

# COUNCIL POLICY

## PROCUREMENT POLICY



**District Council of Coober Pedy**

<b>Policy No.</b> C004	<b>Version No:</b> 1	<b>Date of Current Version:</b> 24 May 2023
<b>Resolution Number:</b> Resolution No 389		<b>Last Reviewed:</b> 7/5/2019
<b>Responsible Officer/Department:</b> Procurement/Finance		<b>Next Review Date:</b> May 2024
<b>Applicable Legislation:</b> Local Government Act 1999		
<b>Related Policies:</b> Employees Code of Conduct Credit Card Policy Disposal of Land & Assets Policy Financial Internal Control Policy (to be developed) Prudential Management Policy Risk Management Policy		
<b>Supporting Procedures and other documents:</b> Financial Delegations Register (to be developed)		
<b>Approved by:</b> Council Resolution No. 389 on 24 May 2023		

### 1. OBJECTIVE

This Procurement Policy sets-out the matters to be considered by the District Council of Coober Pedy (the Council) when procuring Goods, Services and Works.

It provides both Council officers and the market with a procurement framework that defines the methods by which the Council can acquire Goods, Services and Works.

The Policy is designed to assist the Council in achieving best-practice procurement outcomes by:

- enhancing value-for-money through fair, competitive, non-discriminatory Procurement;
- promoting the use of resources in an efficient, effective and ethical manner;
- making decisions with probity, accountability and transparency;
- working within the Council’s economic, social and environmental policies;
- providing reasonable opportunity for competitive local businesses to supply to the Council;

- appropriately managing risk; and
- ensuring compliance with all relevant legislation. In some cases, Council may experience procurement difficulties because of its remote location. This may require flexibility in the application of Procurement practices to ensure balance is achieved across the various Objectives and Principles set out in this Policy.

## 2. SCOPE

This Policy applies to all procurement activities performed by the Council to source Goods, Services or Works from external Suppliers.

The Policy does not apply to:

- non-procurement expenditures such as sponsorships, grants, funding arrangements, and donations; or
- employment contracts; or
- the disposal of land and other Assets owned by the Council; or
- the purchase of land.

## 3. DEFINITIONS

TERM	DEFINITION
CEO	The Chief Executive Officer of the District Council of Coober Pedy
Approving Officer	The staff member who approves a procurement process.
Initiating officer	The staff member who initiates a procurement process.
Respondents	Businesses submitting quotations, tenders, proposals or similar for the supply of Goods, Services or Works.

## 4. ROLES AND RESPONSIBILITIES

### 4.1 COUNCIL

- approving an appropriate procurement policy
- considering reports regarding the adherence to the policy
- involvement in some purchasing decisions outside of that delegated to staff.

### 4.2 CHIEF EXECUTIVE OFFICER

- Ensure adequate resources are available to comply with this policy

- Ensure adherence to the policy

#### 4.3 ALL STAFF

- Ensure adherence to the policy

## 5. POLICY STATEMENTS – GUIDING PRINCIPLES

### 5.1 PROCUREMENT PRE-REQUISITES

5.1.1 The Council will only approach the Market after

- establishing a clear need for the required Goods, Services or Works,
- complying with Prudential Management Policy requirements when applicable, and
- gaining proper approval for the proposed expenditure

### 5.2 OBTAINING VALUE FOR MONEY

5.2.1 An assessment of value for money must include, where applicable, consideration of:

- whole of life costs, not just purchase price;
- the contribution to the Council's long-term plan and strategic direction;
- any relevant direct and indirect benefits to the Council, both tangible and intangible;
- the efficiency and effectiveness of the proposed procurement method, including the council's internal administration costs;
- the performance history of each Respondent (supplier);
- fitness for purpose of the proposed Goods, Services or Works;
- technical compliance with the Requirement specification;
- risk assessment; and
- the value of any associated environmental benefits.

### 5.3 RISK MANAGEMENT

5.3.1 The Council will adopt sound risk management principles in its procurement activities consistent with the Council's Risk Management Policy.

