

POLICY NUMBER:	46 (C)
NAME OF POLICY:	PROCUREMENT POLICY 2021
DATE OF NEXT REVIEW:	In accordance with section 108 (5) of the <i>Local Government Act 2020</i> , Council must review the Policy at least once during its 4-year term.
DATE APPROVED:	21 December 2021
RESPONSIBLE OFFICER:	Manager Financial Services
REFERENCES:	<p>This policy should be read in conjunction with the following:</p> <p><i>Local Government Act 2020</i> <i>Competition and Consumer Act 2010</i> <i>Freedom of Information Act 1982</i> <i>Independent Broad-based Anti-corruption Commission Act 2011</i> <i>Privacy Act 1988</i> <i>Public Records Act 1973</i></p> <p>Policy 45 (C) Fraud Prevention Policy 51 (O) Acceptance of Gifts, Hospitality, and Other Gratuities by Employees Policy 54 (O) Corporate Credit Card Policy 57 (O) Employee Code of Conduct Policy 47 (C) Councillor Code of Conduct Policy 74 (C) Public Interest Disclosure Procedures Policy 84 (C) Councillor Gifts, Benefits and Hospitality</p> <p>CEO Instrument of Delegation – Purchasing Council Plan 2021 – 2025 Council Best Practice Procurement Guidelines Procedure Manual and related documents – Procurement Procedure Manual and related documents – Contract Management</p>

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## 1. INTRODUCTION

This Procurement Policy is made under Section 108 of the *Local Government Act 2020* (the Act).

It specifies the principles, procedures and processes which will be applied to the purchase of goods and services, including the carrying out of works.

It seeks to promote open and fair competition and provide value for money.

All procurement activities shall endeavour to:

- Support the Council Plan 2021 – 2025 priority statements and strategies including, but not limited to:
  - Supporting and facilitating a diverse and innovative local economy that encourages an increase of local business with diverse offerings to achieve positive social, economic and environmental impacts (Priority Statement 4.3).
  - Developing and promoting the circular economy to diversify our local economy and support our sustainability goals (Priority Statement 4.4).
  - Focusing on sustainable practices (Strategy 1.1.2).
  - Developing a meaningful partnership with Dja Dja Wurrung (Strategy 4.3.9).
  - Supporting local businesses (Strategy 4.3.9).
  - Ensuring the procurement practices of staff are in line with policies, procedures and guidelines that have a focus on transparency, accountability and probity (Strategy 5.3.9).
- Use strategic procurement practices and innovative procurement solutions to promote sustainability.
- Use social procurement to effectively contribute towards building stronger communities and meeting wider social objectives.
- Ensure that potential risk is identified, assessed and managed at all stages of the procurement process.

## 2. SCOPE

This policy applies to all procurement activities other than those expressly excepted. It contains both legislative requirements as well as good practice requirements. It provides direction on the conduct of procurement activities but does not extend to the related accounts payable processes.

The following procurement expenditure is excluded from this policy:

- Payments for utilities where no other provider is available, such as water authorities;
- Payments to Local, State and Federal Governments where funds are requested for shared good, services of works.
- Payments to Dja Dja Wurrung Clans Aboriginal Corporation and associated entities up to \$100,000
- Expenditure on Emergency response, relief or recovery (refer section 5. Definitions and abbreviations);

- Loans and investments;
- Expenditure on the Purchase of land or an interest in land, including an easement;
- Auspice of outside organizations;
- Shop supplies (such as supplies and publications for the purpose of resale in a Visitor Information Centre);
- Regional library supplies;
- Plant and equipment servicing/spare parts where applicable to maintain warranty protection or to maintain plant to Original Equipment Manufacturer (OEM) standard;
- Expenditure on Legal Services
- Insurance schemes (when there is a statutory requirement such as Workcover);
- Payroll expenses and deductions;
- Expenditure on Electoral services or valuation services for rating purposes;
- Exhibitions and performances (such as art exhibitions and musical performances);
- Professional memberships and subscriptions (including professional workshop and conference registration fees and associated costs);
- All refunds;
- Rates, taxes, levies or other State or Federal government charges; and
- Any statutory fees, including payments made under the Land Use Activity Agreement.

Notwithstanding that such expenditure is excluded from this policy, the procurement principles (refer section 6) should be considered when carrying out the procurement activity.

If any aspect of this policy should be unclear, then reference must be made to Council's Best Practice Procurement Guidelines.

### 3. PURPOSE

The purpose of this policy is to:

- promote open and fair competition and achieve value for money;
- provide guidance on ethical behaviour in public sector purchasing;
- demonstrate accountability to rate payers;
- apply best practice and achieve consistency and control in purchasing;
- support the achievement of Council's sustainability and social procurement objectives;
- support local economies and communities; and
- promote collaborative procurement.

### 4. LOCAL GOVERNMENT ACT 2020

In accordance with Section 109 of the Act, Council must comply with its Procurement Policy before entering into a contract for the purchase of goods or services or the carrying out of works.

