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| POLICY NUMBER: | 46 (C) |
| NAME OF POLICY: | PROCUREMENT POLICY 2023 |
| 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: | 19 September 2023 |
| RESPONSIBLE OFFICER: | Manager Financial Services |
| REFERENCES: | |

TABLE OF CONTENTS

| | | |
|-----|--|----|
| 1. | BACKGROUND | 3 |
| 2. | PURPOSE | 3 |
| 3. | OBJECTIVES | 3 |
| 4. | APPLICATION OF THE POLICY | 4 |
| 5. | EFFECTIVE LEGISLATIVE AND POLICY COMPLIANCE AND COONTROL | 4 |
| 6. | COMPLAINTS & REPORTING SUSPICIOUS ACTIVITIES | 6 |
| 7. | GOVERNANCE | 7 |
| 8. | PROCUREMENT THRESHOLDS AND COMEPTITION | 7 |
| 9. | EXEMPTIONS FROM THE RFT AND RFQ PROCESSES..... | 8 |
| 10. | PUBLIC NOTICE REQUIREMENTS | 9 |
| 11. | PROCUREMENT PLAN AND PROBITY PLAN | 9 |
| 12. | EVALUATION OF TENDERS AND QUOTATIONS | 9 |
| 13. | PROBITY ADVISER AND PROBITY AUDITOR | 11 |
| 14. | SHORTLISTING AND BEST & FINAL OFFER NEGOTIATIONS | 12 |
| 15. | COLLABORATIVE PROCUREMENT | 12 |
| 16. | DEMONSTRATE SUSTAINED VALUE | 13 |
| 17. | PURCHASES BY CORPORATE CREDIT CARD | 16 |
| 18. | CHIEF EXECUTIVE OFFICER EMERGENCY POWER | 16 |
| 19. | RISK MANAGEMENT AND OCCUPATIONAL HEALTH & SAFETY | 16 |
| 20. | INTERNAL CONTROLS | 16 |
| 21. | CONTRACT MANAGEMENT AND RELATED PROCESSES | 17 |
| 22. | RELATED LEGISLATION, POLICIES AND REFERENCES | 19 |
| 23. | DOCUMENT INFORMATION | 19 |

APPENDICES

| | |
|--|----|
| APPENDIX 1 – Procurement Methodology for RFQ and RFT | 21 |
| APPENDIX 2 – Procurement Exemptions | 22 |
| APPENDIX 3 – Definitions & Abbreviations | 27 |

1. BACKGROUND

This Procurement Policy is made under section 108 of the *Local Government Act 2020* (Vic) ('the Act'). The Act requires a Council to:

- a. prepare and adopt a Procurement Policy which specifies the principles, processes and procedures applying in respect of the purchase of goods and services and carrying out of works by the Council;
- b. review its Procurement Policy at least once during each 4-year term of the Council; and
- c. comply with its Procurement Policy before entering into a contract for the purchase of goods or services or the carrying out of works.

2. PURPOSE

The purpose of the Procurement Policy ('Policy') is consistent with the requirements of section 108(2) of the Act and will:

- a. promote open and fair competition and provide Value for Money;
- b. provide clear guidelines to the Council to allow consistency and control over procurement activities;
- c. demonstrate accountability to ratepayers and residents;
- d. provide guidance on ethical behaviour in public sector procurement;
- e. demonstrate the application of best practice in procurement activities;
- f. demonstrate the consideration of sustainability in procurement with respect to social, economic and environmental factors;
- g. increase the probability of obtaining the best outcome for the municipal community when procuring goods and services, and delivering works; and
- h. promote collaborative procurement.

3. OBJECTIVES

These objectives will be achieved by requiring that the Council's contracting, purchasing and contract management activities:

- a. support the Council's corporate strategies, aims and objectives;
- b. achieve demonstrable Value for Money;
- c. are conducted in, and demonstrate, an impartial, fair and ethical manner;
- d. span the whole life cycle of an acquisition and take sustainability considerations into account;
- e. seek continual improvement through innovative and technological initiatives, and
- f. generate and support Local Business through inclusion wherever practicable.

4. APPLICATION OF THE POLICY

- a. This Policy will apply to all Councillors, Council Staff and all persons engaged in procurement on Council's behalf, and they will be accountable for compliance with all relevant legislative requirements and requirements of this Policy.
- b. It is recognised this will enhance achievement of the Council's objectives such as sustainable and socially responsible procurement, supporting local economies and obtaining Value for Money, leading to a better result in the provision of goods, services and works for the benefit of the community.
- c. This Policy provides direction on the conduct of procurement activities throughout the sourcing, management and disposal phases. It also covers the general procurement framework but does not extend to the related accounts payable processes.
- d. The Council must comply with this Policy before entering into a contract for the purchase of goods or services or the carrying out of works.

5. EFFECTIVE LEGISLATIVE AND POLICY COMPLIANCE AND CONTROL

ETHICS AND PROBITY

5.1.1 Requirement

- a. The Council's procurement activities shall be performed in an open, transparent and ethical manner with demonstrated integrity, fairness and accountability that meets relevant legal requirements.
- b. All procurement activities shall be conducted in accordance with the requirements of the Act, this Policy and any associated procedures, relevant legislation and relevant Australian Standards.

