

**Management report to Council**

**Agenda item 6.4**

**Procurement Policy Review**

**Council**

**Presenter:** Michael Tenace, General Manager Finance and Corporate

**30 June 2020**

**Purpose and background**

1. The procurement policy (Policy) is the governing framework that underpins the procurement strategy and function across the Council.
2. Section 186A of the *Local Government Act 1989* (Act) provides that, at least once in each financial year, a Council must review the current procurement policy and may amend the Policy.

**Key issues**

3. A review of the procurement policy (refer Attachment 2) has been undertaken with the aim to:
  - 3.1. Maintain compliance to the Act and deliver value for money outcomes.
  - 3.2. Simplify and provide greater clarity to ensure the intent of the Policy is aligned to the Council's strategic objectives.
  - 3.3. Update the Policy in respect to Council's commitment to sustainability and the Climate and Biodiversity Emergency Declaration.
  - 3.4. Benchmark the Policy against other Capital City Councils and similar organisations.
  - 3.5. Improve visibility and efficiencies across procurement activities.

**Recommendation from management**

4. That Council approves the revised Procurement Policy (refer Attachment 2 of the report from management).

**Attachments:**

1. Supporting Attachment (Page 2 of 16)
2. Procurement Policy (Page 3 of 16)

**Supporting Attachment**

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**Legal**

1. The report accurately reflects the requirements in the Act.

**Finance.**

2. There are no financial implications of the recommendation.

**Conflict of interest**

3. 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.

**Health and Safety**

4. In developing this proposal, no Occupational Health and Safety issues or opportunities have been identified.

**Stakeholder consultation**

5. The draft Policy reflects input from Councillors and management.

**Relation to Council policy**

6. The Policy supports:
  - 6.1. Council Plan 2017-21
  - 6.2. Future Melbourne 2026
  - 6.3. Climate and Biodiversity Emergency Declaration.

**Environmental sustainability**

7. In updating the Policy, specific elements relating to Environmental sustainability were strengthened.



# Procurement Policy

Last updated June 2020

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## 1. Background

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

- Publicly tender procurements over certain thresholds.
- Prepare, approve and comply with a procurement policy encompassing principles, processes and procedures applied to all purchases.

## 2. Purpose

The purpose of this Procurement Policy (Policy) is to:

- Provide a procurement framework for the Melbourne City Council (Council) to achieve value for money in the procurement of goods and services.
- Assist in advancing the Council's sustainability and social objectives.
- Ensure continuous improvement in the provision of services for the community.
- Ensure that Council resources are used efficiently and effectively.

## 3. Why is the Policy important?

The policy enables Council and Council employees to:

- **Meet legislative requirements**  
Enables compliance with the Act.
- **Deliver best value outcomes**  
Effectively procure items while delivering best value to the Council.
- **Ensure ethical conduct, accountability and transparency**  
Procurement must be conducted ethically to the highest standard of integrity.
- **Manage risk management factors and ensure continuity of supply**  
Appropriate risk management must be considered to ensure continuity of supply of goods and services to Council.

## 4. What if we don't comply?

In all cases, Council staff are responsible for complying with the Policy. Non-compliance with the Policy may result in a breach of our legislative requirements and disciplinary actions, including dismissal. In addition, criminal and civil penalties may be imposed in cases of fraud, corruption, bribery or breach of Australian Consumer Laws.

## 5. Key Principles for all Staff

Staff must not engage in the selection of external suppliers without seeking timely input from the procurement team.

Staff engaged in any procurement activities must be able to demonstrate that they have complied with this policy.

## 6. Scope

The Procurement Policy and procurement function sets the direction of procurement governance, processes and procedures.

This Policy will apply to Council, Council staff and all persons undertaking procurement on behalf of Council and the principles of this policy must be complied with when undertaking procurement for goods and services.

The scope of this Policy commences from when Council has identified a need for procurement and it continues through to the delivery / completion of the awarded contract.