In accordance with Section 108(3) of the Act, this policy includes:

- (a) the contract value above which Council must invite a tender or seek an expression of interest;

- (b) a description of the criteria to be used by Council to evaluate whether a proposed contract provides value for money;
- (c) a description of how Council will seek collaboration with other councils and public bodies in the procurement of goods or services;
- (d) the conditions under which Council may purchase goods or services without inviting a public Tender or Expression of Interest; and
- (e) a description of the process to be undertaken in inviting a public Tender or Expression of Interest.

## 5. DEFINITIONS AND ABBREVIATIONS

Term	Definition
<b>CEO</b>	Chief Executive Officer of Council.
<b>Commercial in Confidence</b>	Information that, if released, may prejudice the business dealings or commercial interests of Council or another party, e.g. prices, discounts, rebates, profits, manufacturing methodologies and intellectual property.
<b>Contract</b>	Means an agreement between two or more legal entities, to supply goods, perform services or carry out works, that is enforceable by law. A contract may be verbal, written or implied by the conduct of the parties.
<b>Council Staff</b>	Includes full time, part-time and casual Council officers, and temporary employees, contractors and consultants while engaged by Council.
<b>Cumulative spend</b>	Is the spend limits with a single supplier over the previous and current financial year that triggers the requirement under the policy to undertake a Request for Tender or Expression of Interest process.
<b>Emergency response, relief or recovery</b>	Includes: <ul style="list-style-type: none"> <li>• Any urgent circumstance which may present a risk to public health and/or safety, such as a community health issue, earthquake, explosion, fire, flood, hazardous material or substance spill or exposure, storm, terrorism or transport accident.</li> <li>• The failure of an essential service provider or disruption to an essential service;</li> <li>• Significant damage to municipal building (where it is no longer safe); and</li> <li>• Major business disruptions, such as an extensive IT failure resulting in a loss of services to the community.</li> </ul>
<b>Expression of Interest (EOI)</b>	A formal expression of interest, submitted usually in response to a Request for Expressions of Interest, by a potential contractor or supplier to undertake a proposed contract.
<b>GST</b>	Has the same meaning as in <b><i>A New Tax System (Goods and Services Tax) Act 1999</i></b> . All procurement and contract values, in this policy, include GST.

Term	Definition
<b>Local Business</b>	A business whose registered business address is within the Shire of Hepburn, or within a neighbouring municipality or within the Central Highlands Region (being Ararat, Pyrenees, Ballarat, Moorabool and Golden Plains municipal districts).
<b>Probity</b>	The practice of conducting business in a fair, impartial, honest and ethical manner, demonstrating high levels of integrity consistent with the public interest.
<b>Procurement</b>	The process (including planning, specifying, sourcing, evaluating, negotiating, recommending and approving) of acquiring goods, services and works. This process spans the whole life cycle from the initial concept through to the end of the useful life of the goods or works (including disposal) or the end of a service contract.
<b>Procurement Owner</b>	Means the Council Staff member who has overall responsibility for the budget from which the purchase of goods, services or works will be funded.
<b>Public Notice</b>	Means a notice published in a newspaper generally circulating within the municipal district of the Shire of Hepburn. In addition, the public notice may also be published on Council's website as well as Council's preferred online tendering and procurement system (currently "tenders.net").
<b>Quote or Quotation</b>	A formal statement of offer, submitted usually in response to a Request for Quotation (RFQ), by a potential contractor or supplier to provide the specified goods, services or works at a specified price(s) and within a specified period.
<b>Request for Expressions of interest</b>	The process of giving public notice calling for expressions of interest to be submitted within a set timeframe, followed by an evaluation of responses and the selection of respondents to be invited to submit a Tender or quotation.
<b>Request for Quotation (RFQ)</b>	The process of inviting quotations to be submitted within a set timeframe, followed by an evaluation of quotations and the selection of a successful submitter.
<b>Request for Tender (RFT)</b>	The process of giving public notice calling for tenders to be submitted within a set timeframe, followed by an evaluation of tenders and selection of a successful Tenderer. The RFT includes a set of clearly defined and specified requirements, including the conditions of tendering and proposed contract conditions.
<b>Supply Panels</b>	Panels of suppliers or contractors who can supply goods, works or services (examples include trade services, materials and plant hire). Council Staff may appoint a supplier from the Supply Panel or, if required,

Term	Definition
	request a quotation from suppliers on the Supply Panel. Supply Panels are also known as Approved Supplier Lists or Approved Contractor Lists.
<b>Social Procurement</b>	Occurs when organisations use their buying power to generate social value above and beyond the value of the goods, services or works being procured.
<b>Sustainability</b>	Activities that meet the needs of the present without compromising the ability of future generations to meet their needs.
<b>Tender</b>	A formal statement of offer, submitted usually in response to a Request for Tender (RFT), by a potential contractor or supplier to provide the specified goods, services or works at a specified price(s) and within a specified period.
<b>Value for money</b>	Includes both the monetary costs and non-monetary impacts over the whole life of the goods, services or works.