5.1.2 Conduct of Councillors and Council Staff

- a. Councillors and Council Staff shall at all times conduct themselves in ways that are in accordance with the Councillor Code of Conduct or the Staff Code of Conduct respectively, will perform their duties ethically and with integrity and must:
 1. Treat potential and existing suppliers with equality and fairness;
 2. Not use their position to seek or receive personal gain in procurement matters;
 3. Maintain confidentiality of Commercial in Confidence information;
 4. Present the highest standards of professionalism and probity;
 5. Afford suppliers the same information and an equal opportunity to tender or quotation for goods, services and works contracts;
 6. Be able to account for all decisions and demonstrate and provide evidence of the processes followed;
 7. Not perform any work under any Council contracts they are supervising i.e., Council Staff cannot also work for the relevant supplier;

8. Query incidents, decisions or directions that appear to contradict or deviate from Council’s standards of ethics or probity or established policies and procedures;
9. Ensure that the requirements of this Policy and Council’s procurement procedures are adhered to in relation to any expenditure of Council funds.

5.1.3 Conflict of Interest

- a. 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.
- b. A member of Council Staff has a general conflict of interest in a matter if an impartial, fair-minded person considers that the person's private interests could result in that person acting in a manner that is contrary to their public duty.
- c. 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.
- d. Council Staff involved in the procurement process, in particular preparing tender/quotation documentation, writing tender or quotation specifications, opening tenders or quotation, participating in tender or quotation evaluation panels, preparing a recommendation report; and Councillors and Council Staff awarding contracts must:

Avoid conflicts of interest, whether material or general or actual, potential or perceived;

Declare that they do not have a conflict of interest in respect of the procurement. Council Staff participating in tender or quotation evaluation panels must complete a Conflict of Interest declaration form. Council Staff must declare any actual or perceived conflicts in line with Council’s internal processes for reporting conflicts of interest; and

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.

5.1.4 Fair and Honest Dealing

- a. All prospective contractors and suppliers must be treated impartially and afforded an equal opportunity to tender or submit a quotation.
- b. Any suspected improper conduct, including suspected fraud, corruption, substantial mismanagement of public resources, risk to public health and safety, risk to the environment, or detrimental action should be managed in accordance with Council’s internal policies and processes.

5.1.5 Probity, Accountability and Transparency

- a. Accountability in procurement means being able to justify and provide evidence of the process followed. An independent third party must be able to see clearly that a process has been followed and that the process was fair and reasonable.
- b. Council Staff must be able to account for all procurement decisions and ensure all procurement activities leave an audit trail for monitoring and reporting purposes.

5.1.6 Gifts and Benefits

- a. No Councillor or member of Council Staff shall seek or accept any immediate or future reward or benefit in return for the performance of any duty or work for Council or where it could be reasonably perceived as influencing them or their position or undermining their integrity or the integrity of the process in some way.
- b. Any gift or benefit offered to a Councillor or Council Staff will be managed in accordance with Council's internal policies and processes.
- c. Councillors and Council Staff, particularly contract supervisors:
 - 1. must not knowingly visit a current supplier's premises without invitation when acting in their official capacity; and
 - 2. must not knowingly engage a Council supplier for private benefit unless that engagement is on proper commercial terms.

5.1.7 Disclosure of Information

- a. Commercial in Confidence information received by the Council must not be disclosed and is to be stored in a secure location.
- b. Councillors and Council Staff must take all reasonable measures to maintain confidentiality of:
 - 1. Information disclosed by organisations in tenders, quotation or during tender negotiations; and
 - 2. Commercial in Confidence information.
- c. Discussion with potential suppliers during tender evaluations should not go beyond the extent necessary to resolve doubt on what is being offered by that supplier.
- d. At no stage should any discussion be entered into which could improperly influence the procurement process or negotiation of a contract prior to the contract approval process being finalised, other than authorised pre-contract negotiations.

6. COMPLAINTS & REPORTING SUSPICIOUS ACTIVITIES

6.1 Complaints Handling

Members of the public and suppliers are encouraged to report known or suspected incidences of improper conduct to the Chief Executive Officer.

Councillors and Council Staff will report and manage complaints in accordance with Council's internal policies and processes.

6.2 Reporting Suspicious Activities

- a. All Councillors, Council Staff and Council suppliers are required at all times to act honestly and with integrity and to safeguard the public resources for which they are responsible. Council is committed to protecting all revenue, expenditure and assets from any attempt to gain illegal benefits (financial or otherwise).
- b. Council will take all reasonable steps to protect those who assist Council by providing information about suspected fraud. This will include confidentiality of identity and protection from harassment to the extent possible.
- c. Suspected improper conduct, offers of bribes, commissions and any other irregular approaches from suppliers, prospective suppliers or other individuals will be investigated and reported in accordance with Council's internal policies and processes.
- d. The Chief Executive Officer must notify 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*.

7. GOVERNANCE

7.1 Treatment of GST

All monetary values stated in this Policy are inclusive of goods and services tax (GST) unless specifically stated otherwise.

7.2 Structure

- a. Council has delegated a range of powers, duties and functions to the Chief Executive Officer in relation to procurement. The delegation aims to ensure that the Council's procurement structure operates according to processes that:
 1. are flexible enough to procure in a timely manner the diverse range of goods, works and services required by Council;
 2. guarantee that prospective contractors and suppliers are afforded an equal opportunity to tender or submit a quotation; and
 3. encourage competition and collaboration.

7.3 Responsible Financial Management

- a. The principle of responsible financial management shall be applied to all procurement activities. Accordingly, 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 action for the supply of goods, services or works.

- b. Council funds must be used efficiently and effectively to procure goods, services and works and every attempt must be made to contain the costs of the procurement process without compromising any of the procurement principles set out in this Policy.

8. PROCUREMENT THRESHOLDS AND COMPETITION

8.1 Procurement Process

- a. Council must undertake any procurement activity in compliance with sections 108 and 109 of the Act and this Policy before entering into a contract for the purchase of goods or services or the carrying out of works.
- b. In every procurement activity all practicable efforts must be made to consider the sustainable procurement consideration as described in clause 16.2 of this Policy.
- c. Council Staff members must ensure that any purchased goods from a foreign supplier comply with the relevant Australian Standards.

