

Entertainer Contracting Plan

Quote or Tender Consideration Plan prepared in accordance with section 179 of the *Local Government (Finance, Plans and Reporting) Regulation 2010*.

<p>CORPORATE PLAN REFERENCE:</p>	<p>1.0 ROBUST ECONOMY 1.1.3 FACILITATE THE DEVELOPMENT OF THE REGION’S KNOWLEDGE-BASED ECONOMY IN PARTICULAR THE CREATIVE, HEALTHY, ENVIRONMENTAL, LEISURE, AND SPORTING SECTORS 1.2 SUPPORT FOR LOCAL BUSINESS 1.2.4 ENSURE COUNCIL’S PROCUREMENT POLICIES SUPPORT LOCAL BUSINESS AND HELP GENERATE LOCAL EMPLOYMENT</p> <p>3.0 INNOVATION AND CREATIVITY 3.2.3 SUPPORT EDUCATION, TRAINING, AND APPRENTICESHIP INITIATIVES THAT HELP BUILD SKILLS WITHIN THE REGION AND RETAIN YOUNG PEOPLE 3.3.2 PROVIDE AND FACILITATE LOCAL AND REGIONAL ARTS AND CULTURAL FACILITIES AND PROGRAMS WITHIN THE COMMUNITY</p> <p>5.0 SOCIAL COHESION 5.3.1 SUPPORT COMMUNITY PROGRAMS AND INFRASTRUCTURE THE ENCOURAGE INTERACTION, CONTRIBUTE TO PLACE MAKING AND A SENSE OF COMMUNITY</p> <p>7.0 MANAGING GROWTH 7.1.2 DEVELOP AND IMPLEMENT STRATEGIES TO RETAIN THE UNIQUE CHARACTER OF OUR CENTRES, VILLAGES, AND TOWNS</p> <p>8.0 GREAT GOVERNANCE 8.1 ETHICAL, ACCOUNTABLE AND TRANSPARENT DECISION-MAKING 8.1.2 ENSURE LEGISLATIVE COMPLIANCE AND AWARENESS 8.3 STRONG FINANCIAL MANAGEMENT</p>
<p>UNITED NATIONS STANDARD PRODUCTS AND SERVICES CODE (UNSPSC) :</p>	<p>82151700 – PERFORMING ARTISTS AND PROFESSIONALS</p>
<p>ENDORSED BY COUNCIL ON:</p>	
<p>DOCUMENT OWNER AND DEPARTMENT:</p>	<p>MANAGER COMMERCIAL & PROCUREMENT, FINANCE & BUSINESS DEPARTMENT</p>

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INTRODUCTION

The *Local Government Act 2009* ('the Act') the *Local Government (Finance, Plans and Reporting Regulation 2010* ('the regulation') provide the considerations for, and methods by which Council may establish medium and large sized contracts. These regulations require local governments to use a written quote process for medium sized contracts and a written tender process for large sized contracts. The regulations also provide a number of exceptions to those processes. Preparation of a quote or tender consideration plan is one of those exceptions.

Council seeks to organise and conduct a number of community and public events, which include the provision of entertainment provided by a wide variety of entertainers, such as musicians, actors, artists and other performers.

The entertainment industry is not structured in a way, which is conducive to the quote or tender processes provided in the regulation. Consequently, by using those processes, council will be disadvantaged from attracting appropriate entertainers and establishing the most advantageous contracts.

As a result, Council intends to depart from the quote or tendering processes provided in the regulation and conduct contracting in the entertainment industry by way of this quote or tender consideration plan.

The regulations provide that a quote or tender consideration plan will contain the following information:

1. the objectives of the plan;
2. how the objectives are to be achieved;
3. how the achievement of the objectives will be measured;
4. any alternative ways of achieving the objectives, and why the alternative ways were not adopted;
5. the proposed terms of the contract for the goods or services; and
6. a risk analysis of the market from which the goods or services are to be obtained.

This plan will provide the information required to comply with the regulations and justify the use of the plan as an effective and appropriate alternative to the quote and tender processes.

1. OBJECTIVES OF THE PLAN

Plan scope

This plan has been prepared to assist Council to establish best practice contracts with entertainment professionals. It covers contracting activities conducted by Council officers in sourcing the services of entertainment providers.

This plan will provide guidance on the process of engagement, including:

1. developing a business case and determining value for money;
2. governance and delegated authorisation to make offers;
3. communication of offer;
4. negotiating contract conditions; and
5. the final booking agreement (contract).

