



Tasmanian
Audit Office



**Report of the Auditor-General
No. 7 of 2020-21**

Procurement in Local Government

10 December 2020

The Role of the Auditor-General

The Auditor-General's roles and responsibilities, and therefore of the Tasmanian Audit Office, are set out in the *Audit Act 2008* (Audit Act). The Auditor-General's role as Parliament's auditor is unique.

Our primary responsibility is to conduct financial or 'attest' audits of the annual financial reports of State entities. State entities are defined in the Interpretation section of the Audit Act. We also audit those elements of the Treasurer's Annual Financial Report reporting on financial transactions in the Public Account, the General Government Sector and the Total State Sector.

Audits of financial reports are designed to add credibility to assertions made by accountable authorities in preparing their financial reports, enhancing their value to end users. Following financial audits, we report findings and outcomes to Parliament.

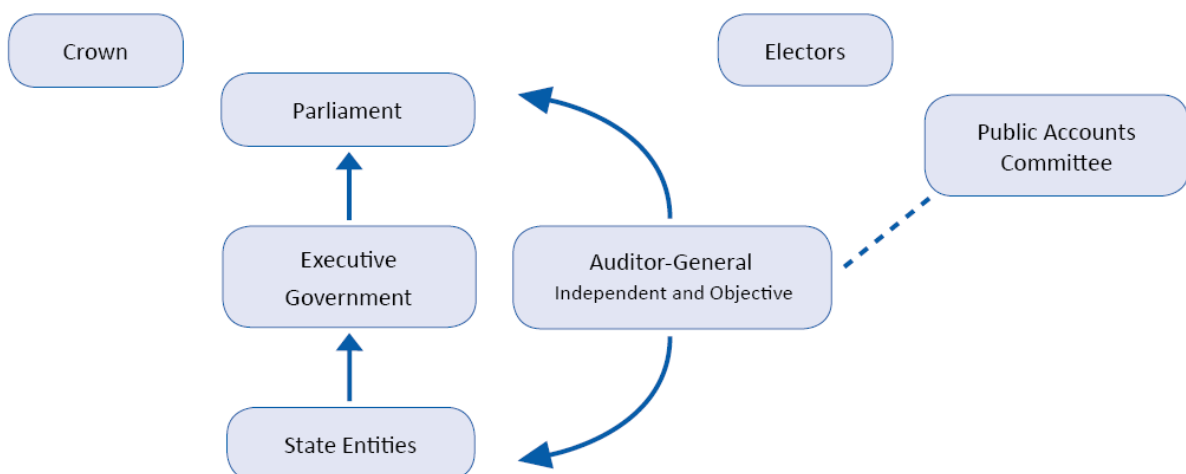
We also conduct performance audits and compliance audits. Performance audits examine whether a State entity is carrying out its activities effectively and doing so economically and efficiently. Audits may cover all or part of a State entity's operations, or consider particular issues across a number of State entities.

Compliance audits are aimed at ensuring compliance by State entities with directives, regulations and appropriate internal control procedures. Audits focus on selected systems (including information technology systems), account balances or projects.

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Where relevant, the Treasurer, a Minister or Ministers, other interested parties and accountable authorities are provided with opportunity to comment on any matters reported. Where they choose to do so, their responses, or summaries thereof, are detailed within the reports.

The Auditor-General's Relationship with the Parliament and State Entities





**2020
PARLIAMENT OF TASMANIA**

**Report of the Auditor-General No. 7 of 2020-21:
Procurement in Local Government**

10 December 2020

Presented to both Houses of Parliament pursuant to
Section 30(1) of the *Audit Act 2008*

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ISBN: 978-0-6488176-7-3

10 December 2020

President, Legislative Council
Speaker, House of Assembly
Parliament House
HOBART TAS 7000

Dear President, Madam Speaker

Report of the Auditor-General No. 7 of 2020-21: Procurement in Local Government

This report has been prepared consequent to examinations and investigations conducted under section 23 of the *Audit Act 2008*. The objective of the audit was to form a reasonable assurance opinion on the compliance of Break O'Day Council, Derwent Valley Council and Glamorgan Spring Bay Council with their procurement and reporting obligations under the *Local Government Act 1993*, *Local Government (General) Regulations 2015* and their respective Code for Tenders and Contracts.

Yours sincerely



Rod Whitehead
Auditor-General

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Table of contents

Independent assurance report	1
Executive summary	5
Summary of findings	5
Recommendations	6
Submissions and comments received	7
Introduction	11
Context	11
Recent Local Government procurement audit findings	12
Break O’Day Council detailed findings	13
Did Break O’Day Council’s policies and procedures comply with LGA and LGR procurement requirements?	13
Did Break O’Day Council have an effective approach to procurement that complied with the LGA, LGR and demonstrated good practice?	14
Did Break O’Day Council ensure staff were well trained in procurement?	17
Derwent Valley Council detailed findings	19
Did Derwent Valley Council’s policies and procedures comply with LGA and LGR procurement requirements?	19
Did Derwent Valley Council have an effective approach to procurement that complied with the LGA, LGR and demonstrated good practice?	20
Did Derwent Valley Council ensure staff were well trained in procurement?	23
Glamorgan Spring Bay Council detailed findings	25
Did Glamorgan Spring Bay Council’s policies and procedures comply with LGA and LGR procurement requirements?	25
Did Glamorgan Spring Bay Council have an effective approach to procurement that complied with the LGA, LGR and demonstrated good practice?	26
Did Glamorgan Spring Bay Council ensure staff were well trained in procurement?	27
Acronyms and abbreviations	28
Appendix 1: Legislative framework and relevant legislation relating to procurement	29
Appendix 2: Local Government Association of Tasmania Guide: Extract from Code for Tenders and Contracts	33

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Independent assurance report

This independent assurance report is addressed to the President of the Legislative Council and the Speaker of the House of Assembly. It relates to my audit of compliance by Break O'Day Council, Derwent Valley Council and Glamorgan Spring Bay Council with their procurement and reporting obligations under their respective Code for Tenders and Contracts (Code), the *Local Government Act 1993* (LGA) and *Local Government (General) Regulations 2015* (LGR).

Audit objective

The objective of the audit was to form a reasonable assurance opinion on each council's compliance with their procurement and reporting obligations under their respective Code, the LGA and LGR (the requirements).

Audit scope

Each council's Code, procurement policies and processes and annual reports were examined. For the purpose of assessing compliance with regulation 29 of the LGR, annual reports were examined for the financial years ended 30 June 2017, 2018 and 2019.

Payments made in the financial year ended 30 June 2019 were reviewed and a sample of procurements relating to these payments were selected for testing.

These time periods are referred to collectively as the 'specified period'.

Audit approach

The audit was conducted in accordance with Australian Standard on Assurance Engagements ASAE 3100 *Compliance Engagements* issued by the Australian Auditing and Assurance Standards Board, to express a reasonable assurance opinion.

The audit evaluated the following criteria and sub-criteria for each council:

1. Did the council's policies and procedures comply with the LGA and LGR procurement requirements?
 - 1.1. Was there a publicly accessible up-to-date Code that complied with the LGA and LGR?
 - 1.2. Were policies and procedures in relation to procurement compliant with the Code, LGA and LGR?
 - 1.3. Were adequate procedures established to document, review and report purchases of goods and services where a public tender or quotation process was not used?
2. Did the council have an effective approach to procurement that complied with the LGA, LGR and demonstrated good practice?
 - 2.1. Were procurement thresholds complied with?

