

	<b>Procurement Policy</b>
<b>Version No.</b>	V7.0, 4 October 2021
<b>Endorsement</b>	Executive - 7 October 2021 Policy Review Panel - 13 October 2021
<b>Authorisation</b>	Council - 25 October 2021
<b>Review date</b>	October 2025
<b>Responsible officer</b>	Procurement Coordinator
<b>Policy owner</b>	Manager Finance

## 1. Scope & Application

- 1.1. The *Local Government Act 2020 (Vic)* (**LG Act**) requires each council to 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.
- 1.2. This Procurement Policy (**Policy**) is made under Section 108 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. This Policy applies to all contracting and Procurement activities and is binding upon all Councillors and Council Staff.

## 2. Definitions

2.1. In this Policy, the following words have the following meaning:

- 2.1.1. **Collaborative Procurement Arrangements** are arrangements established by the Council, government or a nominated agent, such as Procurement Australasia, Municipal Association of Victoria (MAV), which aims to achieve better value by leveraging the combined economies of scale provided by multiple participants.
- 2.1.2. **Council** means the entire Melton City Council organisation, including Councillors and Council Staff.
- 2.1.3. **Councillors** means Council's elected representatives (the Mayor or Councillors) or an administrator(s) appointed to act in this capacity.
- 2.1.4. **Council Staff** includes all Council officers, temporary employees, contractors, volunteers and consultants while engaged by Council.
- 2.1.5. **Indigenous Business** is per the Australian Indigenous Minority Supplier Office Limited (Supply Nation) definition.

- 2.1.6. **Procurement** means the whole process of acquisition of external goods, services and works. The process spans the whole life cycle of an asset (including disposal) or the end of a service contract.
- 2.1.7. **Procurement Procedures** are Council's procedures that support this Policy contained or referred to in the endorsed Procurement Procedures Manual.
- 2.1.8. **Sustainable Procurement** is defined in clauses 4.8 to 4.10.
- 2.1.9. **Total Contract Value** means the sum of once-off or ongoing cumulative spend over the life of the Contract, including:
  - 2.1.9.1. costs applicable to any options for either party to extend the contract;
  - 2.1.9.2. applicable goods and services (GST);
  - 2.1.9.3. anticipated contingency allowances or variations;
  - 2.1.9.4. all other known, anticipatory and reasonably foreseeable costs.
- 2.1.10. **Value for Money** is defined in clause 4.2.

### 3. Purpose

- 3.1. The purpose of this Policy is to establish a Procurement framework for Council to ensure that the Procurement of all goods, services and works promotes open and fair competition and provide Value for Money.
- 3.2. This Policy further aims to:
  - 3.2.1. provide guidance to Council to allow consistency and control over Procurement activities;
  - 3.2.2. demonstrate accountability to rate payers;
  - 3.2.3. provide guidance on ethical behaviour in public sector purchasing;
  - 3.2.4. demonstrate the application of elements of best practice in purchasing;
  - 3.2.5. demonstrate the consideration of sustainability in Procurement with respect to social, economic and environmental factors; and
  - 3.2.6. seek to undertake Collaborative Procurement Arrangements.

### 4. Procurement Governance

#### 4.1. Principles

- 4.1.1. 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:
  - 4.1.2. Value for Money;
  - 4.1.3. open and fair competition;
  - 4.1.4. accountability;
  - 4.1.5. risk management;

- 4.1.6. probity and transparency;
- 4.1.7. Sustainable Procurement – economic (Buy Local), environmental and social (including ethnicity and gender).

## **4.2. Value for Money**

- 4.2.1. Obtaining Value for Money does not mean Council is obliged to accept the lowest price.
- 4.2.2. The concept of 'Value for Money' involves taking into account both financial and non-financial factors including:
  - 4.2.2.1. advancing Council's priorities;
  - 4.2.2.2. fitness for purpose;
  - 4.2.2.3. quality;
  - 4.2.2.4. service and support; and
  - 4.2.2.5. whole-of-life costs and transaction costs associated with acquiring, using, holding, maintaining and disposing of goods, services or works.
- 4.2.3. Value for money involves a balanced judgement of financial and non-financial factors.