### 5.4 PROBITY, ETHICAL BEHAVIOUR AND FAIR DEALING

5.4.1 The Council is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations, and use its best endeavours to deal with all respondents on the basis of mutual trust and respect.

- 5.4.2 If the Council or the Chief Executive assess that the need for impartiality, fairness or independence will be compromised without the appointment of an independent Probity Officer, then one should be appointed for any specific procurement project.
- 5.4.3 Subject to the requirements of the Freedom of Information Act 1991 the Council will maintain the confidentiality of commercial information provided by Suppliers. Clauses dealing with the treatment of Confidential Information will be included in all Purchase Agreements.

## 5.5 ACCOUNTABILITY, TRANSPARENCY AND REPORTING

- 5.5.1 Records detailing all aspects of a procurement process are to be maintained and appropriate documentation completed commensurate with the nature and complexity of the transaction.
- 5.5.2 The Council must record written reasons for utilising a specific procurement method in each activity and where it uses a procurement method other than tendering.
- 5.5.3 All purchasing records will be maintained in accordance with the State Records Act and Council's relevant Records Management Policy.

## 5.6 EFFICIENT PROCUREMENT PRACTICES

- 5.6.1 Standard processes and documentation will be used wherever possible to ensure efficiency and consistency.
- 5.6.2 Panel arrangements and pre-qualification of suppliers should be utilised in most cases to improve the efficiency of the procurement process and reduce the impact of repetitive bidding on respondents.

## 5.7 USE OF LOCAL SUPPLIERS

- 5.7.1 Where all other factors are equal, the Council may, to the extent permitted by law, favour the engagement of suppliers operating within the area of the Council.
- 5.7.2 The following criteria are to be considered in selecting a local Supplier
- the creation of local employment opportunities;
  - increased availability of local servicing support;
  - increased convenience in dealing with the Supplier for contract management;
  - economic growth within the local area;
  - benefit to the Council of associated local commercial transaction; and/or
  - the short and long term impact of the Procurement on local business.
- 5.7.3 Where a suitable local area supplier is not available then preference may be given to South Australian based and then Australia based Suppliers of Goods, Services or Works, in that order.

## 5.8 WORK HEALTH AND SAFETY

- 5.8.1 The Council will ensure that WHS is considered prior to the acquisition of any plant and equipment.
- 5.8.2 As a minimum, Council will comply with the Work Health, Safety and Welfare Act 2012 and all associated regulations. Additional health and safety requirements specific to the Procurement will be advised in the Procurement Documentation, which will typically include obtaining insurances and licences and certification relevant to the works, good or services.
- 5.8.3 Council only engages suppliers who are able to maintain a level of Work Health and Safety acceptable to Council. As a minimum, this must comply with the Work Health and Safety Act 2012, all associated regulations and all requirements relating to contractors in Council's relevant Work Health and Safety policies, and as specified in terms and conditions of contractual arrangements.

## 5.9 ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY

- 5.9.1 The Council will seek to:
- adopt purchasing practices which conserve natural resources;
  - align the Council's procurement activities with principles of ecological sustainability;
  - purchase recycled and environmentally preferred products where possible;
  - integrate relevant principles of waste minimisation and energy efficiency;
  - foster the development of products and services which have a low environmental impact;
  - provide leadership to business, industry and the community in promoting the use of environmentally sensitive Goods and Services.
- 5.9.2 When engaging Suppliers, the Council will require a minimum standard of environmental management which includes compliance with all applicable environmental law, regulations and licences. Additional environmental requirements specific to the Procurement will be advised in the Procurement Documentation.

