



10 October 2025

Council Governance Team
Office of Local Government
NSW Department of Planning, Housing and Infrastructure

By email: olg@olg.nsw.gov.au

Attn: Council Governance Team

Consultation on the Draft Procurement Guidelines for NSW Local Government

Thank you for the opportunity to provide feedback on the draft Procurement Guidelines for NSW Local Government.

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of 12 councils spanning Sydney's southern suburbs, eastern suburbs, CBD, and inner west and covering a third of the Greater Sydney's population, over 1.8 million people. SSROC provides a forum through which our member councils can interact, exchange ideas and work collaboratively to solve regional issues and contribute to the future sustainability of the region. We advocate on behalf of our region for major issues to be addressed by all levels of government.

One of SSROC's main functions is the procurement of goods and services for our member councils and, where doing so will add value for our members, for additional, non-member councils. SSROC procurement aggregates goods and services across the region, particularly for complex and specialised procurements. We aim to deliver sustainable, innovative procurement that creates economic, environmental and social benefits, as well as financial savings. We are committed to continuous improvement and delivering strategic sustainable procurement outcomes.

We always adhere to the requirements of the Local Government Act 1993 and related regulations. The procurement guideline is potentially a valuable resource for us and for councils.

SSROC nominates our Strategic Procurement and Contracts Manager, Cathy Dizon, to participate in the OLG's working group in finalising the Guidelines and any supporting materials. Cathy is an experienced local government procurement specialist, with experience in a number of NSW Councils as well as with SSROC.

1. General Comments

SSROC welcomes the draft Guidelines, which are generally improved and updated for councils' procurement practices today. We note that many of the points in SSROC's previous submission in 2023 have been considered.

The emphasis on best practice principles, ensuring that the Guidelines are flexible and adaptable rather than stipulating rigid process, is well taken. This shift in focus from prescription to best practice principles, probity and transparency will encourage councils to act ethically and diligently

achieving innovation and value for money. This approach would indeed empower councils to exercise sound judgment while maintaining probity and good governance. Referring the Guidelines' reader to the Code of Conduct in the context of procurement is helpful.

As stated in SSROC's 2023 submission, the new Guideline must not be too prescriptive to avoid duplication of and possible conflict with councils' own procurement policies and documentation. Since the procurement process is regulated, the guideline should assist Councils in managing elements that are not necessarily entirely clear, such as purchases below the tender threshold, by reinforcing the importance of probity and internal audits. It is helpful that the draft Guideline now covers these issues.

2. Strategic Procurement

To drive greater value and efficiency across council operations, it is imperative that we shift our procurement mindset from a predominantly transactional approach to a more strategic procurement model. Currently, a significant portion of council's procurement activity is consumed by minor and transactional tasks, which not only dilute our capacity but also hinder our ability to deliver long-term value. Strategic procurement, by contrast, focuses on proactive planning, supplier relationship management, and aligning procurement with broader organisational and regional goals.

This shift enables councils to consolidate spend across categories, negotiate better contract terms, and reduce supplier duplication. For example, by strategically sourcing common-use goods and services, such as cleaning, maintenance, or pest control, councils can leverage volume discounts (e.g. joint procurement), standardise service levels, and reduce administrative overheads. Similarly, implementing category management for construction, waste processing or consultancy services can lead to improved supplier performance, clearer accountability, and reduced risk exposure.

By streamlining transactional processes and investing in strategic procurement capabilities, councils can unlock substantial efficiencies, reduce duplication, and potentially save millions in operational costs. This transformation is not just about doing procurement differently, but about better procurement.

3. Guideline Review

There is no mention of the Guideline of any review period. Periodic review will be important to revisit its efficacy, continuing relevance and utility. SSROC suggests initial review 2 years after the publication of the revised Guideline, and every 5 years thereafter.

