

Management report to Council

Agenda item 6.9

Procurement Policy Review

Council

Presenter: Phu Nguyen, Chief Financial Officer

30 August 2016

Purpose and background

1. The purpose of this report is to seek endorsement of the revised draft Procurement Policy.
2. Section 186A of the *Local Government Act 1989* (Act) requires Council prepare a Procurement Policy (Policy). The Policy must be reviewed at least once each financial year and be made publicly available, at its office and on its website.
3. The Policy was first endorsed by Council in September 2009 and most recently amended and endorse by Council in November 2015.

Key issues

4. The Act requires that Council must have regard to the Victorian Local Government Best Practice Procurement Guidelines (Guidelines) with respect to form or content of the Policy.
5. A revised Policy has been prepared:
 - 5.1. In accordance with the Guidelines issued in 2013.
 - 5.2. Reflecting the centre led category management approach to procurement.
 - 5.3. Incorporating amendments to reflect areas of focus.
 - 5.4. With other minor changes reflecting current procurement activities.
6. A marked up copy of the Procurement Policy is included in Attachment 2 to make the changes easily identifiable.

Recommendation from management

7. That Council:
 - 7.1. Notes its obligations under section 186A of the *Local Government Act 1989* to review its current Procurement Policy, at least once every financial year.
 - 7.2. Endorses the amended Procurement Policy with marked up changes.

Attachments:

1. Supporting Attachment (page 2 of 11)
2. Procurement Policy (page 3 of 11)

Supporting Attachment

Legal

1. The revised Policy is aligned with the Guidelines, which are designed to assist Councils to better understand their obligations under the *Local Government Act 1989* (the Act).
2. Section 186A(7) of the Act provides that the Council must review the current procurement policy at least once in each year financial year.

Finance

3. There are no major financial implications associated with the recommendation.

Conflict of interest

4. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

5. The 2013 Guidelines were reviewed through the Policy update process.
6. The Social Investment has been consulted during this review process.

Environmental sustainability

7. The Policy demonstrates Council's commitment to sustainability, which is about taking positive action to demonstrate Council's commitment to the local community and environment. In procurement activities, Council will undertake to support opportunities with social enterprises, Aboriginal and Torres Strait Islander groups and sustainability.

Procurement Policy

1. Background

The Local Government Act 1989 (the Act) requires each council to:

- publicly tender contractual procurements over certain thresholds; and
- prepare, approve and comply with a procurement policy encompassing principles, processes and procedures applied to all purchases.

2. Policy Objectives

The objectives of this Procurement Policy (Policy) are to:

- establish a procurement framework for the Melbourne City Council (Council) to achieve value for money and continuous improvement in the provision of services for the community
- ensure that Council resources are used efficiently and effectively
- where practical, Council will collaborate with other Councils in order to take advantage of economies of scale
- achieve compliance with relevant legislative requirements achieving high standards of probity, transparency, accountability and risk management
- give preference to procurements which provide environmentally sustainable benefits
- give preference to procurements which provide social benefit.
- give preference to local suppliers whose businesses are registered in Victoria (Local Suppliers) providing opportunities back into the local supply chain
- all values referred to in this Policy are inclusive of GST.

3. Legislative Compliance

The key legislative requirements for this Policy include:

- section 186 of the Act (Power to enter into Contracts)
- section 186A of the Act (Procurement Policy)
- section 3C of the Act (Objectives of a Council);
- section 208B of the Act (Best Value Principles)

- sections 77A, 77B, 78, 78A to 78E, 79, 79B to D, 80, 80 A to C, 81, 95 and 95AA of the Act (Conflict of Interest)
- section 98 of the Act (Delegations)
- section 140 of the Act (Accounts and Records)
- The relevant provisions of the Competition and Consumer Act 2010 (Cth)

Council will adhere to all these provisions in all procurement matters.

4. Scope and Application

This Policy represents the principles, processes and procedures that will be applied to all Procurement activities undertaken by the Council. The scope of this Policy commences from when Council has identified a need for procurement and it continues through to the delivery / completion of that procurement.

This Policy will apply to Council, Council staff and all persons undertaking procurement on behalf of Council.

5. Policy provisions

5.1 Procurement Principles

Council will apply the following fundamental best practice principles to procurement, irrespective of the value and complexity of that procurement:

- value for money
- sustainability (social, economic and environmental)
- open and fair competition
- accountability
- risk management
- probity and transparency.

