

Management report to Council

Agenda item 6.4

Procurement Policy Review

Council

Presenter: Michael Tenace, Chief Financial Officer

26 March 2019

Purpose and background

1. The purpose of this report is to seek endorsement of the Procurement Policy. The Policy was first endorsed by Council in September 2009 and most recently endorsed by Council in February 2018.
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.

Key issues

3. The Act requires that Council must have regard to the Victorian Local Government Best Practice Procurement Guidelines 2013 (Guidelines) with respect to form and content of the Policy. The Policy has been reviewed and updated in accordance with the Act and the Guidelines.
4. The Policy is aligned to a centre-led procurement model which strengthens procurement practices across Council by utilising the expertise of the centralised Procurement team to deliver optimised procurement outcomes.
5. The proposed Policy changes reflect the delivery of best practice procurement with enhanced Procurement team involvement, alignment of the capital works tendering threshold with legislation, utilisation of the contract management system to increase compliance and automation and improved management of contract variations. A transition approach will be developed and implemented for Branches to adopt the new policy.
6. The centre-led procurement model requires policy enhancements to enable the procurement team to deliver increased benefits and uplift the commercial capability of procurement practices across Council. Specifically the proposed changes will deliver:
 - 6.1. Best practice procurement, requiring all Tenders to be processed through the procurement team. This includes the centralisation of the capital spend for Council.
 - 6.2. Capital Works tendering threshold to be aligned with the Act which is set at \$200,000 (Inc. GST). This would be an increase from the current threshold of \$150,000 (Inc. GST).
 - 6.3. Greater visibility and controls by having all procurements conducted by Council to be undertaken using a central system. This includes all Tenders and Request for Quotes.
 - 6.4. Contract variations >\$150,000 (Inc. GST) must be approved by Manager, Procurement and Category Management. Delegation of Authority is on the total of contract value (contract award value plus contract variation/s) providing greater control spend, transparency of variations and improved commercial outcomes. The exception is for Construction Works contracts (eg. AS2124, AS4000), where Procurement (as Principal's Representative) will be informed of contract variations with a value of \$150,000 (Inc. GST) or greater, prior to the Superintendent's determination.
7. The proposed changes intend to raise the standards by working towards best practice procurement as well as end to end lifecycle of supplier management and implementation via a supplier management framework and strategic contract management framework.
8. Centralisation of processes and systems and greater involvement from the category management team will result in increased benefits to be delivered including those of environmental, social and financial nature. This ultimately allows Council to allocate resources efficiently.
9. The proposed changes support Council with the implementation of a strategic contract management framework. This will provide Council with greater transparency of contracts and supplier performance and compliance, improved risk management across the Council supply chain and delivers improved services to the broader City of Melbourne community.
10. Our commitment to continuous improvement and exploring best practice approach to deliver the policy in a user friendly and improved readability to which enables the reader to navigate the Policy with ease.

Recommendation from management

11. That Council:

11.1. Notes its obligations under section 186A of the *Local Government Act 1989* to review its current Procurement Policy, at least once every financial year.

11.2. Endorses the Procurement Policy.

Attachments:

1. Supporting Attachment (Page 3 of 15)
2. Procurement Policy (Page 4 of 15)

Supporting Attachment

Legal

1. The report accurately identifies the relevant obligations in the *Local Government Act 1989 (Act)*.

Finance

2. The proposed changes will deliver increased financial benefits given a centralised system for procurement will provide greater control of spend, transparency of variations and improved commercial outcomes.

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.

Occupational Health and Safety

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

Stakeholder consultation

5. The policy will support Council and Council staff with best practice procurement, with no direct impact on how external stakeholders engage with City of Melbourne. Therefore, no external stakeholder consultation was undertaken.

Relation to Council policy

6. Section 186A of the 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.

Environmental sustainability

7. The Policy retains its provisions on Sustainable Procurement Considerations which provides guidance on environmental priorities and considerations when procuring goods and services.



Procurement Policy

Last updated 26 March 2019

Contents

1. Background	3
2. Purpose	3
3. Why is the Policy important?	3
4. What if we don't comply?	3
5. Key Principles for all Employees.....	3
6. Scope.....	3
7. Procurement Methodology.....	4
8. Procurement Principles	5
9. Delegations, Authority and Levels of Procurement	5
10. Contract Management System.....	5
11. Probity Requirements	6
12. Internal Control.....	6
13. Procurement Under \$150,000 (Under \$200,000 for Construction Works)	7
14. Procurement Equal or Over \$150,000 (Over \$200,000 for Construction Works)	7
15. Engaging Existing Council Contracts and Panel Contracts.....	7
16. Tender Evaluation	8
17. Cost Weighting	8
18. Negotiations.....	8
19. Expressions of Interest.....	9
20. Contract Variations	9
21. Evaluating Contract Performance	9
22. Collaborative Procurement	9
23. Sustainable Procurement Considerations.....	10
23.1.Social Sustainability	10
23.2.Environmental Sustainability	11
23.3.Economic Sustainability.....	11
23.4.Aboriginal Engagement	11
23.5.Gender Equality.....	12
24. Council Tenders' Webpage	12
25. Related Policies & Guidelines.....	12

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 if you breach fraud, corruption, bribery or Australian Consumer Laws.

