Tender Procedure

Section 1 - Introduction

(1) This Procedure supports the University of Newcastle's (University) Procurement Policy and outlines the requirements and process for tenders to procure goods and services.

(2) This Procedure should be read in conjunction with the Procurement Policy, Quotation Procedure and the Aboriginal and Torres Strait Islander Procurement Strategy.

Section 2 - Section 2 - Scope

(3) This Procedure applies to procurement activities for:

a. all goods and services, including capital works and research equipment, with an expected Total Cost of Ownership (TCO) of $250,000 (GST exclusive) or more; or
b. any procurement activity which is assessed as presenting a high or extreme risk (in accordance with the Risk Management Framework), regardless of the source of funding. This includes:
    i. capital works for the construction and improvement of facilities;
    ii. IT projects and infrastructure;
    iii. professional services; and
    iv. independent contractors.

(4) Refer to the Procurement Policy for guidance in determining TCO.

(5) Procurement of goods and services must not be split into parts or instalments to fall below the above tender threshold value.

Section 3 - Audience

(6) This Procedure should be read and understood by all staff, including staff of controlled entities, who undertake or are involved in procurement activities, including recommending and approving procurement outcomes.

Section 4 - Definitions

(7) In the context of this document:

a. “Tender Chair” - a representative from Strategic Procurement responsible for the administration and probity management of a tender process; and
b. “Two envelope system” - a method of submitting a tender which separates the technical and commercial responses.

Section 5 - Procedure

Tender Planning

(8) Business units wishing to proceed with a procurement that is within the scope of this procedure must contact Strategic Procurement as soon as possible to discuss timeframe requirements of the specific procurement activity, and to initiate the tender process.

(9) The tender process will be facilitated by Strategic Procurement, using the strategic sourcing framework, outlined below:

a. definition;
b. measurement;
c. analysis,
d. implementation; and
e. control.

(10) For Restricted Use Agreements, a Procurement Plan will be developed by the business unit requiring the goods and/or services, supported by a Manager, Procurement, in accordance with the Procurement Policy, and approved by an authorised delegate.

(11) For Common Use Agreements, a Procurement Plan will be developed by a Manager, Procurement, in accordance with the Procurement Policy, and approved by an authorised delegate.

(12) Approval of the Procurement Plan will be subject to:

a. compliance with Procurement Policy;
b. a clear intent from the University to proceed;
c. clear tender specifications; and
d. available funding.

(13) All staff involved in the development, review or approval of a Procurement Plan are required to declare any conflicts of interest, whether perceived, potential or actual, in accordance with the Disclosure of Interest Policy and its associated procedure. Strategic Procurement are responsible for developing a conflict of interest management plan, if required.

(14) The University uses a variety of approaches to tendering, sometimes in a staged process, and the most appropriate approach will be determined in the Procurement Plan, according to the nature of the specific procurement. The approaches to tender that may be considered are outlined in Table 1.

Table 1 – Approaches to Tendering

Approach	Description
Call for Registration (CFR)	Used to seek details about potential suppliers of goods or services.
Expression of Interest (EOI)	Used primarily to determine the market's ability or desire to meet the procurement need, following which the University may 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 (RFT) that will provide more detailed specifications.

Approach	Description
Request for Information (RFI)	Used to collect written information about the capabilities of various suppliers to assist in refining the final scope and/or participants in a Request For Quotation (RFQ), Request for Proposal (RFP) or Request for Tender (RFT). An RFI is not an invitation to bid and is not binding on either party.
Request for Quotation (RFQ)	Used when detailed specifications of the goods or service(s) are known, and competitive bids are to be evaluated mainly on price.
Request for Proposal (RFP)	Used to directly purchase goods or services when the University clearly understands its business needs but does not have defined details of the solution or is seeking an innovative solution. This approach is often used for the procurement of professional services or as part of information and communication technology projects.
Request for Tender (RFT)	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 as detailed in the Procurement Plan.

Exemptions to Tender

(15) Where there is only one legitimate supplier that can meet the University's operational requirements for a good or service, this may justify or necessitate an exemption to the University's tender procedure. The following goods and services do not require a tender activity and may be purchased without seeking an exemption to tender (as detailed in clause 17):

a. existing contractual arrangements for the same or similar goods and services;
b. training in existing systems, equipment, or processes;
c. subscriptions and memberships;
d. utilities in a non-competitive market;
e. events;
f. travel – as the University's policy is "most practical fare of the day";
g. books and periodicals;
h. the commission of works of art for a museum or public display;
i. professional licenses (e.g. CPA);
j. renewal of software and hardware licence agreements; or
k. the protection of patents, copyrights, or other exclusive rights, or proprietary information.