## **4.3. Open and Fair Competition**

- 4.3.1. 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.
- 4.3.2. 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.
- 4.3.3. Where applicable, the provisions of the *Competition & Consumer Act 2010* (Cth), must be complied with in the Procurement process.

## **4.4. Accountability**

- 4.4.1. 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.
- 4.4.2. Council Officers must ensure they comply with Council delegations and provide appropriate and reliable advice to Council to allow it to make sound decisions on Procurement matters.

## **4.5. Risk Management**

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

4.5.3. 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:

4.5.3.1. protect Council from legal liability; and

4.5.3.2. enhance Council's capability to prevent, withstand and recover from, the interruption to the supply of goods, services and works.

#### 4.6. Probity and Transparency

4.6.1. In all commercial dealings, the highest standards of probity, honesty and transparency must be observed.

4.6.2. Council and Council Officers must conduct their business in a fair, honest and open manner, demonstrating the highest levels of integrity, consistent with the LG Act and the public interest.

4.6.3. All Council activities must be conducted with integrity and in a manner able to withstand the closest possible scrutiny.

#### 4.7. Conflict of Interest and Gifts

4.7.1. Councillors and Council staff shall at all times avoid situations which may give rise to an actual or perceived conflict of interest. A conflict of interest may be a 'general' or a 'material' conflict of interest.

4.7.2. A member of Council Staff has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.

4.7.3. A member of Council Staff has a material conflict of interest in a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit or loss may be direct or indirect and pecuniary or non-pecuniary. Affected persons include, among others, the member of Council Staff and their family members.

4.7.4. Council officers involved in Procurement and contract management activities must:

4.7.4.1. **avoid** conflicts of interests, whether material, general or actual or perceived;

4.7.4.2. **declare** that they do not have a conflict of interest in respect of the Procurement by completing a conflict of interest declaration and ensure it is updated where necessary

4.7.4.3. **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;

4.7.4.4. **observe** prevailing Council and Government guidelines on how to prevent or deal with conflict of interest situations, and not take advantage of any tender related information whether or not for personal gain,

#### **4.8. Sustainable Procurement – Economic (Buy Local)**

- 4.8.1. 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.
- 4.8.2. 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.
- 4.8.3. Council commits to having local content as a weighted criteria in all its tenders, weighted at a minimum of 10%.

#### **4.9. Sustainable Procurement – Environmental**

- 4.9.1. Council is committed to safeguarding environmental quality and wellbeing for its present and future communities.
- 4.9.2. Council recognises the potential impact Procurement has on the environment and where possible will reduce its impact on the natural environment by attempting to:
  - 4.9.2.1. increase recycling;
  - 4.9.2.2. decrease greenhouse gas emissions;
  - 4.9.2.3. decrease water consumption;
  - 4.9.2.4. minimise the degradation and destruction of natural resources; and
  - 4.9.2.5. limit Council's impact on climate change.
- 4.9.3. Accordingly, in the Procurement process, steps must be taken to:
  - 4.9.3.1. encourage and prefer the production and use of eco-friendly products which are more power efficient;
  - 4.9.3.2. select energy, fuel and water efficient products (ideally Energy and Water Star Ratings of 4 Star and above, and low Co<sub>2</sub> emission vehicles including electric and hybrid vehicles;
  - 4.9.3.3. where practicable, purchase from a source which is less polluting or uses clean technology;
  - 4.9.3.4. 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;
  - 4.9.3.5. 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.

#### **4.10. Sustainable Procurement – Social**

- 4.10.1. Council recognises that its decisions have the ability to redress social disadvantage and improve social diversity including in relation to ethnicity, gender and disability.
- 4.10.2. Council will take into account the effect of its decisions on diversity and equal opportunity in all Procurement decision making.

4.10.3. 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:

- 4.10.3.1. giving preference to businesses that employ local or socially disadvantaged residents or residents living with a disability in the City of Melton; and/or
- 4.10.3.2. giving preference to Aboriginal and/or Torres Strait Islander Businesses;
- 4.10.3.3. 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. Procurement Methods

5.1. Council's standard methods for purchasing goods, services and works are:

- 5.1.1. purchase order following a quotation or tender process from suppliers for goods, services or works that represent Value for Money under the thresholds adopted by Council;
- 5.1.2. under contract following a quotation or tender process;
- 5.1.3. using collaborative Procurement arrangements as described in section 8;
- 5.1.4. using Ministerial approved arrangements;
- 5.1.5. corporate business card; and
- 5.1.6. petty cash.