5. Key Principles for all Employees

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

Employees 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. Procurement Methodology

The procurement methodology is dependent on the value and/or risk of the purchase as shown in the table below:

Procurement Threshold incl. of GST/ Risk	Procurement Methodology
<p>Low risk <\$1000</p>	<ul style="list-style-type: none"> For all purchases < \$1000 buy the services having regard to Council's sustainable procurement policy and raise a requisition in Tech One.
<p>Low risk \$1000 - \$5000</p>	<ul style="list-style-type: none"> Determine service requirements. Address any site matters and risk issues including OH&S. The <u>Risk Identification Guide (optional)</u> can be used to identify risks. Obtain at least one written quotation and raise a requisition in Tech One.
<p>Low risk \$5001 - \$25,000</p>	<ul style="list-style-type: none"> <u>Obtain a Contract Number,</u> <u>Assess risk - Risk Identification Guide (optional).</u> <u>Disclosable Interest - Disclosable Interest and Confidentiality Declaration,</u> Obtain at least one written quotation and raise a Purchase Order in Tech One.
<p>Moderate risk Construction Works \$25,001 - \$199,999 All other Procurement \$25,001 - \$149,999</p>	<ul style="list-style-type: none"> Undertake a Request for Quote process by following the process within the Contract Management System.
<p>High risk Construction Works \$200,000 + All other Procurement \$150,000 +</p>	<ul style="list-style-type: none"> Contact your Category Manager to initiate a Request for Tender, or utilise an existing contract or panel or a Ministerial Approval is to be sought from not engaging in a competitive process.

8. 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).

9. 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. This is in accord with section 98 of the Act (Delegations).

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, 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.

10. Contract Management System

Council has an online Contract Management System (CMS) which prescribes the processes and procedures for all stages of the end-to-end procurement lifecycle. It is a requirement that:

- All procurements over \$25,000 must be conducted within CMS, which include all Request for Quotes (RFQs) and Tenders.
- All contract variations must be conducted within the CMS.

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.

11. 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 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 Councillors:

- Must avoid conflicts between her or his public duties as a Councillor 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.

This is in accord with sections 76B, 76BA, 76E, 80C and 79 of the Act.

12. 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).

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

For procurements under \$150,000:

- For Procurements under \$25,000, staff are required to follow the Contract Management Guidelines on the Council's intranet.
- For all procurements between \$25,000 and \$150,000 (or between \$25,000 to \$200,000 for Construction Works), staff are required to undertake a Request for Quote process within the CMS.

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.

All values are inclusive of GST.

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

For procurements equal or over \$150,000:

- All procurements over \$150,000 (or over \$200,000 for Construction Works), are to be processed through the procurement team, and undertaken within the CMS.
- 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.
- 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 Policy and CMS procedures.
- Exemptions from advertising are set out in section 186 (5 and 5A) of the Act.

All values are inclusive of GST.

15. Engaging Existing Council Contracts and Panel Contracts

Under an existing Council Panel Contract or approved Tendering Agent or State Government 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 Agent.

16. 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.
- The tender evaluation panel's composition will be determined by the respective Branch Manager and/or Procurement Category Manager.
- Tender evaluation panels can include external personnel in order to ensure best outcome for procurement activity.

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.

17. 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.

18. 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.

19. 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.

20. Contract Variations

Any variation to the contract award with a value over \$150,000 must be approved by the Manager Procurement and the relevant Delegate. The variation must be approved by the delegate for the total sum of initial value of the contract award plus all variations.

All variations must be conducted in the CMS.

The exception is for Construction Works contracts (eg. AS2124, AS4000), where Procurement (as Principal's Representative) will be informed of contract variations with a value of \$150,000 (Inc. GST) or greater, prior to the Superintendent's determination.

All values are inclusive of GST.

21. 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.

22. Collaborative Procurement

Where practical, Council will collaborate with other Councils in order to take advantage of economies of scale.

23. Sustainable Procurement Considerations

The Centre-Led Procurement and Category Management Team standardises 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.

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.
- A price preference of up to 10 per cent can be applied to tenders that use recycled material.

Council will make available access to the Aboriginal Suppliers database from 'Supply Nation' database.

23.1. 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.
- 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.

23.2. 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.

22.2.1 Recycled Materials

Council will promote more sustainable and effective use of recycled materials and aims to stimulate new ways to redirect recycled materials into the manufacturing process and Supply Chain.

Depending on the nature of the procurement, Council can apply a price preference of up to 10 per cent for the purchase of recycled items.

23.3. 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.

23.4. Aboriginal Engagement

Council aims to stimulate Aboriginal entrepreneurship, business development and employment by providing Aboriginal businesses with more opportunities to participate in the economy by:

- Procurement spend target over three years to engage Aboriginal businesses at different levels of Council's supply chain.
- Being a member of Supply Nation since 2015.
- Together with Supply Nation, the Council 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.

23.5. Gender Equality

Council 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 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 2010* (Vic).
- 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.

Council 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 (organisational structure) or prescriptive measures to address gender imbalance.
- Ratio of employment for men and women.
- A copy of their gender equality policies and commitments.

24. Council Tenders' Webpage

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

25. Related Policies & Guidelines

- Council's Employee Code of Conduct
- Councillor Code of Conduct
- Risk Management Policy
- Supplier Management Framework