- 2.2. Were variations to contracts reviewed to assess if any changes required further disclosure or additional procurement obligations?
- 2.3. Had all procurements gone through an appropriate procurement process?
- 2.4. Were multiple purchases from the same supplier appropriate (i.e. no splitting of procurements into separate invoicing or contracting arrangements to avoid procurement requirements)?
- 2.5. Were processes and procedures for receiving, evaluating, awarding and debriefing public tenders established and maintained?
- 2.6. Were annual reporting requirements in relation to public tenders and contracts as specified in the LGR complied with?
- 2.7. Was there an appropriate monitoring mechanism to ensure the council was complying with legislation and its own policies and procedures?
- 3. Did the council ensure staff were well trained in procurement?
 - 3.1. Did staff involved in procurement have the appropriate skills and training in procurement to perform their duties effectively?
 - 3.2. Did staff have templates and guidance to assist them in the procurement process?
 - 3.3. In relation to procurement, were staff aware of the possibility of conflicts of interest?
 - 3.4. Were all instances of attempted influence through gifts, benefits or other means were declared or reported as appropriate?

ASAE 3100 requires that I plan and perform my procedures to obtain reasonable assurance about whether the councils have complied, in all material respects, with the requirements as evaluated against the audit criteria.

An assurance engagement to report on the councils' compliance with the requirements involves performing procedures to obtain evidence about the activity and controls implemented to meet the requirements. The procedures selected depend on my judgement, including the identification and assessment of risks of material non-compliance with the requirements, as evaluated against the audit criteria.

I conducted my reasonable assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances. Evidence for the review was obtained primarily through discussions with council personnel and examining documentation.

The COVID-19 pandemic occurred prior to the fieldwork and analysis phase of this audit. As a consequence of the Tasmanian Audit Office transitioning to working from home arrangements, Tasmanian Audit Office staff were unable to complete fieldwork on site.

I believe the evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Responsibilities of each council

The functions of a council are contained in section 20 of the LGA and include:

- to provide for the health, safety and welfare of the community
- to represent and promote the interests of the community
- to provide for the peace, order and good government of the municipal area.

In performing its functions, a council is to consult, involve and be accountable to the community. Councillors are also required to comply with a Code of Conduct that sets out standards of behaviour with respect to all aspects of their role. The Code of Conduct acknowledges the importance of high standards of behaviour in maintaining good governance and supports each Councillor's primary goal of acting in the best interests of the community.

In relation to procurement, sections 333A and 333B of the LGA require each council to maintain a Code for Tenders and Contracts and comply with that Code when acquiring goods and services.

Responsibilities of the Auditor-General

My responsibility was to express a reasonable assurance opinion on each council's compliance, in all material respects, with the requirements, as evaluated as against the criteria.

Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and applied Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements* in undertaking this assurance review.

Inherent limitations

Because of the inherent limitations of an assurance engagement, together with the internal control structure it is possible that fraud, error, or non-compliance with the requirements may occur and not be detected. A reasonable assurance engagement does not provide assurance on whether compliance with the requirements will continue in the future.

Opinion

Qualified opinion

In my opinion, except for the effects of the matters described below, Break O'Day Council complied with the requirements, in all material respects, as evaluated against the audit criteria throughout the specified period.

Break O'Day Council was unable to provide documentary evidence that written quotations were sought for all 12 procurements that required quotations. Also, Break O'Day Council did

not identify staff procurement skills gaps and provide staff with formal procurement training.

Qualified opinion

In my opinion, except for the effects of the matters described below, Derwent Valley Council complied with the requirements, in all material respects, as evaluated against the audit criteria throughout the specified period.

In two instances Derwent Valley Council did not provide or adequately document the justification for its decision not to follow the recommendation of the tender evaluation panel. This not only contravened Derwent Valley Council's own procedures but was contrary to LGA procurement principles of transparency and openness. In one instance a Derwent Valley Council Special Committee had not sought written quotations before awarding a contract. Derwent Valley Council was unable to provide documentary evidence that quotations were sought for 33 out of 35 procurements that required quotations, and did not identify and address staff procurement skills gaps through formal training.

Adverse opinion

In my opinion, because of the significance of the matters described below, I do not express an opinion on Glamorgan Spring Bay Council's compliance with the requirements, as evaluated against the audit criteria throughout the specified period.

Glamorgan Spring Bay Council could not provide the majority of the records of procurement and training activity requested. Evidence obtained also showed Spring Bay Council did not comply with its annual reporting requirements for procurements exceeding public tendering thresholds.



Rod Whitehead
Auditor-General

10 December 2020

Executive summary

Summary of findings

Break O'Day Council

Break O'Day Council's Code complied with the LGA and LGR, including promoting the four purchasing principles (open and effective communication, value for money, enhancement of the capabilities of the local business industry and ethical behaviour and fair dealing) and identifying when public tenders were required. However, there was insufficient detail in the Code relating to some requirements of the LGA and LGR.

Break O'Day Council complied with public tendering processes for procurements meeting the tendering threshold, though it had not established and maintained procedures for reviewing each tender process to ensure it complied with the LGR and Code, as required by regulation 28(k). We were unable to access records for procurements for which quotations should have been sought, which meant we could not assess whether there was compliance with thresholds for these procurements. Break O'Day Council complied with its annual reporting requirements for tenders and contracts.

Limited training, processes and templates existed to support staff in complying with legislative and regulatory requirements and the Code.

We have made six recommendations to assist Break O'Day Council improve their procurement processes.

Derwent Valley Council

Derwent Valley Council's Code complied with the LGA and LGR and a suite of procurement policies and processes underpinned the Code. We identified an opportunity to improve efficiency by rationalising the number of policies and processes.

We identified several areas of non-compliance with procurement processes. We could not find records of quotations being sought for most procurements we examined that were within Derwent Valley Council's quotations threshold. Derwent Valley Council's controls for raising and authorising purchase orders were also inadequate. Derwent Valley Council informed us their new finance system, which was being implemented, would address most of these issues.

We found two instances where Derwent Valley Council had not followed the recommendation of the evaluation panel, with no or very limited documentation explaining these decisions. This conflicts with Derwent Valley Council's own policies and the LGA and LGR principles of transparent and open purchasing processes.

Derwent Valley Council had not complied with its annual reporting requirements for 2018-19 by not reporting one procurement of over \$100 000 in that financial year.

We found limited evidence of ongoing monitoring of procurement activity to confirm correct processes were followed and legislative and regulatory requirements were complied with. Although documented processes and templates provided good support for staff

involved in procurement, no other mechanisms existed to ensure staff had the skills and knowledge to undertake procurement effectively.

We have made eight recommendations to assist Derwent Valley Council improve their procurement processes.

Glamorgan Spring Bay Council

Glamorgan Spring Bay Council's Code complied with the LGA and LGR in all material respects.

We found evidence Glamorgan Spring Bay Council had not complied with its annual reporting requirements for procurements exceeding public tendering thresholds.

Glamorgan Spring Bay Council was unable to provide us with the evidence required for us to assess or conclude against any of the other audit criteria. The procurement records we requested to assess compliance could not be provided as there was no centrally maintained document management system. This was a significant failing.

We have made two recommendations to assist Glamorgan Spring Bay Council improve their procurement processes.

Recommendations

Break O'Day Council

1. Ensure its policy on the use of multi-stage tenders includes all the information required by regulation 26.
2. Ensure accessible records are maintained for all procurements meeting quotations thresholds, ideally through a central repository.
3. Document the rationale for decisions where procurement thresholds are not complied with, for example, in approving significant contract variations.
4. Enhance procurement monitoring procedures to ensure they fully comply with regulation 28(k), particularly in relation to major procurements.
5. Support staff carrying out procurements in compliance with the LGA, LGR and the Code by providing them with documented processes, guidance and templates.
6. Ensure all staff carrying out procurement have the requisite skills and capabilities, with training provided through a structured training program.

