

Management report to Council

Agenda item 6.10

New Procurement Policy

Council

Presenter: Michael Tenace, General Manager Finance and Corporate and Chief Financial Officer

29 June 2021

Purpose and background

1. The Procurement function has transformed and developed capability over the recent years to incorporate Strategic Sourcing, Category Management, Contract Management and strategic risk management to increase value for money, reduce supplier risk and complexity for City of Melbourne.
2. The Procurement Policy (Policy) has been updated and modernised to reflect the transformation of the function.
3. The Policy reflects the changing requirements of the Council, the Community and Suppliers and aims to;
 - 3.1. clarify and simplify procurement
 - 3.2. remove obsolete and ineffective processes
 - 3.3. minimise risk
 - 3.4. maximise value including delivering to the Council's sustainability goals.
4. The *Local Government Act 2020* (LGA 2020) was passed on 24 March 2020 with a staged implementation. The LGA 2020 substantially replaces *the Local Government Act 1989* and enables councils greater flexibility to redefine their procurement policy including thresholds and exemption process
5. The procurement section of the LGA 2020 takes effect on 1 July 2021, with a six month implementation window where councils are to develop and implement a procurement policy aligned to the LGA 2020.
6. The intent of the LGA 2020 is to enable councils to create a procurement policy that better aligns to their procurement function, capability and risk.
7. The LGA 2020 states councils must adopt a procurement policy applicable for the purchase of goods and services, and must specify:
 - 7.1. threshold for competitive tenders (councils can now define threshold limits and exemption rules)
 - 7.2. the criteria used to evaluate whether the contract provides value for money
 - 7.3. description of how councils will seek collaboration with other councils and public bodies
 - 7.4. the conditions under which a council may purchase goods or services without inviting public tender or expression of interest
 - 7.5. a description of the process to be undertaken in inviting a public tender or expression of interest
 - 7.6. any other matters prescribed by regulations
 - 7.7. The LGA 2020 requires the procurement policy be reviewed at least once every four years.

Key issues

8. Key focus of the revised Policy are to:
 - 8.1. realign thresholds
 - 8.2. focus procurement capability and process on higher risk and higher value activities
 - 8.3. improve process efficiencies for lower risk and lower value procurements

- 8.4. include a streamlined exemption process which is aligned to procurement value and risk, including the removal of Ministerial exemptions
 - 8.5. include requirements for a strategic supplier and contract assessment
 - 8.6. provide for clearer and simplified definition of value for money drivers
 - 8.7. Provide for the inclusion of Local Economic Benefits.
9. The summary of Changes is shown in the table below;

Policy	Rationale
Evaluation criteria and value for money	<ul style="list-style-type: none"> • Defines value for money as the primary evaluation driver allowing for cost and non cost elements
Thresholds - moving from incl. GST to excl. GST	<ul style="list-style-type: none"> • GST exclusive values consistent with financial reporting • Increase tender threshold to: <ul style="list-style-type: none"> • Focus procurement expertise and process on higher value and higher risk activities • Greater procurement process for 3 quote to drive greater value for money • Process efficiencies for lower value but higher volume two quote “Quick Source”
Procurement Plan to include prototyping	<ul style="list-style-type: none"> • Provides exemption to thresholds to enable prototyping and innovation with a supplier that can be scaled
Local Economic Benefits	<ul style="list-style-type: none"> • Leverage procurement to support local businesses and employers applying a 10% evaluation weighting
Exemptions to the thresholds	<ul style="list-style-type: none"> • Streamlined exemption authority which is aligned to procurement value and risk, including the removal of Ministerial exemptions.
Sole Supplier exemption	<ul style="list-style-type: none"> • Procurement efficiencies allowing direct negotiations for sole suppliers
Collaboration	<ul style="list-style-type: none"> • Strengthen collaboration to include sharing service design and innovation with other councils
Key focus on Economic Sustainability – Buy local	<ul style="list-style-type: none"> • Strengthen Economic sustainability to support the city reactivation and recovery plan by supporting local business and supplies, including start ups
Strategic Supplier and Contract Review (New)	<ul style="list-style-type: none"> • Requirement for a strategic supplier and contract assessment to be completed prior to the end of CoM strategic contracts.

Recommendation from management

10. That Council:

10.1.Approves the new Procurement Policy (refer Attachment 1 of the report from management).

10.2.Notes that an implementation window of approximately three months after approval is required, to enable communication and change management.

