

GUIDELINE

FOR THE PROCUREMENT OF GOODS & SERVICES



1. Purpose

The purpose of this Guideline is to encourage the highest standard of procurement practice by Clubs and suppliers to Clubs, particularly for major procurements. It should be noted, however, that proper processes should be applied to all goods and services procurement, regardless of size.

2. Application

These Guidelines apply from 1 July 2005.

3. Definitions

'**Contract**' means a legally binding agreement involving mutual obligations.

'**Fairness**' means being just, equitable, reasonable and even-handed.

'**Major procurements**' means procurements of goods and services having a value in excess of \$10,000.

'**Tender**' means a written price, bid, quotation and consultant proposal for the supply of goods or services.

'**Tenderer**' means any party submitting tenders.

'**Value for money**' means the balance between the price of goods or services and other factors relevant to quality and meeting specific needs of Clubs, for example: experience, reliability, timeliness and service.

4. Background

Among the most important decisions Clubs make are those relating to the provision of goods and services.

Contracts are typically awarded for the supply of a wide array of goods from food and beverage to gaming and office equipment. Services ranging from professional (accounting, legal, etc) to cleaning,

catering and maintenance are also commonly outsourced.

Boards of Directors and Management have a responsibility to ensure that purchases of goods and services are undertaken in an ethical manner.

5. Guiding Principles

The Guideline is based on the following principles:

- a) all aspects of the procurement process should be conducted with honesty and fairness at all levels of the industry;
- b) Clubs and suppliers should conform to all legal obligations;
- c) parties should not seek or submit tenders without a firm intention to proceed;
- d) parties should not engage in any practice that gives one party an improper advantage over another;
- e) conditions of procurement should be the same for each tenderer on any particular project;
- f) Clubs should clearly specify their requirements in the tender documents and indicate criteria for evaluation;
- g) evaluation of tenders should be based on the conditions of procurement and selection criteria defined in the tender documents;
- h) the confidentiality of all information provided in the course of procurement should be preserved;
- i) conflicts of interest should be avoided, and any party with a conflict of interest should declare that interest as soon as the conflict is known to that party; and
- j) inducements offered by suppliers relating to the purchase of goods or services should not be accepted¹.



¹ This provision seeks to discourage the practice by suppliers of offering inducements in the course of tendering for procurement contracts. It is not intended to exclude corporate hospitality such as golf days or client dinners. However, gifts and entertainment as defined in Section 41F of the Registered Clubs Act 1976 need to be dealt with in accordance with the Act.



6. Procurement Methods

Clubs should use the following tendering processes when selecting a supplier of goods or services valued at \$10,000 or greater:

Invited tenders

There are four types of invited tender:

- a) Open - Clubs invite tenders by public advertisement without restriction on the number of tenders received. Tenderers are required to demonstrate they have the right product and the necessary skills, resources, management practices and financial capacity to meet Club requirements.
- b) Selective - Clubs with a continuous program of works, select a limited number of tenderers, from a register of approved tenderers.
- c) Expressions of interest - Clubs invite expressions of interest for specific projects or specific types of projects. Applicants are evaluated against published selection criteria and a number of those who best meet the required criteria are invited to tender.
- d) Pre-qualified - Tenders are invited from a register of approved tenderers who are known to have the ability to undertake a specialist project of the type proposed.

Negotiated tenders

Alternatively, Clubs may negotiate with a single supplier to achieve a desired outcome provided that:

- a) non-price selection criteria and evaluation are formally documented and accepted by the Club's Board of Directors; and
- b) an independent qualified expert on costs such as a quantity surveyor (for capital works projects) reviews the fees, charges and costs quoted to be reasonable for the goods, services or works offered.

Negotiations should deal fairly with all tenderers in a manner which reflects the core principles of this Guideline.

In some circumstances the Club may form the opinion that the lowest tendered price does not conform to the needs of the Club. An example may be the capacity of the tenderer to provide the necessary services within time, cost and ability. In that circumstance, the next lowest price may be used, providing it conforms to the needs of the Club and the reasons for choosing it are documented.

7. Controlled Contracts under the Registered Clubs Act

A 'Controlled Contract'² is any contract with a director or top executive or a company in which a director or top executive has a pecuniary interest; or any contract with the club for the provision of professional advice (other than legal advice or advice provided by a registered liquidator) relating to any of the following matters:

- significant changes to the management and structure of the Club or the governance of the Club;
- significant changes to the financial management of the Club;
- the disposal of real property owned by the Club;
- or
- the amalgamation of the Club with another Club.

Should procurement of goods or services involve the issuing of a controlled contract then:

- a) the contract is of no effect unless it has been approved by the Board of Directors;
- b) the other parties to the contract should not be employed or otherwise engaged by the Club to carry out functions relating to the governance of the Club or the financial management of the Club; and
- c) the other parties to the contract should not receive from the Club any real property disposed of by the Club as a result of the advice provided under the contract.

Within 14 days of entering into a controlled contract the Club should send a copy of that contract to the Director of Liquor & Gaming. This presupposes that all controlled contracts are in writing. It is therefore strongly recommended that any contract that might be a controlled contract is in writing.

8. Preparation of Tenders

Tender documents

The tender documents should:

- a) clearly define the contractual obligations of the parties;
- b) provide full details of all work covered by the tender;
- c) draw attention to any special conditions or obligations under the contract which depart from the Club's normal practice;
- d) designate any supporting information required from tenderers;

² as per the Section 410 of Registered Clubs Act 1976.