## 7. Annual Forward Procurement Plan

At the start of each financial year every branch is required to create a forward procurement plan for all contract purchases greater than \$150,000 and \$200,000 for Construction works (Incl. GST).

These plans are to include at a minimum:

- Name of the purchase
- Brief description of the service
- Estimated amount
- Budget amount allocated for the purchase
- Potential impact on sustainability (Social, Environmental, Economic)

Plans are to be endorsed by the Director Procurement and Contract Management. A consolidated view of all Annual Forward Procurement Plans is to be presented to Council for their information.

## 8. Procurement Plan

Prior to commencing the sourcing process for all purchase amounts above \$150,000 and \$200,000 for Construction works (Incl. GST), a Procurement Plan is to be completed. The Procurement Plan is to be approved by the Director Procurement and Contract Management.

## 9. Procurement Methodology

The procurement methodology is dependent on the value threshold and/or risk of the purchase as shown in the table below. The value threshold to determine the methodology is the totals accumulated spend for the procurement including any anticipated variations for the procurement activity.

Procurement Threshold incl. of GST	Procurement Methodology
<\$ 2000 (Incl. GST)	<ul style="list-style-type: none"> <li>• Obtain a minimum of at least one quotation.</li> <li>• Utilise a purchasing card if available.</li> </ul>
\$2000 - \$25000 (Incl. GST)	<ul style="list-style-type: none"> <li>• Request a minimum of two quotations.</li> <li>• Undertake a request for quote following the process within the Procurement and Contract Management System.</li> <li>• Director exemption is to be sought from requesting two quotations.</li> </ul>
Construction Works \$25,001 - \$199,999 All other Procurement \$25,001 - \$149,999 (Incl. GST)	<ul style="list-style-type: none"> <li>• Request a minimum of three quotations.</li> <li>• Address any site matters and risk issues including OH&amp;S. The <a href="#">Risk Identification Guide (optional)</a> can be used to identify risks.</li> <li>• Undertake a request for quote following the process within the Procurement and Contract Management System.</li> <li>• General Manager exemption is to be sought from requesting three quotations.</li> </ul>

Procurement Threshold incl. of GST	Procurement Methodology
Construction Works \$200,000 + All other Procurement \$150,000 + (Incl.GST)	<ul style="list-style-type: none"> <li>• Contact your Category Manager to initiate a Request for Tender or EOI process.</li> <li>• Undertake the Tender or EOI following the process within the Procurement and Contract Management System</li> <li>• Ministerial Approval is to be sought from not undertaking an open Tender process or two staged EOI. CEO approval is required plus approval from the Director Procurement and Contract management</li> </ul>

## 10. 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.

This is in accord with section 208B of the Act (Best Value Principles) and the relevant provisions of the *Competition and Consumer Act 2010* (Cth).

## 11. Exemptions to the Procurement Methodology

The following authority must be used for exemptions to the procurement methodology where the exemption is justified:

- Director exemption is to be sought from requesting two quotations.
- General Manager exemption is to be sought from requesting three quotations.
- Ministerial Approval is to be sought from not undertaking an Open Tender process or two staged EOI. Request to be approved by the CEO and the Director Procurement and Contract Management.

## 12. Delegations, Authority and Levels of Procurement

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



A Purchase Order must be raised in the finance system, for each individual procurement and all subsequent contract variations.

Measures which intentionally seek to avoid the requirement to give public notice, for example, contract splitting, purchase order splitting or 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 Procurements equal or over \$150,000 below) where threshold values would otherwise be reached.

All procurements above \$150,000 and \$200,000 for Construction (incl. GST), except for major construction projects, must be approved by the **Director Procurement and Contract Management** prior to delegation approval.

## 13. Procurement and Contract Management System

Council has an online Procurement and Contract Management System (PCMS) which prescribes the processes and procedures for all stages of the end-to-end procurement lifecycle. It is a requirement that all procurements including variations are conducted in the PCMS.