Derwent Valley Council

1. Explore opportunities for rationalising the number of procurement policies and procedures to improve efficiency.
2. Develop a process to ensure compliance with regulation 29 annual reporting requirements for all contracts falling within the relevant threshold.
3. Ensure accessible records are maintained for all procurements meeting quotations thresholds, ideally through a central repository.
4. Introduce stronger controls for raising and authorising purchasing orders.

5. Establish processes for documenting the rationale for approving contract variations rather than proceeding with a new procurement when the variation amount falls within the threshold for public tenders and quotations.
6. Ensure decisions to award contracts contrary to the evaluation panel's recommendation comply with established procurement policy and processes, i.e. decisions are based on the same evaluation criteria and supported by written reasons.
7. Establish arrangements for ongoing monitoring or review of procurement activity to confirm correct processes are followed and there is compliance with the LGA, LGR and Code.
8. Ensure all staff carrying out procurement have the requisite skills and capabilities, with training provided through a structured training program.

Glamorgan Spring Bay Council

1. Introduce a centrally maintained document management system and maintain complete procurement records to evidence compliance with the LGA, LGR and Code and to enable effective procurement and contract monitoring and management.
2. Ensure all procurements exceeding the reporting threshold prescribed in the LGA and LGR are included in annual reports.

Submissions and comments received

In accordance with section 30(2) of the Audit Act a summary of observations was provided to the Minister for Local Government, Treasurer and each council with a request for submissions or comments.

Submissions and comments that we receive are not subject to the audit nor the evidentiary standards required in reaching an audit opinion. Responsibility for the accuracy, fairness and balance of these comments rests solely with those who provided the response. However, views expressed by the responders were considered in reaching our conclusions.

Section 30(3) of the Audit Act requires that this Report include any submissions or comments made under section 30(2) or a fair summary of them. Submissions received are included in full below.

Minister for Local Government

Thank you for your correspondence of 20 November 2020, enclosing a copy of your 2020-21 Report on Procurement in Local Government.

The Report demonstrates the important function of the Auditor-General in identifying areas of non-compliance in local government. I take these matters of council compliance very seriously and I am concerned to read some of the findings, particularly those relating to Glamorgan-Spring Bay Council and Derwent Valley Council. Accordingly, I will be contacting each council to discuss their proposed responses to the recommendations contained in the final Report as tabled.

With regard to Glamorgan Spring Bay Council, as you may be aware, the Director of Local Government and I have taken a number of steps recently to support the Council to improve its governance, financial, and operational capabilities and its long-term planning. These include recommending that the Council develop a Statement of Expectations governing relationships between the Mayor, councillors and senior staff; and issuing a Performance Improvement Direction in relation to the Council's statutory financial and asset management obligations under the *Local Government Act 1993*.

Thank you once again for the opportunity to comment.

The Honourable Mark Shelton MP

Minister for Local Government

Premier and Treasurer

I note your audit findings in relation to the compliance of the Break O'Day Council, Derwent Valley Council and Glamorgan Spring Bay Council with procurement and reporting obligations under their respective Code for Tenders and Contracts, the *Local Government Act 1993* and *Local Government (General) Regulations 2015*.

Given the information contained in the summary report, I support the recommendations you have made to each council.

Thank you for providing the summary report and recommendations for my review.

The Honourable Peter Gutwein MP

Premier and Treasurer

Break O'Day Council

Overall, Council management agrees with the assessment process and findings of the audit. Certainly, Council agrees that Policies have not in all instances completely complied with relevant regulations and this will be remedied. However, management does not believe that the conclusions and recommendations arising from the audit are appropriate for a local government of the size, resources and level of procurement both in terms of number and value of the transactions. In particular, management believes that findings and recommendations should be based on the level of risk, as determined by an assessment of likelihood and consequences, not simply of whether something may possibly happen. Further, recommendations appropriate to local governments with staff and financial resources are not necessarily appropriate for local governments of smaller staffing levels and other resources. The 'one size fits all', best practice approach to local government procurement audits should be tempered with a greater awareness of balance between risk, resources and appropriate practices.

Management notes that within the audit that there is a reference to 'value for money' and the opportunity for Council to package works to instigate a Public Tender process. Council has a strong focus on 'value for money' and draws attention to the Annual Plans of Council

for the period of the audit which identifies an annual target and then reports on progress towards achieving this target

John Brown

General Manager

Auditor-General's rejoinder

I am pleased Council has accepted the majority of findings. I do not believe significant resources would be required to implement the recommendations which, if actioned, would aid Break O'Day Council in complying with the LGA and LGR and enable it to carry out its procurement activities more efficiently.

Derwent Valley Council

Derwent Valley Council acknowledges and accepts the findings and recommendations of the Tasmanian Audit Office (TAO).

As discussed with TAO, Council is in the process of configuring and implementing a new finance system which will help to introduce stronger controls. The system is due to go-live on 1 July 2021. In the meantime, Council plans to review the systems and processes to prioritise improvements that can address the issues identified. This will also include Council's record keeping practices and expanding the suite of processes, guidance, templates and training for staff.

Council is due to review its Code for Tenders and Contracts and will use this opportunity to review and rationalise the associated policies and procedures, in line with the recommendations of TAO, by the end of the financial year 2021.

Council is also committed to ensuring transparency in its decision-making; any future deviations from the recommendation of the tender evaluation panel will be recorded in open and in accordance with Council's Tender Procedure.

Dean Griggs

General Manger

Glamorgan Spring Bay Council

Council have acknowledged the shortcoming in its records management systems and processes. During 2019-20 and continuing into the current year Council have invested in implementing new systems and processes and is in the process of reviewing its Code of Tenders and drafting a new Purchasing Policy. These should go a long way to addressing the short comings identified through this audit process.

Greg Ingham

General Manager

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Introduction

Context

- 1.1 The requirements for procurement by Local Government are specified in the LGA and LGR. All councils are required to maintain a Code consistent with the LGA and LGR and comply with that Code when acquiring goods and services over the prescribed amount specified in the LGR or a council's Code. Our audit assessed compliance with these requirements and also identified opportunities to manage risks of non-compliance more effectively.
- 1.2 Procurement is the process of acquiring goods and services from external providers. Usually different procurement processes are used based on the value of the good or service being acquired. Simple one-off low-value purchases may only require one or more quotes being obtained, while much larger projects, such as constructing new infrastructure or acquiring an expensive piece of equipment, require a more thorough public tender process be undertaken.¹ Procurement processes can involve complexity and risk and it is imperative established policy and procedures are followed diligently.
- 1.3 Sections 333A and 333B of the LGA describe requirements for a council relating to tenders and contracts for goods and services. This includes maintaining a Code and complying with that Code when acquiring goods and services. The requirements of the Code are to be consistent with the requirements of the LGR. The Code governs how councils are to procure goods and services including the need to obtain quotes or tenders.
- 1.4 The Code has specific procurement principles ensuring:
 - open and effective communication – transparent and open purchasing processes
 - value for money – procurement at the most competitive price available, but value for money does not mean buying at the lowest price
 - enhancement of the capabilities of the local business industry – engaging local markets
 - ethical behaviour and fair dealing – promote procurement practices that are legal, ethical, fair and unbiased.
- 1.5 Further details of the legislative requirements under the LGA and LGR are included in Appendix 1. Further details on the procurement principles, taken from a Local Government Association of Tasmania (LGAT) guide – *Code for Tenders and Contracts*, are included in Appendix 2.

¹ A request for tender is a structured invitation to suppliers to submit a bid to supply goods or services.

