

 <p>Mackay REGIONAL COUNCIL</p>	COUNCIL POLICY	
	Procurement Policy	
	POLICY NO	005
	DEPARTMENT	Organisational Services
PROGRAM	Procurement and Plant	
ENDORSED BY COUNCIL	9 December 2020 Resolution: ORD-2020-340	

1. Background

- (a) Council must prepare and adopt a Procurement Policy pursuant to section 198 of the *Local Government Regulation 2012*.
- (b) A Procurement Policy must include details of the principles, including the Sound Contracting Principles that Mackay Regional Council (MRC) will apply in the financial year for purchasing goods and services.
- (c) This Procurement Policy sets out how MRC will apply the Sound Contracting Principles in the financial year and sets out MRC's procedure for acquiring goods and services.
- (d) This policy aims to use MRC's purchasing power to achieve sustainable procurement outcomes.

2. Reference

- (a) *Local Government Act 2009*, s104(3), Sound Contracting Principles.
- (b) *Local Government Regulation 2012*.
- (c) Mackay Regional Council Delegation of Authority ADEL11 - Financial, Procurement, and Acquittal Delegation.
- (d) Mackay Regional Council Delegation of Authority ADEL24 – Contracts and Expenditure
- (e) Mackay Regional Council Environmental Sustainability Strategy 2017-2022.
- (f) Mackay Regional Council Delegation of Authority ADEL53 – Signing of Contracts.
- (g) Fraud and Corruption Prevention Policy.
- (h) Conflict of Interest Policy.
- (i) Code of Conduct.
- (j) Disciplinary Procedure Policy.

3. Definitions

In this Procurement Policy, the following terms shall have the corresponding meaning:

Act means the *Local Government Act 2009 (Qld)*.

Approved Contractor List means a list of contractors (persons or companies) who Council considers to be appropriately qualified to provide the services – refer section 231 of the Regulation.

Authorised Delegate, of Council, means a MRC officer with the appropriate delegation and permission to make the decision.

CEO means MRC's Chief Executive Officer

Consultancy Services are services which involve the provision of expert opinion or services, through reports, plans, works, reviews or any other medium.

Council shall mean the Mayor and Councillors of Mackay Regional Council.

Council Representative means a person who is a Council Employee holding a requisite delegation from Council

Council Requirement means any requirement imposed by Council from time to time, whether under this Procurement Policy, another Council policy, MRC's standard terms and conditions, MRC's proposed contractual terms or similar.

Human Rights Complaint shall mean a complaint about an alleged contravention of section 58-1 by a public entity in relation to an act or decision of the public entity

Key Strategic Priorities, of Council, means those key strategic priorities set out at section 6.2 of this Procurement Policy.

Large-Sized Contractual Arrangement means a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, \$200,000 or more in a financial year or over the proposed term of the contractual arrangement.

Local Business means a supplier of goods, services or works who maintain a permanent presence within MRC's local government area (i.e. a workshop or office and permanent employees residing in the Council region) (as determined by Council in the event of any dispute).

Local Content means a supplier of goods, services or works who have an office or branch employing local people, resources, produce or similar, within Council's local government area (as determined by Council in the event of any dispute).

Medium-Sized Contractual Arrangement means a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, \$15,000 or more but less than \$200,000 in a financial year or over the proposed term of the contractual arrangement;

MRC shall mean Mackay Regional Council.

Preferred Supplier Arrangement has the same meaning as set out at section 233 of the Regulation.

Pre-Qualified Suppliers has the same meaning as set out at section 232 of the Regulation.

Regional Supplier means supplier of goods, services or works who maintains a permanent presence (as determined by Council in the event of any dispute) within the local government area of the Isaac Regional Council or the Whitsunday Regional Council.

Regulation means the *Local Government Regulation 2012 (Qld)*.

Small-Sized Contractual Arrangement – means a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, less than \$15,000 in a financial year or over the proposed term of the contractual arrangement.

Sound Contracting Principles means those principles set out at section 104(3) of the Act.

Sustainable Procurement means achieving the best value for money by considering associated payback periods and “unlocking” the whole-end-to-end life cycle of goods and services. Sustainable procurement seeks to achieve the following outcomes:

- Minimal environmental impacts
- Avoiding unnecessary consumption
- Improved efficiency

Terms of Business are the conditions applicable to each purchase order issued by Council. Details available on Council's website <http://www.mackay.qld.gov.au/business/suppliers/purchasing>

Valuable Non-Current Asset has same meaning as set out in the Regulation.