Attachments

- 1. Supporting Attachment (Page 3 of 16)
- 2. Procurement Policy (Page 4 of 16)

Supporting Attachment

Legal

1. Section 108(1) and (2) of the LGA 2020 provide:

A Council must prepare and adopt a Procurement Policy which specifies the principles, processes and procedures applying in respect of the purchase of goods and services by the Council, including for the carrying out of works.

A Procurement Policy must seek to promote open and fair competition and provide value for money.

Finance

2. The Policy has been reviewed by ELT and also the Finance, Governance and Risk Portfolio Committee.

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 material or general conflict of interest in relation to the matter of the report.

Health and Safety

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

Stakeholder consultation

5. No direct external consultation was undertaken. However indirect consultation was completed specifically related to the sustainability and local economic benefits.

Relation to Council policy

6. Sustainability (Economic, Social and Environmental): Policy 20 specifically applies to Sustainable procurement considerations during the procurement process.
7. Economic Development: Policy 11 provides for Local Economic Benefits.

Environmental sustainability

8. There are no direct impacts on environmental sustainability as a result of this report.



Procurement Policy

Last updated June 2021

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1. Background

Section 108 of the *Local Government Act 2020* (Act) requires councils to adopt a Procurement Policy applicable to the purchase of goods and services and specify:

- Thresholds for competitive Tender.
- Criteria used to evaluate whether a contract provides value for money.
- Description on how a council will seek to collaborate with councils and public bodies.
- Conditions under which a council may purchase goods and services without a public tender or Expression of Interest (EOI).
- Description of the process to be undertaken in inviting a public tender or EOI.

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

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

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

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 \$100,000 (ex GST).

Plans are to be approved by the relevant Director and 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 \$250,000 (ex GST), a Procurement Plan is to be completed.

A Procurement Plan should also be completed when undertaking a prototype or proof of concept which creates a service with a sole supplier (e.g. software). The plan should include the initial procurement approach for the prototype plus an agreed term should the service be scaled plus an upper limit on value for the term. This approach is exempt from the procurement thresholds across the agreed term as approved in the plan. Delegation approval is required for the upper limit value.

The Procurement Plan is to be approved by the Director Procurement and Contract Management and the relevant Branch Director.

9. Procurement Methodology and Thresholds

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

\$0 - <\$2000 (ex GST)

- Purchasing card if available or pay on invoice.

\$2,000 - <\$50,000 (ex GST)

- Obtain a minimum of two quotes
- Undertake a request for quote following the process within the CoMBuy System.
- Director exemption is to be sought from requesting two quotes.

\$50,000 - <\$250,000 (ex GST)

- Obtain a minimum of three quotes.
- Undertake a request for quote following the process within the CoMBuy System.
- Address any risk issues including OH&S. The Risk Identification Guide (optional) can be used to identify risks.
- General Manager exemption is to be sought from requesting three quotations.

>\$250000 (Ex GST)

- Contact your Category Manager to initiate a Request for Tender or EOI process.
- Undertake the Tender or EOI following the process within the CoMBuy System.
- Address any risk issues including OH&S. The Risk Identification Guide (optional) can be used to identify risks.
- Director Procurement and Contract Management, General Manager and CEO approval is to be sought from not undertaking an open Tender process.

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;
- local economic benefits.

11. Local Economic Benefits

Council will leverage procurement to support local businesses and employers who decide to develop their operation and services within the City of Melbourne municipality. Whilst value for money is a key objective, consideration will also be given for investment in local business and genuine employment opportunities within the City of Melbourne. This might include creation of new jobs, ensuring sustainability of existing local jobs or upskilling the local workforces and creating new opportunities.

Where Council can show value for money, capability and competency and sufficient competition the Council may mandate only suppliers within the City of Melbourne Municipality to participate in a particular procurement.

The Council may apply an evaluation weighting of up to 10% for all contracts (RFQ's and tenders) to support the development of employment and business within the council municipality.

When applying this 10% weighting the Council will:

- Where appropriate:
 - Identify if the procurement can be targeted to or adapted to encourage local business;
 - Identify and barriers and limitations of the local supply market and consider opportunities to reduce;
 - Include a statement that this weighting is to encourage responses to identify the development of local business within the council municipality and will be evaluated as such;
 - Develop key performance indicators to measure responses.
- Include within RFQ and tender documentation a supplier question to identify potential local benefits. Responses will be evaluated and scored as part of this 10% weighting.

If the application for local business benefits will result in an outcome that is unreasonable or will not deliver value for money or is deemed not to be to the advantage of council, then Council may elect to remove weighting from the tender or quote documents.