- e) nominate a person for the provision of additional information;
- f) provide positive encouragement to tenderers, allowing them the option, in addition to submitting a conforming tender, to show how an alternative might offer better value for money; and
- g) identify the selection criteria on which the assessment of tenders will be based.

Selection criteria

Selection criteria should include but may not be limited to:

- a) conformity of goods or services to Club requirements;
- b) value for money;
- c) quality assurance;
- d) price compared with estimated cost;
- e) technical, management, physical, environmental management and financial resources;
- f) current commitments;
- g) innovation;
- h) contractor's previous performance; and
- i) industrial relations and Occupational Health and Safety record.

Selection criteria should be clearly advertised in the tender documents. If criteria have not been included in the tender documents, the criteria should be determined prior to evaluation of tenders to ensure an objective and rational basis for the assessment. Weighting of selection criteria should be decided prior to the closing of tenders but should not be disclosed to tenderers.

9. Procedures for Invited Tenders

Advertisement of tenders

Where tenders are called by public advertisement, Clubs should provide equal opportunity to all qualified tenderers.

Tenders should be advertised so as to attract suitable and competitive bidding and the advertisements should include as a minimum:

- a) adequate description of the goods or services required;
- b) advice from where tender documents may be obtained and particulars of the contact officer;
- c) precise details of where and when tenders will close;

- d) price of purchasing the tender documents, if applicable; and
- e) prominent notification of the need for awareness of the ClubsNSW *Code of Practice and Best Practice Guidelines*.

In framing the advertisement, Clubs should allow a reasonable time for tenderers to make site visits and undertake any other work necessary to allow them to respond fully. Clubs should make the site reasonably available for inspection by tenderers.

Communication with tenderers

Any information given to a particular tenderer should also be given promptly to all other tenderers.

Clubs should nominate a person with knowledge of the work to respond to all enquiries from tenderers. All such enquiries should be recorded, noting time and date of receipt and the issue discussed. Where an enquiry reveals a significant error, including ambiguities or discrepancies, information provided should be promptly conveyed in writing to all tenderers. Where the tender documents require a pre-tender conference, such conferences should be minuted and the minutes should be forwarded to all tenderers, and become a part of the tender documents.

Amendments to tender documents

Where it becomes necessary to amend tender documents, the amendments should be advised as an addendum to all tenderers in sufficient time for all tenderers to properly and fully consider the addendum before tenders close.

Each addendum should state clearly that it is meant to be incorporated in the tender documents. Tenderers should confirm in their tenders that allowance has been made for each addendum.

Receipt of tenders

All necessary arrangements should be made to safeguard the security and confidentiality of all tenders.

Tender documents should specify the method and time for lodgement of tenders. Public acknowledgment of those tenderers submitting a tender should be made.



Late tenders should not be accepted, except:

- a) when it is clear that the cause of the lateness was beyond the tenderers' control; and
- b) when there is no possibility the integrity of the procurement process has been compromised.

Where a late tender is received, the time and date of receipt shall be noted on the document and endorsed by the recipient.

10. Evaluation of tenders

Tenders should be assessed by people with relevant skills and knowledge and who are free of any conflict of interest that might undermine the objectivity of the assessment. Tenders should be assessed in a consistent fashion against the selection criteria contained in the tender documents.

Any tender which does not comply with the tender documents should be rejected. Where a Club rejects a tender, the reasons for such action should be clearly documented by the Club.

Should Clubs seek a revised tender, they should specify the conditions under which revised proposals are to be submitted. Where a tenderer offers an alternative, a comparable price for the alternative should not be obtained from other tenderers nor should the detailed alternative be used as the basis for the recall of tenders.

Should it be decided not to accept any tender and to recall tenders, the original tenderers should be advised of the reasons for recalling. This should not prevent Clubs from adding other tenderers to the tender list.

11. Negotiations

Should none of the tenders be acceptable, negotiations may be conducted, preferably in the first instance with the least unacceptable with the aim of achieving a conforming tender.

Unless time constraints prevent it, Clubs should first exhaust negotiations with the preferred tenderer(s), before negotiating with subsequent tenderers.

Clubs should not in post tender negotiation unfairly seek to trade off different tenderers' prices against others in an attempt to seek lower prices. This practice is sometimes known as 'bid shopping' and is unacceptable.

Written records of all negotiations should be maintained by the Club.

12. Outcomes of tenders

Clubs may advise the name of the successful tenderer and the awarded contract sum.

No information should be released in relation to unsuccessful tenders. Unsuccessful tenderers for major procurements should be advised (in writing) that their tenders have been unsuccessful.

For major procurements, the option of providing a debriefing for unsuccessful tenderers, as to how their tender performed against the selection criteria, may be pursued with the objective of enhancing future performance.

13. Fair dealing

Negotiations

In any tender-related negotiations or evaluation, the Clubs should deal fairly with all tenderers in a manner that reflects the core principles of this Guideline. Clubs should not in any way seek to trade off different tenderers' prices against others in an attempt to seek lower prices.

Confidentiality

Confidentiality of information, particularly intellectual property, should be preserved throughout the tender process. This means that information provided by a tenderer relating to a tender should not be divulged to another tenderer, at any stage during the process, or after it has been concluded.

14. Disclosure of Interest in Contracts

Consistent with the requirements of section 41C of the Registered Clubs Act, a director of a Club who has a material personal interest in a Club procurement should as soon as practicable declare the nature of the interest at a meeting of the Board of Directors.

Once a declaration has been made, notice of that declaration should be placed on the club notice board within 48 hours and should remain so displayed for 14 days. As per section 411 of the Registered Clubs Act, a copy of the particulars as displayed should also be sent to the Liquor Administration Board within one month of the annual general meeting of the club.