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## 1. PREAMBLE

### 1.1 Background

- 1.1.1 The City of Holdfast Bay (Council, including Alwyndor) procures a wide range of products and services.
- 1.1.2 Council has the power to enter into contracts under the *Local Government Act 1999* (the Act).
- 1.1.3 Section 49 of the Act, requires Council to prepare and adopt policies on contracts and tenders, including:
- the contracting out of services
  - competitive tendering and other measures to ensure that services are delivered cost-effectively and
  - the use of local goods and services
- 1.1.4 Pursuant to section 49 of the Act, policies must:
- identify circumstances where the Council will call for tenders for the supply of goods, the provision of services or the carrying out of works
  - provide a fair and transparent process for calling tenders and entering into contracts in those circumstances and
  - provide for the recording of reasons for entering into contracts other than those resulting from a tender process.

### 1.2 Purpose

The Council is committed to providing best value to the community within a framework of fairness, transparency and accountability. Purchases must be made in the best interests of the community, and in accordance with Council's governing documents and legislative requirements.

### 1.3 Scope

This Policy applies to all purchases, contracts and tenders organised by Council or Alwyndor employees (including staff contractors and any other party involved in decision-making about purchases), on behalf of Council when undertaking procurement activities (the Purchaser/s).

Purchasers will ensure all purchases they initiate comply with this Policy and financial and contractual delegations. Purchasers must, act with integrity and in good faith at all times when dealing with suppliers.

### 1.4 Strategic Reference

Statutory requirement

## 2. PRINCIPLES

### 2.1 Procurement Principles

Council is committed to the following core principles when selecting suppliers:

### 2.2.1 Value for Money

The Council will undertake efficient and effective procurement to ensure value in the expenditure of public money. Value for money is achieved by ensuring the desired outcome is delivered at the best possible price, accounting for relevant financial and non-financial factors. These factors may include:

- costs – including price, whole of life cycle costs, and opportunity costs
- relevant and relative risks
- the value of any environmental, social and economic benefits
- the maturity of the market for the goods or services being sought
- flexibility or adaptability to possible change over the life cycle of the goods or services being sought
- circumstances or innovations that may not have been foreshadowed at the time this policy was developed.

Value for money may not necessarily favour the lowest price.

To achieve value for money, procurement activities should:

- include a comparative analysis of the costs and benefits of each option
- where relevant, specify the conditions and evaluation criteria in approach to market documents
- consider extending or reviewing existing contracts, if it is determined that such an approach will achieve better outcomes and value for money, compared with a market approach.

### 2.2.2 Transparent, Accountable, Fair and Ethical Standards

All purchases must be made in a transparent, accountable, fair and ethical manner. Standards must be maintained in perception and reality in accordance with Council's Codes of Conduct.

A person with a Conflict of Interest may be removed from the procurement process or have their role in the evaluation of the procurement restricted.

Purchasers must comply with all legal and policy requirements and be impartial, fair and professional in their actions and decisions.

### 2.2.3 Social Responsibility

Council acknowledges Traditional Owners throughout Australia and strongly encourages Aboriginal businesses to quote and tender.

As part of Council's commitment to Reconciliation and desire to invite increased Aboriginal economic participation to our City, Aboriginal businesses will, to the extent permitted by law, be given preference when other considerations are equal. Where Aboriginal expertise is required to deliver outcomes being tendered for, direct engagement of an Aboriginal business is permissible.

An Aboriginal business is classified as such if registered on the South Australian Aboriginal Business Register, certified by Supply Nation or registered with an Aboriginal Regional Authority or Aboriginal Landholding Authority and is 50% or more Aboriginal owned and based in South Australia. Council encourages Aboriginal businesses to register on the SA Tenders and Contracts website.

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Council will model public value and social responsibility by ensuring purchases favour suppliers that provide or support social enterprise and/or contribute substantially to social justice, access and inclusion and equal employment opportunities, to the extent permitted by law.

### 2.2.4 Environmental Sustainability

Council will model public value and sustainable practices by, to the extent permitted by law, ensuring purchases:

- favour suppliers that are environmentally responsible,
- contribute to conserving natural resources,
- encourage waste minimisation and recycling,
- include recycled-content and
- contribute to minimising Council's carbon emissions.