4. Council Business Papers – Confidentiality

Most councils' business papers include thorough reports that discuss the merits and relative worth of the tenderers and their submissions. Such detailed discussion usually contains tenderers' commercial-in-confidence information in relation to how tenders were assessed. It would be useful to mention or guide councils on how to handle such sensitive information.

5. Best and Final Offers and Negotiation

There is a widespread perception in Local Government that negotiation and Best and Final Offer (BAFO) processes are not acceptable. Councils understand the necessity to avoid giving the impression of beating a tenderer down on price, or appearing to trade-off one tenderer's prices against those of other tenderers' in order to obtain lower prices while striving to achieve the best value for money.

Guidance on negotiation and BAFO principles would be useful. This should cover how a council can efficiently and ethically conduct a BAFO process prior to any decision or resolution being made. To achieve best value councils need to be flexible during the BAFO stage, which is particularly sensitive to volatile contracts, such as utility contracts. Procurement in Local Government should become more strategic and tactical applying best practice in its process to withstand scrutiny and achieve value for money.

6. Model code of Conduct

Referring the Guidelines' reader to the Code of Conduct for acceptable standards of behaviour reinforces the importance of the Code of Conduct and its relevance in the context of procurement.

7. Legislative Context

The section on legislative context is useful. It could also note that at the same time as adhering to these legislated requirements, procurement teams need to take account of their own council's procurement policies and procedures.

8. Wider Strategic Context

The Guidelines should encourage councils to consider all Integrated Planning and Reporting (IP&R) documents, such as the Community Strategic Plan, Delivery Program, and Operational Plan, alongside broader community outcomes. This should be done with an understanding of the funding and asset management limitations outlined in the Resourcing Strategy.

SSROC welcomes the recognition of procurement as a tool to deliver broader societal benefits and improved social outcomes. This section should also highlight the potential for procurement to drive measurable environmental benefits, particularly through the adoption of sustainability and circular economy principles.

9. Best Practice Procurement

This section of the Guidelines could be expanded to place greater emphasis on broad procurement planning. Councils should be encouraged to develop annual procurement plans in collaboration with all divisions. These plans should outline anticipated procurement activities and ensure that corresponding budget expenditure is endorsed accordingly for delivery by the CEO, General Manager, or Executive Leadership Team.

For major projects, a dedicated procurement strategy should be developed to ensure alignment between implementation timelines, resource allocation, and desired outcomes. This strategic approach helps mitigate risks, improve value for money, and ensure project success.

As part of the planning process, council staff should be expected to review existing contracts within their business units to assess their expiry dates, performance, and relevance. This review will support the Procurement Team in identifying contracts that may require renewal, renegotiation, or replacement due to underperformance or changing needs.

Additionally, the planning process should include a performance review of contractors, including structured debriefs. This provides an opportunity to give feedback to suppliers and reinforce that past performance may be considered in future procurement decisions. Such practices promote accountability, continuous improvement, and stronger supplier relationships.

10. Cumulative spend

There is no reference to or guidance about cumulative spend over time. This is an issue that many NSW councils struggle to set governance around. Victoria, in contrast to NSW, has clear legislative requirements.

11. Principles of Procurement

SSROC welcomes the addition of probity and transparency to the principles, as well as economic development, social outcomes, and sustainability.

Table 1 Factors and evaluation criteria: it is not clear what the “evaluation criteria” column is intended to convey, as they are not all evaluation criteria, more just considerations when setting criteria. It is also unclear whether it is intended to cover the need for a procurement or the goods/services being procured.

In assessing value for money, these considerations would need to be applied with council discretion, since some councils have created their own methodology, which works for them, and should continue to apply as long as it meets the best practice principles generally.

Table 2 Key Aspects of Probity: the Guidelines need to assist councils with understanding how and when the tender panel members’ professional and technical knowledge of tenderers may be used in the assessment of submissions. For example, if a tender panel member has knowledge of a tenderer from a previous project, perhaps in a different council, then when, how, and to what extent are they able to use that knowledge when assessing a fresh tender. Councils are very inconsistent in their approach in managing this, where all they need do is have fully documented a contractor’s performance in their performance reviews. This ties in with the defensible documents bullet point of the draft.