## 6. PROCUREMENT PRINCIPLES

In accordance with Section 108(1) of the Act, Council's procurement principles are explained below.

They are further elaborated in Council's Best Practice Procurement Guidelines. **ETHICS AND PROBITY**

Councillors and Council Staff must exercise the highest standards of integrity in a manner able to withstand scrutiny. Councillors must always act according to Policy 47 (C) Councillor Code of Conduct. Council Staff must always act according to Policy 57 (O) Employee Code of Conduct.

A probity advisor and auditor and probity plan are required for projects above \$3,000,000 and are recommended when the Procurement Owner considers the project is high-risk or there are probity risks.

A probity auditor and advisor does not take part in the evaluation process and/or decision making process but may advise the Evaluation Panel on probity matters.

The role of a probity advisor and auditor is to review all processes and documentation throughout the procurement and evaluation process and then report to the CEO and Council. **CONDUCT OF COUNCILLORS AND COUNCIL STAFF**

Council's procurement activities shall be performed fairly, impartially and honestly. Council Staff and Councillors must:

- treat potential and existing suppliers with equality and fairness;
- not seek or receive personal gain;
- maintain the confidentiality of Commercial in Confidence information; • present the highest standards of professionalism and probity;
- deal with suppliers in an honest and impartial manner;
- provide all suppliers and tenderers with the same information and equal opportunity; and



- be able to account for all decisions and provide feedback on them

**CONFLICT OF INTEREST**  
In accordance with sections 126 to 131 of the Act, Councillors and Council Staff shall always 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.

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

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.

Council Staff must not participate in any procurement process where that Staff member has a general conflict of interest or a material conflict as defined by the Act.

Councillors and Council Staff involved in the procurement process must declare any potential interest that may conflict or could be perceived to conflict with an impartial assessment of the purchasing decision being made.

All potential conflicts of interest (or the absence of them) must be reported promptly in accordance with the Councillor Code of Conduct or the Employee Code of Conduct (as appropriate) and using the Conflict of Interest and Confidentiality Declaration Form.

Following the declaration of a potential conflict of interest by a Council Staff member, that Council Staff member's supervisor or manager will determine how the conflict will be managed (this may include an exclusion from the procurement process or a determination that a conflict of interest does not exist).

#### **6.4 OPENNESS AND TRANSPARENCY**

Procurement processes must be undertaken in an open and transparent manner without any bias, or perception of bias, so that potential suppliers and the public have confidence in the outcome.

All potential suppliers and contractors must be treated (and be seen to be treated) fairly, impartially and honestly and given the same information about the procurement to enable them to submit Expressions of Interest, Tenders or Quotations on the same basis.

#### **6.5 DISCLOSURE OF INFORMATION**

The commercial interests of existing and potential suppliers and contractors must be protected. Subject to the *Freedom of Information Act 1982*, information provided by existing and potential suppliers and contractors must not be disclosed, particularly information that is commercial in confidence.

The *Freedom of Information Act 1982* provides members of the public with a legally enforceable right of access to documents held by Council, subject to certain restrictions (or exemptions) that are set out within the legislation. Where practicable, Council will consult with the relevant supplier and contractor to seek its view before deciding on whether to grant access to documents under a Freedom of Information (FOI) application.

## 6.6 ACCOUNTABILITY

Council Staff must be able to account for all procurement decisions.

Discussions during the evaluation of Tenders and Quotations should not go beyond the extent necessary to resolve doubt on what is being offered.

Other than authorised pre-contract negotiations, there should not be any discussions with existing and potential contractors or suppliers which could improperly influence the procurement process or negotiation of a contract prior to the procurement process being finalised.

All documentation (such as specifications, correspondence, meeting notes, tenders, quotations, and evaluation notes) related to procurement activities must be saved in Council's records management system (Content Manager).

Records will be kept in accordance with the *Public Records Act 1973* - Public Record Standard PROS 09/05 (Retention and Disposal Authority for Records of Local Government Functions).

## 6.7 ACCEPTANCE OF GIFTS AND HOSPITALITY

Councillors must always act according to Policy 84 (C) Councillor Gifts, Benefits and Hospitality.

Council Staff must always act according to Policy 51 (O) Acceptance of Gifts, Hospitality and Other Gratuities by Employees.

Under section 128(4) of the Act, a material conflict of interest exists if a Councillor or a Council Staff member has, over the specified period, accepted a gift or gifts greater than \$500 in value from a person or supplier involved in a procurement process.

No Councillor or member of Council Staff shall, either directly or indirectly, solicit or accept gifts from any member of the public who is involved, either directly or indirectly, with any matter that is connected with the duties of the officer, or in which Council is interested. Councillors and members of Council Staff must not use their position, knowledge, contacts or influence to extract, demand, intimidate, cajole or coerce any supplier, customer or competitor of Council to provide or offer any gift, hospitality or gratuity to any person or organisation.