Plan objectives

This Entertainment Provider Contracting Plan will:

1. Support Council's vision for making the Sunshine Coast Australia's most sustainable region - vibrant, green and diverse;
2. Guide Council officers to contract with entertainment providers in a method that meets probity requirements and the sound contracting principles of:
 - (a) value for money;
 - (b) open and effective competition;
 - (c) the development of competitive local business and industry;
 - (d) environmental protection; and
 - (e) ethical behaviour and fair dealing.

2. HOW THE OBJECTIVES ARE TO BE ACHIEVED

Process for performer selection, procurement and contracting

1. Developing a business case

A documented business case is required to support the recommended entertainment provider.

The responsible Council unit/officer for performer selection is to make every possible effort to retrieve as much information as possible to verify that the selected entertainment provider will contribute positively to the event's success.

Some performers have their estimated worth published in PollstarPro, an entertainment industry subscription publication which tracks data on ticket sales such as quantity sold, price and venue capacities. It is also an online directory linking event coordinators with performers or their agents.

After researching publically available market information to determine the estimated value and cost of the performer, the event promoter should contact the performer/s or their agent/s and obtain specific details such as availability and true cost information. This information will be used to further assess and compare performer options and update the business case with more accurate information rather than approximations.

Once this research has been conducted it is important that a business case is developed for the entertainment professional being considered.

Cost and ticket values are determined through the above information gathering process/es. The following basic calculation should be performed to determine the monetary value of the performer to enable testing of viability and comparison between performers.

Calculation of performer value (<1 = performer cost covered by ticket revenue)
(Number of tickets expected to be sold * cost per ticket) / Cost of performer

There may also be other calculations, which are considered appropriate to be performed. This calculation should be carried out and documented as a minimum.

2. Authorisation to submit offer

The offer made by Council to the entertainment provider or their agent is determined based on the research performed as part of 2.1 above and the statistical information attained. The Council representative will make an estimate of performer worth based on the value they are predicted to add to the event.

Only a Council officer with appropriate delegation (as per delegation No. 2 and No. 37) may approve an offer and must do so prior to submission to the performer or their agent.

The Approval to Issue Offer is to be supported by the event plan, the outcome of the business case, market evaluations and the confidential offer.

3. Communication of offer

After appropriate delegated approval for the offer has been received, the event coordinator must formally communicate the complete offer to the performer or their agent along with Council's terms and conditions, including any additional 'special conditions' (refer to 5. Proposed Terms of the Contract).

4. Negotiating the contract

A performer may accept, reject, or request clarification of offer details. If the performer counter offers, the Council officer may negotiate and agree on a proposed counter offer. A detailed examination of the proposed offer must be undertaken. Only on determination that the offer presents satisfactory terms to Council shall the offer be accepted.

5. Forming the contract

A contract is formed when a performer or their agent accepts a formal offer made by an appropriately authorised council officer. Following acceptance of the offer it is usual entertainment industry practice for the performer or their agent to issue an official booking agreement.

The Council representative must ensure that this booking agreement is consistent and in accordance with the terms and conditions of the initially presented and/or negotiated offer, including technical production and hospitality requirements.

3. HOW THE OBJECTIVES WILL BE MEASURED

Indicators for measuring the delivery of outcomes and success of use of this quote or tender consideration plan include:

- Documentation of the contracting process, through the retention of documents and approval which support steps 2.1-2.5 above;
- A documented event plan which considers Council’s event strategy and objectives, specifically related to the sourcing and delivery of entertainment services;
- A documented business case supporting the selection of performer/s, including a financial analysis and breakdown of expected costs and revenue;
- The acceptance of offers by sought after performers which support the event and entertainment plan;
- Establishing contracts which include appropriate terms and conditions in line with Council requirements; and
- Post event analysis, including results which support that the entertainment professionals involvement in the event was successful and aligned with Council expectations.

4. ALTERNATIVE WAYS OF ACHIEVING THE OBJECTIVES

There are no known efficient or effective methods of achieving the objectives, outside of this contracting plan.

5. PROPOSED TERMS OF THE CONTRACT

The entertainment professional/s offer must address all commercial considerations such as the services required and the structure of payments. Upon acceptance by the performer, these items will form terms of the contract.