The PCMS must also be used for contract management including key activities such as performance management, records management, alerts on key activities, risk and issues, PCI DSS compliance management plus financial management.

## 14. 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 highest level possible of scrutiny. All members of staff have an overriding responsibility to act impartially and with integrity, avoiding conflicts of interest (section 95 of the Act).

In procurement matters, all Council staff:

- Must complete and lodge a Disclosable Interests and Confidentiality Declaration if engaged in the evaluation of quotations or tenders.
- Must disclose a direct or indirect interest and the type of interest before providing advice or reports where it could be perceived that an interest might unduly influence them.
- Those 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.
- 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.

In procurement matters, all Councilor's:

- Must avoid conflicts between her or his public duties as a Councilor and her or his personal interests and obligations.
- 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.

## 15. Internal Control

All persons engaged in procurement processes must follow the established framework of internal controls over the 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.

This is in accord with section 140 of the Act (Accounts and Records).

## 16. Procurement Under \$150,000 (Under \$200,000 for Construction Works)

For procurements under \$150,000 and \$200,000 for construction works (Incl.GST):

- All procurements are to undertaken in the Procurement and Contract Management System.
- Refer to section 9 (Threshold to determine the Procurement Methodology) for the procurement process.
- A public tender process should be used for values less than \$150,000 or \$200,000 for Construction works (Incl. GST) if there is a likelihood that the accumulated value will increase above these threshold limits due to unforeseen variations of the procurement activity or if this will serve Council interests and produces a better outcome in the context of this Policy.

## 17. Procurement Equal or Over \$150,000 (Over \$200,000 for Construction Works)

For procurements equal or over \$150,000:

- All procurements above \$150,000 or \$200,000 for Construction works (Incl. GST) require an approved Procurement Plan and are to be processed through the procurement team, and undertaken within the PCMS.
- Construction Works procurements over \$200,000 must be publicly tendered; or utilise 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 or quotes from suppliers on the Register.
- Exemptions from advertising are set out in section 186 (5 and 5A) of the Act.
- Approval to award a Tender must be approved by the Director Procurement and Contract Management plus the relevant delegation authority.

## 18. Engaging Existing Council Contracts and Panel Contracts

Under an existing externally approved Tendering Agent or Victorian Government Contract, such as Procurement Australasia, Municipal Association of Victoria or Victorian State contracts, staff are required to:

- Prepare a project brief and obtain a minimum of two quotes from suitable Panel members or arrangement.
- Evaluate quotes.
- Follow the process required by the Tendering Agent.

For internal Council Panel Contracts, a minimum of one quote is required, however multiple quotes are encouraged where a competitive situation can be created that will achieve an improved value for money outcome.

## 19. Tender Evaluation

Council Staff must ensure that:

- Late tenders will not be accepted.
- Tender evaluations will be conducted in accordance with the methodology set out in the PCMS.
- A tender evaluation panel will be established to evaluate each tender submission against the tender's selection criteria and the evaluation plan within the PCMS.
- The tender evaluation panel's composition will be determined by the respective Director and the Category Manager as defined in the Procurement Plan.
- Tender evaluation panels can include external personnel in order to ensure best outcome for procurement activity.
- All staff involved in the tender evaluation process, including advisors and approvers must complete conflict of interest declarations.

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.

## 20. Sustainable Procurement Considerations

The Procurement and Contract Management Team standardises procurement activities directly impacting our Supply Chain, optimising our ability to identify and deliver positive sustainable outcomes through our procurement activities. To ensure real and long term value for money from procurement decisions procurement processes include consideration of the total cost to society, the environment and our economy over the entire life cycle of a purchased product or service.

Council's supply chain has a significant material impact on the organisation's sustainability performance, therefore; Council applies sound sustainable contracting principles to its procurement recovery and disposal activity.

As part of its responsiveness to business and community expectations set out in Future Melbourne 2026, meeting the commitments of our Climate Change Mitigation and Climate Change Adaptation Strategies and through the declaration of a Climate and Biodiversity Emergency, Council uses procurement as an opportunity to generate social, environmental and economic benefits beyond the purchases required.