## 6.8 GOVERNANCE

Council operates a decentralized procurement framework where all strategy, policy, guidelines, procedures, and document controls are the responsibility of the People and Governance Department.

Council will ensure that the procurement framework:

- encourages competitive processes;
- is flexible enough to purchase in a timely manner the diverse range of material, goods, works and services required by Council; and
- gives potential suppliers and contractors the same opportunity to submit an Expression of Interest, Tender or Quotation.

Council will:

- maintain a procurement delegation structure that enables accountability, traceability and auditability of all procurement decisions;
- ensure that purchasing procedures and guidelines are communicated and implemented; and
- ensure that Council Staff are adequately trained in relation to competitive processes and other procurement activities. **VALUE FOR MONEY**

Council's procurement activities will be carried out based on achieving value for money. This means minimising the total cost of ownership over the life cycle of the goods, services or works consistent with acceptable quality, reliability and delivery considerations.

Value for Money is best achieved by:

- undertaking competitive processes;
- using collaborative purchasing arrangements where appropriate;
- identifying and rectifying inefficiencies in procurement processes;
- working with suppliers to create relationships that are professional and productive;
- understanding and applying the risk assessment for each major contract or project;
- considering non-cost factors, such as fitness for purpose, quality, and support services; and
- considering cost-related factors, including whole-of-life costs and transaction costs associated with acquiring, using, holding and maintaining goods, services or works.

#### **6.10 BEST AND FINAL OFFER (BAFO)**

A BAFO is a means to assist selection of a preferred contractor or supplier. In an RFT or RFQ, where a lump sum price is requested Council may include relevant clauses to provide Council with the option to initiate a BAFO with short listed tenderers.

A BAFO process is conducted after the close of the tender process and during the evaluation stage.

#### **6.11 RESPONSIBLE FINANCIAL MANAGEMENT**

The principle of responsible financial management shall be applied to all procurement activities.

To give effect to this principle:

- the availability of existing funds within an approved budget, or source of funds, shall be established prior to the commencement of any procurement activity; and
- Council Staff must not authorise the expenditure of funds in excess of their financial delegations.

#### **6.12 SUSTAINABILITY**

Council is committed to procuring goods, services and works which align with its values of environmental, social, economic and cultural sustainability.

Council is committed to addressing the climate emergency and has adopted a Community Transition Plan which sets out our role, and the ambitions of the Hepburn community in responding to this challenge. Council's procurement activities will be carried out in a manner that responds to the climate emergency.

Council is committed to supporting the circular economy by reducing the consumption of resources and minimising waste through re-use and repair, acquiring goods manufactured from recycled materials, maximising resource recovery and effectively managing waste.

Council Staff are empowered to and responsible for appropriately considering the environmental impact of goods, services and works, and factoring this into their procurement decision-making together with operational performance and fit-for-purpose. At the same time, Council Staff must also be aware of the other principles of this Policy, including value for money, support of local business and social procurement values.

Training, tools and resources will be provided to assist Council Staff in the practical and efficient application of sustainability principles in procurement. This training may include the preparation of Requests for Tenders or Requests for Quotation to ensure that Council's sustainability requirements are clearly communicated to potential suppliers.

#### **6.13 SUPPORT OF LOCAL BUSINESS**

Council is committed to supporting procurement from local businesses in order to build a stronger local community. As such, Council will consider those local businesses in procurement decisions in determining best value for money and as may be considered and recommended by the evaluation panel. This support to local business will have regard to local production and employment.

#### **6.14 SOCIAL PROCUREMENT**

Council is committed to using social procurement to effectively contribute towards building stronger local communities and meeting its wider social objectives. In particular, Council's social procurement focus is on producing local employment outcomes whilst achieving value for money.

During the evaluation of Tenders and Quotations, the evaluation panel will remain cognisant of whether the supplier's offer includes:

- engagement of services from Dja Dja Wurrung or other registered Aboriginal and Torres Strait Islander groups;
- employment of persons from disadvantaged groups (including but not limited to groups that experience a higher level of unemployment than the general population, due to social or education factors);
- employment of apprentices and recognised traineeships;
- employment of youth and mature aged persons; and/or
- other social and community benefits.

Under Council's Disability Access and Inclusion Plan 2018 – 2022, Council should provide services and facilities that are accessible to all people who live, work in or visit the municipality. During the evaluation of Tenders and Quotations, the evaluation panel will remain cognisant of whether the supplier's offer provides services and facilities that are accessible to all people who live, work in or visit the municipality.

## **7. PROCUREMENT METHODS**

All procurement methods are subject to the relevant procurement thresholds set out in clauses 7.2 and 7.3 of this policy.