12. Probity Advisors or Auditors

SSROC recommends that the reference to the NSW Performance and Management Services Scheme be revised or reconsidered. Based on our understanding of how the scheme is structured, it may not comply with Section 55(1) of the Local Government Act. As a matter of better practice, councils should be advised to undertake their own selective procurement processes when engaging suppliers from the scheme.

13. Innovation and Unsolicited Proposals

SSROC welcomes the guidance provided in relation to innovation. However, the reference to innovating by “considering unsolicited proposals” is problematic and should be deleted.

Under the NSW Local Government Act 1993 and the Local Government (General) Regulation 2021, councils are required to conduct procurement in a manner that is transparent, competitive, and compliant with statutory tendering processes.

Accepting unsolicited proposals (that is, proposals initiated by a supplier without a formal request from council) may contravene these requirements unless managed under a strict framework that ensures compliance with probity, value for money, and public accountability.

The Office of Local Government Circular 18-12¹ explicitly states that councils must ensure any consideration of unsolicited proposals aligns with statutory requirements and council planning documents. In practice, this means unsolicited proposals are rarely appropriate for local government procurement and should not be encouraged as a standard innovation pathway.

Therefore, SSROC recommends that the reference to unsolicited proposals be removed to avoid any implication that councils may bypass legislated procurement processes.

¹ <https://www.olg.nsw.gov.au/https-www-olg-nsw-gov-au-category-https-www-olg-nsw-gov-au-category-council-circulars/governance/18-12-management-of-unsolicited-proposals-received-by-councils/>

To comply with Sect 55 of the Act, Councils must include contract clauses that will allow councils to entertain and consider innovation during the contract period specially those contracts that have long contract terms. New associated products and technologies change all the time to improve the outcomes of the contract. Innovation must be encouraged not only in the forming of original specifications but throughout of the contract period.

14. Delegation

The Guidelines need to cover on how to deal with prescribed entities contracts. Although exempt from the tendering requirements of section 55, use of these contracts frequently exceeds the tender threshold. Greater clarity for Councils around the authorisation and approval of procurement from prescribed entities, including the use and application of contracts that prescribed entities have formed. For consistency, the Guidelines need to address the requirements for procurement via prescribed organisations and contracts in their delegation process.

There is an opportunity to provide clearer guidance on the application of Sections 55 (3) (a) and (g) of the Local Government Act, particularly in relation to:

- BuyNSW panel procurement above \$250,000: it remains unclear how BuyNSW fits within the framework of prescribed organisations. Clarification on the panel selection process compliance with Act would assist councils in confidently applying these provisions.
- More broadly, it would be beneficial for the guidelines to outline how all prescribed organisations including Local Government Procurement and Procurement Australia are recognised and applied under s55 (3) (a) and (g), with a ceiling price or no price at all to ensure consistency and transparency across councils.
- Regional Organisations of Councils (ROCs) panels: the guidelines are currently silent on the role of ROCs in this context. Given that ROC panels also involve competitive processes, it would be helpful to confirm whether they can be treated similarly to prescribed organisations for procurement thresholds.

SSROC notes the improved clarity relating to section 377(1)(i) of the LG Act, which is open to interpretation. The Guidelines make it explicit that this sub-section of the Act refers to decisions to outsourcing services.

15. Procurement Staff

Specialist teams seems to assume a centralised procurement function. The Guidelines could be improved with more advice about centre-led procurement frameworks. Additionally, it would be worthwhile to provide insight into the merits or otherwise of Procurement as a Service (PaaS) models, as their use has been increasing.