These principles are detailed in Council's Contract Management System

5.2 Corporate Contract Management System

Council has an online Contract Management System (CMS) which prescribes best practice methodologies for all stages of procurement and contract management. CMS provides advice, process guides and templates for procurement, including tenders and all other required contract documents.

It is a requirement for relevant Council staff and agents to be trained in the use of, and comply with, CMS for all purchases. Managers will regularly review the performance of their staff to ensure this Policy and Council's contract management objectives are achieved. Council's Employee Code of Conduct also applies to contract management practice.

The CMS does not apply to contracts arising from the statutory requirements of Government, Government Departments, Statutory Authorities, Utility Companies or Government Franchisees for works affecting those bodies' assets and which are only permitted to be undertaken by those bodies or their approved contractors.

CMS will be regularly reviewed for relevance, contemporary best practice and improvement through received Council staff change requests, Procurement and Category Management Team meetings and regular management reviews to ensure the processes are fit for purpose.

5.3 Organisational Structure for Procurement

The Council operates a structure wherein all strategy, policy, technology, best practice and networking in procurement matters are conducted by the Council's Centre-Led Procurement and Category Management Team, undertaking all Contract and Procurement business requests. This methodology ensures that best practice is undertaken for all council activities.

The Council has completed an internal re-alignment whereby the Procurement & Category Management Team are utilizing a Category Management approach to undertake procurement. This organizational change will streamline required level of effort and reduce turnaround times for internal & external stakeholders. Results will be proven in reducing timeframes, reduced risk, improved cost savings and simplified processes to enable a reduced effort in completing procurement activities.

5.4 Sustainability

A Centre-Led Procurement and Category Management Team will standardize procurement activities, directly impacting our Supply Chain and optimizing our ability to identify and deliver positive sustainability outcomes through our procurement activity.

Council's supply chain has a material impact on the organization's sustainability performance, therefore; Council has a strong focus on sustainable procurement. To deliver on Council's commitment to the local community and the environment, Council uses procurement as an opportunity to generate social, environmental and economic benefits beyond the purchases required. This demonstrates Corporate Social Responsibility (CSR) which is about taking positive action to demonstrate the Council's commitment to the local community and environment on which its procurement activities impact.

When making purchases Council will consider the following:

5.4.1 Social Sustainability

Social sustainability focuses on the social (or people) aspects of sustainability and in particular social equity. Social equity goals address disadvantage and are underpinned by principles of diversity, acceptance, fairness, compassion, inclusiveness and access for people of all abilities. A focus is placed on people who are underrepresented and people with less opportunity. Socially sustainable procurement generates positive outcomes for, and contributes to building stronger communities by:

- elevating the inherent 'social value' of doing business

- ~~• improving equity of access to services~~
- creating new jobs and opportunities for people who may be struggling to find work
- targeting cohorts that may be experiencing economic exclusion
- reinvigorating depressed or marginalised communities
- improving equity of access to opportunities
- ~~• increasing purchases of ethical and fair trade goods (or equivalent)~~

Depending on the nature of the procurement, Council shall explore opportunities in engaging Social Enterprises for the procurement of goods or services:

- This may result in engagement as a contractor or subcontractor
- Social Enterprises should be considered when conducting an RFQ process
- Council will make available access to the Social Enterprise database from 'Social Traders'

5.4.2 Environmental Sustainability

Council will reduce its impact on the natural environment by making decisions which reduce natural resource and biodiversity depletion. Procurement priorities will include:

- reducing greenhouse gas emissions
- reducing waste to landfill and increasing amount of waste recycled
- reducing water consumption and improving water management
- encouraging improved environmental management in Council's supply chain
- selecting products/services that have minimal effect on the depletion of natural resources and biodiversity
- improving our ability to adapt to climate change .

5.4.3 Economic Sustainability

Council is committed to procurement that supports local businesses and economic diversity and viability by

- generating local employment
- taking into account the life cycle impacts of products purchased (purchase, operation and disposal)
- building relationships and encouraging purchasing from local suppliers, including social enterprises to help build their capacity
- explore, where appropriate and possible, the opportunity to maximise the social benefits of a contract by offering 'social tender'

- fostering innovation and emerging sectors
- allowing a price preference of up to 10 per cent for sustainable purchases

5.4.4 Aboriginal Engagement

The City of Melbourne aims to stimulate Aboriginal entrepreneurship, business development and employment by providing Aboriginal businesses with more opportunities to participate in the economy. To achieve this, Council is implementing a target of procurement spends over three years to engage Aboriginal businesses at different levels of Council's supply chain.