4. Purpose & Scope

- (a) This Procurement Policy sets out the MRC's procedure for acquiring goods and services (including works) and sets out how Council will apply the Sound Contracting Principles and comply with its relevant obligations under the Act and Regulation.
- (b) This Procurement Policy also stipulates requirements regarding the disposal of Valuable Non-Current Assets, including land.
- (c) This Procurement Policy applies to MRC officers with financial delegation or responsibility for purchasing goods and services, who must comply with this Procurement Policy. It is the responsibility of these MRC officers to understand the meaning and intent of this Procurement Policy.
- (d) This Procurement Policy ensures that MRC's sustainable procurement practices consider environmental, social and economic impacts throughout the life cycle of goods and services.

- (e) Human Rights have been considered when preparing this Policy.

5. Council to operate under Default Contracting Procedures

Council has not decided to apply the *Strategic Approach* (refer Part 2 Chapter 6 of the Regulation) to MRC's Procurement Activities.

MRC will operate under the *Default Contracting Procedures* (refer Part 3 Chapter 6 of the Regulation) which sets out prescribed requirement for Medium Sized Contractual Arrangements, Large Sized Contractual Arrangements and Valuable Non-Current Asset Contracts.

6. Application of Sound Contracting Principles

6.1 When purchasing any goods or services, MRC officers should apply the Sound Contracting Principles in the manner outlined in this section 6. The Sound Contracting Principles are (and their application is discussed further below):

- (a) Value for money;
- (b) Open and effective competition;
- (c) The development of competitive local business and industry;
- (d) Environmental protection;
- (e) Ethical behaviour and fair dealing.

6.2 MRC officers do not need to give equal consideration to each Sound Contracting Principles (pursuant to section 104(3) of the Act), but each Sound Contracting Principle must be considered and applied before MRC procures any goods or services.

(a) Application of the Value for Money Principle

MRC must harness its purchasing power to achieve the best value for money. The concept of value for money is not restricted to the purchase price alone and may not necessarily favour the lowest price.

When undertaking procurement activities, MRC officers should apply the value for money principle by considering:

- (i) the contribution to the advancement of MRC's Key Strategic Priorities
- (ii) fitness for purpose, quality, services and support; and
- (iii) maintenance and disposal; and
- (iv) internal administration costs; and
- (v) technical compliance issues; and

- (vi) risk exposure; and
- (vii) the value of any associated environmental or sustainable benefits.

(b) Application of the Open and effective competition Principle

Procurement should be open and result in effective competition in the provision of goods and services. MRC officers should apply the principle of open and effective competition by giving fair and equitable consideration to all prospective suppliers.

(c) Application of the development of competitive local business and industry Principle

MRC encourages the development of competitive Local Businesses first and then the development of Regional Suppliers.

Accordingly, MRC officers should apply the principle of developing competitive local business and industry by:

- (i) issuing and receiving quotations from Local Businesses in the first instance for Medium-Sized Contractual Arrangements and smaller purchasing arrangements (as set out in sections 8.2 to 8.4 of this Procurement Policy); and
- (ii) considering the application of criteria in its tender evaluation process which could give preference to Local Businesses, Regional Suppliers or suppliers who undertake to utilise Local Content (as set out in section 8.5 of this Procurement Policy).

(d) Environmental protection

One of MRC's Key Strategic Priorities is the promotion and adoption of Environmental Sustainability. MRC officers should apply the environmental protection principle when undertaking any procurement activity by considering:

- (i) Procurement of environmentally friendly goods and services; and
- (ii) fostering the development of products and processes of low environmental and climate impact; and
- (iii) setting an example to business, industry and the community by promoting the use of climate and environmentally friendly goods and services.

(e) Ethical behaviour and fair dealing

MRC officers involved in procurement are to behave with impartiality, fairness, independence, openness, integrity and professionalism in their discussions and negotiations with suppliers and their representatives.

MRC officers should apply the ethical behaviour and fair dealing principle by giving:

- (i) full disclosure of all relevant information to all responding parties
- (ii) equal response durations and closing times
- (iii) declarations of officers regarding confidentiality and conflicts; (where applicable) and
- (iv) probity plans (where applicable).

(f) Separation of Duties

MRC has completed the implementation of Centre-led Procurement throughout MRC's Programs. This ensures a central group coordinates procurement, ensures governance compliances, provide procurement support, ensures compliance with payment terms, relieves Program administrative burdens and provide internal training.

(g) Conflicts of Interest

MRC requires the perception of a conflict between officer's public duties and their private interests (including interests of family members, friendships, work colleagues) to be identified and referred to the relevant Manager, who is responsible for ensuring a copy of the form is issued to Corporate Governance for registering the document on the Employee's Personnel File and noting it on the Employee Declaration Register.