## 6. Procurement Thresholds

### 6.1. General

Section 108 of the LG Act requires Council to set the Total Contract Value above which the Council must invite a tender or seek an expression of interest.

### 6.2. Tender thresholds

Council will invite tenders from the supply market in the following circumstances:

Where Total Contract Value (including GST) will exceed:	Procurement Methodology
Up to \$2,500	In accordance with the Procurement Procedures to achieve Value for Money
\$2,501 to \$10,000	At least 1 written quote and In accordance with the Procurement Procedures to achieve Value for Money
\$10,001 to \$149,999 (goods and services or \$10,001 to \$199,999 (building and construction works)	At least 3 written quotes and In accordance with the Procurement Procedures to achieve Value for Money

\$150,000 (goods and services) or \$200,000 (building and construction works)	A public tender process is required and In accordance with the Procurement Procedures to achieve Value for Money
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**6.3. Expressions of Interest**

Council will seek Expressions of Interest when:

- 6.3.1. the requirement is complex, difficult to define or unknown;
- 6.3.2. the requirement is capable of several technical solutions;
- 6.3.3. it reasonably believes that a high number of tenders will be received;
- 6.3.4. the costs to tender will make the process of tendering uncommercial for tenderers;
- 6.3.5. uncertainty exists as to whether the vendor will offer the required Procurement; or
- 6.3.6. Council requires external input before addressing the particular issue.

**6.4. Contract Variations**

All contract variations will be assessed to determine whether they are properly characterised as variations, or whether they are in effect a new contract. For the purposes of this Policy, a contract variation will not constitute a new contract unless it has been assessed as being a new contract based on factors like:

- 6.4.1. the monetary value of the proposed variation, i.e. the value of the variation in the context of the thresholds fixed by this Policy;
- 6.4.2. the subject matter of the proposed variation, and whether it is consistent with the subject matter scope of the initial contract or some different and additional service or product scope.

Approval and execution of variations must follow Council delegations based on the Total Contract Value of the variation.

**6.5. Exemptions from thresholds and procedures**

Council may choose to exempt a particular Procurement from the thresholds above and associated tender and expression of interest procedures in the following circumstances.

The exemption process, including requirements for endorsement of the alternative Procurement strategy must be performed in accordance with the Procurement Procedures.

Exemption description	Explanation
A contract made because of genuine emergency or hardship	<ul style="list-style-type: none"> <li>• Allows a contract to be entered into where the CEO considers it to be necessary because of an emergency (e.g. to provide immediate response to a natural disaster, declared emergency, etc.)</li> <li>• In the event that any Contracts are entered as a result of genuine emergency or hardship the CEO will notify the Mayor of same within a reasonable period of time of entering that Contract</li> </ul>

Extension of contracts while Council is at market	<ul style="list-style-type: none"> <li>Allows the extension of an existing contract where the Procurement process to replace the contract has commenced (or is imminent) and where the establishment of an interim short-term arrangement with an alternative supplier would lead to Council achieving lesser Value for Money or an adverse effect on public interest</li> </ul>
Professional Services unsuitable for tendering	<ul style="list-style-type: none"> <li>Only allows the acquisition of legal services and insurance (other than broking services)</li> </ul>
Novated Services	<ul style="list-style-type: none"> <li>Allows a contract to be novated to a new third party where the initial contract was entered into in compliance with the Act and due diligence has been undertaken in respect to the new party</li> </ul>
A contract made with, or a purchase from a contract made by, another government entity, government-owned entity or other approved third party	<ul style="list-style-type: none"> <li>Allows contracts with another government entity or government owned entity.</li> <li>Allows engagements pursuant to panels established by another government entity, local authority or approved group purchasing scheme (including Collaborate Procurement Arrangements). The Procurement Procedures will set out approved group purchasing schemes.</li> </ul>
Information technology licensing, maintenance and support renewals	<ul style="list-style-type: none"> <li>Allows the renewal of software licenses and maintenance and support, or upgrade to existing systems, where there is only one supplier of the software who holds the intellectual property rights to the software.</li> </ul>
Collaborative Procurement Arrangements and processes	<ul style="list-style-type: none"> <li>Where a competitive tender process has been conducted under a Collaborative Procurement Arrangement. Also allows Council to continue or use outputs of a competitive tender process performed during an unfinished Collaborative Procurement Process or one in which Council has ceased to participate in circumstances where an additional tender process would lead to Council achieving lesser Value for Money</li> </ul>
Operating Leases	<ul style="list-style-type: none"> <li>Where a lessor leases an asset (generally a vehicle or plant and equipment) to the Council and assumes the residual value risk of the vehicle.</li> </ul>
Monopoly market or sole supplier	<ul style="list-style-type: none"> <li>Statutory compulsory monopoly insurance schemes (WorkCover, motor vehicle insurance)</li> <li>Supply of utilities or other services by statutory bodies with a monopoly (electricity, water)</li> <li>Where a Procurement requires access to the sole source of, or access to, the required services, particular facilities or intellectual property, including where the marketplace is restricted by license conditions or third-party ownership of an asset (excluding public utility plant);</li> <li>Council is party to a joint arrangement where Council jointly owns the Intellectual Property with a third party provider;</li> </ul>