In support of the Local Government Association's 'Buying it Back' Circular Procurement Pilot Project, Council will endeavour to prioritise the purchase of recycled-content materials through its procurement processes for all categories of procurement, including panel contracts already in place.

Consideration of sustainability outcomes must be balanced against other principles (such as buy local, Aboriginal employment etc) but may include the consideration of opportunity costs. Council will use its best endeavours to track the purchase of recycled-content by weight and where feasible, will report publicly on purchases.

### 2.2.5 Buy Local

Council acknowledges the value local businesses add to the City and strongly encourages local businesses to quote and tender. To the extent permitted by law, Council will give preference to local suppliers (that is those operating within the City of Holdfast Bay boundaries), who's activities contribute to local economic development, where other considerations are equal.

Council will endeavour to engage a local contractor or supplier to promote local employment opportunities and economic growth where the supplier can demonstrate capability, capacity and competitiveness.

The definition of 'local' may vary, depending on the identified geographic market for the relevant procurement activity.

Council will support economic development for South Australia by using suppliers that employ South Australian residents and invest in the State (acknowledging the South Australia Industry Participation Policy) where possible. Council will prefer the use of Australian products unless there is no alternative equivalent in which case overseas products will be considered.

Council encourages local suppliers to register on the SA Tenders and Contracts website.

### 2.2.6 Work Health and Safety

Council has an obligation to ensure that all suppliers are compliant with the *Work Health and Safety Act 2012*, as well as being competent in the provision of the goods or services. Relevant certifications are required to be held by suppliers and made available to Council on request.

### 2.2.7 Fit for Purpose

It is a requirement that all services and materials sourced for Council projects, including steel, meet relevant Australian standards for design, manufacture and fabrication. These requirements should be clearly outlined to suppliers during the purchasing process. Fit for purpose considerations include:

- service or functional requirements of users,
- suitable standard in materials and build quality and
- available on time and within budget.

## 3. PARAMETERS

### 3.1 Financial and Contractual Delegations

3.1.1 Under the Act (section 101), the Chief Executive Officer has delegated authority with respect to expenditure of Council funds, which has been sub-delegated to Purchasers (financial delegation).

3.1.2 Under the Act (section 36), the Chief Executive Officer has delegated authority with respect to entering into any kind of contract or agreement, which has been sub-delegated to Purchasers in accordance with their financial delegations.

### 3.2 Value of the purchase

The value of the purchase will be calculated (exclusive of GST) as follows:

3.2.1 one-off purchase: the total value of the purchase,

3.2.2 multiple purchases: the total value of items/ purchases for a particular project/activity (whole of life costs); or

3.2.3 ongoing purchases: the annual value of the purchases from the supplier.

Purchases must not be broken into parts in order to circumvent this Policy. For clarity, circumvention does not occur if a project or activity is genuinely multi-stage (that is, one stage *must* logically be completed *before* the next stage can be planned).

### 3.3 Purchasing Methods

When purchasing goods and services there are a number of transaction methods which can be used to select and contract with the supplier. The underlying principle is to balance the transaction costs associated with each transaction method, with risk and probity.

Purchases which are low value, low risk or low complexity should be acquired through the more efficient processes of credit cards, direct purchase or panel arrangements.

Those items which are high value, high risk and/or high complexity should be acquired through the more stringent process of a tender. Transaction costs are lowest with methods such as credit cards, and higher for methods such as tenders.

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The decision matrix below outlines the different transaction methods based on value:

Value of purchase (excluding GST)	Direct Purchasing	Request for Quotes (2 quotes)	Request for Quotes (3 quotes)	Tender (Open/Select)	Panel Contract	Strategic Alliances
< \$15000	x				x	x
\$15,000 - \$34,999		x			x	x
\$35,000 - \$100,000			x		x	x
> \$100,000				x	x	x

The direct purchasing method can be conducted verbally, with Request for Quotes conducted via email or in writing.