12. 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.
- General Manager, Director Procurement and Contract Management and CEO approval is to be sought from not undertaking an open Tender process.

This exemption process should be followed to approve a single sourcing procurement approach.

13. Exemption for Sole Supplier

Any procurement where a supplier is a monopoly or has sole ownership or rights over a service, assets or goods and its use, or is mandatory for use by Council, is exempt from the procurement thresholds and direct negotiations can be undertaken. This specifically applies to:

- Utilities such as Powercor that are mandated to work on their own assets.
- Transport such as Yarra Trams.
- Proprietary software and related proprietary maintenance of that software such as Microsoft.
- Maintenance that is propriety to an asset and can only be performed by a sole supplier.

Approval of such suppliers for exemptions (ongoing) must be obtained from the Director Procurement and Contract Management

14. Delegations, Authority and Levels of Procurement

The relevant instrument of delegation and Council's general delegation policy determine 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 of the procurement thresholds, 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 be a breach of this Policy.

All procurements above \$250,000, except for major construction projects, must be approved by the Director Procurement and Contract Management prior to delegation approval.

15. Procurement and Contract Management System

Council has an online Procurement and Contract Management System (CoMBuy) 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 CoMBuy.

CoMBuy must also be used for contract management including key activities such as performance management, records management, alerts on key activities, risk and issues, Payment Card Industry Data Security Standard compliance management plus financial management.

16. 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.

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 general or material conflict of interest (sections 127 and 128 of the Act) 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 Director 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 Councilors:

- Must avoid conflicts between their public duties as a Councilor and their 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.

17. 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 authorizations are obtained and documented.

18. Accessing Existing Council Contracts and External 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, all of which have been market tested, staff are required to:

- Prepare a project brief and obtain a minimum of two quotes from suitable Panel members or arrangement. (i.e. exempt from procurement thresholds).
- 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.

When accessing Victorian Government supplier registers, the procurement thresholds must be followed however tenderers can be selected from the register or a single quote obtained if a sole provider.

19. Tender Evaluation

Council Staff must ensure that:

- Late tenders are not accepted.
- Tender and three quote evaluations are conducted in accordance with the methodology set out in CoMBuy.
- An evaluation panel is established to evaluate each tender and three quote submission against the selection criteria and the evaluation plan within CoMBuy.
- The tender evaluation panel's composition is determined by the respective Director and the Category Manager as defined in the Procurement Plan. Three quote evaluation panel members are determined by the project manager responsible for the procurement.
- Tender and three quote evaluation panels can include external personnel in order to ensure best outcome for procurement activity.
- All staff involved in the evaluation process, including advisors and approvers, must complete conflict of interest declarations.
- Two quote evaluations are based on best value for money.

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

City of Melbourne aims to strategically use procurement to drive sustainability outcomes.

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

Economic Sustainability - Support City of Melbourne's reactivation and recovery plan by supporting local businesses, suppliers, small businesses and start-ups.

Priorities	Considerations
Increase Opportunities for Melbourne based businesses, Small Businesses and Start-ups	<p>Increasing purchasing from businesses located in Melbourne municipality</p> <p>Increasing the use of local suppliers as sub-contractors</p> <p>Increasing generation of local employment</p> <p>Increasing support for local production and manufacturing</p> <p>Fostering innovation and emerging sectors</p> <p>Building relationships and encouraging purchasing from start-ups and small businesses to help build their capacity</p>

Social Sustainability - Elevate the inherent social value of doing business

Priorities	Considerations
Increase opportunities for City of Melbourne by working and partnering with Aboriginal businesses and peoples	<p><i>Strengthen and build the economic growth of local Aboriginal Communities, by:</i></p> <p>Recognising the value that Aboriginal businesses can bring through new procurement relationships and opportunities;</p> <p>Increasing procurement from Melbourne and Victorian based Aboriginal businesses, in particular those registered with Supply Nation and Kinaway</p> <p>Increasing employment of local Aboriginal people by suppliers when appropriate</p> <p>Increasing the use of Aboriginal Businesses as subcontractors</p> <p>Increasing Aboriginal employment and building capacity and skills</p> <p>Continuing to monitor the success, growth and satisfaction of both the Council and Aboriginal suppliers</p>
Increasing opportunities for those experiencing disadvantage (Disability, Youth, Ageing population, Inclusion, Homelessness)	<p><i>Increasing employment of people experiencing disadvantage by our suppliers by:</i></p> <p>Increasing procurement from social enterprises and those registered with Social Traders.</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>