(h) Order Splitting

MRC prohibits officers from splitting purchase orders to avoid financial procurement thresholds of quotes or in any way attempting to split the full purchase cost across different or multiple requisitions or budget items.

(i) Record Management

MRC requires officers to complete full and accurate records (work diaries, emails, standard forms) of all procurement and contract activities (quotes, evaluations, site inspections) to ensure an open, independent and merits-based decision process is used and recorded in MRC's corporate content management application or contract management system, as required.

(j) Honesty and Probity

MRC requires all officers to act honestly in the public interests when conducting procurement and contracting activities in accordance with the Employee Code of Conduct and The Fraud and Corruption Prevention Policy and relevant procedures.

(k) Committals

MRC officers must provide suppliers with a purchase order prior to any services or goods being undertaken.

(l) Complaints

Any complaints in relation to this service will be assessed and managed in accordance with MRC's Administrative Action Complaints Policy, a copy of which can be found on MRC's website.

Complaints may be made as following:

In writing to

Chief Executive Officer
Mackay Regional Council
PO Box 41
MACKAY QLD 4740

Via Email - complaints@mackay.qld.gov.au

In person at the following Council Client Services Centres:

- MRC Mackay Office – 73 Gordon Street, Mackay
- MRC Sarina Office – 65 Broad Street, Sarina
- MRC Mirani Council Office – 20 Victoria Street, Mirani

(m) Human Rights Complaints

When an individual feels that they are the subject of MRC's failure to act compatibly with human rights, they can make a complaint directly to MRC. These complaints will be assessed against the Human Rights Act 2019.

7. Other Procurement Principles

7.1 As well as applying the Sound Contracting Principles, MRC will aim to ensure that its procurement activities support certain key strategic priorities which are:

- (a) Community and Lifestyle
- (b) Economic Development
- (c) Environmental Sustainability
- (d) Strategic Planning
- (e) Infrastructure Services
- (f) Commercial Services and
- (g) Organisational Excellence and Governance.

7.2 MRC will also aim to ensure that its procurement activities achieve advantageous procurement outcomes by:

- (a) Promoting value for money with probity and accountability

- (b) Advancing MRC's economic, social and environmental policies
- (c) Providing reasonable opportunity for competitive local businesses that comply with relevant legislation to supply to MRC; and
- (d) Promoting compliance with relevant legislation.

8. Policy Statement - Acquiring Goods and Services

8.1 Purchases up to \$50

Purchases by an MRC officer with the appropriate delegated authority up to \$50.00 (exclusive of GST), may be spent out of petty cash, except as defined otherwise by the Program's Manager , in accordance with petty cash procedures.

8.2 Purchases up to \$1,000

- (a) Purchases made up to \$1,000.00 (exclusive of GST) that are not made from petty cash, must be made by placing a written purchase order or by purchasing card in accordance with MRC's Purchasing Cards Administrative Policy.
- (b) Purchases under this section 8.2 must be made by:
 - (i) accessing a Preferred Supplier Arrangement (if permitted under the Regulation); or
 - (ii) accessing inventory; or
 - (iii) accessing a Register of Pre-Qualified Suppliers; or
 - (iv) in the case of services, accessing an Approved Contractor List; or **if none of the above options are available**
 - (v) obtaining at least one quote.
- (c) A quote under section 8.2(b)(v) of this Procurement Policy:
 - (i) must be sought from a Local Business in the first instance; and
 - (ii) may be obtained verbally or in writing.
- (d) Only if a Local Business cannot, in the opinion of an Authorised Delegate of MRC:
 - (i) meet MRC's Requirements;
 - (ii) meet MRC's Requirements at a competitive price;
 - (iii) supply the goods or services requested; or
 - (iv) provide value for money to MRC;

can quotes under section 8.2(b)(v) of this Procurement Policy subsequently be sought and accepted from a supplier other than a Local Business.

- (e) Details and copies of quotes received under section 8.2(b)(v) of this Procurement Policy must be entered into MRC's corporate accounting software.
- (f) Any quotes received under section 8.2(b)(v) of this Procurement Policy must be evaluated in accordance with MRC's evaluation criteria, which will include the application of the Sound Contracting Principles and other procurement principles set out in this Procurement Policy.

