

Tender Procedure

Section 1 - Introduction

(1) This procedure supports the University's [Procurement Policy](#) and outlines the process for the procurement of all goods and services for the University of Newcastle valued at over \$150,000 (GST exclusive) for operational expenditure, up to the threshold value of \$250,000 (GST exclusive) for capital and research equipment or any procurement which is assessed as presenting a significant risk, regardless of the source of funding. This includes capital works for the construction and improvement of facilities, IT projects and infrastructure as well as professional services and independent contractors.

(2) This procedure should be read in conjunction with the [Procurement Policy](#) and the [Quotation Procedure](#).

Section 2 - Procedure

Tendering

(3) A competitive tender process will be conducted for the procurement of all goods and services valued at over \$150,000 (GST exclusive) for operational expenditure, up to the threshold value of \$250,000 (GST exclusive) for capital and research equipment or any procurement which is assessed as presenting a significant risk to the University.

(4) Procurement of goods and services cannot be split into parts or instalments to fall below the tender threshold value.

Tender Planning

(5) The tender process will be planned and administered by Procure to Pay's strategic sourcing framework which is based on the stages of definition, measurement, analysis, implement and control (DMAIC).

(6) A procurement strategy will be developed by Procure to Pay and approved by an authorised officer(s) to ensure that the University acts with intent to proceed, clear tender specifications and available funding in accordance with the [Procurement Policy](#).

(7) The University uses a variety of approaches to tendering, sometimes in a staged process, and the most appropriate will be determined as part of the procurement strategy according to the nature of the specific procurement. Consideration will be given to the following:

- a. Call for Registration (CFR) - is an approach to market used by the University to seek details about potential suppliers of a good or service.
- b. Expression of Interest (EOI) - is used primarily to determine the market's ability or desire to meet the University's procurement need following which the University may need to collect additional information to make procurement decisions. An EOI is not an invitation to bid, is not binding on either party and is usually followed by a selective Request for Tender based on a more detailed specification.
- c. Request for Information (RFI) - is commonly used on major procurements particularly if the University's

requirements could potentially be met through several alternate means. A RFI is not an invitation to bid, is not binding on either party, and in some circumstances may be followed by a selective RFT, RFP or RFQ.

- d. Request for Quotation (RFQ) - is used when detailed specifications of a good or service are known and competitive bids are to be evaluated mainly on price.
- e. Request for Proposal (RFP) - is used to directly purchase goods or services when the University clearly understands its business needs but does not have defined details of the solution. This approach is often used for the procurement of professional services or as part of information and communication technology projects.
- f. Request for Tender (RFT) - is used when the University is seeking potential suppliers for a scope of work which has been designed and specified in detail. A RFT is often used for building and construction works and evaluation is based on price and a range of technical factors.

Exemptions to Tender

(8) Certain circumstances may justify or necessitate an exemption to the University's tender procedures such as:

- a. existing contractual arrangements for the same or similar goods and services;
- b. functional, technical, logistic and/or geographic requirements;
- c. alternative procurement methods offer better value for money and/or lower cost, risk and complexity; and/or
- d. there is a sole supplier in the market.

(9) An exemption to tender may be approved by the Associate Director, Procure to Pay provided that there is adequate documentation to support the request.

(10) Retrospective exemption requests will not be approved.

Tender Documentation

(11) Tender documentation will be prepared by Procure to Pay to clearly and accurately specify the:

- a. evaluation criteria to be used in the assessment and comparison of potential suppliers - commercial, technical, quality and cost/price including both mandatory and desirable criteria;
- b. structure/format of responses from potential suppliers;
- c. draft contract to be executed (wherever possible); and
- d. conditions of tendering including details of submission.

(12) The relevant business area will prepare the statement of work in relation to the goods or services - based on performance, design or quality according to the nature of the procurement.