Recent Local Government procurement audit findings

- 1.6 In September 2019, we released *Report of the Auditor-General No.1 of 2019-20 Procurement in Local Government* following the conduct of an audit examining the effectiveness of governance and procurement processes for three local government councils: Devonport City Council, Dorset Council and Glenorchy City Council. Our audit found:
- Devonport City Council's governance and procurement processes for management of its Living City project, as measured against the audit criteria, were in all material respects, performed effectively except for it failing to follow sound commercial and governance processes before entering into the Providore Place head lease.
 - Dorset Council complied, in all material respects, with its Code, the LGA and LGR relating to processes to extend the Blue Derby Bike Trails, as evaluated against the criteria
 - Glenorchy City Council complied, in all material respects, with its Code, the LGA and LGR, as evaluated against the audit criteria.
- 1.7 Our audit of Break O'Day Council, Derwent Valley Council and Glamorgan Spring Bay Council builds on our September 2019 audit by using similar criteria and methodology.

Break O'Day Council detailed findings

Did Break O'Day Council's policies and procedures comply with LGA and LGR procurement requirements?

2.1 We assessed compliance of Break O'Day Council's policies and procedures with the LGA and LGR procurement requirements by determining whether:

- there was a publicly accessible up-to-date Code that complied with the LGA and LGR
- policies and procedures in relation to procurement were compliant with the Code, LGA and LGR
- adequate procedures were established to document, review and report purchases of goods and services where a public tender or quotation process was not used.

Break O'Day Council's Code complied with the LGA and LGR in nearly all respects and was publicly accessible

- 2.2 Break O'Day Council's Code complied with LGA and LGR requirements. The *Procurement Policy (Code for Tenders and Contracts)*, last amended on 16 December 2019, promoted the four purchasing principles as required by the LGA and LGR and identified the requirement for public tenders for procurements valued at an amount of \$100 000 or more. This is a lower threshold than the \$250 000 threshold prescribed in the LGR. Break O'Day Council informed us it considered this threshold was appropriate for the environment in which it operates and had made the decision not to raise the threshold.
- 2.3 Guidance to staff could be improved. There were some areas where the LGA and LGR requirements could be described in more detail to assist staff with compliance, either within the Code or through supporting procedures. These areas are described later in this Chapter.
- 2.4 The Code was publicly accessible on the Break O'Day Council's website and at its offices.

Limited additional procurement policy and procedures had been produced, with some procedures not covering all the activities required by the LGA and LGR

- 2.5 The Code was the main source of information for staff about the processes to follow for undertaking procurements. Break O'Day Council produced limited additional documented processes and guidance to support staff in complying with the Code.
- 2.6 Regulation 28 requires councils to establish and maintain local level procedures for tenders and contracts, which support the procurement principles defined in LGR.

Section 7 of Break O’Day Council’s Code described most stages required for tendering including:

- preliminaries and documents preparation
- tender advertising and documents issue
- preferred shortlisted tenderers meeting
- tender evaluation
- reporting of exemptions.

There was insufficient detail about how some processes should operate. Some stages, such as processes for receiving and opening tenders, amending or extending tenders and handling complaints were referenced at a high level in the Code and there was limited information about how these processes should operate. Also, we found the policy on the use of multi-stage tenders did not provide the level of detail required by regulation 26.

2.7 The following requirements complied with the Code, LGA and LGR:

- instruments of delegation for committing expenditure for the procurement of goods and services
- official purchase order procedures, which expanded on some of the procurement principles in the Code
- Contractor Management Procedure as far as it related to awarding contracts and informing winning tenderers.

2.8 The Code described specific instances when Break O’Day Council is not required to call for public tenders as required by regulation 27. However, this was not supported by processes for documenting and reviewing purchases where a tender or quotation was not used. We were informed there had been no such procurements in the past few years.

2.9 Break O’Day Council informed us it did not use multiple-use registers, and therefore, had not produced procedures for multiple-use registers in accordance with regulation 25.

Did Break O’Day Council have an effective approach to procurement that complied with the LGA, LGR and demonstrated good practice?

2.10 In determining whether Break O’Day Council had effective approaches to procurement that complied with the LGA, LGR and demonstrated good practice we assessed whether Break O’Day Council:

- complied with its own procurement thresholds
- reviewed variations to contracts to assess if any changes required further disclosure or additional procurement obligations

- ensured all procurements gone through an appropriate procurement process
- had procured multiple purchases from the same supplier that could be construed as splitting procurements
- established and maintained processes and procedures for receiving, evaluating, awarding and debriefing of tenders
- complied with annual reporting requirements in relation to public tenders and contracts as specified in the LGR
- had an appropriate monitoring mechanism to ensure it was complying with legislation and its own policies and procedures.

Whilst there was compliance with public tendering requirements, inadequate record keeping meant compliance with requirements for seeking written quotations could not be assessed

- 2.11 Procurement thresholds were defined in Break O’Day Council’s Code. Procurements of \$100 000 or more were required to be subject to public tender. We assessed a sample of procurements from payments made in 2018-19 exceeding the threshold for public tendering and found they had been subject to public tender as required. Records maintained for these procurements provided evidence that an appropriate procurement process had been followed, apart from the debriefing to unsuccessful tenderers (addressed later in this Chapter).
- 2.12 Written quotations were required for procurements between \$10 000 and \$100 000. Some quotation records were kept within a centrally held register, which was accessible and could be used by Break O’Day Council to check compliance with procurement processes before purchase orders were raised, invoices accepted and payments made. However, various methods of record management existed, which were the responsibility of individual staff managing the procurements. Problems with accessing records meant we did not have the evidence to satisfy ourselves that written quotations were sought as required for all procurements within this threshold range.
- 2.13 We found evidence of the procurement of separate services from a supplier that could have been bundled and packaged as a tender to achieve better value for money. In this instance, the supplier received six payments in 2018-19, which when totalled exceeded the Break O’Day Council’s threshold for tendering. Break O’Day Council was of the view that each procurement represented a different and separate job but acknowledged that tendering of these services, for example, through establishment of a multiple use register, may be more appropriate.
- 2.14 In this case we were satisfied there was no intent to split the procurement into separate contract arrangements to avoid the public tendering requirement. However, Break O’Day Council’s Code did not specifically prohibit the splitting of a contract into two or more contracts to avoid compliance with the public tendering requirement. Although not required by the LGR, including this information in the Code would facilitate staff awareness and compliance.

A significant variation to a contract was approved with limited documentation of the rationale for the approval

2.15 Break O'Day Council advised no significant variations to tenders or contracts had occurred in at least the past two years, except for one instance. After the original contract was awarded, a variation was subsequently requested by the contractor for an amount exceeding Council's thresholds for seeking written quotations. Our review of closed minutes confirmed Break O'Day Council had approved an increase in the capital budget to enable the extra work described in the variation request to be completed. However, there was no documented rationale for why Council agreed to treat this as a contract variation as opposed to a new procurement.

Documented procedures existed for the receiving, evaluation, awarding and debriefing of tenders, although information was limited on some requirements

2.16 Processes for receiving, evaluating, awarding and debriefing of tenders were set out in section 7 of the Code, although there was very limited information relating to the receipt and opening of tenders. Tools to support staff in receiving, awarding and debriefing were not available. The documented process steps would benefit from supporting templates such as a register of tenders received, register of attendance at tender opening, standard evaluation template and template debriefing letter.

2.17 For the procurements we reviewed, we found appropriate processes had been followed, apart from some information missing from debriefing letters sent to unsuccessful tenderers. We noted:

- a register was maintained to record tenders received and non-compliant tenders
- details of tender panel members present at tender opening were recorded
- evaluation matrices complied with Code requirements, with evaluation criteria well defined and aligned with Request for Tender criteria
- Break O'Day Council was provided with a report on details of the evaluation and recommendation to award a contract
- Break O'Day Council minutes recorded recommendations and motions regarding decisions to award contracts
- written notification was sent to successful and unsuccessful tenderers.

Annual reporting requirements were complied with

2.18 Annual reports for the periods 2016-17, 2017-18 and 2018-19 included reporting on procurement of amounts of \$100 000 or more. There was compliance with regulation 29 (1) and (3) requirements relating to contracts entered into following tender or quotation processes respectively, though we noted annual reports would benefit from further clarity about options to extend contracts. For example, if contracts do not contain options for extension, this could be stated.