8.3 Purchases between \$1,001 - \$14,999

- (a) Purchases made between \$1,001 - \$14,999 (exclusive of GST) must be made by placing a written purchase order or by purchasing card in accordance with MRC's *Purchasing Cards Administrative Policy*.
- (b) Purchases under this section 8.3 must be made by:
 - (i) accessing a Preferred Supplier Arrangement (if permitted under the Regulation); or
 - (ii) accessing inventory; or
 - (iii) accessing a Register of Pre-Qualified Suppliers; or
 - (iv) in the case of services, accessing an Approved Contractor List; or if none of the above options are available or desirable to MRC
 - (v) obtaining at least two quotes.
- (c) Quotes under section 8.3(b)(v) of this Procurement Policy:
 - (i) must be sought from a Local Business in the first instance; and
 - (ii) must be obtained in writing.
- (d) Only if a Local Business cannot, in the opinion of an Authorised Delegate of MRC:
 - (i) meet MRC's Requirements;
 - (ii) meet MRC's Requirements at a competitive price;
 - (iii) supply the goods or services requested; or
 - (iv) provide value for money to MRC;

can quotes under section 8.3(b)(v) of this Procurement Policy subsequently be sought and accepted from a supplier other than a Local Business.

- (e) Details and copies of quotes received under section 8.3(b)(v) of this Procurement Policy must be entered into MRC's corporate accounting software.
- (f) Any quotes received under section 8.3(b)(v) of this Procurement Policy must be evaluated in accordance with MRC's evaluation criteria, which will include the application of the Sound Contracting Principles and other procurement principles set out in this Procurement Policy.
- (g) All purchase orders issued by MRC include our Terms of Business. Consideration needs to be given to the risk associated with the goods or services being procured. Where this risk is not mitigated sufficiently under the Terms of Business, involvement by MRC's Contracts department is required.

8.4 Purchases between \$15,000 - \$200,000

Medium-Sized Contractual Arrangements (contracts worth between \$15,000 and \$200,000 excluding GST, either in a financial year, or over the proposed term of the contract)

- (a) Subject to certain exceptions (including those exceptions listed at sections 8.4(b) below), section 225 of the Regulation requires that Council invites at least 3 written quotes from persons who MRC considers can meet MRC's requirements at competitive prices before entering into a Medium Sized Contractual Arrangement.
- (b) Medium-Sized Contractual Arrangements must be entered into by:
 - (i) accessing a Preferred Supplier Arrangement (if permitted under the Regulation); or
 - (ii) accessing inventory; or
 - (iii) accessing a Register of Pre-Qualified Suppliers;
 - (iv) in the case of services, accessing an Approved Contractor List;
 - (v) way of another exception under the Regulation; or if **none of the above is available or desirable to MRC**
 - (vi) obtaining at least three written quotes from persons who MRC considers can meet MRC's requirements at competitive prices.
- (c) Quotes under section 8.4(b)(vi) of this Procurement Policy must be:
 - (i) sought from Local Businesses in the first instance; and
 - (ii) issued to Local Businesses on a rotating basis as far as possible.
- (d) Only if Local Businesses cannot, in the opinion of an Authorised Delegate of MRC:
 - (i) meet MRC's Requirements;

- (ii) meet MRC's Requirements at a competitive price;
- (iii) supply the goods or services requested; or
- (iv) provide value for money to MRC;

can quotes under section 8.4(b)(b)(vi) of this Procurement Policy subsequently be sought and accepted from suppliers other than Local Businesses.

- (e) Details and copies of quotes received under section 8.4(b)(b)(vi) of this Procurement Policy must be entered into MRC's corporate accounting software.
- (f) Any quotes received under section 8.4(b)(vi) of this Procurement Policy must be evaluated in accordance with MRC's evaluation criteria, which will include the application of the Sound Contracting Principles and other procurement principles set out in this Procurement Policy.
- (g) All purchase orders issued by MRC include MRC's Terms of Business. Consideration needs to be given to the risk associated with the goods or services being procured. Where this risk is not mitigated sufficiently under the Terms of Business, involvement by MRC's Contracts department is required.

8.5 Purchases more than \$200,000

Large-Sized Contractual Arrangements (contracts worth more than \$200,000 excluding GST, either in a financial year or over the proposed term of the contract)

- (a) Subject to certain exceptions (including those exceptions listed at section 8.5(b) below), section 226 of the Regulation requires that MRC first invites written tenders before entering into a Large-Sized Contractual Arrangement, by using the tender process set out Section 228 of the Regulation.
- (b) Large-Sized Contractual Arrangements must be entered into by:
 - (i) accessing a Preferred Supplier Arrangement (if permitted under the Regulation); or
 - (ii) accessing inventory; or
 - (iii) accessing a Register of Pre-Qualified Suppliers;
 - (iv) in the case of services, accessing an Approved Contractor List;
 - (v) way of another exception under the Regulation; or if none of the above is available or desirable to MRC
 - (vi) inviting written tenders in accordance with the tender process set out at section 228 of the Regulation.

