The University of Technology Sydney (UTS)

Code of Practice For Procurement
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PART 1 – OVERVIEW

1 Introduction

This Code of Practice for Procurement outlines how the University of Technology Sydney (UTS) will conduct its procurement activities when interacting with the private sector.

The Code sets the framework for all business relationships by:
- Establishing the standards of behaviour expected from UTS staff, tenderers & service providers
- Requiring a strong commitment to continuous improvement and best practice performance by all participants in the supply chain.
- UTS will use its right as a major client to do business only with service providers who display a commitment to and consistent application of the standards of behaviour outlined in the Code.

The Code applies to all procurements for which tenders are invited or negotiations commenced on or after 1 May 2012. Where a revision to the Code has been introduced, the date of the revision is noted in the Code’s Log of Revisions.

2 Objective

UTS wants its procurement activities to achieve best value for money in the expenditure of public funds while being fair, ethical and transparent.

In achieving this objective, UTS:
- has set the responsibilities and standards of behaviour expected of the parties undertaking procurement activities as outlined in this Code of Practice;
- will award contracts to those service providers that meet the requirements outlined in the Code; and
- calls on other industry stakeholders, such as employer associations, industry associations and unions, to support and uphold this Code of Practice.

All UTS clients, tenderers and Service Providers are required to comply with this Code.

3 Standards of Behaviour

All parties will behave in accordance with the following standards at all times:

**Honesty and fairness:** Parties will conduct all procurement and business relationships with honesty and fairness.

**Accountability and transparency:** The process for awarding contracts at UTS will be open, clear and defensible.

**No conflict of interest:** A party with a potential conflict of interest will declare and address that interest as soon as the conflict is known to that party.

**Rule of law:** Parties shall comply with all legal obligations.

**No anti-competitive practices:** Parties shall not engage in practices that are anticompetitive.

**No improper advantage:** Parties shall not engage in practices that aim to give a party an improper advantage over another.

**Intention to proceed:** Parties shall not seek or submit tenders without a firm intention and capacity to proceed with a contract.

**Co-operation:** Parties will maintain business relationships based on open and effective communication, respect and trust, and adopt a non-adversarial approach to dispute resolution.
PART 2 – PRACTICE REQUIREMENTS

All parties shall adhere to the requirements of this section.

4 Best Practice

Procurement processes should be structured to minimise costs for all parties, consistent with the standards of behaviour required by this Code.

Commitment to continuous improvement and best practice performance is expected of all those involved in government procurement. Areas where this commitment may be demonstrated include, but are not limited to:

- Client focus, service quality and value for money outcomes;
- Ethical business practices;
- Management of procurement risk;
- Tendering and contract management;
- Co-operative relationships;
- Non-adversarial dispute resolution;
- Planning and management of human, physical and financial resources;
- Environmental management;
- Occupational health and safety management, and workplace injury management;
- Workplace practices;
- Industrial relations;
- Training management;
- Supply chain management;
- Payment practices, including reflective practices down the contract chain; and
- Innovation in design, service provision, processes and use of technology.

A service provider who contracts UTS is accountable for the standards of performance, behaviour and ethical conduct of all service providers down the contract chain.

5 Tendering Requirements

Clients will not knowingly accept tenders from or award contracts to tenderers who:

- are subject to exclusion from tendering as a result of a breach of this Code;
- are bankrupt;
- are subject to a winding up order;
- are corporate entities with persons involved directly or indirectly in the management of the entity who are disqualified under corporations law; or
- demonstrate an inability to meet the requirements of the Code.

Clients may choose not to accept tenders from or award contracts to tenderers who have an administrator appointed.

Tender Methods and Process

UTS will select a tendering method and process that suits the procurement, its level of risk, is timely, avoids creating unnecessary costs for tenderers, and safeguards the security and confidentiality of all tenders.

Conditions of tendering shall be the same for each tenderer on any particular tender process. All requirements shall be clearly stated in conditions of tendering.

Evaluation Criteria

In addition to prices tendered, evaluation criteria shall contain the critical factors to be used in the evaluation of tenders. These factors typically include, but are not limited to:

- whole-of-life costs, including costs of disposal;
- ability to meet Code requirements;
innovation offered;
delivery times offered;
quality offered;
previous performance of tenderer;
experience of tenderer and personnel proposed;
capability of tenderer, including technical, management, human resource, organisational and financial capability and capacity;
tenderer's occupational health and safety management practices and performance;
tenderer's environmental management practices and performance;
value adding components
initiatives, if appropriate and relevant to the procurement; and
conformity of tender with requirements.

The evaluation criteria should be consistent with the proposed contract requirements and aim to identify the tenderer offering the best value for money. Ideally, the weighting of the evaluation criteria should be determined prior to calling of tenders but shall be not later than close of tenders.

5.1 Submission of Tenders

It is the tenderer's responsibility to submit a tender in accordance with the conditions of tendering and in a legible and uncorrupted form, particularly in the case of electronic tendering.