- 2.19 Regulation 29 (2) requires the reporting of certain instances of the non-application of the public tender process. Break O'Day Council informed us there had been no such procurements for these annual reporting periods.
- 2.20 We found no evidence of procurement activity which fell within the requirements for tender, which had not been reported.

Monitoring to ensure procurements had been through an appropriate process was undertaken, though processes did not fully comply with the LGR monitoring requirements

- 2.21 Regulation 28 (k) requires councils to establish and maintain procedures for the review of each tender process to ensure it is in accordance with the LGR and Code. We found evidence of ongoing monitoring of procurement activity. For example, system controls ensured compliance with delegations and reasonableness checks were undertaken before purchase orders were accepted and payments made. These could identify purchases that may not have been through appropriate processes.
- 2.22 A procurement or contract management review was included on the internal audit schedule every three years. The last review was conducted in July 2019, which covered Break O'Day Council's compliance with the LGA, LGR and policies and procedures from acceptance of tender and appointment of contractor to payment of invoice.
- 2.23 A future internal audit review of tender arrangements has been scheduled. Including procurement within other scheduled reviews of policies and procedures and fraud could be helpful in further strengthening Break O'Day Council's procurement review arrangements.
- 2.24 Break O'Day Council had some monitoring mechanisms in place for the review of submitted tenders and evaluation processes leading to recommendations to award contracts. However, the procedures do not fully comply with regulation 28(k), specifically to demonstrate there is monitoring of compliance with each part of the process for major procurements.

Did Break O'Day Council ensure staff were well trained in procurement?

- 2.25 In determining whether Break O'Day Council ensured staff were well trained in procurement we assessed whether:
- staff involved in procurement had the appropriate skills and training in procurement to perform their duties effectively
 - staff were provided with templates and guidance to assist them in the procurement process
 - staff were aware of the need to declare possible or actual conflicts of interest during procurement activities

- all instances of attempted influence through gifts, benefits or other means were declared or reported as appropriate.

Staff would benefit from more support through training, guidance and templates to carry out procurements appropriately

- 2.26 Break O'Day Council informed us staff procurement capabilities were assessed when staff were recruited, where relevant. Staff with purchasing responsibilities also received training in systems use and changes, with additional guidance provided where instances of non-compliance were identified. However, there was no process for identifying staff procurement skills gaps, for example, through formal staff performance reviews and for undertaking structured training. We would expect staff to receive training in the LGA and LGR procurement principles and the requirements of Code as part of staff induction and through refresher training. Not having a planned, structured approach to assessing skills gaps and for providing training may result in staff undertaking procurements in contravention of LGA and LGR principles and established policies and procedures.
- 2.27 Whilst the Code was the main source of information for staff undertaking procurement, there were limited additional documented processes, guidance and templates to support staff in complying with the Code. In practice, the lack of supporting templates resulted in staff copying and pasting from previous procurement documents. This could result in inconsistencies, inaccuracies and non-compliance in the way procurement is undertaken.

Processes existed for staff to declare conflicts of interest for procurements

- 2.28 Processes existed for staff to declare conflicts of interest for procurements they were involved in, and we were provided with evidence that staff completed Tender Assessment Conflict of Interest forms, whether they had an interest to declare or not. Also, as part of induction, staff were required to read and certify they had read and would comply with the conflicts of interest and gifts and benefits policies.

Derwent Valley Council detailed findings

Did Derwent Valley Council's policies and procedures comply with LGA and LGR procurement requirements?

3.1 We assessed compliance of Derwent Valley Council's policies and procedures with the LGA and LGR procurement requirements by determining whether:

- there was a publicly accessible up-to-date Code that complied with the LGA and LGR
- policies and procedures in relation to procurement were compliant with the Code, LGA and LGR
- adequate procedures were established to document, review and report purchases of goods and services where a public tender or quotation process was not used.

Derwent Valley Council's Code complied with the LGA and LGR and was publicly accessible

3.2 Derwent Valley Council's Code incorporated and expanded on the content of the LGAT model Code. Our analysis found the Code was compliant with the LGA and LGR. Many aspects of the Code expanded on the minimum requirements prescribed in the LGA and LGR, for example, the Code set out how to calculate the value of purchases, the use of Probity Advisors, procedures for recording and registering quotes and the responsibilities of the General Manager in procurement processes.

3.3 The Code was publicly accessible on the Derwent Valley Council's website and at its offices.

Procurement policies and procedures complied with the LGA and LGR and the Code, though some were overdue for review

3.4 Regulation 28 requires councils to establish and maintain local level procedures for tenders and contracts, which support the procurement principles defined in LGR. Derwent Valley Council had a suite of policies and procedures that underpinned the Code and complied with the LGA and LGR. This included hyperlinks from the policies and procedures to relevant templates. Delegations were compliant with section 64(1)(b) of the LGA and were accurately reflected in the procurement policies.

3.5 Although policies and procedures complied with the Code, LGA and LGR, some were past their review date. The lack of timely review had resulted in some policies and procedures not reflecting current practice. For example, Derwent Valley Council had implemented an E-procurement portal, which was used for inviting and receiving tenders. There was no reference to this portal in Derwent Valley Council's Tender

Procedure² which set out the mechanism for how tenders would be developed and reviewed through six identified stages of tendering. Stage 3 (invite and receiving) documented processes were mostly obsolete due to the introduction of the portal.

- 3.6 Derwent Valley Council advised it did not have the capacity to review all policies and procedures by their due date.

Processes for reporting on procurements where a tender or quotation process was not used were adequately documented

- 3.7 Derwent Valley Council's procedures for reporting on procurements where an exemption is granted were set out adequately in its Code.

Did Derwent Valley Council have an effective approach to procurement that complied with the LGA, LGR and demonstrated good practice?

- 3.8 In determining whether Derwent Valley Council had effective approaches to procurement that complied with the LGA, LGR and demonstrated good practice we assessed whether Derwent Valley Council:

- complied with its own procurement thresholds
- reviewed variations to contracts to assess if any changes required further disclosure or additional procurement obligations
- ensured all procurements gone through an appropriate procurement process
- had procured multiple purchases from the same supplier that could be construed as splitting procurements
- established and maintained processes and procedures for receiving, evaluating, awarding and debriefing of tenders
- complied with annual reporting requirements in relation to public tenders and contracts as specified in the LGR
- had an appropriate monitoring mechanism to ensure it was complying with legislation and its own policies and procedures.

Whilst there was compliance with public tendering requirements, inadequate record keeping meant compliance with requirements for seeking written quotations could not be assessed

- 3.9 We assessed compliance with thresholds for a sample of procurements and found tendering requirements were complied with.

- 3.10 Derwent Valley Council's Code and supporting procedures require written records of all written and verbal quotations to be documented. We selected a sample of

² DVC-PRO-023 *Tender Procedure*

suppliers who received payments during 2018-19 above the prescribed amount for seeking quotations. Of this sample, only 6% were recorded in the quotations register. Therefore we were unable to confirm whether quotations were sought, where required, in all instances. Derwent Valley Council acknowledged the quotations register was a significant failing in its financial system arising from an inability to match quotes against purchase orders and invoices for goods and services, resulting in resulting in a lack of transparency in procurement transactions. Derwent Valley Council advised it is currently implementing a new financial system which will enable records of procurements within the quotations threshold to be maintained centrally.

- 3.11 We found requests to raise purchase orders were often submitted by email and the staff member raising and authorising the purchase order were the same person. This lack of verification process indicated Derwent Valley Council had inadequate controls in place to manage risks of process non-compliance, fraud and error. Derwent Valley Council informed us the new financial system will address this issue.