- (c) Tenders or quotes received under section 8.3 (c) or 8.4 (c) or 8.5(b)(vi) of this Procurement Policy will be evaluated in a three-stage process by MRC as follows:
- (i) **Stage 1** - Any mandatory criteria imposed by MRC (e.g. compliance with legislative, WH&S and environmental obligations) must be met by a tenderer in order for their tender to progress to stage 2 of the evaluation.
 - (ii) **Stage 2** - Any scoring criteria imposed by MRC will be applied at this stage.
 - (iii) **Stage 3** - At this stage, MRC will apply the Sound Contracting Principles and consider any other procurement principles set out in this Procurement Policy and any discretionary criteria set out in this section (f), in order to finally determine the successful tenderer.
- (d) If, after the evaluation of all conforming tenders received by MRC:
- (i) the submission received from the Local Business or Regional Supplier satisfies MRC's qualitative evaluation criteria; and
 - (ii) the best submitted price received by MRC is from a supplier other than a Local Business or Regional Supplier; and
 - (iii) a Local Business or Regional Supplier has submitted a price to MRC which is within the parameters of the Local Preference Matrix below;

then considering the combined qualitative and price score, MRC may (but is not obliged to) award the contract to the Local Business or Regional Supplier.¹

Local Preference Matrix

Best Submitted Price (\$)	Maximum * (amount above the Best Submitted Price (\$))	
	Local Business	Regional Supplier
200,000 - 500,000	75,000	37,500
500,001 - 1,000,000	100,000	50,000
1,000,001 - 3,000,000	240,000	120,000
≥ 3,000,001	250,000	125,000

¹ with preference being given to a Local Business in the event that both a Local Business and Regional Supplier are within the relevant ranges.

** The above listed local preference amounts will include a sliding scale amount up to the listed maximum amount for each category.*

- (e) When evaluating tender responses, MRC may (but is not obliged to), find that a tenderer better achieves the Sound Contracting Principle of developing competitive local business and industry, if that tenderer provides a satisfactory assurance to MRC that it will use at least 75% Local Content to perform the relevant contract.
- (f) To avoid doubt and without limitation, if an Authorised Delegate of MRC considers that a Local Business or Regional Supplier:
 - (i) cannot supply the goods or services subject of the tender;
 - (ii) cannot meet all of MRC's Requirements relevant to the tender;
 - (iii) has submitted a tender which does not provide value for money to MRC;

then MRC is under no obligation to award the relevant tender to a Local Business or Regional Supplier.

- (g) Notwithstanding anything in this section 8.5, MRC may invite expressions of interest before inviting tenders under section 228 of the Regulation if:
 - (i) MRC decides, by resolution, that it would be in the public interest to invite expressions of interest before inviting tenders; and
 - (ii) records its reasons for making the resolution in the minutes of the meeting at which the resolution was made.
- (h) Invitations for expressions of interest must be made by:
 - (i) advertising in a newspaper that circulates generally in the Mackay region; and
 - (i) allowing written expressions of interest to be given to MRC for at least 21 days after the advertisement is published.
 - (ii) after receipt of expressions of interest MRC may:
 - (j) prepare a shortlist from the persons who respond to the invitation for expressions of interest; and
 - (ii)(i) invite written tenders from those persons.

8.6 Procurement of Consultancy Services

- (a) Consultancy Services require additional rigor in the procurement and retention of their services. Due to the variability in the intended use of consultant's deliverables and associated risk, the procurement threshold amounts set out in section 8 of this Procurement Policy are not sufficient to adequately ensure the value for money principle is satisfied.

- (b) Therefore, key criteria must be considered prior to the procurement of consultancy services. These include but are not limited to:
 - (i) Assessment of MRC's internal resources available to perform the service;
 - (ii) Form of contract (Terms and Conditions);
 - (iii) Documented deliverables or outcomes of consultancy services which are linked to payment; and
 - (iv) Budgetary approval.

8.7 Exceptions for Artspace, Artwork Consignments, MECC and Barristers

It is acknowledged that the nature of the community services being provided by both MRC's Artspace and MECC programs does not easily fit within MRC's procurement policy.

In order to adhere to policy requirements, the following clarifications are made.

8.7.1 Artspace Artwork and Exhibitions

MRC is currently drafting a Collection Development Plan and Exhibition Policy which shall outline the type of artworks required to complement existing works. Further to this Plan, MRC also adheres to the Art Collection Policy which states the following:

"The artworks in the Art Collection will be of the highest affordable quality and consist of professional work displaying excellence in that medium. Such an Art Collection will stimulate and inspire the community and encourage it to aspire to greater creative accomplishments.