Environmental Sustainability - Increase implementation of environmentally sustainable business practice

Priorities	Considerations
<p>Reduce pollution including carbon emissions from City of Melbourne's supply chain</p>	<p>Encouraging suppliers to reduce and offset greenhouse gas emissions and reduce pollution</p> <p>Reducing the impact of works, goods and services on the public (health and well-being, air quality, generation and disposal of hazardous materials)</p> <p>Improving energy efficiency and encourage renewable energy</p> <p>Improving water management and reduce water consumption</p> <p>Avoiding the use of fossil fuels in the delivery of products or services where practicable</p> <p>Leveraging City of Melbourne's purchasing power to ensure emissions and environmental reporting from suppliers</p>
<p>Stimulate the transition to a circular economy; reducing/eliminating waste, minimising the use of resources, water and energy</p>	<p><i>Challenge existing and new suppliers to improve environmental management and collaborate on delivering long-term circular economy practices, by</i></p> <p>Minimising the use of resources throughout the supply chain</p> <p>Selecting products/services that have a minimal effect on the depletion of natural resources or that regenerate natural resources</p> <p>Reducing waste to landfill through the supply chain and increase the use of materials that contain re-claimed resources</p> <p>Incentivising the supply chain to be transparent about their materials, metrics, practices and progress on circular solutions</p> <p>Managing products and packaging across the full life-cycle, from selection of materials and design, to funding and managing product stewardship at the end of the product's life.</p>
<p>Biodiversity and Climate Resilience</p>	<p><i>Challenge new and existing suppliers to:</i></p> <p>Increasing the city's passive cooling efficiency by increasing canopy cover particular over public spaces and travel routes</p> <p>Using nature to solve problems by implementing nature-based solutions, such as green infrastructure and water sensitive urban design; include protection of local nature and tree protection</p> <p>Incorporating drainage, water storage and increased permeability considerations into building retrofit designs to protect waterways</p> <p>Protecting and enhancing the natural environment and green spaces of our municipality</p>

Connect people with nature

21. Evaluation criteria and Value for Money

When evaluating a procurement proposal, value for money is the primary evaluation objective taking into account both cost and non-cost factors (not necessarily the lowest cost). This should include:

- A cost weighting for evaluation between 60 to 100 per cent. Should a requirement for the weighting be lowered below 60 per cent, Procurement must approve this change.
- Ensure the product and service is fit for purpose.
- Quality.
- Service and support.
- Whole of life cost.

Evaluation criteria for Tenders are confirmed in the approved Procurement Plan

22. EOI

Council may determine to seek an EOI 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.

The EOI must be publicly advertised.

A select tender can then be conducted from preferred respondents to the EOI.

23. 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 \$250,000, when the accumulated variation value for a contract will exceed 20% of the initial awarded contract value, the Contract Manager or Director must advise the relevant General Manager. Approval must be sought from the General Manager to proceed with the variation, and that any future variations can still be approved by the Financial Delegate or the Superintendent for each variation amount. The General Manager must also ensure budget is approved for all variations.

Any individual variation to the contract award with a value over \$250,000 must also be approved by the Director Procurement and Contract management, excluding construction works contracts.

All variations are to be processed through CoMBuy.

24. Contract Extensions

For contracts over \$250,000 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 CoMBuy.

25. 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 the Supplier Relationship Management Program.

26. Collaborative Procurement

Where practicable, Council will collaborate with other councils in order to take advantage of economies of scale, explore service design best practice, shared service opportunities and services plus drive innovation with suppliers. Opportunities to collaborate must be identified within the Procurement Plan.

27. 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.

28. Accumulated Spend

The threshold to determine the procurement approach must allow for the potential accumulated spend with the supplier across the same project or initiative across a period of three years. The value of the accumulated spend determines the procurement approach

29. Strategic Supplier and Contract Review

A Strategic assessment must be completed for strategic contracts during the course and end of the contract that:

1. Provides strategic enhancements during the current contract lifecycle including:

Innovation to the existing service.

Alternative or improvements to the existing service.

Added services to the contract.

2. Requires strategic assessment prior to contract end (generally 12 months prior to the end date) including:

Market assessment of suppliers and service delivery models.

Contract synergies across City of Melbourne services.

Strategic assessment of the service model and specification.

Review of contract structure and pricing approach.

Defines the future strategic direction.

Identifies service risk review including transition.

These reviews are completed by the branch and procurement, and approved by the Branch Director and the Director Procurement and Contract Management.