(16) For all other requirements whereby the purchasing staff member is seeking an exemption from the University's Tender Procedure, an exemption to tender may be requested through the University's Finance System and must be approved by the Chief Operating Officer, General Counsel and Chief Governance Officer, or Associate Director, Strategic Procurement. Requests for exemptions must be supported by adequate documentation to satisfy the following principles:

a. Value for Money: the purchasing staff member must address how this option will provide the best value for money outcome for the University;
b. Fairness: the purchasing staff member must justify with appropriately independent advice why it is not appropriate to give other businesses an opportunity to bid for the project;
c. Accountability and Transparency: the purchasing staff, and any other staff member involved in the decision to seek an exemption, must declare that their decision to do so is both accountable and transparent;
d. Impartiality: the purchasing staff, and any other staff member involved in the decision to seek an exemption, must declare any actual or perceived conflicts of interest.

(17) All exemptions should be submitted in accordance with the University's Tender Exemption Guidelines located on

the Strategic Procurement sharepoint site.

(18) Failure to apply for an exemption, or to submit an application for an exemption after an arrangement is entered into, will be considered a breach of this Procedure and will not be approved.

Tender Documentation

(19) The relevant business unit will prepare the statement of work in relation to the goods and services, based on performance, design, and quality according to the nature of the procurement, as specified in the Procurement Plan.

(20) With reference to the Procurement Plan, Tender documentation will be prepared by a Manager, Procurement in consultation with the business unit initiating the procurement, and will clearly and accurately specify the:

a. risk, ethical and social trading compliance requirements;
b. 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;
c. structure/format of responses from potential suppliers;
d. draft contract to be executed (where relevant and wherever possible); and
e. conditions of tendering including details of how to lodge a tender.

(21) The weighting of evaluation criteria will be determined using a methodology endorsed by the Associate Director, Strategic Procurement, that considers strategic risk, value, and opportunity 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%).

(22) Although weightings, including sub-weightings, must be agreed before tender documents are issued, they do not need to be shared with potential suppliers. However, it is recommended that the overall technical and commercial weightings be included in the conditions of tender.

(23) The prepared tender documentation must be Associate Director, Strategic Procurement and the business unit’s Contract Owner/Manager.

(24) The tender must not be advertised until authorised to be issued.

Issue of Tenders

(25) All tender documents must be issued by a Manager, Procurement to potential suppliers via the University's eProcurement system. 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 in accordance with the University's marketing policies and procedures, and endorsed by the Associate Director, Strategic Procurement.

(26) Each potential supplier will be given the same tender documentation including any background, supplementary, or amendment material issued during the tender process.

Communication During the Tender Process

(27) 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 time for response to ensure that no single supplier is given a potentially unfair advantage. This includes clarifications on any aspect of the tender, unless there are reasons relating to confidentiality or intellectual property.

(28) Enquiries about any tenders will be handled and recorded by a nominated officer in Strategic Procurement. Phone

enquiries will be accepted, but wherever possible all enquiries should be made in writing via the University's eProcurement system.

Submission of Tender Responses

(29) Tender responses must be submitted in accordance with the University's conditions of tendering that are issued with the relevant tender package, and will generally include the following principles:

a. responses must be submitted to the specified location(s) before the tender closing date and time, as detailed in the tender documentation;
b. once submitted, tender response documents 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 response may be whole or in part and may be conditional upon execution of a contract or purchase order in a form that is acceptable to the University.

(30) Tender responses must be submitted via the University's eProcurement system unless otherwise approved by the Associate Director, Strategic Procurement or General Counsel and Chief Governance Officer. Exceptions will only be granted to ensure that all relevant suppliers have equitable access to lodge a tender. When granted, all suppliers will have access to the alternative method if they so choose.

(31) The Tender Chair, in consultation with the business area, may in exceptional circumstances approve the extension of the tender closing date, in which case all potential suppliers will be notified in writing by Strategic Procurement.