Adverse effect on Value for Money or public interest	<ul style="list-style-type: none"> <li>Where the Council or the CEO considers the nature of the Procurement or the characteristics of the market are such that a public tender process would lead to Council achieving lesser Value for Money or an adverse effect on public interest.</li> </ul>
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## 6.6. Treatment of GST

All monetary values stated in this Policy include GST unless specifically stated otherwise.

## 7. Public Tender requirements

### 7.1. Advertisements

All public tenders invited by the Council, may be published via Council's eTendering Portal and may be advertised in the media.

### 7.2. Tender Evaluation

7.2.1. A tender evaluation panel will be established to evaluate each tender submission against the tender's selection criteria.

7.2.2. Tender evaluation panels:

7.2.2.1. will be made up of representatives that reflect Council and the community, including representatives of different genders, cultural backgrounds, abilities and age; and

7.2.2.2. can include external personnel in order to ensure the best outcome for a Procurement activity;

7.2.2.3. must comprise of at least 3 persons; and

7.2.2.4. must have an appointed chairperson.

7.2.3. A Tender Evaluation Plan shall be developed, approved and strictly adhered to by that panel. Amongst other things, this involves the establishment of more detailed evaluation criteria and the application of a pre-approved and robust weighted scoring system.

7.2.4. The Tender Evaluation Plan should be completed and signed off by the evaluation panel prior to the tender or quotation being issued.

### 7.3. Evaluation Criteria

7.3.1. The Council may include evaluation criteria categories to determine whether a proposed contract provides Value for Money, including:

7.3.1.1. mandatory compliance criteria;

7.3.1.2. tendered price;

7.3.1.3. capacity of a tenderer to provide the goods and/or services and/or works; and

7.3.1.4. Sustainable Procurement.

## **7.4. Probity Advisor**

- 7.4.1. A formal probity plan should be developed, and a probity advisor appointed where:
  - 7.4.1.1. the proposed Total Contract Value exceeds \$10 million (or any lesser value set by Council);
  - 7.4.1.2. the proposed contract is considered particularly complex, of a high risk or controversial nature, and requiring a high level of public confidence.
- 7.4.2. A probity advisor may be appointed to any tender evaluation panel and may be appointed to oversee the evaluation process.

## **7.5. Shortlisting and Negotiations**

- 7.5.1. Council may conduct a shortlisting process during Expression of Interest, tender and quotation processes. Shortlisting will occur only in pursuit of Value for Money by Council.
- 7.5.2. 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.
- 7.5.3. Once a preferred tenderer(s) is/are selected, negotiations can be conducted in order to obtain the optimal solution and commercial arrangements, providing the scope remains within the intent of the tender. Probity requirements apply to all negotiations.

## **8. Collaborative Procurement**

- 8.1.1. In accordance with Section 108(c) of the LG Act, Council will first give consideration to Collaborative Procurement Arrangements.
- 8.1.2. Council Staff must consider any opportunities for Collaborative Procurement Arrangements in relation to a Procurement process undertaken by Council.
- 8.1.3. Any Council report that recommends entering into a Procurement arrangement must set out information relating to opportunities for Collaborative Procurement Arrangements, only if available, including:
  - 8.1.3.1. the nature of those opportunities, if any, and the councils or public bodies with which they are available; and
  - 8.1.3.2. why Council did, or did not, pursue the identified opportunities for collaboration in relation to that Procurement process.
- 8.1.4. Procurements where the specifications of the goods, services or works required are unique to a specific Council site and are not applicable to other Councils will not be considered for collaboration. Any Federal or State Government grant funded projects may be excluded from collaborative Procurement.