New acquisitions will consolidate the existing Art Collection, its themes and media. New additions should strengthen long established collecting areas, with particular focus on the nationally significant artists book collection (see section 6.5), but also works on paper and ceramics, as well as work that will develop new collection focus areas such as works by Aboriginal and Torres Strait Islanders and Australian South Sea Islanders."

Due to the uniqueness of procuring artworks and curating in house or engaging touring exhibitions, the Artspace Gallery Director will be required to present to Council, for Resolution, at the commencement of each financial year (following budget approval) a confidential report detailing the exhibitions recommended for the year. The report will further detail the available funds allocated for the purchase of artwork for the financial year. Following the receipt of this Resolution, the requirement for any quotation process for these items, in accordance with the limits noted in this Procurement Policy, will be negated. Consideration in relation to engagement of artists or touring exhibitions or procurement of artworks will then be

in accordance with the Collection Development Plan, the Art Collection Policy and the Exhibition Policy.

8.7.2 Mackay Entertainment Convention Centre (MECC)

Due to the unique nature of engaging performers, pursuant to the Resolution of this Procurement Policy, Council delegates approval for relevant engagement to the CEO.

The Manager MECC will be required to present to the CEO at the commencement of each financial year (following budget approval) a confidential report detailing the performers recommended to commence negotiations with, for approval. Following receipt of this approval, the requirement for any quotation process relevant to engaging these performers, in accordance with the limits noted in this Procurement Policy, will be negated.

8.7.3 Mackay Entertainment Convention Centre (MECC) catering

Due to the unique nature in relation to procurement requirements when undertaking catering services from the MECC, quotes or tenders for food and alcohol purchases will only be required if the anticipated order total is within the limits of a medium or large sized contractual arrangement, until such time as Procurement and Plant complete a tender process identifying pre-approved suppliers.

8.7.4 MRC's Legal Counsel's use of Barristers

MRC have an established in-house legal team. At times, it may be necessary to engage the services of a Barrister. Barristers are primarily retained to appear in Court, and to assist with the preparation of legal proceedings and to mediate to endeavor to resolved legal proceedings without recourse to a contested hearing.

As barristers generally cannot accept legal briefs directly from clients, a barrister will:

1. not be registered on Local Buy;
2. be unable to submit an expression of interest/tender for a Council panel of pre-qualified suppliers/approved contractors;
3. be unable to tender/quote for Council service contracts.

This makes it difficult for Council's in-house legal unit to retain barristers beyond the value of \$15,000, being the threshold for medium sized contractual arrangements.

It is impractical and disadvantageous for Council to invite quotes or tenders for this legal work due to the confidential nature of the legal advice sought from barristers and specialised nature of legal advice provided by barristers to Council.

The Senior Legal Counsel, in consultation with the CEO, will have the ability to engage a Barrister as required without undertaking a quote or tender process.

8.8 Contractual Arrangements without quotations

Division 3 (sections 230-235) of the Regulation allows MRC to enter into contracts without first inviting quotes, for Medium and Large Sized Contractual Arrangements, in accordance to one of the following exceptions, summarised as follows.

- (a) *Exception if quote or tender consideration plan prepared*
 - (i) MRC may enter into a Medium or Large Sized Contractual Arrangements without first inviting written quotes or inviting tenders if MRC resolves to prepare a quote or tender consideration plan and prepares and adopts the plan in accordance with section 230(2) of the Regulations.
- (b) *Exception for contractor on Approved Contractor List*
 - (i) MRC may enter into a contract for a Medium or Large Sized Contractual Arrangement without first seeking written quotes or inviting tenders **for services only**, if the contract is made with a person who is on an Approved Contractor List.
 - (ii) MRC, must appoint persons to an Approved Contractor List by inviting expressions of interest in the manner stipulated in clause (f) of this Procurement Policy and in accordance with the Sound Contracting Principles.
- (c) *Exception for Register of Pre-Qualified Suppliers*
 - (i) MRC may enter into a contract for a Medium or Large Sized Contractual Arrangement without first seeking written quotes or inviting tenders **for goods and services**, if the contract is entered into with a supplier from a Register of Pre-Qualified Suppliers.
 - (ii) Prior to the formation of a Register of Pre-Qualified Suppliers MRC must establish that:
 - The preparation and evaluation of invitations every time that the goods or services are needed would be costly; and
 - The capability and financial capacity of the supplier of the goods and services is critical; or
 - The supply of the goods and services involves significant security considerations; or
 - A precondition of an offer to contract for the goods or services is compliance with particular standards or conditions set by the local government; or
 - The ability of local business to supply the goods or services needs to be discovered or developed.
- (d) *Exception for Preferred Supplier Arrangement*

