



Australian Competition & Consumer Commission

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P		City of Joondalup
A	NOTE	DOCUMENT REGISTRATION
	A17	Ref 37863
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Dear Sir/Madam,

I refer to your letter to the Australian Competition and Consumer Commission (the Commission) received on 27 December 2001 in relation to the proposed Purchasing Policy of the City of Joondalup. You request the Commission's advice and comment in relation to any non-compliance issues or inconsistencies with the *Trade Practices Act 1974* (the TPA) or National Competition Policy (NCP).

The Commission is a federal statutory authority with responsibility for ensuring compliance with the TPA the object of which is to enhance the welfare of all Australians through the promotion of competition and fair-trading and provision for consumer protection. Part IV of the TPA contains a number of provisions prohibiting anti-competitive conduct.

The Commission is unable to provide legal advice, however, I am happy to provide you with my comments on the issues raised and outline the operation of the TPA for your information.

The NCP reforms adopted by the Council of Australian Governments (COAG) in April 1995 resulted in amendments to the TPA and pro-competitive reforms in relation to inter-government agreements. This is reflected in the terms of the Conduct Code Agreement signed by the Commonwealth, the States and Territories on 11 April 1995. The result is Part IV of the TPA extends to all persons and entities, including local government bodies, not just corporations.

The reforms of inter-government agreements focus on areas such as public monopolies and competitive neutrality. These areas are not within the jurisdiction of the Commission and I am unable to comment on the impact of this aspect of NCP on the City of Joondalup's Purchasing Policy.



Section 45 of the TPA deals with a variety of proscribed agreements. Agreements that restrict the supply of goods and services are prohibited if they have the purpose or effect of substantially lessening competition in a market in which the business operates.

A market for these purposes can be defined as a field of economic activity in which traders acquire and supply goods or services which are substitutable with each other. A market will, therefore, generally not only include those who are currently supplying or acquiring the goods or services in question but will extend to those who, given a sufficient price incentive, may enter the market in the future. Conduct will substantially lessen competition if it significantly reduces competitive activity in the market, irrespective of its effect on particular individual competitors in the market.

The Purchasing Policy of the City of Joondalup proposes to provide opportunities, such as the Joondalup On-Line Business Directory, to local Joondalup businesses to participate in the provision of goods and services to the City. Contracts made pursuant to the Purchasing Policy may have the relevant anti-competitive purpose under section 45 of the Act. However, it is unlikely that any one contract of this nature would substantially lessen competition in the relevant market. The Purchasing Policy may advantage local Joondalup businesses, however, this would not seem to create significant barriers to entry from non-local suppliers.

Section 46 of the TPA is the central provision for regulation of misuse of market power. It provides essentially that a firm with substantial market power shall not take advantage of that power for one of the proscribed purposes, namely eliminating or damaging a competitor, preventing entry into a market, or deterring or preventing competitive conduct.

To determine whether conduct breaches section 46 it is required to establish a high degree of market power, use of that power in conduct that would not be regarded as rational in the normal course of business and a proscribed purpose under section 46. It is unlikely the City of Joondalup would have a substantial degree of market power in any one market. Notwithstanding this there does not appear to be evidence the City of Joondalup has used its market power for a proscribed purpose.

Ultimately, the issue of whether particular conduct contravenes the TPA is a matter for a Court to determine. The TPA provides for a right of private action to parties who believe they may have suffered loss or damage as a result of the alleged conduct.

Should you have any queries, or wish to discuss the matter further, please contact Tania Murray of this office on (08) 9325 0627.

Yours sincerely


Larry Kelly
a/g Regional Director
Western Australia

POLICY 2.4.6 – PURCHASING GOODS AND SERVICES

PREAMBLE

The City recognises that there are many tangible economic benefits in supporting businesses located within the City of Joondalup. It is committed to assisting with the promotion and stimulation of local economic development.

As a major purchaser of goods and services, the City will provide every opportunity for businesses located within the City to participate in the provision of goods and services to the City. It is recognised that the range and availability of goods and services offered by local businesses is sometimes limited. The City will procure goods and services within a context of ensuring the City achieves best value for money for the community, products and services which meet the City's requirements for quality and availability, and that the procurement process meets the City's legal and ethical obligations

OBJECTIVES

To stimulate business development and growth in the City by pursuing every opportunity to purchase goods and services from businesses located within the City of Joondalup, having regard to the need to:

- achieve best value for money for the community;
- meet the specified requirements of the City;
- comply with the legal framework and Cities policies; and
- recognise the economic benefits that each purchasing decision may offer the City and the region.