16. Contingent labour

With contingent labour or external professional expertise, it is important to note that hiring temporary staff or consultants, depending on the cost and risk, is subject to the Regulations and Act Requirements and/or the Council's policy. The Guidelines should also discourage the elevation of consultants above the position of advisor. Expanded advice on this matter would be valuable.

17. Tendering documents

It would be helpful if this section covered the use of technology and contract management platforms to improve procurement and tendering processes. These systems can offer benefits such the automatic, timely creation of records by the eTendering platforms/systems, which enhance compliance and free officers' time for more productive aspects of procurement.

18. Risk considerations

Without being prescriptive and overly limiting, procurement professionals need clear guidance on the governance and probity risks inherent in conducting one-to-one dealings with tenderers before a determination has been made, such as interviews or presentations.

Many councils feel that they better understand tenderers' submissions with a follow up interview, meeting or presentation, yet there are innate risks associated with this, such as allegations that one tenderer was treated preferentially; or that a tenderer attempts to expand upon its submission, thereby providing information after the close of tenders.

The Guidelines reference resources available from the Independent Commission Against Corruption (ICAC), but in this context could also refer specifically to the ICAC's publication, "Direct Negotiations - guidelines for managing risks in direct negotiations".

Also, probity and audit obligations must continue during the contract term. To safeguard Council from potential procurement-related fraud or misconduct, probity measures must extend beyond the tender evaluation phase and remain active throughout the duration of the contract. While robust controls (such as declarations of confidentiality and disclosures of conflicts of interest) are standard during the tender assessment period, similar governance mechanisms must be applied post-award.

Accordingly, all personnel involved in the procurement lifecycle, including nominated buyers and delegated approvers, should be required to periodically declare any actual, potential, or perceived conflicts of interest and to reaffirm their commitment to confidentiality in relation to major contracts. These declarations should be captured through a council's procurement systems via a mandatory Yes/No response mechanism when raising a request from the selected preferred suppliers.

Where a conflict of interest is declared, the individual must adhere to the council's conflict management protocols, including but not limited to recusal from decision-making processes, disclosure to relevant governance bodies, and implementation of mitigation strategies as prescribed by Council policy.

These ongoing declarations form part of a Council's continuous probity assurance and audit framework and shall be subject to review and verification by internal audit and governance team.

19. Local preference policies

The definition of "local suppliers" is challenging for councils when they attempt to prioritise local suppliers. The draft guidelines refer to councils to "define what "local" means in their policy, aligning it with their Community Strategic Plan". Some councils jointly develop an organisation plan that covers wide areas of NSW and not just their own local government area. The statement in the draft guidelines is confusing and adds little to the clarification desired by councils. It is suggested that alternative text is used to clarify the intent here. It is proposed that the following is drafted in replacement; "To support this, councils could use the local regions or communities defined in their strategic planning documents as a means to provide a desired hierarchy."

Secondly, the discussion between life cycle costs and local businesses is confusing and appears to be a niche example of a specific situation. It is suggested that an alternative paragraph is inserted instead to address the intent:

"Additionally, councils should be mindful of developing contractual arrangements that place onerous financial burdens on smaller or local suppliers that restrict them from applying for tenders and quotations. Contracts that require the purchase of machinery and other upfront costs over a short timeframe may discourage local suppliers or place them in a disadvantage to enter into this arrangement".

20. Australian Competition and Consumer Commission

The Guidelines should provide clarity in regard to when and how the Australian Competition and Consumer Act 2010, and its associated Regulation, applies to councils. Specifically, how section 2BA of that Act should be understood by councils.

Many councils feel compelled to seek authorisation from the Australian Competition and Consumer Commission (ACCC) for joint tenders, yet no council has been denied such authorisation. It appears that the authorisations are granted to councils on the grounds that community benefit can be demonstrated. Councils need clear guidance on what triggers exist that would cause them to seek authorisation. The ACCC is reluctant to give advice in relation to whether authorisation is necessary or not, nor is the ACCC willing to assist councils to understand how to interpret section 2BA of its Act. As a result, councils make applications to the ACCC as a precaution: this is a time-consuming and often costly exercise, which may be unnecessary.

