or during the contract (within a time nominated by the Council) and where all other requirements of the contract will be fully met.

QUANTITATIVE EVALUATION

The factors that may be considered as part of the quantitative evaluation to determine the offer that represents "best value" for Council and the community include price, value for money, financial benefit to Council, program for delivery of the contract requirements, etc.

SELECTION OF PREFERRED RESPONDENT

CONTRACTS AND TENDERING PROBITY POLICY

Following consideration of all the evaluation criteria, the Evaluation Panel will determine a preferred respondent i.e. the respondent whom the Evaluation Panel has determined best meets all the evaluation criteria.

OTHER REQUIREMENTS

Following determination of the preferred respondent, there are a number of other checks that must be performed including:

- The preferred respondent's submission must be submitted to the Risk Management Team in Human Resources Department for review and assessment of Occupational Health and Safety (OH&S) aspects of the submission. This referral shall be undertaken by the Contracts Team.

The intent of this review is to confirm that the preferred respondent has appropriate and satisfactory OH&S systems and procedures in place. Any issues identified by the Risk Management Team will be discussed with the originating Department to determine what further information is required from the preferred respondent either before award of the contract can proceed or, following award, before the commencement of any work under the contract;

- The financial status of the preferred respondent must be independently assessed. Currently this assessment involves a review by the Contracts Team and the Evaluation Panel two separate reports. The first is a report available from Dunn and Bradstreet based on information currently held in the D&B database on the preferred respondent's company and the second is a report specifically prepared for Council on the preferred respondent by Corporate Scorecard Pty Ltd. This latter report independently assesses the financial standing of the preferred respondent and their capability to undertake the work of the particular tender or quotation.