## **9. Management of Procurement**

### **9.1. Delegations**

- 9.1.1. Delegations define the limitations within which Council Staff are permitted to commit Council to the Procurement of goods, services or works.

- 9.1.2. An endorsed instrument of delegation will identify specified Council Staff that may undertake certain purchases, quotation, tender and contractual processes without prior referral to the Council. This enables the Council to conduct Procurement activities in an efficient and timely manner whilst maintaining transparency and integrity.

## **9.2. Internal Controls**

- 9.2.1. The CEO will install and maintain a framework of internal controls over Procurement processes that will ensure:
- 9.2.1.1. More than one person is involved in and responsible for the authorisation of a transaction from end to end;
  - 9.2.1.2. Transparency in the Procurement process;
  - 9.2.1.3. A clearly documented audit trail exists for Procurement activities;
  - 9.2.1.4. Appropriate authorisations are obtained and documented;
  - 9.2.1.5. Systems are in place for appropriate monitoring and performance measurement;
  - 9.2.1.6. A process is in place for escalation, where appropriate, of Procurement matters (including procedural non-compliance) to the executive leadership team, the audit and risk committees and Council.

## **9.3. Disclosure of Information**

- 9.3.1. 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.
- 9.3.2. Council and Council Officers will act with discretion to ensure that, unless required by law, confidential and commercially 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.
- 9.3.3. 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.
- 9.3.4. 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.

## **9.4. 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.

## **9.5. 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.

## 9.6. Processes and Procedures

9.6.1. Council will have and implement processes, templates and guidelines for all stages of the end-to- end Procurement and contract management lifecycle.

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

## 9.7. 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.

## 10. Responsibility/Accountability

### 10.1. Executive and Managers

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

### 10.2. All Staff

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

## 11. Policy Review process

In accordance with the LG Act, Council will review its Procurement Policy at least once during each 4-year term of the Council.

## 12. References and links to policy and legislation

The Council's Procurement activities shall be carried out to the professional standards in accordance with best practice and in compliance with the Act and applicable policies and procedures including Codes of Conduct for Councillors, Council Staff and suppliers

This policy has clear linkages to a range of codes, charters, legislation and Council documents, including:

Name	Location
<i>Local Government Act 2020 (Vic)</i>	<a href="http://www.legislation.vic.gov.au">http://www.legislation.vic.gov.au</a>
<i>Competition &amp; Consumer Act 2010 (Cth)</i>	<a href="http://www.comlaw.gov.au">http://www.comlaw.gov.au</a>
<i>Privacy and Data Protection Act 2014 (Vic)</i>	<a href="http://www.legislation.vic.gov.au">http://www.legislation.vic.gov.au</a>
<i>Health Records Act 2001 (Vic)</i>	<a href="http://www.legislation.vic.gov.au">http://www.legislation.vic.gov.au</a>
<i>Working with Children Act 2005 (Vic)</i>	<a href="http://www.legislation.vic.gov.au">http://www.legislation.vic.gov.au</a>
<i>Gender Equality Act 2020 (Vic)</i>	<a href="http://www.legislation.vic.gov.au">http://www.legislation.vic.gov.au</a>

Procurement Procedure Manual	Council Intranet
Contract Management Guidelines	<a href="http://www.mav.asn.au">http://www.mav.asn.au</a>
Australian Government Sustainable Procurement Guide	<a href="http://www.environment.gov.au/">http://www.environment.gov.au/</a>
Social Procurement: A Guide for Victorian Local Government	<a href="http://www.dpcd.vic.gov.au">http://www.dpcd.vic.gov.au</a>
Best Practice Guide for Gender equity in Local Government	<a href="https://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0030/329277/Gender-Equity-in-Local-Government-Best-Practice-Guide.pdf">https://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0030/329277/Gender-Equity-in-Local-Government-Best-Practice-Guide.pdf</a>