**Applying sustainable procurement in Council:**

Council applies sustainable procurement by examining organisational, project, environmental and community needs for each procurement activity and by;

- Refining sustainability strategies and specifications for each procurement activity.
- Setting a minimum 10% sustainability weighting for each procurement unless there are strong reasons why this is not appropriate or feasible and only as agreed by relevant General Manager.
- In some instances making selected sustainability elements a mandatory condition of the procurement activity may apply.
- Planning and undertaking sustainability evaluations as part of contracting activities including appropriate subject matter experts.

**Priorities and Considerations:**

Depending on the nature of the procurement, Council shall explore opportunities to engage suppliers who will help to achieve City of Melbourne’s sustainability priorities and outcomes. The following economic, environmental and social objectives have been determined in line with these principles.

**Social Sustainability**

Priorities	Considerations
<p><b>Increase opportunities for those experiencing disadvantage (Disability, Youth, Homelessness)</b></p>	<p>Elevating the inherent ‘social value’ of doing business</p> <p>Increase procurement from Social Enterprises registered with Social Traders</p> <p>Employment of people experiencing disadvantage by our suppliers</p> <p>Creating new jobs and opportunities for people who may be struggling to find work</p> <p>Increasing employment and skills through training, internships, and apprenticeships</p> <p>Developing local communities</p> <p>Targeting cohorts that may be experiencing economic exclusion</p> <p>Reinvigorating depressed or marginalised communities</p> <p>Improving equity of access to opportunities</p>
<p><b>Increase business opportunities for Melbourne Aboriginal people</b></p>	<p>Ensure all CoM staff engaged in procurement activities have undertaken cultural safety training to increase the successful selection and engagement of Aboriginal suppliers</p> <p>Develop an equity-based, self-determining procurement framework and processes that acknowledge the disadvantages faced by Aboriginal suppliers/businesses</p> <p>Increase procurement from Melbourne-based Aboriginal</p>

	<p>businesses registered with Supply Nation and Kinaway</p> <p>Increase employment of local Aboriginal people by suppliers when appropriate</p> <p>Increase the use of Aboriginal Businesses as subcontractors</p> <p>Increase Aboriginal employment and build capacity and skills</p> <p>Strengthen and build the economic growth of local Aboriginal Communities</p> <p>Develop appropriate quantitative and qualitative impact framework that accurately monitors success, growth and satisfaction of both the Council and Aboriginal suppliers</p> <p>Adapting our internal systems to provide shorter payment terms for Aboriginal businesses to support cash flow</p>
<p><b>Support Safe and Fair workplaces (including recognising equality and diversity, children’s safety, observing core labour standards, and ensuring fair working conditions)</b></p>	<p>Investigate supply chain to ensure suppliers are meeting Modern Slavery Act</p> <p>Occupational Health and Safety is considered in all procurement</p> <p>Reportable conduct embedded and managed within appropriate contracts</p> <p>Child Safety considerations embedded within appropriate contracts</p> <p>Ensure gender Equality and diversity within supplier businesses</p> <p>Recognising equality, equity and diversity</p> <p>Observing core labour standards</p>

**Environmental Sustainability**

Priorities	Considerations
<p><b>Increased Implementation of environmentally sustainable business practices</b></p>	<p>Reduce and offset greenhouse gas emissions, reduce pollution</p> <p>Reduce the impact of works, goods and services on the public (health and well-being, air quality, generation and disposal of hazardous materials)</p> <p>Improve energy conservation and water management, reduce water consumption</p> <p>Avoid use of fossil fuels in the delivery of products or services to CoM where practicable</p> <p>Stimulate sustainable business practices by using circular business models, the use of recycled/recyclable content and responsible disposal; Allow for experimentation in a</p>