Council's standard methods for purchasing goods, services and works include:

- Purchase Orders under a contract following a Request for Tender or Request for Quotation process;
- Purchase Orders following a Request for Quotation;
- Purchase Orders using collaborative purchasing arrangements; • Purchasing cards or corporate credit cards; and
- Other arrangements authorised by Council or the CEO as required by exceptional circumstances.

The Procurement Owner must ensure that:

- A Procurement Plan is prepared for any procurement where the expenditure is estimated to exceed \$50,000.
- The most appropriate method of procurement is utilised.
- An approved purchase order or contract is created prior to incurring any expenditure.
- Where any terms or conditions for the supply of goods, services or works differ from Council's standard Purchase Order Terms and Conditions, the appropriate and relevant contract documentation is used. **COLLABORATIVE PURCHASING ARRANGEMENTS**

In accordance with section 108(3)(c) of the Act, when undertaking a procurement process Council Staff should firstly consider collaboration with other councils and public bodies or utilise Collaborative Procurement Arrangements in order to achieve value for money outcomes and benefit from economies of scale.

Council Staff should be aware of contracts available from:

- Procurement Australia.
- MAV Procurement.
- the Victorian Government (Whole of Victorian Government Contracts).
- Regional Procurement Excellence Networks (RPEN), such as Barwon South West Region Councils.

The pricing for the supply of goods and services through these collaborative purchasing arrangements have been market tested and generally list multiple suppliers/prices.

All procurement under a collaborative purchasing arrangement must be approved by the Officer with the appropriate level of delegated financial authority.

If a collaborative purchasing arrangement is utilised and the spend exceeds the CEO's financial delegation, an evaluation report must be presented to Council for approval.

When an evaluation report recommending awarding of a contract is presented to Council for approval, it must include information relating to any collaborative arrangement opportunities that were explored as part of the procurement process.

## 7.2 TENDERS AND EXPRESSIONS OF INTEREST

In accordance with Section 108(3)(a) of the Act, the contract value above which Council will give public notice calling for Tenders or Expressions of Interest is \$300,000.

In accordance with Section 108(3)(e) of the Act, this process will be undertaken by either:

- inviting Tenders by giving public notice; or
- inviting Expressions of Interest by giving public notice.

All Tenders or Expressions of Interest must remain open for a minimum period of 15 Business Days from the date of the public notice, unless prior written approval has been given by the CEO.

Where Council invites Expressions of Interest it will register those Expressions of Interest; and when it is ready to enter into the contract, it will invite Tenders from some or all of those who registered their interest in undertaking the contract.

To demonstrate best value for money and policy compliance and for audit purposes, the Procurement Owner must ensure that a copy (or other evidence) of:

- the public notice calling for Tenders or Expressions of Interest to be submitted; and
- the list of all Tenders or Expressions of Interest and Tenders received

is saved in Council's records management system (Content Manager).

The threshold of \$300,000 aligns with the limit of the CEO's financial delegation therefore the evaluation report and recommendation (for any contract over \$300,000) will be submitted to Council to allow Council to award the contract.

The threshold of \$300,000 dictates when the Procurement Owner must give public notice of the contract. However, if the estimated contract value is below that threshold and the CEO or Procurement Owner considers that the nature of the contract and the characteristics of the market are such that a public notice would lead to a better result for Council, then Tenders or Expressions of Interest may be called for by the giving of public notice.

Refer to clause 7.10 for the exemptions to compliance with clause 7.2.

## 7.3 QUOTATIONS

The purchase of goods or services or the carrying out of works for which the expenditure is estimated to be less than \$300,000 may be undertaken by obtaining a minimum number of quotations as listed in the following table:

Estimated Expenditure Threshold	Minimum Number of Quotations	Conditions
Up to \$5,000	One (1) Verbal	Prices should be obtained from known or Supply Panel Suppliers. A Purchase Order must be approved by the Council Staff member with the appropriate level of financial delegation.
\$5,001 - \$10,000	One (1) Written	Prices should be obtained from known or Supply Panel Suppliers.

		A Purchase Order must be approved by the Council Staff member with the appropriate level of financial delegation.
<b>\$10,001 - \$50,000</b>	Two (2) Written	Prices should be obtained from known or Supply Panel Suppliers. Quotations must be evaluated, and an evaluation report and recommendation must be prepared and presented to the Council Staff member with the appropriate level of financial delegation.
<b>\$50,001 - \$300,000</b>	Three (3) Written	Quotation process should be conducted using Council's preferred online tendering and procurement system (currently "tenders.net"). Quotations must remain open for a minimum of 3 clear business days, unless prior written approval has been given by the Council Staff member with the appropriate level of financial delegation. Quotations must be evaluated, and an evaluation report and recommendation must be prepared and presented to the Council Staff member with the appropriate level of financial delegation.

The application of the above purchasing ranges and associated minimum quotation numbers will assist the Procurement Owner to demonstrate best value for money has been sought and achieved by Council.