There was no formal mechanism to review variations requests to assess if further disclosure or procurement processes were required

- 3.12 Variations forms were used by suppliers to request variations. Variations were documented and formal letters sent out to suppliers as required. However, it was unclear whether there was internal scrutiny of variations requests to determine whether a further procurement process was required to comply with Derwent Valley Council tendering and quotations thresholds before they were agreed.

Some procurements did not follow documented procurement processes

- 3.13 We assessed our sample of procurements against each of the six stages described in Derwent Valley Council's Tender Procedure, with no exceptions identified. COVID-19 restrictions meant we were unable to review records for inviting and receiving tenders retained within Derwent Valley Council's E-procurement portal. However, use of this portal would have reduced the risk of non-compliance with invitation and receipt of tender requirements.
- 3.14 The Tender Procedure, provides for Derwent Valley Council to make a final determination on the acceptance or rejection of tender responses. The procedure states 'Any decision by the Council to award a tender to a tenderer, other than the recommended tenderer, will need to be based on the same evaluation criteria and supported by written reasons'.
- 3.15 We were alerted to two occasions where Derwent Valley Council had awarded contracts contrary to the tender evaluation panel's recommendations. In one instance, Derwent Valley Council rejected the recommendation of the evaluation panel and awarded the contract to a supplier who had tendered at a higher price, however, no reason was documented. In the other instance, the written reason provided for not awarding the tender to the recommended supplier was 'local content'. However, both tenderers had been given equal weighting for 'local content' by the evaluation panel.

- 3.16 We were also alerted to the awarding of a contract by a Derwent Valley Council Special Committee without following Derwent Valley Council's processes for seeking two written quotations. We were informed this was a regular occurrence and we were not provided with any documented policies or processes describing the procurement role of Special Committees, including their exemption from complying with Derwent Valley Council's documented procurement processes.
- 3.17 On the face of it, the Derwent Valley Council's decisions for these procurements did not appear to comply with its own policies and processes. The decisions also appear to conflict with the LGA and LGR principles relating to transparent and open purchasing processes.

Appropriate processes were in place, in most respects, for the receiving, evaluation, awarding and debriefing of tenders

- 3.18 Derwent Valley Council's use of an E-procurement portal provides a mechanism to ensure process compliance for the receipt and opening of tenders.
- 3.19 Section 6.1 of the Code states that unless the Conditions of Tendering expressly provide for an alternative method, tender evaluation will be carried out in accordance with the principles and practices set out in the Code. The Code describes the requirement for an evaluation panel, evaluation criteria and weightings, a scoring guide to assist in the evaluation process and conflict of interest declarations.
- 3.20 Evaluations we reviewed were robust with weighted scoring used to assess compliance against the tender criteria and written evaluation reports submitted to Derwent Valley Council for decision were comprehensive.
- 3.21 For the completed procurements reviewed, letters were sent to unsuccessful bidders. These did not comply with all the requirements of the LGR, though they did include an invitation for a full debrief and the name of a Derwent Valley Council contact person.

Annual reporting requirements were complied with in material respects

- 3.22 Annual reporting on tenders and contracts complied with regulation 29, except for one contract with a value of over \$100 000 which had not been included in the annual report for the financial year in which the contract had been awarded, as required by regulation 29(3). The explanation for this exception was the procurement had not been registered in the Contract Register from which annual report information was drawn.
- 3.23 Derwent Valley Council complied with all other regulation 29 reporting requirements, except for the non-disclosure of the business address of a successful supplier in the 2017-18 annual report, as required by regulation 29(1)(f).

Evidence of ongoing monitoring of procurement activity to ensure compliance was limited

- 3.24 Regulation 28(k) requires councils to establish and maintain procedures for the review of each tender process to ensure it is in accordance with the LGR and the Code. Section 6.4 of Derwent Valley Council's Code states Probity Advisors will be engaged

‘where the nature of the tender warrants particular sensitivity to due process’. Examples provided included large and complex developments involving joint venture proposals.

- 3.25 We were provided with a probity report, produced internally by a staff member independent of the process, for review of a bridge tender. However, apart from this, there was no evidence of ongoing monitoring or review of procurement activity to confirm compliance with legislative requirements or established policies and procedures.
- 3.26 Some reviews were scheduled within the Audit Panel work program 2019-20, and although the program did not specifically identify procurement, other projects may include some elements of procurement within their scope. These included changes to the LGA, purchase orders approvals, Delegations of Authority, Gifts and Benefits Register and fraud control.

Did Derwent Valley Council ensure staff were well trained in procurement?

- 3.27 In determining whether Derwent Valley Council ensured staff were well trained in procurement we assessed whether:
- staff involved in procurement had the appropriate skills and training in procurement to perform their duties effectively
 - staff were provided with templates and guidance to assist them in the procurement process
 - staff were aware of the need to declare possible or actual conflicts of interest during procurement activities
 - all instances of attempted influence through gifts, benefits or other means were declared or reported as appropriate.

Staff procurement skills were not identified and staff did not have access to procurement training

- 3.28 Derwent Valley Council had not assessed whether its staff had the skills required to undertake procurement effectively. This could have occurred through formal staff performance reviews. There was no planned procurement training program, including refresher training, nor was procurement a component of staff induction.
- 3.29 Staff did not have access to procurement training. Derwent Valley Council’s procurement procedures identified the General Manager as being responsible for ‘providing adequate resources and training to achieve the required outcome’ in relation to procurement. We were informed LGAT had offered free procurement training, which Derwent Valley Council staff could attend if they requested, however this training was cancelled due to COVID-19.

Documented processes, guidance and templates supported staff undertaking procurement

3.30 As previously mentioned, a comprehensive suite of processes, guidance and templates for staff underpin the Code, which should support compliance.

Processes existed for staff to declare conflicts of interest for procurements

3.31 Derwent Valley Council provided evidence that key personnel involved in procurement decisions completed Conflict of Interest declarations whether they had a conflict or not. The General Manager was also responsible for maintaining a publicly accessible Gifts Register, with templates for staff to declare gifts received.

Glamorgan Spring Bay Council detailed findings

Did Glamorgan Spring Bay Council's policies and procedures comply with LGA and LGR procurement requirements?

4.1 We assessed compliance of Glamorgan Spring Bay Council's policies and procedures with the LGA and LGR procurement requirements by determining whether:

- there was a publicly accessible up-to-date Code that complied with the LGA and LGR
- policies and procedures in relation to procurement were compliant with the Code, LGA and LGR
- adequate procedures were established to document, review and report purchases of goods and services where a public tender or quotation process was not used.

Glamorgan Spring Bay Council's Code complied with the LGA and LGR and was publicly accessible

- 4.2 Glamorgan Spring Bay Council's Code complied with the LGA and LGR in all respects. The Code required public tenders for procurements of \$250 000 or more and clearly described processes for open tenders, a multi-stage tender and multiple-use register. In this respect it provided an extra level of detail to the requirements of regulation 28.
- 4.3 The Code also outlined where Glamorgan Spring Bay Council was not required to call for a tender, including the need for the General Manager to report to Glamorgan Spring Bay Council where a tender or quotation process was not used.
- 4.4 Our audit reviewed the May 2016 version of the Code. Following the completion of audit fieldwork, Glamorgan Spring Bay Council reviewed and approved an updated version of the Code.
- 4.5 The Code was publicly accessible on the Glamorgan Spring Bay Council's website and at its offices.

Glamorgan Spring Bay Council was unable to provide us with the evidence we requested for us to assess whether policies and procedures in relation to procurement were compliant with the Code, LGA and LGR or whether adequate procedures were established to document, review and report purchases of goods and services where a public tender or quotation process were not used

- 4.6 Glamorgan Spring Bay Council could not provide the procurement records we sought to assess whether policies and procedures in relation to procurement were compliant with the Code, LGA and LGR or whether adequate procedures were established to document, review and report purchases of goods and services where a public tender or quotation process were not used. This is because Glamorgan Spring Bay Council did not have a centrally maintained document management system. This is a significant failing by Glamorgan Spring Bay Council.