	<p>low-risk environment for pioneers</p> <p>Build CoM's position as a sustainability enabler/expert by gathering embodied and operational carbon information from suppliers</p>
<p><b>Stimulate the transition to a circular economy; reducing/eliminating waste, minimising the use of resources, water and energy</b></p>	<p>Minimise the use of resources throughout the supply chain; select products/services that have a positive or minimal negative effect on the depletion of natural resources and biodiversity</p> <p>Reduce waste to landfill and increase the use of waste as a resource through reuse, remanufacturing and recycling</p> <p>Stimulate supply chain to incentivise circular economy practices</p> <p>Managing products and packaging across the full life-cycle, from selection of materials and design, to funding and managing recycling programs at the end of the product's life.</p> <p>Challenge existing and new suppliers to improve environmental management and collaborate on delivering long-term circular solutions</p>
<p><b>Shaping our built form and urban renewal areas to withstand future climate change impacts</b></p>	<p>Increasing the city's passive cooling efficiency</p> <p>Implement nature-based solutions, such as green infrastructure and water sensitive urban design; include protection of local nature and tree protection</p> <p>Improve building performance in extreme weather and incorporate thermal comfort, drainage and water storage considerations into building retrofit designs</p> <p>Increased permeability across the municipality</p> <p>Protect and enhance the natural environment and green spaces of our municipality</p> <p>Creating cool public spaces and travel routes and improve thermal comfort; including increasing canopy cover</p>

## Economic Sustainability

Priorities	Considerations
<p><b>Increase Opportunities for Melbourne based businesses, Small Businesses and Start-ups</b></p>	<p>Increase purchasing from businesses located in Melbourne municipality</p> <p>Increase generation of local employment</p> <p>Fostering innovation and emerging sectors</p> <p>Taking into account the life cycle impacts of products purchased (purchase, operation and disposal)</p>

Building relationships and encouraging purchasing from local suppliers, including social enterprises to help build their capacity

Increase support for local production and manufacturing

Adapting our internal systems to provide shorter payment terms for emerging start-up businesses to support cash flow

## 21. Cost Weighting

When undertaking procurement, the Cost Weighting for evaluation must be between 60 to 100 per cent. Should a requirement for the weighting be lowered below 60 per cent, Procurement must approve this change.

## 22. Negotiations

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

## 23. 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.

## 24. Contract Variations

Contract variations are to be approved by the Financial Delegate or Superintendent for the value of the individual variation. The Delegate must also ensure that budget is approved for the variation.

For contracts over \$150,000 or \$200,000 for construction works (Incl. GST), when the accumulated variation value for a contract will exceed 20% of the initial awarded contract value, then the Contract Manager or Director must advise the relevant General Manager. Approval must be sought from the General Manager to proceed with the contract, and that any future variations can still be approved by the Financial Delegate or the Superintendent for each variation amount. The General Manager with Finance must also ensure budget is approved for all variations.

Any individual variation to the contract award with a value over \$150,000 must also be approved by the Manager Procurement and Contract management, excluding construction works contracts.

All variations are to be processed through the Procurement and Contract Management System.

## 25. Contract Extensions

For contracts over \$150,000 or \$200,000 for construction works (Incl. GST) that have extension options, delegation approval is required to exercise the extension for the value of the option. These extension options are to be processed through the procurement team and within the Procurement and Contract Management System.

## 26. Evaluating Contract Performance

In order to continually improve its outcomes, Council will evaluate and seek to improve on all aspects of procurement and contract management, in accord with procurement processes and Supplier Management Framework.

## 27. Collaborative Procurement

Where practical, Council will collaborate with other Councils in order to take advantage of economies of scale. Opportunities to collaborate must be identified within the Procurement Plan.

## 28. Contract Management Plan

A segmentation of all supplier contracts is to be undertaken to determine strategic importance and risk to Council.

A Contract Management plan must be created by the Branch prior to contract execution, in consultation with procurement for all contracts segmented as strategic, important and/or high risk as determined in the Procurement Plan. This plan should include risk assessment and mitigation plans and a process for enabling innovation throughout the life of the contract.