3.3.1 For purchases over \$100,000, reference checks should be considered as part of the due diligence process, and documented in the Tender Evaluation Report. Where a reference check is undertaken the following information should be included as a minimum:

- referee's name, position and the date of the reference check
- nature and length of engagement with the proposed supplier
- the overall experience with the proposed supplier
- levels of satisfaction with the capabilities of key personnel
- ability to deliver on time and overcome unanticipated events
- quality of work/product compared to specifications/key performance indicators
- compliance with work health and safety (including managing sub-contractors)
- responsiveness to change/flexibility
- value for money.

### 3.4 Conflicts of Interest

3.4.1 A Purchaser's duties and responsibilities must be carried out fairly and impartially, without bias, free from improper influence and in the community's interest. Conflicts of interest, actual and perceived, can erode the community's trust that public funds are expended in the public interest.

3.4.2 A Conflict of interest arises where the private interests of a Purchaser actually conflict, have potential to conflict or might be perceived to conflict, with the conduct of a Purchaser. The personal interests of a Purchaser can be material or financial interests, as well as non-financial interests, arising from their private life. They can be their own personal interests, or the interests of family, friends or associates. The interests of a business, club, group or association can also comprise a personal interest for a Purchaser, as can animosities, grievances or biases against other individuals or groups.

### 3.4.3 There are 3 types:

- **Actual** conflict of interest exists if private and/or personal interests *influence* the performance of or decisions made of a Purchaser.
- **Perceived** conflict of interest exists if private and/or personal interests *appear* to influence the performance of or decisions of a Purchaser.
- **Potential** conflict of interest exists if private and/or personal interests *have potential* to influence the performance of or decisions of a Purchaser.

3.4.4 Purchaser/s (project officers) are required to assess any actual, perceived or potential conflicts of interest and declare these before proceeding with a procurement process or as soon as possible after a conflict has been identified. It is not enough for a Purchaser to regard themselves as not being influenced by their personal interest. If a reasonable and fair-minded observer might perceive that a Purchaser's personal interest could be favoured by exercising their duties and responsibilities, then a conflict of interest exists. If a conflict is identified it must be disclosed to the Procurement Officer in writing (via email). The disclosure must contain sufficient information to enable effective management of the conflict. Inaccurate, incomplete or misleading information about the conflict can give rise to allegations of corruption.

3.4.5 Where a conflict of interest is disclosed, the Procurement Officer will prepare a plan to manage it. The plan will assess the risk the conflict poses to the procurement process and will identify an appropriate response, which may include:

- registering the interest so that others are aware that a matter involves a personal interests (only in less serious circumstances where risk is low)
- recruiting an independent party to oversee all or part of the procurement involving the conflict of interest
- restricting the person's involvement in the procurement
- removing the person entirely from the procurement
- the person relinquishing the personal interest that gave rise to the conflict, or modifying its potential influence over a matter
- escalating decision making to a relevant manager, General Manager or Chief Executive Officer.

### 3.5 Exemptions from this Policy

This policy does not apply to:

- the continuation of work or services under existing arrangements (for example, variations or minor extensions to existing work orders or contracts to facilitate completion)
- works, goods or services that have been subject to a recent competitive procurement process and the pricing is still valid
- works, goods or services being provided under warranty, servicing, maintenance or defects liability
- works, goods or services where the supply market is known to be limited to the extent that adhering to procurement processes is not feasible.

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- 3.5.1 Emergencies: In certain circumstances and emergencies the Chief Executive Officer or Council may exempt/ waive application of this Policy and pursue a method which will bring the best outcome for the Council.

This includes when there are timing constraints and where the supply market is known e.g. monopoly exists, limited specialist goods/services required and can only be provided by a single provider (sole supplier), emergency need etc. (not an exhaustive list).

Where an exemption is due to an emergency situation:

- expenditure should be limited to that required to alleviate the emergency situation; and
- purchasers must ensure that appropriate methods of purchase are resumed as soon as practicable (i.e. purchase order generated, quotations sought for remainder of the goods, works or services other than that required for the emergency response).

- 3.5.2 Under \$100,000: General Manager approval is required if a different purchasing method for purchases under \$100,000 (excluding GST) are used other than those prescribed in this Policy. Approval may be granted for considerations such as market conditions, value for money or availability of the required goods/services from an Aboriginal, local or other relevant business pursuant to Sections 2.2.3 to 2.2.5 of this Policy. Under such circumstances the cost of these purchases should be benchmarked (e.g. quantity survey) for value for money.