- (i) MRC may enter into a contract for a Medium or Large Sized Contractual Arrangement without first seeking written quotes or inviting tenders for goods and services, if the contract is entered into with a preferred supplier under a Preferred Supplier Arrangement.
- (ii) Prior to the formation of a Preferred Supplier Arrangement for goods and services MRC must establish that it:
 - needs the goods or services—
 - in large volumes; or
 - frequently; and
 - is able to obtain better value for money by accumulating the demand for the goods or services; and
 - is able to describe the goods or services in terms that would be well understood in the relevant industry.
- (iii) To enter into a Preferred Supplier Arrangement MRC must:
 - Invite tenders as described in section (f) of this Procurement Policy; and
 - Describe the terms of the preferred supplier arrangement; and
 - Must give regard to the Sound Contracting Principles when selecting persons; and
 - Ensure the terms allow for termination for the poor performance of the supplier; and
 - Enter into the arrangement for a term greater than two years only if MRC is satisfied that it will get better value for doing so.

(e) *Exception for LGA arrangement*

- (i) MRC may enter into a contract for a Medium or Large- Sized Contractual Arrangement without first seeking written quotes or inviting tenders for goods and services, if the contract is entered into under a LGA arrangement. However, to demonstrate value for money outcomes, it is strongly recommended that a minimum of two quotes are sought.
- (ii) An **LGA arrangement** is an arrangement that—
 - has been entered into by—
 - LGAQ Ltd.; or
 - a company (the **associated company**) registered under the Corporations Act, if LGAQ Ltd. is its only shareholder; and

- if LGAQ Ltd. or the associated company were a local government, would be either—
 - a contract with an independent supplier from a register of pre-qualified suppliers established under section 232 by LGAQ Ltd. or the associated company; or
 - a preferred supplier arrangement entered into with an independent supplier under section 233.
- (iii) An **independent supplier** is an entity other than a subsidiary (a **relevant subsidiary**) of LGAQ Ltd. or the associated company under the Corporations Act.
- (iv) Despite subsection (2)(b), an **LGA arrangement** may include a contract with a relevant subsidiary from a register of pre-qualified suppliers or a preferred supplier arrangement with a relevant subsidiary if the arrangement is approved by the Minister.
- (v) For deciding whether to approve an LGA arrangement under subsection (iv), the Minister—
 - must have regard to the sound contracting principles; and
 - may ask LGAQ Ltd. or the associated company to give the Minister information or documents relevant to the arrangement.
- (f) *Other Exceptions*

MRC may enter into a contract for a Medium or Large-Sized Contractual Arrangement without first seeking written quotes or inviting tenders if:

- (i) Council resolves that it is satisfied that there is only one supplier reasonably available; or
- (ii) Council resolves that, because of the specialized or confidential nature of the services that are sought, it would be impractical or disadvantageous for MRC to invite quotes or tenders; or
- (iii) A genuine emergency exists; or
- (iv) The contract is for the purchase of goods and is made by auction; or
- (v) The contract is for the purchase of second-hand goods; or
- (vi) The contract is made with, or under an arrangement with, a government agency.

8.9 Valuable non-current asset contract – tenders or auction needed first (Disposals)

Council cannot enter into a valuable non-current asset contract unless it first:

- (i) Invites written tenders for the contract in accordance with the tender process set out section 228 of the Regulation; or
- (ii) Offers the non-current asset for sale by auction.

8.10 Exceptions for valuable non-current asset contracts

1. MRC may dispose of valuable non-current assets other than by tender or auction if:

- a) The valuable non-current asset:
 - i. Was previously offered for sale by tender or auction and was not sold; and
 - ii. Is sold for more than the highest tender or auction bid that was received; or
- b) The valuable non-current asset is disposed of to:
 - i. A government agency; or
 - ii. A community organisation; or
- c) For the disposal of land or an interest in land -
 - i. The land will not be rateable land after the disposal; or
 - ii. The land is disposed of to a person whose restored enjoyment of the land is consistent with Aboriginal tradition or Island custom; or
 - iii. the disposal is for the purpose of renewing the lease of land to the existing tenant of the land; or
 - iv. the land is disposed of to a person who owns adjoining land if -
 - A. the land is not suitable to be offered for disposal by tender or auction for a particular reason, including, for example, the size of the land or the existence of particular infrastructure on the land; and
 - B. there is not another person who owns other adjoining land who wishes to acquire the land; and
 - C. it is in the public interest to dispose of the land without a tender or auction; and
 - D. the disposal is otherwise in accordance with sound contracting principles; or