To demonstrate best value for money and policy compliance and for audit purposes, the Procurement Owner must ensure that a copy (or other evidence) of the request for quotation and the list all quotations received is saved in Council's records management system (Content Manager).

Refer to clause 7.11 for exemptions to compliance with clause 7.3.

#### **7.4 SUPPLY PANELS**

Council recognises the importance of effective and open working relationships with its suppliers and contractors and is committed to maintaining Supply Panels. These provide Council with efficiency, transparency, compliance and potential savings in quotation-based procurement from preferred suppliers and contractors.

Suppliers and contractors are appointed to a Supply Panel after successfully participating in a tender process and being assessed as compliant with requirements. Whilst a Supply Panel provides benefits in the procurement process, the Procurement Owner should still consider the specific goods, services or works being sought and confirm the approach is going to get the best value outcome.

Suppliers and contractors may be called on at any time to supply goods, services or works, but being a member of a Supply Panel does not give any guarantee.

Following the appointment of a Supply Panel and the creation of a Supply Panel agreement, the following procurement thresholds and procedures must be followed:

- Value \$0 to \$50,000 – direct appointment of a panel member.
- Value \$50,001 to \$300,000 – a minimum of 3 written quotations must be obtained from panel members.

When the purchase value can be fully derived from the schedules of rates within the Supply Panel prices, the minimum number of quotations is not required. An example of this would be the supply of materials that are charged per tonne. This exemption is not able to be applied if there is any uncertainty in the total purchase value.

When the purchase value is estimated to be more than \$300,000, then the Procurement Owner must comply with clause 7.2.

Following the appointment of a Supply Panel and the creation of a Supply Panel agreement, care should be taken in relation to the engagement of one or more of the panel members. Some aspects to consider are:

- Which panel member is available to provide the required goods, services or works in the required timeframe;
- If all panel members are offering a similar service, the panel member offering the lowest price may be the best option, providing they are available;
- Avoiding situations where, over the contract term, one or two members of the panel are allocated most of the work.

#### **7.5 EXCLUDED RESPONDENTS**

When a consultant has substantially developed or determined a contract specification, the consultant must be excluded from providing a Tender or Quotation for the contract.

#### **7.6 CUMULATIVE SPEND**

Prior to selectively seeking a Quotation from a supplier, the Procurement Owner must determine whether their proposed procurement will cause the cumulative spend with that supplier to exceed the threshold of \$300,000 (as defined in clause 7.2) during the current and previous financial years.

In determining the cumulative spend with a supplier, the Procurement Owner must make reasonable attempts (including an examination of Council's financial management system) to establish the cumulative spend with that supplier, including any current commitments

If their proposed procurement will cause the cumulative spend with that supplier to exceed the threshold of \$300,000, then the Procurement Owner must comply with clause 7.2.

Expenditure already incurred or committed with a supplier as a result of a public tender process under clause 7.2 is excluded from the calculation of cumulative spend.

#### **7.7 EVALUATION CRITERIA**

In accordance with Section 108(3)(b) of the Act, the following evaluation criteria describe how Council will evaluate whether a proposed contract provides value for money.



- Price – Suppliers and contractors are to respond by providing the price for which they offer to undertake the scope of the goods, services or works of the contract.
- Sustainability – Suppliers and contractors are to respond by describing the environmental sustainability of the good, works and services being provided.
- Local Content – Suppliers and contractors are to respond by describing their local production and local processing activities which produce local employment outcomes.
- Social Procurement Value – Suppliers and contractors are to respond by describing how their offer addresses social and community values, such as the engagement of services from local registered Aboriginal and Torres Strait Islander groups; employment of persons from disadvantaged groups; employment of apprentices and recognised traineeships; employment of youth and mature aged persons; and/or other social and community benefits.
- Risk / OHS/ Quality Management – Suppliers and contractors are to respond by outlining their relevant systems and processes that are in place relating to the goods, services and works of the contract.
- Response to Specification – Suppliers and contractors are to respond to those elements of the specification which require a response.
- Experience and Qualifications – Suppliers and contractors are to respond by describing their experience and qualifications relating to the goods, services and works of the contract.
- Business and Financial Capacity – Suppliers and contractors are to respond by providing information and evidence about their history and current business and financial capacity, including references and testimonials.

The Procurement Owner must use all the above evaluation criteria when the value of the contract is estimated to exceed \$50,000.

The Procurement Owner may request written approval to exclude one or more of the above evaluation criteria by providing the justification for doing so in the Procurement Plan.

The Procurement Owner may include additional evaluation criteria according to specific circumstances or requirements of the contract.

#### **7.8 EVALUATION CRITERIA WEIGHTINGS**

Due to the diverse range of goods, works and services being purchased by Council, different contracts will attract different Evaluation Criteria weightings.

The Procurement Owner is responsible for determining the weightings to be applied to the Evaluation Criteria. This responsibility recognises that the weighting of the Evaluation Criteria should reflect their importance and relevance according to the contract and the specific goods, services or works which are being purchased.