The City of Melbourne has been a member of Supply Nation since 2015 and has been an active member always. Together with Supply Nation, the City of Melbourne has embedded process and tools in the procurement framework to ensure supplier diversity. Equal opportunity is being provided to Aboriginal and Torres Strait Islander Businesses.

Depending on the nature of the procurement, Council is committed to explore opportunities in engaging Aboriginal businesses for the delivery of goods or services. This may result in engagement as a contractor, a subcontractor or individual's employment as a result of provision of goods, services or works to the City of Melbourne.

5.4.4.5 Gender Equality

The City of Melbourne plays a significant role in making our city a safer and a more inclusive environment for all and demonstrates leadership in promoting gender equity principles to the broader community by:

- ensuring an integrated and comprehensive approach to the promotion of gender equity and the prevention of violence against women
- modelling safe, flexible workplace practices that support respectful relationships
- representing gender diversity in all Council plans, activity, and publications in the media

A commitment has been made to drive positive action that ensures fair treatment to all employees, volunteers and contractors (including the City of Melbourne's Supply Chain) whereby our organisational values and obligations are enforced as per the Equal Opportunity Act (Vic, 2010).

The City of Melbourne will seek to obtain through our Supply Chain for procurement activities, the following information to ensure that it is appropriating goods and services from organizations with a shared commitment to equal opportunity.

Evidence of gender equality in leadership (organisations structure) or prescriptive measures to address gender imbalance;

- Ratio of employment for men & women
- A copy of their gender equality policies and commitments.

The Procurement and Category Management Team are committed to driving greater awareness of diversity and inclusion through its engagement practices with existing and new suppliers as well as communicating its expectations in regards to operational compliance with equal opportunity principles and practices.

5.5 Expressions of Interest

Council may determine to seek Expressions of Interest (section 186 (1) of the Act) where:

- there are likely to be many tenderers.
- tendering will be costly or the procurement is complex and Council does not wish to impose the costs of preparing full tenders on all tenderers.
- there is uncertainty as to the willingness and / or interest of vendors to offer the required procurement.
- Council requires advice from the market regarding how best to address a particular need

Expressions of Interest must be publicly advertised.

5.6 Delegations, Authority and Levels of Procurement

Council's instrument of delegation determines the seniority levels of staff authority, required for expenditure on each instance of procurement.

Measures which intentionally seek to avoid the requirement to give public notice, for example, contract splitting, placing multiple orders, seeking multiple quotations with a single supplier or engaging in effect a single supplier under different guises, are considered to breach the requirement to call public tenders (refer to 5.6.2 below) where threshold values would otherwise be reached.

5.6.1 Procurements under \$150,000

For procurements under \$150,000 staff are required to follow processes in accord with the Contract Management System. These procedures apply unless the procurement is being made under an existing Council Contract or approved State Government Contracts. A Purchase Order is required to be raised in Council's Technology One finance system.

A public tender process may be used for values less than \$150,000, if this will serve Council interests and produce a better outcome in the context of this Policy.

5.6.2 Procurements equal to or over \$150,000

Staff are required to follow processes in accord with CMS.

(a) For procurements where there is an existing Panel Contract, staff are required to:

- prepare a project brief and obtain quotes from suitable Panel members
- raise a Purchase Order in Technology One. Details of the successful Panel member's quote are to be included in the Purchase Order.

(b) For Building and Construction Works where there are suitable building industry contractors or consultants on the Construction Supplier Register maintained by the Department of Transport

Planning and Infrastructure for and on behalf of the State Government (“Register”), staff are required to:

- receive a minimum of three tenders from suppliers on the Register
- raise a Purchase Order in Technology One. Details of the successful tender are to be included in the Purchase Order.

(c) Where there is a contract in place and Council has appointed a Tendering Agent, for example Procurement Australia, staff are required to:

- prepare a project brief and obtain a quote from the contracted supplier
- raise a Purchase Order in Technology One. Details of the quote are to be included in the Purchase Order.