(13) The weighting of evaluation criteria will be determined using supply positioning methodology that considers strategic risk and value to the University. Tender documentation must clearly indicate the relative importance of each of the evaluation criteria and similarly, the overall importance of commercial, technical and cost/price should also be weighted (totalling 100%). Although weightings must be agreed before tender documents are issued, they do not need to be shared with potential suppliers.

(14) All tender documentation must be completed prior to advertising or issuing the tender in accordance with the University's templates and standard documents unless otherwise approved by the Associate Director, Procure to Pay.

Issue of Tenders

(15) All tender documents must be issued by Procure to Pay to potential suppliers on request or via the University's electronic tendering system. Procure to Pay will record details of potential suppliers to whom documents are issued.

(16) For some tenders, the University may wish to separately advertise the tender in the most appropriate media for the goods or services being procured. In such cases the tender advertisements must be approved by the Associate Director, Procure to Pay.

(17) Potential suppliers will be given the same tender documentation including any background, supplementary or amendment material given out to any other potential supplier at any time during the tender process.

(18) The University reserves the right to charge potential suppliers a fee for tender documents in exceptional circumstances where the tender documents are extensive and detailed. Any such fee must be approved by the Chief Financial Officer on the recommendation of the Associate Director, Procure to Pay.

Communication During the Tender Process

(19) Communications during the tender process, including any pre - tender briefings/ presentations and site inspections, will be handled with due regard for probity. Potential suppliers will receive the same information and no single supplier will be given a potentially unfair advantage. This includes clarifications on any aspect of the tender unless there are reasons relating to confidentiality or intellectual property.

(20) Enquiries about any tenders will be handled and recorded by a nominated officer in Procure to Pay. Phone enquiries will be received but wherever possible all enquiries should be directed in writing via the University's electronic tendering system.

Submission of Tenders

(21) Tenders must be submitted in accordance with the University's conditions of tendering which will generally include the following principles:

- a. tenders must be submitted at the specified location by the specified closing date and time;
- b. tender documents submitted will become the property of the University;
- c. the University is not bound to accept the lowest or any tender; and
- d. acceptance of a tender may be whole or in part and is conditional upon execution of a contract or purchase order acceptable to the University.

(22) Tenders must be submitted via the University's electronic tendering system unless otherwise approved by the Associate Director, Procure to Pay.

(23) The Associate Director, Procure to Pay may in exceptional circumstances approve the extension of the tender closing date in which case all potential suppliers will be notified in writing.

Receipt and Registration of Tender Responses

(24) Tender responses will be signed in by two staff members in Procure to Pay as soon as practical after the stated closing date and time for the submission of tenders. Each tender response will be date stamped and initialled by the two staff members and a register of all tender submissions will be established.

Assessment of Tender Responses

(25) The technical aspects of tender responses will be assessed by a Technical Evaluation Panel. The Technical Evaluation Panel will consist of at least three members appointed by the Associate Director, Procure to Pay.

(26) For construction - related procurements, membership will consist of:

- a. a subject matter expert (sme) who is familiar with the procurement requirements; and

b. at least two staff from Infrastructure and Facilities Services.

(27) For all other procurements, membership will consist of:

- a. at least two subject matter expert (sme)s who are familiar with the procurement requirements (one of whom may be from Procure to Pay if appropriate) ; and
- b. at least one key stakeholder as appropriate.

(28) The Tender Evaluation Panel will be chaired by a staff member from Procure to Pay. The Chair will facilitate the proceedings of the Tender Evaluation Panel however does not complete a technical assessment.

(29) The Tender Evaluation Panel will be convened by Procure to Pay to assess all of the tender responses in accordance with the Tender Evaluation Plan and evaluation criteria as specified in the approved procurement strategy. Procure to Pay supports this part of the process by managing probity requirements, providing the University's tender evaluation tools, providing advice as needed, coordinating the assessment, developing and implementing negotiation strategies, and preparing reports and recommendations for approval.

(30) All members of the Tender Evaluation Panel, as well as any Procure to Pay staff involved in the tender assessment, are required to maintain confidentiality and to disclose any conflict of interest - perceived, potential or actual. Each person will be required to sign a [Conflict of Interest Declaration Form](#) and Non-Disclosure and Confidentiality Deed.