When Council is submitting an offer to the performer, Council's offer is to include the following (as appropriate):

- Price and pricing structure;

There are two common structures for presenting pricing offers to entertainment providers:

a. A flat fee: The flat fee is a fixed sum paid to the performer regardless of how many tickets are sold, or profit generated by the event.
A flat fee is less complicated to calculate for more complex events with multiple performers and various sources of revenue. It is recommended to adopt this commercial arrangement per performer.

b. A split fee: The split fee includes a base fee, plus a percentage of the gross profit. Using a split fee system requires that the performer or their agent has knowledge of all costs associated with the event in order to agree on the percentage profit.

A split fee may be useful where there is only one performer and they are the direct and sole link to all revenue streams; such as tickets, merchandise, and food and beverage sales.

- An approximation of the number of other entertainers which will be performing at the event. This information provides performers and their agents with a gauge for the type, size and possible variety of performers at the event, allowing a more informed decision to be made as whether to accept Council's offer.
- Location, date and time of performance/s;
- The entry of performers and their 'party' and conditions over what constitutes a 'party';
- Conditions for riders (hospitality) and guests;
- Payment conditions;
- Marketing and promotional activities; and
- Property insurance.

A condition of offer is also required which highlights that the performer's booking agreement, which represents the final contract, cannot contradict the terms and conditions of the offer.

Terms and conditions of offer are further detailed in the annexure to the Confidential Offer Template.

Up to date versions of the Approval to Issue Offer document, the Conditions of Offer document and all other contracting documentation may be obtained from the Procurement Contract Unit.

6. RISK ANALYSIS OF THE RELEVANT MARKET

The following risk analysis and mitigation strategies have been identified for Council involvement with the entertainment market. This analysis was performed using the Council Risk/Opportunity Assessment calculator; refer to the link below for further information regarding risk assessment and how the following risk levels were calculated:

http://scrcintranet/govpol/management_systems/ent_risk_mgt/Reference%20Documents/Risk%20Opportunity%20Assessment%20Calculators.xps

This analysis should be used as high level guidance only, each event and entertainment situation should be assessed for specific and detailed risk, as an ongoing process throughout the event planning and management process.

Economic Risk		Risk Level
Likelihood	Unlikely	Medium
Consequence	Insignificant	

Economic risk could be introduced to Council through inappropriate selection of or lacking entertainment. Reduced entertainment quality impacts visitor numbers for the event and the Sunshine Coast region, limiting positive effects on business, industry and tourism.

Mitigation

This risk is minimised through preparation of an event plan that takes into consideration promotion planning and meeting the expectations of the target audience and the region.

Financial Risk		Risk Level
Likelihood	Possible	Medium
Consequence	Minor	

Events are often predominantly held as tourism activities to promote the Sunshine Coast region and often do not fully recover costs. The level of financial loss presents a risk to Council.

Should an event fail to achieve its objectives due to the selection of performer/s, the unexpected level of financial loss presents further financial risk to Council.

Mitigation

This risk is minimised through preparation of an event plan that takes into consideration budget, expected ticket sales and revenue, promotion planning, target audience and considering contingencies for outcomes not aligned with the plan, to reduce the possible negative financial impacts.

Legislative Risk		Risk Level
Likelihood	Unlikely	Medium
Consequence	Moderate	

Breach of contractual and legislative obligations. For example, public health and safety requirements, local business impact, terms and conditions of contract with providers. All of which could result in Council being involved in legal proceedings.

Mitigation

This risk is minimised through preparation of an event specific risk analysis and event plan that take into consideration regulation, legislative requirements and possible impacts which could result in legal disputes.

Terms and conditions of contracts should also be in line with those acceptable to Council and the contract administrator needs to be fully aware of and understand all obligations which the contract involves for Council.

Environmental Risk		Risk Level
Likelihood	Unlikely	Low
Consequence	Minor	

Performers selected may not respect, share or adhere to Council environmental values and/or environmental requirements of the selected event site. Risk of negative environmental impacts directly or indirectly (through promotion of environmentally negative actions) impacted by the performer and/or party.

Mitigation

Council values and event site requirements regarding environment should be made clear to the provider/agent in initial correspondence. Specific site environmental concerns and impacts will be identified as part of event planning, and will be addressed and communicated to all stakeholders as required; this will include the entertainment professional/s. Where appropriate these messages will be included within the terms and conditions of offer.

Community/Social Risk		Risk Level
Likelihood	Unlikely	Medium
Consequence	Moderate	

Events are often held in public spaces which can cause disruption and inconvenience to the surrounding community. Some audiences or stakeholders may be disapproving of the event and/or associated performer/s and make complaint.