8.2 Procurement Principles

- a. Council will apply the following fundamental best practice principles to procurement, irrespective of the value and complexity of that procurement:
 1. Value for Money;
 2. Sustainability (social, economic and environmental);
 3. Open and fair competition;
 4. Accountability;
 5. Risk management, and
 6. Probity and transparency.

8.3 Procurement Thresholds

- a. A public tender process must be used for all procurements valued at \$300,000 and above (incl of GST) for goods, services or works. For procurements valued under \$300,000 (incl of GST), the request for quotation process must be undertaken.
- b. When applying the procurement threshold as described in Appendix 1 of this Policy the following must be strictly complied with:
 1. The value of the purchase is to include the total anticipated cost of the goods, services or works to be supplied during the total contract term which include an initial term, any option to extend the contract, applicable goods and services tax (GST) and anticipated contingency allowances;
 2. Clause 21.4 Contract Splitting Prohibited;
 3. Clause 21.5 Cumulative Spend.

8.4 Procurement Methodology

The Council's standard methodology for procuring goods, services and works shall be by any of the following:

- a. Contract following a Request for Quotation or Request for Tender process (**see Appendix 1**);
- b. Purchase Order following a Request for Quotation process (**see Appendix 1**);
- c. Multi-stage tenders commencing with an expression of interest followed by a tender process;
- d. Using Collaborative Procurement arrangements (**see clause 15**);
- e. Purchases made under the exempt circumstances (**see Appendix 2**);
- f. Purchases made in compliance with the Corporate Credit Card Policy (**see clause 17**)

unless other arrangements are authorised by Council or under appropriate delegated authority on an 'as needs' basis as required by abnormal circumstances.

Council will also procure goods, services or works from its internal Panel of Suppliers. *See **Guidance for Establishing and Use of Panel of Suppliers document.***

9. EXEMPTIONS TO REQUIREMENTS FOR THE REQUEST FOR PUBLIC TENDER AND REQUEST FOR QUOTATION PROCESSES

- a. Exemptions to the requirements for the public tendering, expression of interest and request for quotation processes are set out in detail in **Appendix 2 of this Policy**.
- b. If Council Staff or persons engaged in procurement on Council's behalf request the exemption, they must follow the requirements of **Appendix 2 of this Policy** and the steps that are detailed in the **Guidance – Request for Procurement Exemption** document.
- c. The key procurement principles as set out below will still apply:
 1. Value for Money;
 2. maintaining transparency and accountability;
 3. managing risk;
 4. avoiding and managing conflict of interest;
 5. ensuring compliance with confidentiality principles.

10. PUBLIC NOTICE REQUIREMENTS

- a. All public tenders invited by the Council will be published via Council's Tenders.Net portal and may be advertised in the newspapers.
- b. Information regarding current tenders and awarded tenders will be published on Council's website.
- c. Request for Quotation valued at \$50,000 (incl of GST) and above for goods,

services or works will be published via Council’s Tenders.Net portal.

11. PROCUREMENT PLAN AND PROBITY PLAN

11.1 Procurement Plan

A procurement plan must be developed for any procurement activity where the proposed total contract value exceeds \$50,000 (inclusive of GST) and be approved by a financial delegate before undertaking the procurement activity.

11.2 Probity Plan

- a. A probity plan is a document that sets out the steps to be taken and the processes to be implemented to ensure a tender is conducted fairly and ethically.
- b. The probity plan must be developed and implemented in one of two circumstances:
 1. where a proposed total contract sum exceeds \$3 million (inclusive of GST) over the life of the contract; or
 2. where a proposed contract is considered by Council or the Chief Executive Officer to be particularly complex, of a high risk or controversial nature, and requiring a high level of public confidence.

12. EVALUATION OF TENDERS AND QUOTATIONS

12.1 Evaluation Criteria

- a. Council must include the following evaluation criteria categories to determine whether a proposed contract provides Value for Money.
- b. For more detailed guidance about the evaluation criteria see **Guidance - Application of Evaluation Criteria** and **Guidance - Application of Insurance Cover** documents.

| CRITERION | MINIMUM WEIGHTING |
|---|-------------------|
| Price | 20% |
| Capability of the respondents to provide the goods or services or works | 10% |
| Capacity of the respondents to provide the goods or services or works | 10% |
| Occupational Health & Safety | 10% |
| Local Content | 7.5% |
| Demonstration of Sustainable Procurement This includes social, economic, and environmental sustainability | 10% |

- c. A Council Staff member may add other evaluation criteria to the table under this clause 12.1(b) subject to the needs and/or requirements of their project in order to achieve Value for Money and the best outcome for Council and its community. Any Council Staff member who wishes to add any additional criterion to their project's evaluation criteria must submit this request for an approval via Procurement Plan.
- d. A Council Staff member who wishes to remove any criterion and/or reduce the weighting that is described under clause 12.1(b) must submit this request for an approval via Procurement Plan.

12.2 Financial Viability Assessment

- a. An external financial viability assessment must be conducted for all short-listed supplier/s for purchases over \$1 million (inclusive of GST) or which are considered complex, high risk and critical purchases and/or projects.
- b. In assessing whether a financial viability assessment is required, consideration is given to the likelihood and consequence of a financial viability issue in the purchase or project and subsequent contract, as well as any other factors that have the potential to impact on the overall level of risk.
- c. Procurement Officer will conduct this assessment via an external independent party on behalf of the Evaluation Panel, and this process will be undertaken as part of the evaluation process but will not be scored.