Receipt and Registration of Tender Responses

(32) The date on which each complete tender response is received will be recorded, and each response will be reviewed by a minimum of two staff members from Strategic Procurement to confirm it meets all mandatory requirements. This will occur as soon as practical after the stated closing date and time for the submission of tenders.

Assessment of Tender Responses

(33) Each tender response that meets the University's mandatory requirements will be assessed in accordance with the Proposal Evaluation Plan and evaluation criteria as specified in the approved Procurement Plan. The University uses a two-envelope system whereby the technical schedules will be evaluated by a Technical 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 Plan.

(34) Panel members for both the Technical Evaluation Panel and Commercial Evaluation Panel may comprise University staff or external parties. The Associate Director, Strategic Procurement reserves the right to reject any panel members nominated by the relevant business unit where a reasonable justification is provided and reported.

(35) Panel members must comply with the University's Staff Code of Conduct, and Disclosure of Interest Policy and associated procedures.

Evaluation Panels

(36) The Technical Evaluation Panel will be convened by Strategic Procurement and will consist of at least three members, subject to due consultation with key stakeholder(s) from the relevant business unit.

(37) For asset related procurements, membership of the Technical Evaluation Panel 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, Digital Technology Solutions, or Research Infrastructure Services, depending on the nature of the asset.

(38) For all other procurements, membership of the Technical Evaluation Panel will consist of:

a. at least two subject matter experts (SME) who are familiar with the procurement requirements (one of whom may be from Strategic Procurement if appropriate); and
b. at least one key stakeholder, as appropriate.

(39) The Commercial Evaluation Panel will be convened by Strategic Procurement and will consist of at least two subject matter experts, subject to due consultation with key stakeholder(s) from the relevant business unit.

(40) All members of the Technical and Commercial Evaluation Panels, as well as any Strategic Procurement staff involved in the tender assessment, are required to maintain confidentiality and disclose any conflict of interest, whether perceived, potential or actual. Each panel member will be required to sign a Conflict of Interest Declaration form and Confidentiality Deed Poll.

(41) The Technical and Commercial Evaluation Panels will be chaired by a staff member from Strategic Procurement. The Chair is non-voting and does not contribute to the technical evaluation, and will:

a. facilitate the proceedings of the panel;
b. provide the University tender evaluation tools;
c. provide advice, as needed;
d. coordinate the evaluation;
e. develop and implement negotiation strategies, in collaboration with the business unit;
f. prepare reports and recommendations for approval; and
g. manage governance and probity requirements.

Evaluation Outcomes

(42) The Technical and Commercial Evaluation Panels will recommend a preferred proponent and document this recommendation in a method provided by Strategic Procurement with reference to the agreed evaluation criteria.

(43) The Technical and Commercial Evaluation Panels recommendation for a preferred proponent should be unanimous, however, in the event that the Panel's recommendations differ and this cannot be resolved, the matter will be referred by the Chair to the Associate Director, Strategic Procurement for advice.

(44) In the event that several tender responses are assessed as being equal the University may conduct negotiations with the proponents to inform decisions. Negotiations will be conducted in accordance with the Procurement Negotiation Guide on the Strategic Procurement sharepoint site.

(45) Negotiations will be undertaken at the end of the evaluation of tenders by the Contract Owner, and/or their nominee's with support from Strategic Procurement.

(46) The purpose of negotiations will be to achieve an agreement that is fair, equitable, meets the needs of both parties, and maintains or improves the relationship between the parties.

(47) If, after negotiations, several proponents remain equal in their overall ranking, the successful proponent will be selected based on the following preferences and their order listed:

a. a proponent who, as a result of a documented due diligence process, represents a lower level of risk; then
b. a local, Indigenous, or minority owned proponent in preference to other proponents.

Due Diligence

(48) The financial viability and stability of a preferred proponent(s) will be assessed for engagements that are:

a. long term (e.g. 12 months or more), or recurring;
b. are for contracts valued at more than $500,000; and/or
c. present a high or extreme risk to the University.

(49) The proponent's financial information will be treated as confidential. Strategic Procurement will coordinate the financial check.

(50) Reference checks should be conducted on the preferred proponent(s) to validate the information provided in the proponent's tender submission. A Manager, Procurement will coordinate reference checks which may also include a representative(s) from the business unit.