Mitigation

A stakeholder engagement and communication program will reduce community surprise and complaint regarding the event and/or entertainment provider selection. Impacted parties will be well informed, well in advance of event proceedings. Risk is minimised through preparation of strategies and objectives aligned to Council’s objectives and application of these to performer selection.

Political Risk		Risk Level
Likelihood	Possible	Medium
Consequence	Minor	

Risk exists in that the provider and event may not meet community expectations, which could have negative political impacts for Council, questioning the allocation of funds by Council and the appropriateness of decisions.

Mitigation

Comprehensive strategy and event planning are crucial to consider and mitigate as far as possible outcomes resulting in negative political impact for Council. There are many factors which require consideration as part for this process in order to ensure that the engagement with the entertainment market is effective and addresses all possible concerns which may have a political implication.

Public Safety Risk		Risk Level
Likelihood	Possible	High
Consequence	Major	

Events attract large crowds in confined spaces, introducing risk of participant harm. The safety of the audience is subject to numerous variables, particularly crowd behaviour which can be influenced by performer/s attitudes and conduct.

Mitigation

Council’s position on safety should be made clear to the provider/agent in initial correspondence and if considered appropriate included within the terms and conditions of offer. Specific event safety concerns and potential likelihood of performer impact on these will be identified as part of event planning, risk analysis and performer background research, considered as part of performer selection and addressed in communications as considered necessary.

Business Activities Risk		Risk Level
Likelihood	Possible	Medium
Consequence	Minor	

Council events are usually held in public spaces which are surrounded by local business. There is a risk that these businesses could be disrupted as a result of event activity.

Mitigation

A comprehensive event plan will consider the impact that an event will have on the surrounding business community and to determine possible strategies to minimise this impact. The plan will also include the communication of relevant details of the event and performances and possible impacts to the businesses well in advance.

Asset Risk		Risk Level
Likelihood	Unlikely	Low
Consequence	Minor	

The possible impact on Council assets resulting from engaging with the entertainment market is limited. Council assets may be used as part of the event and may be specifically used by the entertainment provider/s. There is also risk that Council may be liable for the assets of performers. There is a risk of damage to these assets.

Mitigation

A comprehensive event plan will consider the Council assets required for use by the performer/s and council’s responsibility and liability for entertainment professional’s asset damage. The event coordinator will devise plans to limit or protect assets from damage. These items should be written into the terms and conditions of offer.

Reputation/Public Image Risk		Risk Level
Likelihood	Unlikely	High
Consequence	Major	

Risk exists in that the performer selected may have values, behaviours, lifestyle or other characteristics which are inconsistent with the values of Council and/or member of the Sunshine Coast community. This could result in negative media coverage and a loss of community confidence in Council decision making and appropriate allocation of funds.

Mitigation

Responsible officers are required to consider all community factors, concerns and possible issues which may arise. Event planning will include a detailed review of market information, including research of past performances, media coverage and corresponding with the performer and/or their representative/s. An event strategy will be developed to determine the objectives for the event and the target audience/s which will go on to drive the selection of an appropriate and well suited entertainment provider.

Contract Risk		Risk Level
Likelihood	Unlikely	Medium
Consequence	Moderate	

Contract risk includes the possible exposures resulting from the development and acceptance of the offer and contract and those involved in the management of the contract.

Contract development risk is the possibility of contracting with providers’ using terms and conditions outside of those acceptable to Council, resulting in a contract which is not advantageous to council or could negatively impact Council.

Contract management risk refers to the possibility that the contract in place with the selected provider will not be managed or evaluated effectively, resulting in outcomes which are not the most advantageous to Council.

Mitigation

In order to mitigate the risks involved in Contract **development** it is important:

- when preparing conditions of offer and contract to consult as required with Council’s contracts team who have knowledge of Council accepted service terms and conditions;
- to review the performers booking agreement in detail, ensure that the document does not contradict the terms and conditions of Council’s offer;
- if not experienced in reading legal documents or if you would just like to have a secondary reviewer of the document , organise for a member of the contracts and/or legal team/s to review the document;

In order to mitigate the risks involved in Contract **management** it is important to:

- assign a responsible person to track and evaluate the contract and performance;
- the responsible owner is to fully familiarise themselves with the terms and conditions in the contract to enable measurement and assessment of the providers compliance and performance;
- if there are instances of non compliance with or lacking performance by the provider it is the contract administrator’s responsibility to formally address these with the performer and/or their representatives; and
- contact Council’s contracts team if further assistance is required for the communication of performance or non compliance issues.

Version Control

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	Eg. Create new			DD/MM/YYYY
	Eg. Review			