- v. all or some of the consideration for the disposal is consideration other than money, for example, other land given in exchange for the disposal, if—
 - A. it is in the public interest to dispose of the land without a tender or auction; and
 - B. the disposal is otherwise in accordance with sound contracting principles; or
 - vi. the disposal is for the purpose of a lease for a telecommunication tower; or
 - vii. the disposal is of an interest in land that is used as an airport or for related purposes if—
 - A. it is in the public interest to dispose of the interest in land without a tender or auction; and
 - B. the disposal is otherwise in accordance with sound contracting principles; or
 - d) for the disposal of a valuable non-current asset, other than land, by way of a trade-in for the supply of goods or services to the local government—
 - i. the supply is, or is to be, made under this part; and
 - ii. the disposal is, or is to be, part of the contract for the supply; or
 - e) for the disposal of a valuable non-current asset by the grant of a lease— the grant of the lease has been previously offered by tender or auction, but a lease has not been entered into; or
 - f) the Minister exempts the local government from complying with section 227.
2. An exception mentioned in subsection (1)(a) to (e) applies to a local government disposing of a valuable non-current asset only if, before the disposal, the local government has decided, by resolution, that the exception may apply to the local government on the disposal of a valuable non-current asset other than by tender or auction.
 3. A local government may only dispose of land or an interest in land under this section if the consideration for the disposal would be equal to, or more than, the market value of the land or the interest in land, including the market value of any improvements on the land.
 4. However, subsection (3) does not apply if the land or interest in land is disposed of under subsection (1)(b), (1)(c)(ii) or (1)(f).
 5. For subsection (3), a written report about the market value of land or an interest in land from a valuer registered under the Valuers Registration Act 1992 who is not an employee of the local government is evidence of the market value of the land or the interest in land.

6. An exemption under subsection (1)(f) may be given subject to conditions.

8.11 Additional Procurement Considerations

MRC's procurement decisions should also encompass the consideration of goods and services which have a lower impact on the environment, climate change and human health, rather than that of other competing goods and services, and which are ethically and socially responsible in value for money considerations.

9. **Delegations**

- 9.1 The Chief Executive Officer implements MRC's policies and decisions e.g. spending in accordance with the adopted budget.

Other officers may only incur expenditure on behalf of MRC if:

- The position that the officer holds has been granted the financial and/or contractual delegation by the Chief Executive Officer and this delegation has been recorded in the Delegation of Authority No ADEL11, ADEL24 and ADEL53; and
- The expenditure is provided for in Council's budget; and
- The officer has received the relevant training in MRC's procurement system and procedures; and
- The officer is employed on a permanent or temporary basis, or where the officer is employed on a casual basis, the Director Organisational Services has provided approval for that employee to use the delegations granted to the position, based on a business need

For the purposes of clarity, volunteers, contractors and consultants cannot have financial delegation to incur expenses on behalf of Council.

By signing or approving a requisition/purchase order, all officers are confirming that they have taken full notice of this policy and will comply with all of the requirements of this policy. The Delegation Authority is available on the MRC's intranet.

9.2 Variations

For the purpose of this policy, variations refer solely to a financial deviation from the original contract value. The contract can be a MRC purchase order or agreement signed by a delegated MRC officer. Other variations such as non-financial scope changes, extension of time etc are to be managed by delegated MRC officers as per contractual conditions.

Variation procedures are as follows:

- Each variation can only be approved by the project officer up to their authorised financial delegation then by the relevant Manager and where necessary Director, as per financial delegation;
- Where the sum of all variations to a contractual arrangement exceed the authorise financial delegation of an MRC officer then all future variations can only be approved by an MRC officer with a level of delegation sufficient to cover the cumulative value of variations;
- All variations are to be approved in writing and recorded within MRC's contract management and document management system; and
- Where the original purchase order raised was in accordance with MRC's Terms of Business, the variation requires an additional line item on the original purchase order stating the scope and cost; or
- Where the variation relates to a major contract and is being managed by MRC's contracts department, one continual variation order will be raised in addition to the originally approved Contract Sum.

10. Review of Policy

This policy will be reviewed when any of the following occur:

1. The related documents are amended or replaced;
2. Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed in accordance with Section 198 of the Regulation, for each financial year.

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	Review of Policy		Council	03.12.14
2	Review of Policy		Council	24.06.15
3	Review of Policy	Amendments to Policy	Council	25.10.17
4	Review of Policy	Amendments to Policy	Council	27.03.19
5	Review of Policy	Annual Review	Council	14.08.19
6	Review of Policy	Amendments to Policy	Council	9.12.20