## 6. POLICY STATEMENTS – PROCUREMENT METHODS

### 6.1 DETERMINING THE APPROPRIATE METHOD

The appropriate method of procurement will be determined by reference to several factors including:

#### 6.1.1 the value of the purchase;

Expenditure*	Minimum Requirement	Additional Requirement
Up to \$2,000	Quote from at least One single supplier (Direct Sourcing)	Expenditure in the Council approved budget Subject to staff delegations
\$2,001 to \$5,000	At least Two (2) Written Quotations if there are two local suppliers, otherwise one (1) quotation	Expenditure in the Council approved budget Subject to staff delegations
\$5,001 to \$15,000	At least Two (2) Written Quotations, including at least One from a local supplier where they exist	Expenditure in the Council approved budget Subject to staff delegations
\$15,001 to \$50,000	At least Three (3) Written Quotations including at least One from a local supplier where they exist	Expenditure in the Council approved budget Subject to staff delegations
\$50,001 to \$100,000	At least a Selected Tender	A formal Tender Evaluation Plan and Tender Evaluation Report with recommendation to CEO for approval and Council Report to endorse recommendation,  (Exception where CEO has prior authorisation to approve by the Council.)
Over \$100,000	Formal tender process for purchases over contract duration over \$100,000	A formal Tender Evaluation Plan and Tender Evaluation Report with recommendation to the CEO for approval and subsequent Council Report seeking Council endorsement,  (Exception where CEO has prior authorisation to approve by the Council.)

The value of the purchase will be calculated as follows:

- single one-off purchase – the total amount, or estimated amount, of the purchase (excluding GST);
- multiple purchases – the gross value, or the estimated gross value, of the purchases (excluding GST); or
- ongoing purchases over a period – the gross value, or the estimated gross value, of the purchases (excluding GST). It is noted that purchase orders may be issued annually or more frequently for accounting purposes.

- 6.1.2 the cost of an open market approach versus the value of the acquisition and the potential benefits;
- 6.1.3 the circumstances of the procurement activity;
- 6.1.4 the size of the market and the number of competent suppliers;
- 6.1.5 the Council's leverage in the marketplace;
- 6.1.6 time constraints;
- 6.1.7 a global assessment of the risks associated with the relevant activity and /or project, including the risk profile of the procurement and any risks associated with the preferred procurement method.
- 6.1.8 benefits to the community of Local Industry Sourcing.

## 6.2 TENDER PROCESS

- 6.2.1 An open tender must be advertised publicly through the Tenders SA website and/or the LGA Vendor panel website.
- 6.2.2 A select tender process may be used where there are a limited number of suppliers able to provide the goods or services sought.
- 6.2.3 Both open tenders and select tenders require:
  - Tender Evaluation Team
  - Tender Evaluation Plan
  - Tender Evaluation Report

## 6.3 PURCHASE ORDERS

- 6.3.1 Purchase Orders are required for expenditures over \$2,000 however the Chief Executive Officer may exempt this requirement in certain circumstances e.g. booking flights and accommodation for Administrators and/or staff. Similarly the Chief Executive Officer may require purchase orders for purchases less than \$2,000 in certain circumstances e.g. plant repairs and maintenance.
- 6.3.2 Also there may be occasions when it is not practical to issue a Purchase Order, for example when emergency remedial works are required outside of business hours. In such cases, a Work Order shall be provided to the supplier as an interim measure.

- 6.3.3 All purchase orders will be required to be undertaken by two different officers of Council – An Initiating Officer and an Approving Officer. The Initiating Officer and the Approving Officer must be different Council employees.
- 6.3.4 The General Terms and Conditions for Procurement as set out in Attachment 1 will apply to all procurements including purchase orders.

#### 6.4 PRUDENTIAL MANAGEMENT

- 6.4.1 A Prudential Report will be prepared for major projects in accordance with Section 48 of the Local Government Act 1999 when it is applicable.

#### 6.5 REQUEST FOR EXPRESSIONS OF INTEREST

- 6.5.1 A Request for Expressions of Interest may be issued to test the market. The process is the same as a normal procurement with the exception that responses do not constitute a binding offer capable of acceptance by the Council to form a Contract.

#### 6.6 UNSOLICITED PROPOSALS

- 6.6.1 The Council recognises the reputational risk associated with any unsolicited bid. For this reason, 'exceptional circumstances' would need to be present before the Council would consider any unsolicited bid. For an 'exceptional circumstance' to exist, the proposal would need to:
- Be unique in that it could not be delivered by any other party within acceptable timeframes, and promote a tangible economic, social or environmental outcome which is consistent with the Council's strategic objectives.
  - Any unsolicited proposal with a value greater than \$100,000 would automatically be subject to an appropriate competitive tender process to ensure appropriate governance standards
  - Proposals that are rejected based on value or as a consequence of the following evaluation process should nevertheless undergo an internal evaluation to determine merit for future planning purposes.