12.3 Evaluation Panel

Council Staff members and all persons engaged in procurement on Council's behalf must ensure that:

- a. an Evaluation Panel will be established to evaluate each submission against the evaluation criteria;
- b. the composition of the Evaluation Panel will be established in accordance with the table in this clause 12.3.
- c. evaluation criteria and their associated weightings must be established and agreed to by the Evaluation Panel prior to the request for tender or request for quotation or expression of interest being officially open to the market;
- d. a Procurement Plan must be signed off by the financial delegate prior to the procurement documentation being officially open to the market;
- e. the evaluation process is robust, systematic and unbiased;
- f. a probity adviser be appointed to any procurement process and/or Evaluation Panel in line with clause 13; and
- g. if required, external specialists be included in the evaluation process in order to achieve Value for Money.

| Contract Value <i>(inclusive of GST)</i> | Min. Number of Panel Members | Minimal Panel Composition |
|---|---------------------------------|---|
| \$10,000 - \$50,000 | 2 | <ul style="list-style-type: none"> Staff members of the relevant department |
| \$50,001- \$300,000 | 3 <i>(scoring members)</i> | <ul style="list-style-type: none"> Subject matter expert from the relevant department Co-ordinator and/or Manager of the relevant department One staff member from a different department or Directorate <p>Note: Seek advice from the Procurement Officer, if required</p> |
| \$300,001 - \$3M | 3 <i>(scoring members)</i> | <ul style="list-style-type: none"> Subject matter expert from the relevant department Co-ordinator and/or Manager of the relevant department One staff member from a different department or Directorate |
| | Advisers | <ul style="list-style-type: none"> Procurement Officer must be involved in the Panel as an adviser May include a probity adviser (see clause 13) May seek advice from a member of the Financial Services Department May include external party to provide specialist advice |
| Over \$3M | 4 <i>(scoring members)</i> | <ul style="list-style-type: none"> Subject matter expert from the relevant department Manager and/or Director or Executive Manager of the relevant department One staff member from a different department A member from the Financial Services Department <p>Note: A Director or an Executive Manager must be included if it is a complex and high-risk major project</p> |
| | Advisers | <ul style="list-style-type: none"> Procurement officer must be involved in the Panel as an adviser Must include a probity adviser (see clause 13) May include external party to provide specialist advice |

13. PROBITY ADVISER OR PROBITY AUDITOR

13.1 Probity Adviser

- a. A formal probity plan must be developed, and a probity adviser appointed in the following circumstances:
 1. where the proposed total contract sum exceeds \$3 million (incl of GST) over the life of the contract; or
 2. where a proposed contract is considered by Council or the Chief Executive Officer to be particularly complex, of a high risk or controversial nature, and requiring a high level of public confidence.
- b. At the discretion of the Chief Executive Officer a probity adviser may be

appointed to any procurement process and/or Evaluation Panel in order to provide advice on probity related matters and to oversee the evaluation process.

13.2 Probity Auditor

- a. At the discretion of the Chief Executive Officer a probity auditor may be appointed to review an outcome of the procurement process and/or evaluation process for continuous improvement.

14. SHORTLISTING AND BEST AND FINAL OFFER NEGOTIATIONS

- a. Council may conduct a shortlisting process during expression of interest, tender and quotation processes. Shortlisting can be based on any criterion or criteria but only in pursuit of the most advantageous outcome for the Council.
- b. 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.
- c. Once one or more preferred tenderers are selected, negotiations can be conducted in order to obtain the optimal solution and commercial arrangements within the original scope and intent of the tender. Probity requirements apply to all negotiations.

15. COLLABORATIVE PROCUREMENT

- a. In accordance with section 108(c) of the Act, the Council will first consider collaboration with other Councils and public bodies or utilise Collaborative Procurement Arrangement, when procuring goods, services or works in order to take advantage of economies of scale.
- b. Council staff must consider any opportunities for collaborative procurement in relation to a procurement process undertaken by Council.
- c. In accordance with section 109(2) of the Act any Council report that recommends entering into a contract must include information in relation to opportunities for collaboration, if available:
 1. the nature of the identified opportunities, if any, with other Councils and public bodies; and
 2. whether Council did, or did not, pursue the identified opportunities for collaboration in relation to the recommended contract.
- d. Council may collaborate with other Councils or other bodies such as MAV Procurement or Procurement Australasia to procure goods, services or works established through a public tender process where it provides an advantageous Value for Money outcome for the Council.
- e. Any Federal or State Government grant funded projects may be excluded from collaborative procurement.

16. DEMONSTRATE SUSTAINED VALUE

16.1 Achieving Value for Money

16.1.1 Requirement

The Council's procurement activities will be carried out on the basis of obtaining Value for Money. This means minimising the total cost of ownership over the lifetime of the requirement consistent with acceptable quality, reliability and delivery considerations. Lowest price is not the sole determinant of Value for Money.

16.1.2 Approach

This will be facilitated by:

- a. achieving continuous improvement in procurement activity in accordance with the requirements set out in this Policy;
- b. developing, implementing and managing processes that support the co-ordination and streamlining of activities throughout the procurement lifecycle;
- c. effective use of competition;
- d. using existing Council contractual arrangement or Collaborative Procurement Arrangements where appropriate;
- e. identifying and rectifying inefficiencies in procurement processes;
- f. developing cost efficient tender processes;
- g. Council Staff responsible for providing procurement services or assistance within the Council providing competent advice in terms of available products and agreements; and
- h. working with suppliers to create relationships that are professional, productive, and are appropriate to the value and importance of the goods, services and works being acquired.

16.2 Sustainable Procurement

16.2.1 Sustainable Procurement Definition

Sustainable procurement involves decision making that has the most positive environmental, social and economic impacts possible across the entire lifecycle of goods, services and works. The United Nations Environment Programme defines sustainable procurement as a "process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves Value for Money on a whole of life basis in terms of generating benefits not only the organisation, but also to society and the economy whilst minimising damage to the environment."