21. Local Procurement Policy vs Australian Competition and Consumer (ACC) Act 2010

Councils must be guided on how to be fair in the implementation of their local supplier preferencing policies and know the difference between the Competition and Consumer Act 2010 that aims to foster overall market competition and consumer welfare nationally, while a local supplier preferencing policy has the more specific goal of boosting the local economy by favouring local businesses in a limited set of procurement activities. Councils must have a framework on how and when to apply their local supplier preference policy.

The ACC Act aims to promote fair competition and protect consumers by preventing anti-competitive conduct, misleading claims, and unfair practices. It prohibits cartels, price-fixing and other anti-competitive behaviour, bans misleading advertising and deceptive sales practices and enforces consumer guarantees for product and service standards. It applies to interactions among suppliers, wholesalers, retailers, and consumers, covering product safety, labelling, and industry codes.

SSROC recommends that Guidelines cover the provisions of the ACC Act in the context of local government procurement, including reconciling these provisions with preferencing local suppliers.

Close

This submission has been developed in consultation with our member councils, particularly the members of the SSROC Regional Strategic Procurement Group. However, in order to meet the consultation period deadline, it has not been possible for it to be reviewed or endorsed at a formal meeting of SSROC. I will contact you should any issues arise as result.

Should you wish to discuss this submission or seek any further information, please do not hesitate to contact me or our nominee for the reference group, SSROC Strategic Procurement and Contracts Manager, Cathy Dizon at ssroc@ssroc.nsw.gov.au or 02 8396 3800.

Yours faithfully



Helen Sloan
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Attachment: Summary of Recommendations

SSROC recommends that the draft Guidelines:

1. Promote strategic sourcing and procurement.
2. Be reviewed 2 years after its publication and every 5 years thereafter.
3. Be amended to guide councils on how to manage confidential information in council business papers.
4. Should define a BAFO process generally, clearly articulating how it differs from unacceptable practices such as playing tenderers against each other.
5. Should note that procurement teams need to take account of their own council's procurement policies and procedures as well as the legislative context.
6. Encourage councils to consider all Integrated Planning and Reporting documents in procurement planning
7. Acknowledge the potential of councils' procurement to achieve environmental benefits as part of the wider strategic context.
8. Give more extensive guidance on best practices in the development of annual procurement plans.
9. Address monitoring and managing cumulative spend, including how to respond should it exceed the tendering threshold over time.
10. Clarify the application of Table 1 and, if it is intended to apply to the assessment of tenders, note that it would need to be applied with council discretion and clarify how councils can use knowledge of previous performance of a contractor to new procurements.
11. Include guidance on the application of previous experience to tender evaluation.
12. Revise the reference to the NSW Performance and Management Services Scheme to encourage councils' compliance with s55 (1) of the Act.
13. Delete the suggestion of considering unsolicited proposals as a means of innovation.
14. Address the use of prescribed organisations, BuyNSW and ROCs in councils' procurement.
15. Recognise continuing probity and audit obligations during the contract term and provide some advice on managing them.
16. Include advice about central procurement frameworks and Procurement as a Service (PaaS).
17. Explicitly discourage the elevation of consultants above the position of advisor.
18. Cover the use of technology and contract management platforms to improve procurement and tendering processes.
19. Provide clear guidance on the risks inherent in one-to-one dealings with tenderers, and on probity and audit obligations during the contract term.
20. Add explicit reference to ICAC's publication, "Direct Negotiations - guidelines for managing risks in direct negotiations".
21. Consider revising the guidance on local preference policies as suggested in 19 and 21 above.
22. Be amended to explain how councils should apply section 2BA of the Australian Competition and Consumer Act 2010.
23. Add guidance on the need to seek authorisation from the Australian Competition and Consumer Commission.