(d) Where there is a suitable State Government Contract in place approved for Council use by the Minister for Local Government, staff are required to follow the process required by the State Government.

(e) Where there are no current contracts in place, staff are required to:

- use the appropriate Invitation to Tender template in CMS
- conduct a publicly advertised, open and competitive Tender for the procurement, in accord with Council’s CMS procedures.

Note: Exemptions from advertising are set out in section 186 (5 and 5A) of the Act.

5.7 Risk Management

Council will manage all aspects of its procurement processes in accordance with its adopted Risk Management Policy and in such a way that all risks, including Occupational Health and Safety, are identified, analysed, evaluated, treated, monitored and communicated to the standard required by the law, in accordance with Australian Standards.

A Procurement Risk Management Plan is required to be completed and approved for all procurements of a value of \$25,000 or greater.

5.8 Probity Requirements

Members of staff (and all persons engaged in procurement on Council’s behalf) must exercise the highest standards of integrity in a manner able to withstand the closest possible scrutiny. All members of staff have an overriding responsibility to act impartially and with integrity, avoiding conflicts on interest (section 95 of the Act).

In procurement matters:

- Council staff must disclose a direct or indirect interest (and the type of interest) before providing advice or reports (or any other matter) (section 80C of the Act).

- Council staff who have been delegated Council powers, duties or functions are prohibited from exercising those powers, duties or functions if they have a Conflict of Interest (section 80B of the Act).
- a Councillor must comply with the Primary principle of Councillor conduct (section 76B of the Act) and avoid conflicts between her or his public duties as a Councillor and her or his personal interests and obligations (section 76BA of the Act). Councillors (and members of Council audit committees) must disclose a Conflict of Interest (section 79 of the Act).
- Councillors must also comply with the Councillor Code of Conduct (section 76C of the Act) .
- Councillors must not improperly direct or improperly influence a member of Council staff in the exercise of any power or in the performance of any duty or function (section 76E of the Act) .
- Council staff must also comply with Council's Employee Code of Conduct (section 95AA of the Act).
- Council staff engaged in the evaluation of quotations or tenders must complete and lodge a Disclosable Interests and Confidentiality Declaration .
- Council staff must make their interests known in any situation where it could be perceived that an interest might unduly influence them.
- Council staff must declare to their Manager any items delivered to Council which were not part of the requirements of the contract and which could be construed as gifts or new assets to Council. Such items must also be referenced on supplier invoices.

5.9 Tender Evaluation

Council Staff must ensure that:

- Late tenders will not be accepted under any circumstances.
- Tender evaluations will be conducted in accordance with the methodology set out in CMS.
- A tender evaluation panel will be established to evaluate each tender submission against the tender's selection criteria and the tender evaluation panel's composition will be determined by the respective Branch Manager.
- Tender evaluation panels can include external personnel in order to ensure best value.

Council Staff must consider the following:

- a probity advisor may be appointed to any tender evaluation panel.
- a probity auditor may be appointed to oversee the evaluation process.
- the evaluation process must be robust, systematic and unbiased.

A price preference of up to 10 per cent can be collectively applied to:

- the purchase of recycled and environmentally preferable items
- procurements which provide social benefit
- purchases from local suppliers.

5.11 Negotiations

Once a preferred tenderer is selected, negotiations can be conducted in order to obtain the optimal solution and commercial arrangements, providing negotiations remain within the intent and scope of the tender.

Council may conduct a shortlisting process. Shortlisted Tenderers may be invited by the Council to submit a best and final offer in relation to all or certain aspects of their respective Tenders.

5.12 City of Melbourne Tenders' Webpage

Information regarding Current Tenders, Closed Tenders, Awarded Tenders and Future Tenders is placed on Council's website.

5.13 Internal Control

Council will establish, document and maintain a framework of internal controls over procurement processes in order to ensure:

- more than one person is involved in and responsible for each transaction
- transparency in the procurement process
- a clearly documented audit trail exists for procurement functions
- the required authorisations' are obtained and documented.

All persons engaged in procurement processes must diligently apply all internal controls.

5.14 Evaluating Performance

In order to continually improve its processes and outcomes, Council will evaluate and report on the following aspects of procurement:

- evaluate contractor performance
- evaluate opportunities to improve processes
- incorporate process improvements.

This Policy was endorsed by Council on 24 November 2015