16.2.2 Applying Sustainable Procurement in Council

- a. Sustainability will be embedded in the Council’s operations. All Council Staff will have a clear and shared understanding about what it means and how they can apply it to their daily tasks. The Council commits to applying the principles of sustainability to its decision-making and activities.
- b. Council demonstrates sustainable procurement by:
 1. being accountable for its impacts on society, the economy and the environment including the impacts of the organisation’s supply chain;
 2. examining anticipated organisational, project and/or community needs;
 3. continually improving sustainability specifications, practices and outcomes, and
 4. planning and undertaking sustainability evaluations as part of contracting activities.

16.2.3 Principles and objectives

- a. Council commits to
 1. applying specific principles of sustainability to its decision-making and activities, and
 2. focusing on specific Economic, Environmental and Social objectives.

| Area | Principles | Objectives |
|------------------------|---|--|
| <p>Economic</p> | <p>Council is committed to procurement that supports Local Business.</p> <p>Where practicable and applicable Council will give preference to goods manufactured or produced in Australia and will actively seek quotations and tenders from Local Businesses.</p> <p>Council’s Procurement Policy will be underpinned by the following principles:</p> <ul style="list-style-type: none"> • Ensuring accountability and transparency; • Ensuring Value for Money outcomes; • Ensuring open and effective competition, and development of competitive Local Business and industry; • Fostering innovation and emerging sectors; and • Considering life cycle costs. | <p>Council’s economic sustainability approach aims to:</p> <ul style="list-style-type: none"> • Achieve Value for Money on a whole of life (including disposal) basis, rather than just initial cost; • Consider broader life cycle impacts of products procured; • Ensure probity and accountability in the procurement process; • Commit to sourcing locally; • Build relationships with Local Business and encourage procurement from them to help build their capacity; • Increase local employment; • Consider purchasing from the suppliers who will demonstrate innovative or creative approaches to supplying goods, services or works; and • Consider purchasing goods, services or works which will consider the benefits and disadvantages of life cycle costing of goods, services or works (i.e., purchase price, maintenance, operating and disposal costs). |

- b. The following Economic, Environmental and Social objectives as described in the **table** below have been determined in line with these principles.

| Area | Principles | Objectives |
|----------------------|---|---|
| <p>Social</p> | <p>Council is committed to building stronger communities and meeting social objectives which benefit the municipality and commits to integration of measures in its procurement processes and documentation which promote improved social outcomes.</p> <p>Council’s sustainable procurement will be underpinned by the following principles:</p> <ul style="list-style-type: none"> • A thorough understanding of the socio-economic issues affecting the community; • Creation of training and employment opportunities for unemployed or disadvantaged residents and ratepayers in Council’s municipality, and marginalised job seekers in Council’s municipality, to address local socio-economic issues; • Promotion of equity, diversity and equal opportunity; and • Respect for human rights, the rule of law and international norms of behaviour. | <p>Council’s social sustainability approach aims to:</p> <ul style="list-style-type: none"> • Ensure vendors do not exploit workers and provide fair wages, including inclusive business practices; • Maintain a social procurement program to increase social procurement spend across the Hepburn Shire municipality; • Ensure sourced products are accessible by all segments of the community; • Increase employment opportunities for indigenous people, people with a disability, disadvantaged people and long term unemployed; • Improve gender equity; • Support and promote safe and fair workplaces; and • Prevent, detect and remove modern slavery from Council’s supply chain. |

17. PURCHASES BY CORPORATE CREDIT CARD

- a. Any procurement undertaken by the corporate credit card must comply with Council’s Corporate Credit Card Policy requirements.

18. CHIEF EXECUTIVE OFFICER EMERGENCY POWER

- a. The Chief Executive Officer has the power to declare that a contract must be entered into because of an emergency as defined in *Appendix 3 Definitions & Abbreviations* of this Policy and thus avoid delays in responding to an emergency.
- b. Any decision taken by the Chief Executive Officer under this clause 18 will be communicated to Councillors, and if required by the Mayor, will be subject of a report to the next scheduled Council meeting for noting.

19. RISK MANAGEMENT AND OCCUPATIONAL HEALTH AND SAFETY

- a. Council is committed to manage all aspects of its procurement processes in line with its risk management policy and in such a way that all risks, including occupational health and safety, are identified, analysed, evaluated, treated, monitored and communicated to the standards required by the law, Australian Standards and Council policies and procedures.

| | | |
|----------------------|--|--|
| Environmental | <p>Where applicable Council will purchase goods, services and works that reduce air, water and soil pollution, greenhouse gas emissions, waste production, natural resource depletion and biodiversity depletion whenever they present an acceptable Value for Money outcome, and in some cases where they might not. Council’s sustainable procurement activities will be underpinned by the following principles:</p> <ul style="list-style-type: none"> • Considering a product’s or asset’s lifecycle; • Promoting circular economy participation; • Managing demand to reduce procurement requirements; • Encouraging innovation through specifications; and • Engaging suppliers who are also committed to reducing their environmental impact. | <p>Council’s environmental sustainability and approach aims to:</p> <ul style="list-style-type: none"> • Improve energy efficiency; • Reduce greenhouse gas emissions and contribution towards Council’s carbon footprint; • Minimise waste production; • Improve water efficiency; • Reduce air, water and soil pollution; • Reduce biodiversity impacts; • Minimise pollution and harmful impacts on natural environment; • Avoid or reduce the use of goods, materials, products or services that generate waste; • Re-use goods, products or materials, where possible, to extend their useful lifecycle; and • Procure goods, products or materials that are recycled. • Increase the use of recycled materials to: <ul style="list-style-type: none"> – Reduce demand for raw materials and non-renewable resources; and – Close the loop on curbside recycling. |
|----------------------|--|--|

- b. Council requires all contractors, service providers and volunteers to comply with

all OH&S legislative requirements. Suppliers must, upon request by Council, provide evidence of certification or policy when providing goods, services or works.