When determining the weightings, the Procurement Owner must apply the following minimum weightings, except if one or more of the Evaluation Criteria have been excluded from the Procurement Plan.

- Price: a minimum of 10%
- Sustainability: a minimum of 7.5%
- Local Content: a minimum of 7.5%
- Social Procurement Value: a minimum of 7.5%
- Risk/OHS/Quality Management: a minimum of 5%
- Response to Specification: a minimum of 5%
- Experience and Qualifications: a minimum of 5%
- Business and Financial Capacity: a minimum of 5%.

The evaluation criteria, which will be used in the evaluation, must be included in the Request for Tender or Request for Quotation, but not necessarily their weighting.

The Evaluation Panel must not change the weighting after tenders have been publicly advertised or after quotations have been selectively invited.

### 7.9 EVALUATION PANELS

An evaluation panel must be formed for the evaluation of Tenders and Quotations as follows:

Estimated Contract Value	Minimum Number of Panel members	Conditions
\$10,001 - \$50,000	Two	None
More than \$50,001	Three	<p>If the estimated contract value exceeds \$300,000 then at least one panel member must be from a different Directorate.</p> <p>If the estimated contract value exceeds \$1,000,000 then:</p> <ul style="list-style-type: none"> <li>• the Panel must also include a representative from the Financial Services Department.</li> <li>• the evaluation process must include an external third-party review of the financials of the preferred Tenderer prior to the contract being awarded.</li> </ul> <p>Note: if the estimated contract value exceeds \$3,000,000 then a probity auditor must be engaged (refer to clause 6.1).</p>

The formation and role of Evaluation Panels and the evaluation process is described in Council's Best Practice Procurement Guidelines.

### 7.10 EXEMPTIONS TO COMPLIANCE WITH CLAUSE 7.2

In accordance with Section 108(3)(d) of the Act, the following exemptions describe the conditions under which Council may purchase goods, services or works without giving public notice calling for Tenders or Expressions of Interest.

- A contract is entered into with another council that is acting as agent for several councils (collaborative agreement);

- There is only one supplier in Victoria (or Australia), or where the goods, services or works can only be supplied by a specific supplier and no reasonable alternative or substitute goods, services or works exist. This condition must have been previously tested by a public Tender or public quotation process within the previous two years.
- If, after giving public notice calling for Tenders or Expressions of Interest, no Tenders were received, or the Tenders received do not conform to the specification, or after evaluation the Tenders are deemed to be unsuitable, then the Procurement Owner may seek Tenders for the same contract from known suppliers or contractors without publicly readvertising the contract.
- The goods and services are replacement parts from an original supplier, an extension of the original goods and services, or a continuing service for existing equipment and software upgrades or licensing.
- The procurement of goods, services or works is specified as part of a government grant or similar arrangement.

If any of the above exemptions apply, the Procurement Owner must complete and submit the Procurement Policy Exemption Form.

Written approval may be granted by the CEO.

#### **7.11 EXEMPTIONS TO COMPLIANCE WITH CLAUSE 7.3**

When the minimum number of quotations cannot be obtained after being requested, (for example, six quotations were requested but only two quotations are received) the Procurement Owner may seek written approval to proceed with one of the quotations that has been received.

If this circumstance applies, the Procurement Owner must complete and submit the Procurement Policy Exemption Form.

Written approval may be granted by the Council Staff member with the appropriate level of delegated financial authority.

A procurement exemption must not be used as a substitute for proper procurement processes.

A procurement exemption should not be used if the procurement will cause the cumulative spend with that supplier to exceed the threshold of \$300,000 (as defined in clause 7.2) during the current and previous financial years. **DELEGATED AUTHORITY**

#### **8.1 FINANCIAL DELEGATIONS**

Financial delegations define the financial limitations within which Council Staff are permitted to authorise expenditure.

This enables procurement activities to be undertaken in an efficient and timely manner whilst maintaining transparency and integrity.

The limits of the financial delegations are set out in the Instruments of Delegation, “S5 Instrument of Delegation to Chief Executive Officer” and “Instrument of Delegation – Purchasing.”

If the value of the contract exceeds the CEO's financial delegations, then, unless Council has resolved to delegate specific authority to the CEO, an evaluation report including a recommendation shall be submitted to a Council meeting for a decision.

Council Staff without a financial delegation are unable to make purchasing commitments in writing or verbally to a supplier, until a purchase order has been approved by a Council Staff member with appropriate financial delegation or by a formal Council resolution. **CONTRACT VARIATIONS**

Each contract variation may be approved by Managers, Directors and the CEO in accordance with their financial delegations, provided that:

- The cumulative contract variations do not exceed 10% of the total contract price.
- The total contract price (including variations) does not exceed the approved budget amount for the procurement.

The CEO may grant written approval to Directors to exceed the contract variations limits described above.