- 3.5.3 Over \$100,000: Tenders must be called for contracts for goods and services in excess of \$100,000 (excluding GST) unless:

- a panel contract or strategic alliances are used,
- a different process will deliver greater benefit than other methods,
- market conditions or circumstances are such that a tender process will not deliver value for money,
- the required outcomes to be delivered require Aboriginal expertise and an Aboriginal business can supply the required goods/services (see Section 2.2.3), or
- a local business can supply the required goods/services and the procurement will demonstrably contribute a significant economic, environmental and/or social good to the City (refer Sections 2.2.3 to 2.2.5). For clarity, 'demonstrable' means measurable, not indirect/general economic activity. Examples could include, for example, additional long term jobs in the City, social enterprises directly created by the procurement, new investments made in accessibility or sustainability in the City, etc.

Under such circumstances the cost of these purchases should be benchmarked (e.g. quantity survey) for value for money.

Purchases between \$100,000 to \$500,000 (excluding GST) require approval of the Chief Executive Officer (CEO) if a tender, panel contract or strategic alliances



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are not to be used and an exemption is required. It is at the CEOs discretion to determine whether Council (the elected body) should be notified of the exemption at a following Council meeting (via Items in Brief).

However, purchases in excess of \$500,000 (excluding GST) require Council's (the elected body's) approval if another purchasing method is to be used other than a tender, panel contract or strategic alliance (via Report to Council).

- 3.5.4 Exemptions Register: Council's Administration is to record its reasons in writing for exempting the application of this Policy and retained in Council's document management system for probity purposes.

All exemptions are to be advised to Council's Procurement Officer for including in an Exemptions Register.

- 3.5.5 Unsolicited Proposals: Refer to Council's Unsolicited Proposals Policy.

### 3.6 Open and Select Tenders (over \$100,000 excluding GST)

- 3.6.1 A tender process must be used where the purchase is greater than \$100,000 (optional for purchases under \$100,000). Refer to Council's Internal Tendering Procedure for details about how to undertake a tender process.

- 3.6.2 Open or select tender: An open tender is preferred unless there is a specific reason for a select tender. A select tender may be used with the approval of the relevant Manager where:

- it is the second stage after an Expression of Interest (EOI) or Request for Tender process (e.g. shortlisted from EOI process). Refer to 'Expression of Interest' section below.
- it is known the supplier pool is limited to a few.

- 3.6.3 Advertising and Receipt of Tenders:

Open Tenders- The Procurement Officer will arrange for the finalised tender documentation to be publicly advertised on SA Tenders and Contracts website for a minimum of 21 days (3 weeks).

Open tender responses must lodged electronically on SA Tenders and Contracts website, unless there are exceptional circumstances.

Select Tenders- The Procurement Officer will arrange for the finalised tender documentation to be directed to the relevant selected businesses (via SA Tenders and Contracts or email). The notification period to suppliers will allow a reasonable amount of time for responses to be provided e.g. 10 to 14 days minimum timeframe for responses (taking into account flexibility depending on the business requirements).

Under such circumstances the cost of these purchases should be benchmarked (e.g. quantity survey) for value for money.

Select tender responses must be as specified in the request for tender documentation.

Late tenders are not to be considered (except in exceptional circumstances).

### 3.7 Expression of Interest (EOI)

An EOI allows the Council to elicit information from the market without any obligation to commit. EOIs are useful where Council is unsure which suppliers are in the market, or the scope/budget for a project might be, or where the Council wishes to obtain some conceptual suggestions.

The EOI follows a similar process to a tender but is less detailed and does not include a contract. An EOI may form part of a two phase tender process, where EOI respondents may be short-listed for a select tender.

### 3.8 Panel Contract

This is where Council establishes panel arrangements with a select group of suppliers. A tender is undertaken to select a group of suppliers which provide the services and have the capability to meet the Council's needs.

If Council has a Panel Contract in place for the supply of goods or services, purchases may be made directly from any of the suppliers on the panel, without the need to obtain quotes, or seek tenders (as long as the contract contains contract rates for the items being purchased).