20. INTERNAL CONTROLS

Council Staff and all persons engaged in procurement on Council's behalf must diligently follow a framework of internal controls over procurement processes in order to ensure:

- a. more than one person is involved in, and responsible for, each procurement transaction;
- b. transparency in the procurement process;
- c. a clearly documented audit trail exists for procurement functions;
- d. required authorisations are obtained and documented;
- e. systems are in place for appropriate monitoring and performance measurement;
- f. Council maintains all records relevant to administering this Policy in accordance with the *Public Records Act 1973* (Vic); and
- g. information received by Council that is Commercial in Confidence must not be disclosed and is to be stored in a secure location. Councillors and Council Staff are to protect, by refusing to release or discuss the following:
 1. information disclosed by organisations in tenders, quotations or during tender negotiations;
 2. all information that is Commercial in Confidence; and
 3. pre-contract information including but not limited to information provided in quotations and tenders or subsequently provided in pre-contract negotiations.
- h. a process is in place for escalation, where appropriate, of procurement matters (including procedural non-compliance) to the Executive Team, the Audit and Risk Committee and Council.

21. CONTRACT MANAGEMENT AND RELATED PROCESSES

21.1 Contract Management

- a. The purpose of contract management is to ensure that Council, and where applicable its customers, receive the goods, services or works provided to the required standards of quality and quantity as intended by the contract.
- b. The provision of goods, services and works by contract potentially exposes Council to risk. Council will minimise its risk exposure by measures such as:
 1. standardising contracts to include current, relevant clauses;
 2. ensuring the contract or purchase order reflects the tender pricing;
 3. requiring security deposits where appropriate;
 4. requiring evidence of relevant insurance cover;
 5. referring specifications to relevant experts where appropriate;
 6. requiring a correctly executed contractual agreement before commencement;

7. use of or reference to relevant Australian Standards (or equivalent); and
8. effectively managing the contract including monitoring and enforcing performance.

21.2 Awarding Contract

- a. All contracts with expenditure equal to or less than \$330,000 (inclusive of GST) must be approved by the Chief Executive Officer or their delegate as described in the *Instrument of Financial Sub -Delegation* document.
- b. Council employees must ensure that they seek Council's resolution on all contracts with expenditure greater than \$330,000 (inclusive of GST).

21.3 Contract Execution

- a. The Chief Executive Officer will execute any contract on behalf of Council provided that:
 1. the contract is within the Chief Executive Officer's financial delegation as outlined in S5 Instrument of Delegation to Chief Executive Officer; or
 2. Council by its resolution has awarded the contract which is outside the Chief Executive Officer's financial delegation.
- c. The Chief Executive Officer may delegate the execution of any contract to a Council Staff member as described in the Instrument of Financial Sub – Delegation.
- d. The Chief Executive Officer or a delegated Council Staff member may sign contract under this clause 21.3 either by signing a physical form of the document by hand or an electronic form of the document using electronic signature software method.
- e. Notwithstanding clause 21.3 (a) Council may resolve to delegate execution of a contract to the Mayor or Council's delegate.

21.4 Contract Splitting Prohibited

- a. Before undertaking any procurement activity, the scope of the procured goods, services or works, and anticipated length and value of a contract must be determined in good faith.
- b. The circumstances which intentionally seek to avoid the requirement to undertake the tendering process or request for quotation process will breach the requirements of this Policy to conduct tendering process or request for quotation process where threshold values would otherwise be reached. These following circumstances are prohibited under this Policy:
 1. Contract splitting;
 2. Splitting the purchases or orders so the total value of the purchase falls under the amount of a financial delegate's authority limit;
 3. Placing multiple orders;
 4. Seeking multiple quotations with a single supplier;
 5. Engaging in effect a single supplier under different guises.

21.5 Cumulative Spend

- a. In order to be efficient, effective and achieve Value for Money Council must

- practice cumulative spend process.
- b. Council may, from time to time or as necessary, enter into multiple contracts where significant amounts are expended and result in cumulative spend on one supplier, or for one service, over a period of time. For the purpose of the threshold - cumulative spend will be calculated over a period of two (2) years.
 - c. In each circumstance where accumulated significant amounts are likely to be spent on one supplier, or for one service which may exceed the procurement threshold for tendering as described in Appendix 1 Council must consider undertaking a request for tender process in order to procure the required goods, services or works.
 - d. A process for monitoring and reporting to senior management on cumulative supplier payments will be applied as a way of identifying Value for Money principle being achieved through a competitive procurement process and from the risk management point of view.