#### 6.7 SPECIAL CIRCUMSTANCES

- 6.7.1 In certain circumstances, the Council may, for all amounts above \$10,000, waive application of this Policy and pursue a method which will bring the best outcome for the Council. The Council must record its reasons in writing for waiving application of this Policy. Reasons may include:
- if the CEO decides that there is only one supplier reasonably available to it; or
  - the CEO decides that a genuine emergency exists; or
  - the CEO is satisfied that the services to be supplied are of such a specialised or confidential nature that it would be impractical or disadvantageous to the Council to invite tender or quotations; or
  - the purchase of goods at auction; or



- the purchase of secondhand goods; or
- the contract is made with a person who is on a panel of suitable suppliers maintained by the Council

## 7. DELEGATIONS

7.1 In accordance with sections 44(4)(b) and 101 of the Local Government Act 1999, the CEO can sub-delegate the function and power listed in section 137 of the Local Government Act 1999, with appropriate limitations, the power to expend funds as the Council thinks fit in the exercise, performance or discharge of its powers, functions or duties. The CEO may, from time to time, alter financial delegations as appropriate. These are set out in the Financial Delegations Register.

## 8. TRAINING/EDUCATION

- 8.1 All staff responsible for steps within the procurement process should have an in-depth and working knowledge of the content of this policy.
- 8.2 All staff should be aware of the content of this policy.

## 9. REVIEW

This Policy will be reviewed every three years.

## 10. ACCESS TO THE POLICY

The **Procurement Policy** is available for public inspection at the Council offices located at Hutchinson Street, Coober Pedy South Australia and on the Council's website at [www.cooberpedy.sa.gov.au](http://www.cooberpedy.sa.gov.au)

## Terms & Conditions of Purchase

### 1. Definitions

In this agreement:

- 1.1 **Confidential Information** means any documentation or information of a confidential nature supplied by either party to the other in connection with this agreement but excludes any information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.
- 1.2 **Intellectual Property** means all rights conferred by statute, common law or equity in relation to patents, inventions, registered and unregistered designs, registered and unregistered trademarks, trade names, logos and get up, confidential information, copyright and moral rights and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- 1.3 **Purchase Order** means the Purchase Order on the front page of these Terms and Conditions.
- 1.4 **Terms and Conditions** means these Terms and Conditions.
- 1.5 **Works** means any works and services specified in the Purchase Order together with any additional works necessary for the performance of this agreement.
- 1.6 Expressions used in the Purchase Order have the same meaning in these Terms and Conditions.

### 2. Interpretation

In this document, unless the context otherwise requires:

- 2.1 a reference to this agreement means the Purchase Order and the Terms and Conditions;
- 2.2 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 2.3 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 2.4 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 2.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 2.6 a provision is not construed against a party only because that party drafted it;
- 2.7 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement; and
- 2.8 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

### 3. Application

This agreement

- 3.1 applies to all Works performed by the Contractor/Consultant to the District Council of Coober Pedy and the Contractor/Consultant is deemed to have read and agreed to this agreement prior to filling any order for the Works; and
- 3.2 prevails over the Contractor/Consultant's terms and conditions of sale or any other documents provided by the Contractor/Consultant.

### 4. Supply

The Contractor/Consultant agrees to supply the Works and the District Council of Coober Pedy agrees to purchase the Works on the terms of this agreement.

### 5. Payment

Unless otherwise specified in the Payment Terms, the District Council of Coober Pedy must pay the price specified in the Purchase Order by cheque or electronic funds transfer within 30 days of the end of the month in which the invoice is issued by the Contractor/Consultant. The invoice cannot be issued until the Works have been completed by the Contractor/Consultant.

