

LOCAL PREFERENCE PURCHASING PROCEDURE

Procedure 5.9.7

Policy No. and title	5.9	Procurement Policy
Procedure	5.9.7	Local Preference Purchasing
Version	1	
Date Adopted	20 March 2018	

1 INTRODUCTION

This Procedure has been introduced to support local businesses and encourage local economic business activity for the benefit of the Kempsey Shire community. The Procedure complements Council's integrated strategy to support local business.

This Procedure should be read in conjunction with Council's Procurement Policy and associated procedures, and in consideration of Council's legislative obligation under clause 178 of the *Local Government (General) Regulation 2005* to "accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous".

2 PROCEDURE STATEMENT

Council is committed to supporting the local economy and enhancing the capabilities of local business and industry. The objective of this Procedure is to create a framework that ensures Council gives due consideration to the actual and potential benefits to the local economy of sourcing goods and services locally where possible, whilst maintaining a value for money approach at all times.

The intention of this Procedure is to support Council's commitment to achieving the best value for money outcome to Council and the community, while maximising opportunities for local business to compete for Council business.

Council acknowledges that it has an important role to play in the local economy and is committed to assisting local industry engage in business with Council. To assist local industry and local economic development, Council will apply this Procedure within its tendering procedures as set out in this Procedure.

Council is also concerned to ensure that application of this Procedure does not have an adverse effect on competition and does not cause Council to breach its obligations under the *Competition and Consumer Act 2010 (CCA)*. Council will determine, before calling tenders for any contract, whether the Procedure can be applied without breaching the CCA and having an adverse impact on competition. Section 4 of this Procedure sets out the matters that will be considered in determining whether this Procedure applies.

3 OPERATION OF THE PROCEDURE

When assessing a tender in accordance with Council's Tendering Procedure, the procurement decision will be based on best value for money and the most advantageous result for Council after considering a range of weighted price and non-price (quality) evaluation criteria as set out in any tender documents.

If this Procedure applies to the tender, any Local Supplier who lodges a tender with Council will be granted a notional offset of the lesser of 5% or \$25,000 against that

Local Supplier's submitted tender price, for the purposes only of evaluating the tenders, and awarding the contract.

Applying a notional reduction in price will increase the competitiveness of a Local Supplier against other suppliers. The \$25,000 cap on the offset is intended to limit the financial impact of this Procedure.

As price is only one factor for consideration in the evaluation of a tender, the application of the notional offset does not guarantee that the tenderer receiving the offset will be the successful tenderer.

For the avoidance of doubt, the price paid by Council under any resulting contract will be the submitted tender price, not including the offset.

The notional offset will operate as shown in the following examples:

Example 1: Assuming price is equal

Location	Price offset applied	Submitted tender price	Tender price assessed
Local Supplier	5%	\$400,000 Offset applied \$20,000	\$380,000
Non-Local Supplier	Nil	\$400,000	\$400,000

Example 2: Assuming price is equal

Location	Price offset applied	Submitted tender price	Tender price assessed
Local Supplier	5%	\$600,000 Offset applied \$25,000 limited by the max. cap	\$575,000
Non-Local Supplier	Nil	\$600,000	\$600,000

Example 3: Assuming price is not equal

Location	Price offset applied	Submitted tender price	Tender price assessed
Local Supplier	5%	\$400,000 Offset applied \$20,000	\$380,000
Non-Local Supplier	Nil	\$380,000	\$380,000

4 APPLICATION OF PROCEDURE

Before tenders are called, Council is to firstly determine whether the tender relates to regulatory, service or business activities of Council and therefore whether the CCA applies to the calling of the tender.

Regulatory Activities

If the tender relates to Council's regulatory activities, this Procedure applies.

Examples of regulatory activities of Council include granting approvals and issuing orders under the *Environmental Planning & Assessment Act 1979* and *Local Government 1993*.

Service Activities

Where the tender relates to Council's service activities, Council must determine whether the service activity is, or is not, an activity in which Council carries on a business.

In determining whether the service activity involves the carrying on of a business, Council will consider the following factors:

- whether the activity involves trading or commercial transactions or is carried out in a business context;
- whether the activity is carried out regularly and systematically; and
- whether the activity is like activities a private trader would carry out, rather than being governmental in nature.

Where the tender relates to Council's service activities which are not activities in which Council carries on a business, this Procedure will apply.

Examples of service activities of Council which are not activities in which Council carries on a business are domestic waste collection, local roadworks, maintenance and provision of sewerage and drainage systems and operation of libraries.

Where the tender relates to service activities which are activities in which Council carries on a business, this Procedure will only apply if Council further determines whether the application of the notional offset to the tender price for Local Suppliers would have an anti-competitive effect, such that it would substantially lessen competition in a market (as that terminology is used in the CCA).