If the cumulation of contract variations is greater than the CEO's financial delegation, they must be referred to the Council for approval.

### **8.3 INTERNAL CONTROLS**

Council will maintain a framework of internal controls over procurement processes that will ensure:

- independent approval of purchase orders by a Council Staff member with an appropriate financial delegation (different to the staff member who raised the order);
- dual authorisation of payments;
- a clearly documented audit trail exists for procurement activities;
- appropriate authorisations are obtained and documented; and
- systems are in place for appropriate monitoring of expenditure within the thresholds and performance measurement.

## **9. RISK MANAGEMENT**

Risk Management will be appropriately applied at all stages of procurement activities to ensure that:

- risks, are identified, analysed, evaluated and treated in accordance with Council policies and Australian Standards; and
- Council's ability to prevent, withstand and recover from interruption to the supply of goods and services and the undertaking of works is protected and enhanced.

Detailed procedures for Risk Assessment and Contingency Planning are provided in the Procurement Procedure Manual, the Contract Management Procedure Manual and Council's Best Practice Guidelines.

### **9.1 SUPPLY BY CONTRACT**

Council will minimise its procurement-related risk exposure by measures such as:

- using standard contract documentation;
- establishing Supply Panels, where appropriate, of preferred suppliers and contractors;

- establishing Annual supply Contracts, where appropriate;
- requiring security deposits where appropriate;
- requiring contracts or agreements before works commence;
- referring complicated technical specifications to relevant experts; and
- adhering to Council's Risk Management Policy and OH&S contractor compliance procedures.

### **9.2 CONTRACT TERMS AND CONDITIONS**

Council's standard Purchase Order Terms and Conditions are issued when a Purchase Order is raised for goods, services or works.

Due to the wide variety of goods, services and works, these terms and conditions may not be appropriate or relevant. In these instances, the appropriate and relevant contract documentation must be used.

### **9.3 DISPUTE RESOLUTION**

All Council contracts shall incorporate dispute management and alternative dispute resolution provisions to minimise the chance of disputes leading to claims of loss or legal action.

### **9.4 CONTRACT MANAGEMENT**

In order to continually improve its procurement and contract management processes and outcomes, Council will evaluate and seek to improve on all aspects of procurement and contract management, in accordance with its documented procurement and contract management procedures and guidelines.

A contract manager (sometimes referred to as a contract supervisor or superintendent) will be assigned for each contract to:

- ensure that Council, receives the goods, services or works to the required standards of quality and quantity and within the required timeframes in accordance with the contract;
- manage the performance of both parties' responsibilities and obligations under the contract;
- recognise performance issues and problems and identify solutions; and
- adhere to the Council's Risk Management Framework and relevant Occupational Health and Safety and requirements.

### **9.5 RECRUITMENT OF CONTRACT STAFF**

This policy, including all financial thresholds, shall apply to the recruitment of all contract staff.

## **10. FRAUD CORRUPTION AND COMPLAINTS**

Council has a Fraud Prevention Policy 45(C) which provides a framework for preventing the risk of fraud and strengthening organisational integrity.

Members of the public, suppliers, contractors, Councillors and Council Staff are encouraged to report fraud or corruption allegations or complaints about procurement processes or activities to the CEO or Public Interest Disclosure Coordinator.

The CEO must notify the Independent Broad-based Anti-Corruption Commission (IBAC) of any matter they suspect on reasonable grounds to involve corrupt conduct occurring or having occurred in accordance with mandatory reporting requirements under the Independent Broad-based Anti-corruption Commission Act 2011.

## 11. GOVERNANCE

### 11.1 POLICY OWNER

The Manager Financial Services is currently responsible for this policy, including its implementation and managing the review.

### 11.2 FURTHER INFORMATION

For further information, including any questions, contact Council's Procurement Officer via email to [procurement@hepburn.vic.gov.au](mailto:procurement@hepburn.vic.gov.au)

### 11.3 COMPLIANCE RESPONSIBILITY

The CEO is primarily responsible for ensuring compliance with the policy. If exceptional circumstances exist or if a matter is in the public interest, then the CEO is empowered, up to the CEO's financial delegation of \$300,000, to exempt any expenditure, procurement activity or competitive process from compliance with the policy.

In the event this power is exercised, the CEO will cause a brief description of the circumstances, including the date and the reason for the decision, to be made in a register of Procurement Policy exemptions. The CEO will present the register at a Councillor Briefing on an annual basis.

### OPERATION

This policy is operational from the date it is adopted by Council until the date it is revoked by Council unless its operation becomes obsolete by circumstances beyond the control of Council.

The CEO is authorised to make minor administrative amendments to the policy.

### 11.5 REVIEW

In accordance with section 108 (5) of the Act, Council must review the policy at least once during each 4-year term of Council.

The CEO may cause the policy to be reviewed before then if there is a significant change in organisational circumstances or changes in legislation.