(31) The tender responses will be assessed using an evaluation matrix and the "two envelope" system whereby the technical aspects will be evaluated by the Tender Evaluation Panel before commercial schedules are reviewed by a Commercial Evaluation Panel. These two main criteria will be weighted as identified in the approved procurement strategy.

(32) In the event that two tender responses are assessed as being equal after negotiations have been completed in accordance with University guidelines, the successful one will be selected by following the processes in the order listed:

- a. the first of the two tenders received;
- b. local contractor in preference to contractor from outside the region.

(33) For engagements that:

- a. are long - term or recurring;
- b. are construction contracts valued at more than \$500,000; and/or
- c. present a significant risk to the University

(34) The financial viability and stability of the potential supplier(s) will be assessed. This financial check may be completed by University staff or by an external agent at the request of the University. In all cases the potential suppliers' financial statements will be treated confidentially.

(35) The Tender Evaluation Panel's recommendation about the potential supplier will be clearly established and documented with reference to the agreed evaluation criteria using the University's template reports.

(36) The Tender Evaluation Panel's recommendation should be unanimous however, in the event that there is a material and unreasonable difference between the rankings and evaluation by the members, the matter will be referred to the Associate Director, Procure to Pay for advice.

Negotiations with Tenderers

(37) Negotiations with shortlisted or recommended suppliers regarding the commercial terms and conditions of their engagements may be undertaken by the Associate Director, Procure to Pay or their authorised nominee only at the end of the assessment of tenders.

(38) Negotiations will be undertaken in accordance with the University's [Negotiation Guidelines and Framework](#) to achieve an agreement that is fair, durable, meets the needs of both parties and maintains or improves the relationship between the parties. The University will not attempt to lower the price by negotiating or trading between shortlisted or recommended suppliers. The University will not engage in the practice of bid shopping.

Assurance of Probity of Tender Process

(39) The Tender Evaluation Panel's recommendation will be reviewed by the Associate Director, Procure to Pay to ensure that the tender process has been conducted in accordance with the approved procurement strategy as well as the University's policies and procedures.

(40) The Associate Director, Procure to Pay will provide an assurance regarding the probity of the tender process and will forward the recommendation to the authorised delegate(s) for approval.

(41) In the event that the Associate Director, Procure to Pay has concerns or identifies issues in relation to the probity of the process, the matter will be referred to the Chief Operating Officer for advice and action.

Rescission of a Tender

(42) At any point in the tender process, the University may wish to rescind a tender that has been put to market - particularly if the scope of work has significantly changed or the approved procurement strategy is no longer considered appropriate. The Associate Director, Procure to Pay may approve the rescission of a University tender.

Approval of Recommended Tenderer

(43) The recommendation of the Tender Evaluation Panel and the Associate Director, Procure to Pay will be forwarded to the authorised delegates for approval to award the contract in accordance with the Delegation of Authority Schedules. Contracts greater than \$5,000,000 require approval from University Council.

(44) Any tender contract will only be awarded if the value of the engagement is within an approved budget or source of funds. If the value of the engagement exceeds the approved budget or source of funds, the funding will be reviewed in accordance with the Delegation Schedule. This will be done in a timely manner to ensure that the tender process is not unduly delayed.

(45) In the event that the recommendation of the Tender Evaluation Panel and the Associate Director, Procure to Pay is not accepted by the authorised delegates. The authorised delegates must provide to the Associate Director, Procure to Pay the details for non - acceptance. The matter cannot be resolved, it will be referred to the Chief Financial Officer who will form an independent committee of three members (including the Chair of the Risk Committee) to review the tender process and recommendation. This independent committee will make a final determination in relation to the tender.

Advising Tenderers of the Outcome

(46) Procure to Pay will advise the approved tenderer in writing that their tender has been accepted conditional upon execution of a contract which is satisfactory to the University.

