

	<h1>Procurement Policy</h1>
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Responsible officer	Procurement Coordinator
Policy owner	Manager Legal and Governance

1. Scope & Application

- 1.1. The *Local Government Act* 1989 (Vic) (**LG Act**) requires each council to:
 - 1.1.1. publicly tender contractual procurements over certain thresholds; and
 - 1.1.2. prepare, approve and comply with a procurement policy encompassing principles, processes and procedures applied to all purchases.
- 1.2. This Procurement Policy (**Policy**) is made under Section 186A of the LG Act. The LG Act is the key legislative framework that regulates the process of all local government procurement in Victoria.
- 1.3. Pursuant to the LG Act, Melton City Council (**Council**) is required to prepare and approve a procurement policy that includes any matters, practices or procedures which are prescribed for the purposes of section 186A.
- 1.4. This Policy applies to all contracting and procurement activities, other than legal advice, and is binding upon councillors, council officers, temporary employees, contractors and consultants undertaking procurement on behalf of Council (collectively referred to as **Council Officers**).

2. Purpose

- 2.1. The purpose of this Policy is to establish a procurement framework for Council to ensure that the procurement of all goods, services and works is conducted in a consistent, competitive and transparent manner whilst adhering to principles of probity, ethics and good governance.
- 2.2. This Policy further aims to:
 - 2.2.1. provide guidance to Council to allow consistency and control over procurement activities;
 - 2.2.2. demonstrate accountability to rate payers;
 - 2.2.3. provide guidance on ethical behaviour in public sector purchasing;
 - 2.2.4. demonstrate the application of elements of best practice in purchasing; and
 - 2.2.5. obtain the value for money when purchasing goods and services.

3. Legislative Compliance

The key legislative requirements for this Policy include:

- 3.1. relevant provisions of the *Competition and Consumer Act* 2010 (Cth);
- 3.2. relevant provisions of the *Privacy and Data Protection Act* 2014 (Vic);
- 3.3. *Health Records Act* 2001 (Vic); and
- 3.4. the following specific sections of the LG Act:

Section	
186	Power to enter into contracts
186A	Procurement Policy
3C	Objectives of a Council
208B	Best Value Principles
77A, 77B, 78, 78A, 78B, 78C, 78D, 78E, 79, 79B, 79C, 79D, 80, 80A, 80B, 80C, 81, 95 and 95AA	Conflict of Interest
98	Delegations
140	Accounts and Records

Council will adhere to the above provisions in all procurement matters.

4. Summary of Principles for Procurement

Irrespective of the value or complexity of procurement, Council will apply the following principles that have been developed taking into account industry and best practice standards:

- 4.1. Value for Money;
- 4.2. Open and Fair Competition;
- 4.3. Accountability;
- 4.4. Risk Management;
- 4.5. Probity and Transparency;
- 4.6. Sustainable Procurement – Local Sourcing;
- 4.7. Sustainable Procurement – Environmental;
- 4.8. Sustainable Procurement – Social (including ethnicity and gender);
- 4.9. Expressions of Interest;
- 4.10. Disclosure of Information;
- 4.11. Tender Evaluation;
- 4.12. Performance Measurement and Continuous Improvement;
- 4.13. Processes and Procedures; and
- 4.14. Other Council Policies.

5. Explanation of Principles of Procurement

5.1. Value for Money

- 5.1.1. Obtaining value for money does not mean Council is obliged to accept the lowest price. Section 186(4) of the LG Act specifically provides that Council does not have to accept the lowest tender.
- 5.1.2. The concept of 'value for money'¹ involves taking into account both financial and non-financial factors including:
 - 5.1.2.1. advancing Council's priorities;
 - 5.1.2.2. fitness for purpose;
 - 5.1.2.3. quality;
 - 5.1.2.4. service and support; and
 - 5.1.2.5. whole-of-life costs and transaction costs associated with acquiring, using, holding, maintaining and disposing of goods, services or works.
- 5.1.3. According to the Victorian Government Purchasing Board, value for money involves a balanced judgement of financial and non-financial factors. Typical factors include fitness for purpose, quality, whole-of-life costs, risk, environmental and sustainability issues, and price.²

5.2. Open and Fair Competition

- 5.2.1. All prospective suppliers must be treated (and be seen to be treated) fairly and in an open and transparent manner, with the same access to information about the procurement to enable them to submit prices, quotations and tenders on the same basis.
- 5.2.2. Council must adequately test the market in a consistent manner without any bias, or perception of bias, so that potential suppliers and the public have confidence in the outcome.
- 5.2.3. Where applicable, the provisions of the *Competition & Consumer Act 2010* (Cth), must be complied with in the procurement process.