### 6. Acceptance of Goods

The District Council of Coober Pedy will only be obliged to accept delivery of materials that comply with this Purchase Order. If the delivery of materials do not comply, the Contractor/Consultant will, if so required by the District Council of Coober Pedy, remove all rejected elements of the materials and replace the same with a delivery of the materials acceptable to the District Council of Coober Pedy. All freight, insurance and other charges whatsoever in connection with the return of the element of the materials

wrongly supplied, and the delivery of a further supply of the materials will be borne by the Contractor/Consultant.

## **7. Samples**

The District Council of Coober Pedy may require, as a condition of delivery of any element of the materials, the Contractor/Consultant to supply a sample of the relevant materials for approval by the District Council of Coober Pedy. In the event that a sample is produced and approved, any delivery of materials pertaining to the sample shall be of a size, nature and quality which is consistent with that of the approved sample.

## **8. Property in the Materials**

Where payment is made by the District Council of Coober Pedy for any element of the materials, the entire title of the property shall pass without exclusion or limitation but will be subject to the District Council of Coober Pedy right to subsequent rejection in the event that the relevant element of the materials does not comply with the terms of this Purchase Order.

## **9. Service Standards**

The Contractor/Consultant must:

- 9.1 perform the Works in a professional and competent manner with due care, skill and diligence and within the time specified in the Purchase Order.
- 9.2 comply fully and promptly at its own cost with all laws, applicable standards, codes of practice, by-laws, orders and regulations at present or in the future relating to the performance of the Works and with all requirements, notices or orders in respect of anything affected by the Works;
- 9.3 provide at its own cost all supervision, labour, materials, plant, tools and equipment, transport and temporary works required for the performance of the Works;
- 9.4 be responsible for the care of the Works from the date of commencement until completion, including the care, storage and protection of unfixed items and items provided by the District Council of Coober Pedy (if any); and
- 9.5 provide, effect and maintain all barricades, fences, signs, lighting and temporary works necessary for the protection of the Works, other property and for the safety and convenience of the public.

## **10. Warranties by Contractor/Consultant**

The Contractor/Consultant warrants that the Works will:

- 10.1 be of good merchantable quality and fit for their purpose;
  - 10.1.1 be performed using new materials, unless otherwise notified in writing by the Contractor/Consultant;
  - 10.1.2 conform with the description and the Specifications in the Purchase Order; and
  - 10.1.3 throughout the Warranty Period, operate in accordance with the Specifications, and otherwise in accordance with the operation of similar products.
  - 10.1.4 If any Works are found to be defective or do not comply with clause 10.1.1 to 10.1.2 and the District Council of Coober Pedy notifies the Contractor/Consultant of the defect during the Warranty Period, the Contractor/Consultant must, at its own cost, promptly rectify any defects in the Works within the Warranty Response Time.
  - 10.1.5 Failing rectification by the Contractor/Consultant during the Warranty Response Time, the District Council of Coober Pedy may rectify defects at the cost of the Contractor/Consultant.

## **11. Insurance**

- 11.1 The Contractor/Consultant must maintain Public Liability insurance (minimum \$10 million) at all times during works and for at least six years following completion of the Works unless otherwise specified in the Purchase Order.
- 11.2 The Contractor/Consultant must provide certificates of currency in respect of the Contractor/Consultant's Insurances before commencing the Works and when reasonably requested by the District Council of Coober Pedy.

## **12. Work Cover**

If applicable

- 12.1 the Contractor/Consultant must comply with the Work Health and Safety Act 2012 (SA), any regulations made under it and any associated policies adopted by the District Council of Coober Pedy, and must ensure that its employees and Contractor/Consultants comply with all laws, regulations, notices and codes of practice having application to this agreement;
- 12.2 the Contractor/Consultant must comply with the Workers Rehabilitation and Compensation Act 1986 (SA) and any regulations made under it;
- 12.3 the Contractor/Consultant must comply with all reasonable directions and procedures relating to security and work health and safety as required by the District Council of Coober Pedy; and

- 12.4 the Contractor/Consultant must immediately notify the District Council of Coober Pedy of any incident or accident arising from the performance of this agreement, including any incident or accident involving the public.