(47) All other tenderers will be notified in writing by Procure to Pay that they have been unsuccessful.

(48) The University will not be required to provide any information to the unsuccessful tenderers other than the name of the successful tenderer. However, if an unsuccessful tenderer requests a debriefing, the Associate Director, Procure to Pay has the discretion to provide more detailed feedback in terms of their performance against the evaluation criteria (but not in comparison to the successful tenderer or any other tenderer).

Execution of Contract

(49) In most cases, the tender process will require the execution of a contract between the University and the successful tenderer. Wherever possible the University will provide the draft contract as part of the tender documentation.

(50) The Associate Director, Procure to Pay will be responsible for ensuring that the contract to be executed reflects the negotiated terms and conditions.

(51) Legal Services must review all non - University contracts and must specifically approve any variations to standard University contracts.

(52) The contract may be executed by authorised delegates in accordance with the Delegation of Authority Schedule and a signed copy must be retained by Procure to Pay and the Records Governance Services.

Performance of Suppliers

(53) Poor performance on the part of a supplier or contractor should be reported to Procure to Pay.

Complaints Resolution

(54) Any complaints arising from the University's procurement activities will be handled in accordance with the University's [Complaints Resolution Policy](#) and [Complaint Resolution Procedure](#).

Audit, Compliance and Review

(55) The implementation of and compliance with this procedure will be periodically audited as part of the University's internal audit cycle.

(56) Failure to comply with the provisions of this procedure and the relevant delegations will be taken very seriously. University staff found to be in breach of this procedure may be subject to disciplinary action.

(57) This procedure will be reviewed by the Chief Financial Officer at least once every three years with advice from the Associate Director, Procure to Pay.

Status and Details

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| Status | Historic |
| Effective Date | 8th August 2016 |
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| Expiry Date | 2nd March 2022 |
| Responsible Executive | Morven Cameron Chief Operating Officer |
| Enquiries Contact | Procure to Pay |

Glossary Terms and Definitions

"University" - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

"Risk" - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

"Bid shopping" - The practice of playing one potential supplier or bidder against another to obtain a lower price, either before or after the submission of a quotation or tender.

"Procurement strategy" - The defined and structured way in which the University will approach the market and conduct the tender process for any given procurement, taking into account risk and the nature of the goods or services.

"Award" - When referring to a University qualification, this term means an academic qualification approved by Academic Senate that is conferred when a student has met the relevant program requirements. For all other uses of this term, the generic definition applies.

"Complaint" - As defined in Australian/New Zealand Standard - Guidelines for complaint management in organisations.

"Disciplinary action" - When used in relation to staff of the University, this is as defined in the applicable and current Enterprise Bargaining Agreement, or the staff member's employment contract. When used in relation to students of the University, this refers to the range of penalties that may be applied under the Student Conduct Rule.

"Exemption" - When referring to a student's learning pathway, exemption means being excused from undertaking preparatory subjects, units, modules or competencies in a course or program, while still being required to undertake the same number of subjects, units, modules or competencies as would be completed if an exemption had not been granted. For all other uses of this term, the generic definition applies.

"Intellectual property" - Intellectual property (IP), as defined by the World Intellectual Property Organisation, refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: Industrial property includes patents for inventions, trademarks, industrial designs and geographical indications; and Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g. drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

"Officer" - Has the meaning given in the Corporations Act 2001 (Cth), or any replacing legislation.

"Procurement" - The overarching activities, processes and systems undertaken to acquire goods and services for the University.

"RFQ" - Request for Quotation - the procurement method used by the University when detailed specifications of a good or service are known and competitive bids are to be evaluated mainly on price.

"Staff" - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

"Term" - When referring to an academic period, term means a period of time aligned to an academic year for the delivery of a course in which students enrol and for which they are usually charged fees for example semesters, trimesters, summer, winter or full-year term. The academic year for a term is determined by the academic year in which the course commences, not concludes. For all other uses of this term, the generic definition applies.