Probity Assurance

(51) The Technical and Commercial Evaluation Panel's process and recommendations will be documented in an Evaluation Report developed by a Manager, Procurement and will be reviewed by the Associate Director, Strategic Procurement to ensure that the tender process has been conducted in accordance with the approved Procurement Plan and University policies and procedures.

(52) The Associate Director, Strategic Procurement will provide an assurance regarding the probity of the tender process and value for money, and will forward the recommendation and this assurance to the authorised delegate(s) for their approval.

(53) In the event that the Associate Director, Strategic Procurement has concerns or identifies issues in relation to the probity of the process, the matter will be referred to the General Counsel and Chief Governance Officer or Chief Operating Officer for advice and action. Advice regarding any residual probity concerns will be provided to the approving delegate for their review and consideration before approving the outcome of the tender activity. Should the outcome of the tender activity be approved contrary to the advice of the General Counsel and Chief Governance Officer or COO, any residual probity risk will be assumed by the approving delegate.

(54) An external probity advisor may be engaged by the University, where this is determined to be necessary.

Rescission of a Tender

(55) 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 Plan is no longer considered appropriate. The Associate Director, Strategic Procurement or General Counsel and Chief Governance Officer may approve the rescission of a University tender.

(56) Proponents who have lodged submissions for a tender that has been rescinded, or have indicated their intent to respond, will be notified accordingly by Strategic Procurement.

Approval of Recommended Tenderer

(57) A tender contract will be awarded to the recommended proponent once approved by a delegate, if the value of the engagement is within the 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 by Financial Services. This will be done in a timely manner to ensure that the tender process is not unduly delayed.

(58) In the event that the recommended proponent is not endorsed by a relevant internal stakeholder (including the

contract owner), they must provide the Associate Director, Strategic Procurement with details to justify their non-endorsement. If the matter cannot be resolved it will be referred to the General Counsel and Chief Governance Officer who will form an independent committee of three members to review the tender process and recommendation. The Committee membership will comprise an Executive Leadership Team member who is independent of the tender process, plus two other members nominated by the Chief Operating Officer. This independent committee will make a final determination in relation to the tender.

Advising Tenderers of the Outcome

(59) Strategic Procurement will advise the approved proponent in writing that their tender has been accepted, conditional upon the execution of a contract which will need to be satisfactory to the University.

(60) All other proponents will be notified in writing by Strategic Procurement in a timely manner to advise that they have been unsuccessful.

(61) The University will not be required to provide any information to the unsuccessful proponents other than the name of the successful proponent. However, if an unsuccessful proponent requests a debriefing, the tender Chair has the discretion to provide more detailed feedback in terms of their performance against the evaluation criteria (but not in comparison to any other proponent). In their discretion, the Tender Chair may also include a member(s) of the business unit in the debrief.

Execution of Contract

(62) Wherever possible the University will provide a draft contract as part of the tender documentation.
The Contract Owner will be responsible for ensuring that the contract to be executed reflects the negotiated commercial terms and conditions.

(63) The Legal and Governance Services unit must review and approve all variations proposed by a supplier to a standard University contract, as well as any proposed non-University contracts. The extent of the review is at the discretion of the appointed Legal Counsel.

(64) The contract must be executed by an authorised delegate. A signed copy of the contract must be retained by Strategic Procurement and filed in accordance with the Records Governance Policy.

Section 6 - Compliance

(65) Failure to comply with the provisions of this procedure and the relevant delegations may be considered a breach of the Staff Code of Conduct. University staff found to be in breach of this procedure may be subject to disciplinary action in accordance with the relevant Enterprise Agreement or employment contract.

Status and Details

Status	Current
Effective Date	21st September 2023
Review Date	3rd March 2025
Approval Authority	University Secretary
Approval Date	21st September 2023
Expiry Date	Not Applicable
Responsible Executive	Morven Cameron Chief Operating Officer
Enquiries Contact	Tamarin King Associate Director, Strategic Procurement Strategic Procurement

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.

"Controlled entity" - Has the same meaning as in section 16A of the University of Newcastle Act 1989.

"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.

"External parties" - Any individual or organisation external to the University.

"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.

"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.

"Research" - As defined in the Australian Code for the Responsible Conduct of Research, or any replacing Code or document.

"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.

"Delegate" - (noun) refers to a person occupying a position that has been granted or sub-delegated a delegation of authority, or a committee or body that has been granted or sub-delegated a delegation of authority.