An example of a service activity of Council which is an activity in which Council carries on a business is commercial waste management services that are provided on a price competitive basis.

Business Activities

Where the tender relates to Council's business activities, this Procedure will not apply if Council further determines that the application of the notional offset to the tender price for Local Suppliers would have an anti-competitive effect, such that it would substantially lessen competition in a market (as that terminology is used in the CCA).

Examples of business activities of Council are the operation of the airport, the saleyard and caravan parks.

Anti-Competitive Effect

In determining whether the application of the notional offset in this Procedure to a tender submitted by a Local Supplier would have the effect of substantially lessening competition in a market, Council will consider:

- the competitive nature of the market for the relevant contract; this goes beyond mere consideration of the market by directing attention towards the level of competition, and the number of potential tenderers;

- the likely effect that application of the notional offset in this Procedure will have on the market, which may involve consideration of the impact of the offset on the likely tendered prices (for example, given the \$25,000 cap, the notional offset may have a lesser impact in relation to tenders with a very high expected price); and
- whether Council is a significant, or even the only, purchaser of the types of goods and services to which the tender relates.

Procedural Matters

If Council determines that this Procedure will apply to a tender, this will be noted in the relevant tender documents so that respondents to tenders are aware of the Local Preference Purchasing Procedure prior to responding to the tender. This includes:

- the request for tender, tendering advertisement and procurement plan;
- the conditions of tender; and
- the applicable response schedule for tenderers.

Council reserves its right during the evaluation of submitted tenders to determine not to apply the notional offset in this Procedure if it forms the view, for any reason, that application of the notional offset is not consistent with Council's obligations under the CCA. Tender documents will be drafted to reflect that Council will reserve this right.

To be eligible for the notional offset, suppliers must specifically detail and explain in their response to Council's tender request the facts upon which they rely to establish their eligibility for the notional offset and must provide any evidence of such eligibility as reasonably requested by Council.

If the Procedure is applied, the community should be notified and advised of the cost to the community of applying the Procedure by posting details of the successful supplier, the monetary cost of applying the Procedure and a brief statement of the rationale behind the Procedure on the Council's website within a reasonable time of award of the tender. Additionally, all tenders to which the Procedure has been applied must be capable of identification and verification through any established Council audit mechanism.

5 LOCAL SUPPLIER

A tenderer will be a Local Supplier for the purposes of this Procedure if it is a business which:

- in the case of a business which has been operating for more than 3 months prior to lodging the relevant tender:
 - has its principal place of business within the LGA or within 5 kilometres of the boundaries of the LGA and has had for the 3 months prior to the lodging of the relevant tender; and
 - operates within a market within the LGA and has been doing so for the 3 months prior to the lodging of the relevant tender, or
- in the case of a new business which has not been operating for 3 months, has its principal place of business within the LGA or within 5 kilometres of the boundaries of the LGA, and has been operating or is proposing to operate within a market in the LGA.

The onus will be on the tenderer claiming to be a Local Supplier to provide the necessary supporting evidence with its tender to establish that it is a Local Supplier.

Council will accept ASIC documents as proof of a principal place of business. In respect of whether a business operates in a market within the LGA, Council would expect the evidence submitted to include invoices or copies of other contracts or purchase orders which demonstrate the carrying on of a business within the LGA.

Decisions about a tenderer's status as a Local Supplier will be made by the tender evaluation panel established for the relevant tender. The decision of the tender evaluation panel in that regard is final and not subject to challenge.

6 RESPONSIBILITIES AND AUTHORITIES

The following Council officers are responsible for the implementation of this Procedure, monitoring compliance, and ensuring that the Procedure is reviewed and updated as necessary to meet external compliance:

- General Manager
- Directors

This Procedure applies to all Council staff involved in tendering processes.

7 REFERENCES

- Kempsey Shire Council Procurement Policy
- Kempsey Shire Council Tendering Procurement Procedure Manual
- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*
- *Competition and Consumer Act 2010*
- Office of Local Government Tendering Guidelines for NSW Local Government.

8 DEFINITIONS

- CCA means the *Competition and Consumer Act 2010*.
- Council officer: A member of Council staff.
- Director means a Council officer whose title includes the word 'Director'.
- General Manager means the General Manager of the Council within the meaning of the *Local Government Act 1993*.
- LGA means the area constituted under Part 1 of Chapter 9 of the *Local Government Act 1993* for Kempsey Shire Council.
- Local Supplier means a tenderer which the Council determines to be a local supplier for the purposes of this Procedure under section 4 of this Procedure.

9 REVIEW

A review will be undertaken annually and submitted to the Executive Leadership Team (ELT) if any amendments.

10 AMENDMENTS

New document.

11 VARIATION

Council reserves the right to review, vary or revoke this procedure which will be reviewed periodically to ensure it is relevant and appropriate.