To ensure the City plays an integral role in its economic development through its purchasing directions by:

- facilitating joint project initiatives with businesses in the City; and
- providing reciprocal benefits such as employment opportunities or business sustainability wherever this can be achieved in the region.

STATEMENT

The City of Joondalup will support economic development by providing the opportunity for local business to provide goods and services to the City by:

- Taking a leadership and educational role in promoting the economic advantages which can be delivered from supporting local business within the community
- Encouraging the participation of local business in the City's purchasing process and tendering process through effective communication and relationship management
- Being proactive in promoting the local business community through the use of initiatives such as but not limited to:
 - ◆ The Joondalup On-Line Business Directory and other e-commerce initiatives.
 - ◆ The 2cities Portal Project.
 - ◆ The Community Connections Project.
 - ◆ The Business Incubator

- Providing business information regarding the City's purchasing needs in order to assist local business in providing specific goods and services as required by the City.
- Facilitating an increased understanding for local business in meeting the requirements of the City's purchasing procedures and contract management framework.
- Encouraging local business to also support the community by procuring the majority of its requirements locally.
- Developing and monitoring key measures that demonstrate the effectiveness of this Policy over time

Suppliers within the City can actively seek business with the City of Joondalup by:

- Registering on the City of Joondalup On-line Business Directory
- Proactively promoting goods and services to the City.
- Participating in the City's tender and quotation processes.
- Considering the City as an important customer.
- Offering value for money, customer service and competitive prices for the supply quality goods and services.
- Actively supporting the City's joint project initiatives.

Interpretations

In this Policy the following definitions shall apply unless the context means otherwise:

"Local Business" - a local business is any business within the City of Joondalup which has its business premises physically located within the boundaries of the City.

"The Region" – the region shall include the City of Joondalup and its neighbouring Cities including City of Wanneroo and City of Stirling.

"The City" – The City of Joondalup.

"Contract Management Framework" – the procedural framework developed by the City for its contracts, tenders and associated policies.

"Quotation" means a closed quote up to \$50,000 exclusive of GST.

"Tender" means an open quote through statewide public invitation to comply with statutory requirements.

Benefits of the Policy

The City recognises that the benefits of this policy will:

- Increase and promote economic activity within the City of Joondalup.
- Facilitate small business participation in the City's procurement process.
- Enhance competition amongst local businesses.
- Develop improved relations between the City and the local business community
- Provide more effective risk management.

Application of the Policy

This Policy should be read in conjunction with the City's Corporate Purchasing Procedures and Contract Management Handbook.

Notwithstanding the requirements of relevant legislation in relation to public tenders City staff when making a purchasing decision should:

- Inform and encourage local suppliers who have registered on the City of Joondalup On-line Business Directory to provide a quotation where goods and services are available locally and in accordance with procedures.
- Continue to allow suppliers from outside the City of Joondalup to provide a quotation.
- Ensure that the City is meeting its best value for money objectives.
- Where there is no local supplier within the City of Joondalup, shall consider suppliers from within the Region with the exception of public tenders.
- Demonstrate an ethical and transparent process that also can be viewed by others as ethical and transparent.
- Ensure all purchasing decisions are based upon the following selection criteria where applicable:
 1. Achieving value for money for the community living in the City of Joondalup,
 2. Meeting the specified requirements as detailed in the City's policies and procedures,
 3. Complying with the City's purchasing, contract management, legal and statutory framework
 4. Assessment of any economic benefits which the purchasing decision may offer the City and the Region. This includes circumstances where:
 - continued patronage to a supplier within the City or the Region is likely to create economic benefits such as employment opportunity or business sustainability
 - the purchasing decision has the capacity to generate economic benefit and employment opportunities to the Region
 - the purchasing decision may provide any potential value adding linkages to the City and the Region
- Where the City invites tenders/quotation for supply of goods or services, staff are required to, and will, consider tenders and quotation in accordance with Local Government (Functions and General) Regulations 1996, the conditions of tendering and the City's purchasing procedures. When considering tenders and quotations, no price preference will be given by the City on account of the supplier being local.

Application of this policy is to be within all applicable legal frameworks including, but not limited to, the Local Government Act 1995 and its Regulations, Trade Practices Act 1974 and National Competition Policy.

Policy Review

The Purchasing Policy shall be reviewed at least annually with regard to suitability, currency and compliance and will be reported to Council.