21.6 Contract Variation

- a. All contract variations must be assessed to determine whether they constitute variations under the terms of the contract, or whether they are in effect a new contract. Council must also assess variations for justification of value and scope in the context of the original contract.
- b. The following delegates may approve contract variations up to the amounts set out in the following table:

| DELEGATE | APPROVAL AMOUNT (INCLUSIVE OF GST) |
|--------------------------------|--|
| Council | Aggregate of all contract variations above 30% of the original contract sum, or above \$330,000 individually. |
| Chief Executive Officer | Aggregate of all contract variations up to 30% of the original contract sum, or \$330,000 individually, whichever is the lesser subject to remaining within budget or offset savings being identified. |
| Council Staff | Financial delegation in relation to the contract variations for Council Staff is defined in the <i>Instrument of Financial Sub -Delegation</i> document. |

22. RELATED LEGISLATION, POLICIES AND REFERENCES

Council must comply with all the relevant provisions of the Acts and Regulations in all procurement matters, including but not limited to:

Legislation

- *Local Government Act 2020* (Vic)
- *Local Government (Planning and Reporting) Regulations 2020* (Vic)
- *Charter of Human Rights and Responsibilities Act 2006* (Vic)
- *Competition and Consumer Act 2010* (Cth)
- *Occupational Health and Safety Act 2004* (Vic)
- *Occupational Health and Safety Regulations 2017* (Vic)
- *Privacy and Data Protection Act 2014* (Vic)
- *Public Records Act 1973* (Vic)

- *Freedom of Information Act 1982 (Vic)*
- *Child Wellbeing and Safety Act 2005 (Vic)*
- *Gender Equality Act 2020 (Vic)*

Policies

- Council’s Officer Code of Conduct
- Councillor Code of Conduct
- Supplier Code of Conduct
- Corporate Credit Card Policy
- Fraud Prevention Policy
- Risk Management Policy
- Occupational Health and Safety Policy
- Other relevant Policies

References/Guidance

- Best Practice Procurement Guidelines 2013
- Whittlesea City Council Procurement Policy (Engage Victoria)
- Victorian Auditor-General’s Office report on Tendering and Contracting in Local Government, February 2010

23. DOCUMENT INFORMATION

| | |
|---|---|
| Policy Owner: | Manager Financial Services |
| Send feedback about the Policy to, or further information can be sought via: | procurement@hepburn.vic.gov.au |
| Policy Approved: | 19 September 2023 |
| Policy Review: | The Procurement Policy must be reviewed at least once during each 4-year term of the Council in compliance with section 108 of the <i>Local Government Act 2020 (Vic)</i> . |
| Administrative Amendments | The Chief Executive Officer is authorised to make minor administrative changes to the Procurement Policy to ensure clarity and readability. |

APPENDICES

APPENDIX 1:

Procurement Methodology for Request for Tender and Request for Quotation

| PROCUREMENT THRESHOLD (Inclusive of GST) | PROCUREMENT METHODOLOGY | EST. TIMEFRAME FOR SUPPLIER RESPONSE (<i>minimum</i>) | PROCUREMENT PROCESS |
|---|---|--|---|
| \$0 - \$5,000 | Request at least one (1) verbal quotation | 3 business days | <ul style="list-style-type: none"> • Direct approach to supplier • Raise a Purchase Order |
| \$5,001 - \$10,000 | Request at least one (1) written quotation | 1 week | <ul style="list-style-type: none"> • Direct approach to supplier • Raise a Purchase Order • Attach quotation and any other document/s from supplier to the Purchase Order in TechOne • Save documents in Content Manager |
| \$10,001 - \$50,000 | Request at least two (2) written quotations | 2 weeks | <ul style="list-style-type: none"> • Direct approach to suppliers • Evaluate quotations and select the successful supplier • Raise a Purchase Order • Attach quotation and any other document/s from supplier to the Purchase Order in TechOne • Save documents in Content Manager |
| \$50,001-\$299,999 | Request at least three (3) written quotations | 2 weeks | <ul style="list-style-type: none"> • Procurement Plan must be prepared and approved by a financial delegate before release of the RFQ documents • RFQ must be released to the market through Tenders.Net platform • Evaluate quotation/s and select the successful supplier • Prepare a report and obtain a written approval from a financial delegate on the recommended supplier • Save documents in Content Manager • Signed contract is recommended (Talk to Procurement Officer) |
| \$300,000 and above | Tender | 3 weeks | <ul style="list-style-type: none"> • Procurement Plan must be prepared and approved by a financial delegate before release of the EOI or RFT documents • EOI or RFT must be released to the market through Tenders.Net platform • Evaluate submission/s and select the successful supplier • Prepare a report and obtain a written approval from a financial delegate on the recommended supplier • Save documents in Content Manager • Contract must be signed (Talk to Procurement Officer) |

NOTE:

See **Guidance – Procurement Methodology and Process** document for more information and guidance.

APPENDIX 2: PROCUREMENT EXEMPTIONS

TABLE 1 – EXEMPTIONS FROM PROCUREMENT PROCESS

Table 1 below provides the circumstances which are exempt from the express of interest or general public tendering or request for quotation requirements.

Any expenditure for the purchase of goods, services or works must be approved by the financial delegate in line with the **Instrument of Financial Sub-Delegation** before entering into a contract.

Where the values of the goods, services or works to be purchased exceeds the financial delegation of the Chief Executive Officer before entering into a contract a report for the Council must be prepared for Council’s consideration with the recommended supplier’s name and contract price.

| Exemption Name | Explanation and Limitations |
|--|---|
| A contract made due to a genuine emergency or hardship | <p>Where the Chief Executive Officer has resolved that the contract must be entered into because of an emergency. See:</p> <ul style="list-style-type: none"> a. Clause 18 of this Policy – <i>Chief Executive Officer Emergency Power</i>. b. See definition of Emergency below. c. A Procurement Exemption Form must be submitted under this exempt circumstance. The process of submission is described in Attachment 1 of the Guidance – Request for Procurement Exemption document. |
| A contract made with, or a purchase from a contract made by, another government entity, government-owned entity or other approved third party | <p>Council may procure goods, services or works through:</p> <ul style="list-style-type: none"> a. Municipal Association of Victoria Procurement (MAV Procurement). b. Procurement Australia (PA). c. Department of Premier & Cabinet (eServices Register or IT Infrastructure Register). d. National Procurement network members (e.g., Local Buy). <p>Council staff must ensure that they follow the rules, where applicable, required by the above agents and/or Council’s RFQ process according to Appendix 1 of this Policy.</p> <p>This general exemption allows engagements with another government entity or government owned entity. For example, Federal, State or Local Government or an entity owned by the Federal, State or Local Government.</p> |