### **13. Contractor/Consultant Indemnities**

The Contractor/Consultant indemnifies the District Council of Coober Pedy against all actions, proceedings, claims, demands, charges, penalties, expenses and all other liabilities arising from or in relation to the performance or non-performance of any of the Contractor/Consultant's obligations under this agreement.

### **14. Intellectual Property**

- 14.1 Other than any drawings or specifications provided by the District Council of Coober Pedy to the Contractor/Consultant, the Contractor/Consultant warrants that the Works will not infringe the Intellectual Property of any third party.
- 14.2 The ownership of Intellectual Property produced as a result of this agreement vests solely in the District Council of Coober Pedy immediately on its creation.
- 14.3 The Contractor/Consultant is granted a royalty free non-transferrable non-exclusive licence to use any Intellectual Property:
- 14.3.1 produced as a result of this agreement; or
  - 14.3.2 relating to the drawings and specifications or the Confidential Information provided by the District Council of Coober Pedy to the Contractor/Consultant; solely for the purpose of completing the Works and for no other purpose.

### **15. Force Majeure**

No party is liable for any failure to perform or delay in performing its obligations under this agreement if that failure or delay is due to anything beyond that party's reasonable control. If that failure or delay exceeds 60 days, the District Council of Coober Pedy may terminate this agreement with immediate effect by giving notice to the other party.

### **16. Termination**

- 16.1 The District Council of Coober Pedy may immediately terminate this agreement by giving notice to the other party if the Contractor/Consultant:
- 16.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement;
  - 16.1.2 breaches a material provision of this agreement and fails to remedy the breach within a specified reasonable time after receiving the notice requiring it to do so;
  - 16.1.3 becomes an externally-administered body corporate or an insolvent under administration or becomes insolvent (each within the meaning of the Corporations Act 2001).
- 16.2 Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

### **17. Confidential Information and Freedom of Information**

- 17.1 Each party agrees that it will not use any Confidential information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes contemplated by this agreement, and agrees that it will:
- 17.1.1 keep confidential; and
  - 17.1.2 not use or reproduce in any form; any confidential information belonging to the other party. A party may depart from its obligations under this clause only with the written consent of the other party or as required by law or the terms of this agreement.
- 17.2 The Contractor/Consultant consents to any disclosures made as a result of the District Council of Coober Pedy complying with its obligations under the Freedom of Information Act 1991 (SA), subject to any legally required consultation.
- 17.3 Subject to clause 14.1, for the purposes of the FOI Act, the terms specified confidential in the Purchase Order are confidential (confidential sections).
- 17.4 Unauthorised disclosure of the confidential sections and their subject matter is a breach of this agreement.

### **18. Audit of Services**

The Contractor/Consultant must keep the District Council of Coober Pedy fully and regularly informed as to all matters relating to the Works and must provide to the District Council of Coober Pedy any information reasonably requested by the District Council of Coober Pedy for the purposes of monitoring the performance of the Contractor/Consultant's obligations under this agreement.

### **19. Disputes**

All disputes or differences between District Council of Coober Pedy and the Contractor/Consultant must be referred to an arbitrator, agreed by the parties or in the absence of agreement appointed by the Chief Executive Officer of the District Council of Coober Pedy.

## **20. Relationship**

This agreement does not create a relationship of employment, agency or partnership between the parties.