5.3. Accountability

- 5.3.1. Council Officers are responsible for the actions and decisions they take in relation to procurement and for the resulting outcomes. Council Officers are answerable for such activities through established lines of accountability and delegation, and ultimately to the Chief Executive Officer.
- 5.3.2. Council Officers must ensure they provide appropriate and reliable advice to Council to allow it to make sound decisions on procurement matters.

5.4. Risk Management

- 5.4.1. Strategies for managing risks associated with all procurement processes are in place and consistent.
- 5.4.2. The risk management policies adopted by Council comply with all legislative requirements, including Occupational Health and Safety laws.

¹ Section 3C(2)(b) and (c) of the *Local Government Act 1989*

² <http://www.procurement.vic.gov.au/About-the-VGPB/Glossary#V>

- 5.4.3. Risk management strategies and policies must be applied at all stages of procurement activities to ensure that such activities are planned and carried out in a manner that will:
- 5.4.3.1. protect Council from legal liability; and
 - 5.4.3.2. enhance Council's capability to prevent, withstand and recover from, the interruption to the supply of goods, services and works.

5.5. Probity and Transparency

- 5.5.1. In all commercial dealings, the highest standards of probity, honesty and transparency must be observed.
- 5.5.2. Council and Council Officers must conduct their business in a fair, honest and open manner, demonstrating the highest levels of integrity, consistent with the public interest.
- 5.5.3. All Council activities must be conducted with integrity and in a manner able to withstand the closest possible scrutiny.
- 5.5.4. In addition, the following legislative obligations specified in the LG Act must be complied with:
- Section 80C: Council Officers must disclose any direct or indirect interest (and the type of interest) before providing advice or reports (or any other matter).
 - Section 80B: Council Officers 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 76BA: A Councillor (as defined in the LG Act) must comply with the primary principle of Councillor conduct under section 76B of the LG Act and avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations.
 - Section 79: Councillors (and members of Council audit committees) must disclose a Conflict of Interest.
 - Section 76C: Councillors must comply with the Councillor Code of Conduct.
 - Section 76E: Councillors must not improperly direct or improperly influence a member of Council Officers in the exercise of any power or in the performance of any duty or function.
 - Section 95AA: Council Officers must comply with Council's Employee Code of Conduct.
- 5.5.5. In addition, Council Officers must:
- 5.5.5.1. make their interests known in any situation where it could be **perceived** that an interest might unduly influence them;
 - 5.5.5.2. declare to their direct supervisor 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;
 - 5.5.5.3. not tender for any contracts under their own or a company name.

5.6. Sustainable Procurement – Local Sourcing (within the municipality)

- 5.6.1. Council recognises that it is a major purchaser of goods, services and works and that its procurement practices have the potential to impact the local economy.
- 5.6.2. Council will endeavour to support businesses and industries within the municipality and maximise these opportunities by means that are consistent with this Policy so as to help generate local employment and promote social inclusion.
- 5.6.3. Council commits to having local content as a weighted criteria in all its tenders, weighted at a minimum of 10%.

5.7. Sustainable Procurement – Environmental

- 5.7.1. Council is committed to safeguarding environmental quality and wellbeing for its present and future communities.
- 5.7.2. Council recognises the potential impact procurement has on the environment and where possible will reduce its impact on the natural environment by attempting to:
 - 5.7.2.1. decrease waste;
 - 5.7.2.2. increase recycling;
 - 5.7.2.3. decrease greenhouse gas emissions;
 - 5.7.2.4. decrease water consumption;
 - 5.7.2.5. minimise the degradation and destruction of natural resources; and
 - 5.7.2.6. limit Council's impact on climate change.
- 5.7.3. Accordingly, in the procurement process, steps must be taken to:
 - 5.7.3.1. encourage and prefer the production and use of eco-friendly products which are more power efficient;
 - 5.7.3.2. select energy, fuel and water efficient products (ideally Energy and Water Star Ratings of 4 Star and above, and low CO₂ emission vehicles including electric and hybrid vehicles;
 - 5.7.3.3. where practicable, purchase from a source which is less polluting or uses clean technology;
 - 5.7.3.4. consider the provision of re-usable products and recycling as part of the project planning process, including the consideration of whole-life costs and disposal considerations;
 - 5.7.3.5. where practicable, buy recycled/part recycled products to optimise consumption and stimulate demand for recycled products, promoting the collection and reprocessing of waste and working towards zero discharge to landfill.