Panel arrangements should operate for approximately three years.

Council may also use Panels created by State or Federal agencies.

### 3.9 Strategic Alliances

Strategic alliances may be appropriate where Council can increase its purchasing power by partnering with another Council, representative body or supplier.

Strategic alliances allow the Council to negotiate lower costs for standard goods and services through collaborative purchasing.

Purchasers may make purchases through strategic alliances or common use contract arrangement already established and administered by other organisations such as (but not limited to):

- Local Government Association Procurement (LGAP)
- Procurement Australia (PA)
- CCI Group Purchasing
- State government contracts
- A purchasing arrangement with other Councils e.g. Western alliance etc.

Tender processes are usually undertaken by the organisations in order to select the suppliers available through collaborative purchasing. This saves Council undertaking its own tender process and creates efficiencies for all parties.

### 3.10 Contract Management

It is important that all contracts are managed diligently to maximise the outcomes and minimise risk.

Contracts over \$100,000 require that a Council officer be nominated as the Contract Manager in relevant project/activity documentation. The Contract Manager will have primary responsibility for ensuring the outcomes of the contract are delivered to time, budget and quality standards.

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A Contract Manager also has the primary responsibility for the delivery standards such as Work, Health and Safety measures.

At a minimum, mid-term and post engagement reviews must be undertaken by the Contract Manager and reported via relevant project/activity governance mechanisms. More frequent reviews may be established as needed.

The Project Manager is responsible where relevant for arranging a Certificate of Completion is issued where satisfied works have been brought to Completion or issuing a Non-completion Notice specifying defects in order for Certificate of Completion to be issued.

All handover documents including manuals must be retained for Council's future reference (within document management system).

### 3.11 Risk Management

3.10.1 Council must ensure that procurement activities are consistent with and meet the obligations of Council's Risk Management Policy suite.

3.10.2 Council must ensure the suppliers have sufficient public liability, professional indemnity (if applicable) and personal injury insurance (if applicable).

### 3.12 Prudential Requirements

It is a requirement that a Prudential Report is prepared for projects exceeding a prescribed value, prior to any purchasing being undertaken (refer to Council's Prudential Management Policy).

### 3.13 Payment Options

Goods and services will be paid for on the receipt of an invoice from a supplier emailed directly to [accountspayable@holdfast.sa.gov.au](mailto:accountspayable@holdfast.sa.gov.au). Options include:

3.12.1 Petty Cash: Purchasers may receive an advance or reimbursement of expenses to a limit of \$100 for one-off purchases where Council does not have an account with the supplier.

3.12.2 Credit Cards: for purchases by approved cardholders of \$2,000 (excluding GST) or less, which are low risk and low complexity. Refer to Council's relevant policy.

3.12.3 Payment on invoice (with or without Purchase Orders): Invoices with a value less than \$2,000 (excluding GST) do not need a purchase order but **all purchases over \$2,000 (excluding GST) must be linked to a purchase order prior to**

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**receiving the goods or services** (except not required for Regional Landscape Levy, worker's compensation premiums or payment of utility accounts).

Purchase orders records Council's commitment to purchase goods or services. It contains advice to suppliers of Council's standard terms and conditions for a purchase.

3.12.4 Payment Requisition: A payment requisition form should be completed for purchases that do not have an invoice (e.g. staff reimbursements).

Council has established a Supplier Charter which clearly communicates Council's commitments and expectations in all procurement activities (available on Council's webpage).

## 4. REFERENCES

### 4.1 Legislation

- *Environmental Protection Act 1993*
- *Local Government Act 1999*
- *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*
- *Work Health and Safety Act 2012*
- *Public Interest Disclosure Act 2018*
- *Independent Commission Against Corruption Act 2012*

### 4.2 Other References

- Code of Conduct for Elected Members
- Code of Conduct for Staff
- Disposal of Assets Policy
- Internal Purchasing Procedure
- Internal Tendering Procedure
- Prudential Management Policy
- Risk Management Policy, Framework and Procedure
- South Australian Public Participation Policy, March 2018
- South Australian Public Participation Policy Procedural Guidelines, August 2017
- Supplier Charter
- Unsolicited Proposals Policy
- WHS Contractor Management Policy