Did Glamorgan Spring Bay Council have an effective approach to procurement that complied with the LGA, LGR and demonstrated good practice?

- 4.7 In determining whether Glamorgan Spring Bay Council had effective approaches to procurement that complied with the LGA, LGR and demonstrated good practice we assessed whether Glamorgan Spring Bay Council:
- complied with its own procurement thresholds
 - reviewed variations to contracts to assess if any changes required further disclosure or additional procurement obligations
 - ensured all procurements gone through an appropriate procurement process
 - had procured multiple purchases from the same supplier that could be construed as splitting procurements
 - established and maintained processes and procedures for receiving, evaluating, awarding and debriefing of tenders
 - complied with annual reporting requirements in relation to public tenders and contracts as specified in the LGR
 - had an appropriate monitoring mechanism to ensure it was complying with legislation and its own policies and procedures.

Glamorgan Spring Bay Council was unable to provide us with evidence to enable us to form an opinion

- 4.8 A review of payments for 2018-19 indicated eight suppliers had each received several payments for the supply of the same or similar goods and services, which in total exceeded the procurement thresholds for tendering. We were unable to establish if they were separate procurements or whether public tenders should have occurred.

However, it is likely such procurements could have provided Glamorgan Spring Bay Council the opportunity to bundle goods and services for tendering or establishing a multi-use register to potentially achieve better value for money.

- 4.9 Glamorgan Spring Bay Council's Code states it will not split a contract into two or more contracts where the primary purpose is to avoid compliance with the requirement to publicly invite tenders. In the case of these eight suppliers we were unable to conclude on whether contract splitting had occurred due to Glamorgan Spring Bay Council's being unable to provide the requested information.
- 4.10 Procurement records we sought were not available for us to assess compliance against any of the other sub-criteria as there was no centrally maintained document management system.

Annual reporting requirements were not complied with

- 4.11 Our examination of accounts paid records for the past three years indicated a number of procurements exceeding the reporting threshold had not been disclosed in Glamorgan Spring Bay Council's annual reports.
- 4.12 The eight suppliers noted previously were not disclosed. As Glamorgan Spring Bay Council was unable to provide us evidence as to whether these were separate procurements, we could not conclude whether the non-disclosure complied with the LGA or LGR.

Did Glamorgan Spring Bay Council ensure staff were well trained in procurement?

- 4.13 In determining whether Glamorgan Spring Bay Council ensured their staff were well trained in procurement we assessed whether:
- staff involved in procurement had the appropriate skills and training in procurement to perform their duties effectively
 - staff were provided with templates and guidance to assist them in the procurement process
 - staff were aware of the need to declare possible or actual conflicts of interest during procurement activities
 - all instances of attempted influence through gifts, benefits or other means were declared or reported as appropriate.

Glamorgan Spring Bay Council was unable to provide us with evidence to enable us to form an opinion

- 4.14 Glamorgan Spring Bay Council was unable to provide any information to enable us to form an opinion for this criteria.

Acronyms and abbreviations

Audit Act	<i>Audit Act 2008</i>
Code	Code for Tenders and Contracts
LGA	<i>Local Government Act 1993</i>
LGAT	Local Government Association of Tasmania
LGR	<i>Local Government (General) Regulations 2015</i>
TAO	Tasmanian Audit Office

Appendix 1: Legislative framework and relevant legislation relating to procurement

The LGA requires councils to maintain a Code relating to tenders and contracts that is consistent with the LGA and LGR. This governs how a council is to procure goods and services including the need to obtain quotes or tenders.

The Code has specific procurement principles ensuring:

- open and effective communication – transparent and open purchasing processes
- value for money – procurement at the most competitive price available, but value for money does not mean buying at the lowest price
- enhancement of the capabilities of the local business industry – engaging local markets
- ethical behaviour and fair dealing – promote procurement practices that are legal, ethical, fair and unbiased.

Key clauses from the LGR and the Code referred to in this Report are outlined below.

Local Government (General) Regulations 2015

Regulation 23 *Public tenders*

- (1) For the purpose of section 333A(1) of the Act, the prescribed amount is \$250 000 (excluding GST).
- (2) A tender is to be publicly invited by one of the following:
 - (a) an open tender under regulation 24;
 - (b) a multiple-use register under regulation 25;
 - (c) a multiple-stage tender under regulation 26.
- (3) A council, through a public tender process, may establish a standing contract in which a single tenderer or multiple tenderers may be contracted for a specified period to provide specified goods or services during that period without the need for a further tender process.
- (4) A council must not split a contract into 2 or more contracts for the primary purpose of avoiding compliance with the requirement to publicly invite tenders.
- (5) A council may extend a contract entered into by tender –
 - (a) as specified in the contract; or
 - (b) if the contract does not specify extensions, by an absolute majority.

Regulation 27 *Non-application of public tender process*

The following situations and contracts are prescribed for the purposes of section 333A(3) of the Act:

- (a) an emergency, if, in the opinion of the general manager, there is insufficient time to invite tenders for the goods or services required in that emergency;
- (b) a contract for goods or services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth;
- (c) a contract for goods or services supplied or provided by another council, a single authority, a joint authority or the Local Government Association of Tasmania;
- (d) a contract for goods or services obtained as a result of a tender process conducted by –
 - (i) another council; or
 - (ii) a single authority or a joint authority; or
 - (iii) the Local Government Association of Tasmania; or
 - (iv) any other local government association in this State or in another State or a Territory; or
 - (v) any organisation, or entity, established by any other local government association in this State or in another State or a Territory;
- (e) a contract for goods or services in respect of which a council is exempted under another Act from the requirement to invite a tender;
- (f) a contract for goods or services that is entered into at public auction;
- (g) a contract for insurance entered into through a broker;
- (h) a contract arising when a council is directed to acquire goods or services due to a claim made under a contract of insurance;
- (i) a contract for goods or services, if the council resolves by absolute majority and states the reasons for the decision, being that a satisfactory result would not be achieved by inviting tenders because of –
 - (i) extenuating circumstances; or
 - (ii) the remoteness of the locality; or
 - (iii) the unavailability of competitive or reliable tenderers;
- (j) a contract of employment with a person as an employee of the council.

Section 3 of the LGA – *Interpretation* states:

absolute majority means –

- (a) if no councillors are suspended more than half of the number of councillors to be elected to a council: or
- (b) if one or more councillors are suspended, more than half of the number of councillors to be elected to a council after subtracting the number of councillors who are suspended.

Regulation 28 Code for tenders and contracts

The code adopted under section 333B of the Act is to –

- (a) promote the following principles:
 - (i) open and effective competition;
 - (ii) value for money;
 - (iii) enhancement of the capabilities of local business and industry;
 - (iv) ethical behaviour and fair dealing; and
- (b) establish and maintain procedures to ensure that all potential suppliers are provided with the same information relating to the requirements of a tender or contract and are given equal opportunity to meet the requirements; and
- (c) establish and maintain procedures to ensure that fair and equal consideration is given to all tenders or quotations received; and
- (d) establish and maintain procedures to deal honestly with, and be equitable in the treatment of, all potential or existing suppliers; and
- (e) establish and maintain procedures to ensure a prompt and courteous response to all reasonable requests for advice and information from potential or existing suppliers; and
- (f) seek to minimise the cost to suppliers of participating in the tendering process; and
- (g) protect commercial-in-confidence information; and
- (h) for contracts valued at under \$250 000 (excluding GST), specify when 3 written quotations are required; and
- (i) establish and maintain procedures for the use of multiple-use registers for contracts valued at under \$250 000 (excluding GST); and
- (j) establish and maintain procedures for reporting by the general manager to the council in relation to the purchase of goods or services in circumstances where a public tender or quotation process is not used; and
- (k) establish and maintain procedures for the review of each tender process to ensure that it is in accordance with these regulations and the code; and
- (l) establish and maintain procedures for the following:
 - (i) amending or extending a tender once it has been released;
 - (ii) opening tenders;
 - (iii) the consideration of tenders that do not fully conform with the tender requirements;
 - (iv) the debriefing of unsuccessful tenderers;
 - (v) handling complaints regarding processes related to the supply of goods or services.