5.8. Sustainable Procurement – Social

- 5.8.1. Council recognises that its decisions have the ability to redress social disadvantage and improve social diversity including in relation to ethnicity, gender and disability.
- 5.8.2. Council will take into account the effect of its decisions on diversity and equal opportunity in all procurement decision making.
- 5.8.3. Council's procurement processes will support the generation of positive social outcomes where it can be justified on a value for money basis including but not limited to:

- 5.8.3.1. giving preference to businesses that employ local or socially disadvantaged residents or residents living with a disability in the City of Melton; and/or
- 5.8.3.2. giving preference to businesses that provide evidence of gender equality in leadership (organisational structure) or proscriptive measures to address gender imbalance (e.g. copy gender equality policy or policies).

5.9. Expressions of Interest

Council should seek Expressions of Interest when:

- 5.9.1. the requirement is complex, difficult to define or unknown;
- 5.9.2. the requirement is capable of several technical solutions;
- 5.9.3. it reasonably believes that a high number of tenders will be received;
- 5.9.4. the costs to tender will make the process of tendering uncommercial for tenderers;
- 5.9.5. uncertainty exists as to whether the vendor will offer the required procurement; or
- 5.9.6. Council requires external input before addressing the particular issue.

5.10. Disclosure of Information

- 5.10.1. As part of the process of procurement, Council and Council Officers may receive information that is confidential, sensitive in nature or that may prejudice the business of a tenderer if publicly released.
- 5.10.2. Council and Council Officers will act with discretion to ensure that, unless required by law, confidential and sensitive information is not revealed to any person other than Council or any Council Officers involved in the procurement process and then only for the purpose of the procurement process.
- 5.10.3. If required to release confidential or sensitive information, Council or Council Officers will do so in a commercially sensitive manner and in accordance with applicable privacy laws.
- 5.10.4. Council and Council Officers shall, at all times, comply with the *Privacy and Data Protection Act 2014 (Vic)*, the *Health Records Act 2001 (Vic)*, the Information Privacy Principles, the Health Privacy Principles and Council's Privacy Policy.

5.11. Tender Evaluation

Council and Council Officers must ensure that all tender processes comply and adhere to Council's Tender Process Guide and Tender Evaluation Plan.

5.12. Performance Measurement and Continuous Improvement

Council will ensure that appropriate performance measures are established and reporting systems are used to monitor performance and compliance with this Policy to support continuous improvement to improve this Policy.

5.13. Processes and Procedures

When purchasing goods, services and works, Council will adhere to the terms of the Purchasing Procedures Manual.

5.14. Other Council Policies

Further to complying with this Policy, Council and Council Officers must not engage in any activity during a procurement process that would breach any law or any other policy of Council. To the extent that the law and this Policy are inconsistent, the law will prevail.

6. Responsibility/Accountability

6.1. Executive and Managers

It is the responsibility of all managers and the executives of Council to ensure this Policy is strictly adhered to.

6.2. All Staff

It is the responsibility of all employees of Council to ensure that they comply with this Policy.

7. References and links to legislation and other documents

Name	Location
<i>Local Government Act 1989 (Vic)</i>	http://www.legislation.vic.gov.au
<i>Competition & Consumer Act 2010 (Cth)</i>	http://www.comlaw.gov.au
Procurement Procedure Manual	Council Intranet
Contract Management Guidelines	http://www.mav.asn.au
Victorian Local Government Procurement Best Practice Guidelines 2013	http://www.dpcd.vic.gov.au
Australian Government Sustainable Procurement Guide	http://www.environment.gov.au/
Social Procurement: A Guide for Victorian Local Government	http://www.dpcd.vic.gov.au
Best Practice Guide for Gender equity in Local Government	https://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0030/329277/Gender-Equity-in-Local-Government-Best-Practice-Guide.pdf