## **21. Miscellaneous**

- 21.1 Special Conditions - If there is an inconsistency between a special condition set out in the Purchase Order and the rest of this agreement, the special condition governs to the extent of the inconsistency.
- 21.2 Alteration - This agreement may be altered only in writing signed by each party.
- 21.3 Assignment - The Contractor/Consultant must not assign this agreement or any right under it without the prior written consent of the District Council of Coober Pedy.
- 21.4 Entire Agreement - This agreement
  - 21.4.1 constitutes the entire agreement between the parties about its subject matter; and
  - 21.4.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.
- 21.5 Waiver - A waiver of a provision of or right under this agreement
  - 21.5.1 must be in writing signed by the party giving the waiver;
  - 21.5.2 is effective only to the extent set out in the written waiver.
- 21.6 Exercise of power
  - 21.6.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right;
  - 21.6.2 An exercise of power or right under this agreement does not preclude a further exercise of another right or power.
- 21.7 Survival - Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.
- 21.8 Governing Law
  - 21.8.1 This agreement is governed by the law in South Australia
  - 21.8.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.
- 21.9 Ombudsman - The Contractor/Consultant acknowledges that the Ombudsman Act 1972 (SA) empowers the Ombudsman to investigate matters in the public interest. The Contractor/Consultant must ensure compliance with all obligations arising under that Act and all other applicable laws.
- 21.10 ICAC - The Contractor/Consultant acknowledges and agrees that by entering into this agreement with the District Council of Coober Pedy the Contractor/Consultant will be considered to be a public officer for the purposes of the Independent Commissioner Against Corruption Act, 2012 (SA) (ICAC Act) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

## **22. GST**

- 22.1 The total amounts payable under this agreement are inclusive of GST, if applicable.
- 22.2 Notwithstanding any other provision of this agreement, the District Council of Coober Pedy need not make any payment for a taxable supply made by the Contractor/Consultant under this agreement until the Contractor/Consultant has given the District Council of Coober Pedy a tax invoice in respect of that taxable supply.

## **23. Notices**

- 23.1 A notice, demand, consent, approval or communication under this agreement (Notice) must be:
  - 23.1.1 in writing, in English and signed by a person authorised by the sender, and
  - 23.1.2 hand delivered or sent by pre-paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in the Purchase Order, as varied by any Notice given by the recipient to the sender.
- 23.2 A Notice is deemed to be received:
  - 23.2.1 if sent by prepaid post, two business days after posting;
  - 23.2.2 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;
  - 23.2.3 if sent by electronic communication, at the time deemed to be the time of receipt under the Electronic Transactions Act 1999 (Cth) if the notice was being given under a law of the Commonwealth of Australia

## **24. Work Health and Safety Additional Clauses**

- 24.1 The Contractor/Consultant acknowledges that the District Council of Coober Pedy has adopted a procedure detailing our requirements in the engagement and managing of Contractor/Consultants to ensure compliance with Work Health & Safety. In accordance with this procedure the

Contractor/Consultant must ensure that it and any sub-Contractor/Consultants have systems in place to manage Work Health and Safety.

- 24.2 The Contractor/Consultant must not commence nor allow any other persons to commence work until such time as the Contractor/Consultant has been subject to work health & safety induction. The District Council of Coober Pedy will provide the induction and authority to work information to the primary Contractor/Consultant, however it is the responsibility of the Contractor/Consultant to subsequently convey and maintain documented evidence that this information has been provided to any sub-Contractor/Consultant and/or any other person involved in the works before commencement of works, as per the Work Health and Safety Regulations 2012.
- 24.3 The District Council of Coober Pedy is not obliged to grant access to the site, until the Contractor/Consultant has complied with the requirements of this clause 24.
- 24.4 Following induction the Contractor/Consultant must review and update any safety requirements or safe systems of work required under clause 24.1 and provide documentary evidence of any changes to the District Council of Coober Pedy.
- 24.5 The Contractor/Consultant throughout the duration of the work will review and update and safety requirements or safe systems of work required under clause 24.1 and provide documentary evidence of any changes to the District Council of Coober Pedy Representative.

## **25. Fire Danger**

- 25.1 The Contractor/Consultant acknowledges that the District Council of Coober Pedy has adopted a procedure detailing our response to days declared as severe, extreme or catastrophic fire danger days. In accordance with this procedure the Contractor/Consultant must ensure that any sub-Contractor/Consultants have systems in place to undertake adequate risk assessments, preplanning and make appropriate decisions to protect themselves on days which are declared severe, extreme or catastrophic fire danger days.
- 25.2 In the event of a severe, extreme or catastrophic fire danger day declaration, the Contractor/Consultant must implement the system required by this clause.
- 25.3 Upon request, the Contractor/Consultant must provide to the District Council of Coober Pedy, a copy of any assessments or plans prepared and implemented under this clause.