Late tenders should not be considered, except when the client is satisfied that the integrity and competitiveness of the tendering process has not been compromised.

5.2 Confidentiality

Clients shall not disclose tender information received from tenderers that is intellectual property, proprietary, commercial-in-confidence or otherwise confidential.

5.3 Evaluation of Tenders

Evaluation of tenders shall be based on the conditions of tendering and evaluation criteria therein. Tenders should be evaluated by people with the necessary skills and knowledge, and who are free of any conflict of interest that might undermine the fairness of the process. Any tender that does not adequately comply with the conditions of tendering may be passed over.

Tenderers may be encouraged to offer alternative, better value for money tenders. UTS will specify the conditions under which alternative tenders will be considered. These conditions shall not remove the obligation to comply with the Code of Practice for Procurement. Where a tenderer offers an alternative, a tender for that alternative should not be sought from other tenderers. UTS will not breach confidentiality by using information contained in alternative tenders as the basis for calling subsequent tenders.

5.4 Clarification of Tenders

If information received in a tender is open to interpretation or is not clear, then clarification should be requested from the tenderer where this is material to identifying the successful tender.

The clarification procedure shall be managed in such a way so as not to give the tenderer an unfair advantage over other tenderers by allowing the tenderer to revise or enhance its original tender.

Tenderers shall not use clarification requests by the client as an opportunity to gain an advantage over other tenderers by revising or enhancing their tender.

5.5 Tender Negotiation

If after a competitive tendering process none of the tenders are acceptable either due to the level of non-conformance or because they do not represent sufficient value for money,
negotiations may be conducted with the tenderer that submitted the most acceptable tender based on the evaluation criteria.

The purpose of the negotiations shall be made clear to all participants prior to the commencement of negotiations. The aim is to achieve a tender that is mutually acceptable.

UTS will exhaust negotiations with the tenderer that submitted the most acceptable tender before negotiating with the next most acceptable tenderer, unless time constraints or the closeness of the tenders dictate otherwise.

5.6 **Prohibition of ‘Bid Shopping’**

UTS shall not use tender negotiations as an opportunity to trade-off one tenderer’s prices against other tenderers’ prices in order to obtain lower prices. This practice, known as ‘bid shopping’, is prohibited.

5.7 **Outcomes of Tenders called by UTS**

UTS may make information on the successful tender publicly available. Information relating to unsuccessful tenders will remain confidential, unless otherwise specified in the conditions of tendering, agreed by the tenderer or required by the law.
PART 3 – COMPLIANCE

6 Dealing with Code Breaches

**Breach by UTS**
If a Code breach is substantiated against UTS and is attributable to UTS’ policies, practices or procedures, then UTS will take corrective action in relation to such policies, practices or procedures.

If the breach is the result of the activities of an individual, in contravention of UTS’ policies, code of conduct, practices or procedures, then UTS will take appropriate disciplinary action.

**Breach by Non-UTS Party**
If a Code breach is substantiated against a non-UTS party, UTS may require that party to show cause why sanctions should not be applied and, subject to the response, may apply sanctions to that party.

Where the non-UTS party is a member of an employer association, industry association or union, the breach may also be referred to that association or union for action under its rules or code of conduct.

7 Definitions

**UTS**  The University of Technology Sydney

**Bid shopping**  The practice of trading off one tenderer’s prices against another’s in order to obtain lower prices.

**Construction**  All organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering.

**Employee**  Person whose employment is governed by a contract of service, or a person deemed to be an employee under Australian or NSW industrial law.

**Employer**  Entity that employs a person or persons under a contract of service or a person deemed to be an employer under Australian or NSW industrial law.

**Fair**  Being unbiased, reasonable and even-handed. Being fair does not mean satisfying everyone or not reasonably pursuing one’s legitimate interests. A fair decision may still adversely affect parties.

**Intellectual Property**  Inventions, original designs, and practical applications of good ideas protected by law through copyright, patents, registered designs, circuit layout rights and trademarks.
Also includes trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by law and through additional contractual obligations, such as confidentiality agreements, contracts and conditions of tendering.

**Party**  Client, tenderer or service provider. An entity’s role in a procurement will determine whether it is a client, tenderer or service provider for that procurement.

**Procurement**  All activities involved in acquiring goods or services either outright or by lease (including disposal and lease termination). Includes acquiring consumables, capital equipment, real property, infrastructure, and services under consultancies, professional services, facilities management and construction.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Service</td>
<td>Includes contractors, subcontractors, suppliers and consultants that contract to provide goods or services.</td>
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<tr>
<td>Provider</td>
<td></td>
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<tr>
<td>Tender</td>
<td>Includes a price, bid, offer, quotation, consultant proposal or expression of interest lodged in response to an invitation or request for tender.</td>
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<tr>
<td>Tenderer</td>
<td>Entity submitting a tender.</td>
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<td>Value for</td>
<td></td>
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<tr>
<td>Money</td>
<td>The benefits, compared to whole-of-life costs.</td>
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