Regulation 29 *Annual reporting requirements in relation to tenders and contracts*

- (1) For the purposes of section 72(1)(e) of the Act, a council is to report the following in its annual report in relation to any contract, for the supply or provision of goods or services valued at or exceeding \$250 000 (excluding GST), that is entered into, or extended under regulation 23(5)(b), in the financial year to which the annual report relates:
 - (a) a description of the contract;
 - (b) the period of the contract;
 - (c) the periods of any options for extending the contract;
 - (d) the value of any tender awarded or, if a tender was not required, the value of the contract (excluding GST);
 - (e) the business name of the successful contractor;
 - (f) the business address of the successful contractor.
- (2) For the purposes of section 72(1)(e) of the Act, a council is to report in its annual report all instances where regulation 27(a) and (i) have been applied, with the following details:
 - (a) a brief description of the reason for not inviting public tenders;
 - (b) a description of the goods or services acquired;
 - (c) the value of the goods or services acquired;
 - (d) the name of the supplier.
- (3) For the purposes of section 72(1)(e) of the Act, a council is to report the following in its annual report in relation to any contract, for the supply or provision of goods or services valued at or exceeding \$100 000 (excluding GST) but less than \$250 000, that is entered into, or extended, in the financial year to which the annual report relates:
 - (a) a description of the contract;
 - (b) the period of the contract;
 - (c) the periods of any options for extending the contract;
 - (d) the value of the contract (excluding GST);
 - (e) the business name of the successful contractor;
 - (f) the business address of the successful contractor.

Appendix 2: Local Government Association of Tasmania Guide: Extract from Code for Tenders and Contracts

5 Procurement Principles

Council will have regard to the following principles when acquiring goods and services:

5.1 Open and Effective Communication

The Council will ensure that the purchasing process is impartial, open and encourages competitive offers.

In practice this means that Council will:

- 5.1.1 use transparent and open purchasing processes so that service providers and the public are able to have confidence in the outcomes
- 5.1.2 adequately test the market through seeking quotations or via tender as appropriate
- 5.1.3 avoid biased specifications
- 5.1.4 treat all service providers consistently and equitably
- 5.1.5 ensure a prompt and courteous response to all reasonable requests for advice and information from service providers

5.2 Value for Money

The Council will ensure that it is buying at the most competitive price available, but value for money does not mean buying at the lowest price.

In practice this means that Council will consider

- 5.2.1 the contribution the good or service makes to achieving Council's strategic plans or policies
- 5.2.2 the value of the acquisition and potential benefits against the costs of that purchase
- 5.2.3 an assessment of risks associated with the purchase including the preferred procurement method
- 5.2.4 how well goods or services meet needs
- 5.2.5 maintenance and running costs over the lifetime of a product
- 5.2.6 disposal value
- 5.2.7 time constraints
- 5.2.8 the impact of the procurement decision on the local economy, such as through industry development and employment creation
- 5.2.9 the impact of the procurement decision on the environment, such as through minimising waste and reducing demand for goods and services which have a direct impact on the environment (such as printing, utilities and travel)

- 5.2.10 the impact of the procurement decision on the society, (social value generated) such as through the elimination of discrimination and the promotion of equal opportunity, training, and other identified social objectives

5.3 Enhancement of the capabilities of the local business industry

The Council will ensure that where local capacity exists it will seek to engage the local market and encourage participation in tender and quotation processes.

In practice this means that Council will:

- 5.3.1 actively seek quotes from local businesses that are able to provide quality goods and or services
- 5.3.2 where local capability exists, ensure that discretionary elements of specifications do not prevent local business from competing
- 5.3.3 not give preferential treatment to local service providers where it cannot be reasonably justified

5.4 Ethical behaviour and fair dealing

The Council will promote procurement practice that is legal, ethical, fair and unbiased

In practice this means that Council will:

- 5.4.1 comply with legal requirements
- 5.4.2 conduct all business in the best interests of the Council
- 5.4.3 be as effective and efficient as possible when sourcing, ordering and paying for goods and services.
- 5.4.4 expect individuals involved in procurement processes to declare and act upon any conflicts of interest that may be seen to influence impartiality
- 5.4.5 ensure that specifications are clear
- 5.4.6 ensure that any Service Provider is not provided with information or clarification that is not provided equally to all service providers
- 5.4.7 maintain confidentiality at all times in dealing with service providers
- 5.4.8 ensure that conditions of contract are not excessively onerous
- 5.4.9 decline gifts or benefits offered by those involved in the procurement process, particularly from service providers

In practice this means that Council expects service providers to

- 5.4.10 ensure that they are well acquainted with Council requirements identified in this Code
- 5.4.11 are familiar with particulars relating to a specific tender and quotation processes including the relevant specifications
- 5.4.12 not submit a tender or quotation unless they have the financial, technical, physical, management resource or other capabilities to fulfil Council's requirements

- 5.4.13 not seek to influence a procurement process by improper means or collude with other service providers
- 5.4.14 declare and act upon any conflicts of interest that may be seen to influence impartiality
- 5.4.15 comply with all applicable legislative, regulatory and statutory requirements, including Acts of the Commonwealth and State, regulations, by laws and proclamations made or issued under such Acts and lawful requirements or directions of public and other authorities
- 5.4.16 not offer gifts or benefits to a Council officer for the discharge of official business

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Audit Mandate and Standards Applied

Mandate

Section 23 of the *Audit Act 2008* states that:

- (1) The Auditor-General may at any time carry out an examination or investigation for one or more of the following purposes:
 - (a) examining the accounting and financial management information systems of the Treasurer, a State entity or a subsidiary of a State entity to determine their effectiveness in achieving or monitoring program results;
 - (b) investigating any matter relating to the accounts of the Treasurer, a State entity or a subsidiary of a State entity;
 - (c) investigating any matter relating to public money or other money, or to public property or other property;
 - (d) examining the compliance of a State entity or a subsidiary of a State entity with written laws or its own internal policies;
 - (e) examining the efficiency, effectiveness and economy of a State entity, a number of State entities, a part of a State entity or a subsidiary of a State entity;
 - (f) examining the efficiency, effectiveness and economy with which a related entity of a State entity performs functions –
 - (i) on behalf of the State entity; or
 - (ii) in partnership or jointly with the State entity; or
 - (iii) as the delegate or agent of the State entity;
 - (g) examining the performance and exercise of the Employer's functions and powers under the *State Service Act 2000*.
- (2) Any examination or investigation carried out by the Auditor-General under subsection (1) is to be carried out in accordance with the powers of this Act

Standards Applied

Section 31 specifies that:

'The Auditor-General is to perform the audits required by this or any other Act in such a manner as the Auditor-General thinks fit having regard to -

- (a) the character and effectiveness of the internal control and internal audit of the relevant State entity or audited subsidiary of a State entity; and
- (b) the Australian Auditing and Assurance Standards.'

The auditing standards referred to are Australian Auditing Standards as issued by the Australian Auditing and Assurance Standards Board.



*Front cover image: The road to Ben Lomond.
Simon Sturzaker, Tourism Tasmania Visual Library*

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