| Exemption Name | Explanation and Limitations |
|---|---|
| Legal Services | <p>Provision of legal advice.</p> <p>However, Council staff should undertake RFQ process in accordance with Appendix 1 of this Policy if the procurement process is about updating the templates or purchase of new templates.</p> |
| Operating Lease | <p>Where a lessor leases an asset, such as leasing a vehicle or plant and equipment to the Council and assumes the residual value risk of the asset. The asset under the operating lease does not vest in Council.</p> |
| Novated Contract | <p>Novated contracts are exempt from public tendering providing:</p> <ul style="list-style-type: none"> a. The initial contract was entered into in compliance with section 108 of the <i>Local Government Act 2020</i>; and b. The Council has undertaken due diligence in respect of the new party to the contract. |
| Statutory Compulsory Monopoly Insurance Schemes | <ul style="list-style-type: none"> a. Public liability and professional indemnity insurances taken out by the Council, which is a member of, or participates in, MAV Insurance Scheme which is approved by the Minister. b. WorkCover insurance; c. Motor Vehicle compulsory third party insurance. |
| Information technology resellers and software developers | <ul style="list-style-type: none"> a. Purchase of software specific only to one provider. b. Renew software licenses and maintenance and support, or upgrade existing systems, where there is only one supplier of the software, who holds the intellectual property rights to the software. |
| Other Purchases | <ul style="list-style-type: none"> a. Plant and equipment servicing/spare parts where applicable to maintain warranty protection or to maintain plant to Original Equipment Manufacturer (OEM) standard. b. Payments to Dja Dja Wurrung Clans Aboriginal Corporation and associated entities up to \$100,000 (inclusive of GST). c. Regional library supplies. |

TABLE 2 – EXEMPT CIRCUMSTANCES REQUIRE PROCUREMENT EXEMPTION FORM

Table 2 below provides the circumstances where a Council staff member may purchase goods, services or works directly from a supplier without undertaking a procurement process. In this instance a Procurement Exemption Form must be submitted for approval as outlined in Attachment 1 or Attachment 2 of **Guidance – Request for Procurement Exemption** document.

Any expenditure (Purchase Order) for the purchase of goods, services or works must be approved by the financial delegate in line with the **Instrument of Financial Sub-Delegation** document.

Where the values of the goods, services or works to be purchased exceeds the financial delegation of the Chief Executive Officer before entering into a contract a report for the Council must be prepared for Council’s consideration with the recommended supplier’s name and contract price.

| Exemption Name | Explanation and Limitations |
|---|--|
| <p>Sole or select supplier</p> | <p>Supply of goods or services or works can be procured from a sole supplier or a restricted group of suppliers (select sourcing). The transparent way of engaging a supplier would be to demonstrate:</p> <ul style="list-style-type: none"> a. It is in the public interest. b. There is one or a limited number of available suppliers in the market or suppliers able to submit quotations. c. The marketplace is restricted by statement of license or third-party ownership of an asset (excluding public utility plant). d. Council is party to a joint arrangement where Council jointly owns the Intellectual Property with a third-party provider. |
| <p>Extension of contracts while Council is at market</p> | <p>Allows Council to extend an existing contract where the procurement process to replace the contract has commenced, and where the tender process or negotiations will take or have taken longer than expected. This applies where there is no option to extend the existing contract or option/s to extend the existing contract has been exhausted.</p> <p>This exemption may be used when the establishment of an interim short-term arrangement is considered not to be in the public interest, as it may be cost prohibitive and/or present a risk in the delivery of critical public services to the municipality.</p> |
| <p>Other Purchases</p> | <p>Goods or services procured which is issued under copyright law.</p> <p>Arts programming such as stage shows, bands or performers as determined by the relevant Director or Executive Manager.</p> |

| Exemption Name | Explanation and Limitations |
|--|---|
| <p>Chief Executive Officer's discretion</p> | <p>Goods, services or works which are an extension of the previous work undertaken or supplied by the supplier where the Chief Executive Officer is satisfied that the work has been undertaken, and where the background knowledge about the goods or services or works is known and there is continuity of history and expertise that the supplier will achieve Value for Money and will justify obtaining only one quotation. The total value of the cumulative spend must not exceed \$300,000 (incl of GST).</p> <p>Other exceptional circumstances as solely determined by the Chief Executive Officer which will achieve greater Value for Money than undertaking a request for quotation process.</p> <p>Where no quotations or tenders were submitted after the market has been tested and it is reasonably likely that re-advertising RFQ or RFT will achieve the same outcome of receiving no submissions, in this instance direct contact with the supplier of choice may be appropriate. Where the values of the goods, services or works to be purchased exceeds the financial delegation of the Chief Executive Officer before entering into a contract a report for the Council must be prepared for Council's consideration with the recommended supplier's name and contract price.</p> |
| <p>A contract made because of genuine emergency or hardship</p> | <p>Where the Chief Executive Officer has resolved that the contract must be entered into because of an emergency. See:</p> <ul style="list-style-type: none"> a. Clause 18 of this Policy – <i>Chief Executive Officer Emergency Power</i>. b. See definition of Emergency below. <p>A Procurement Exemption Form must be submitted under this exempt circumstance. The process of submission is described in Attachment 1 of the <i>Guidance – Request for Procurement Exemption</i> document.</p> |

TABLE 3 - Other Payments

Table 3 provides circumstances which are exempt from the market engagement process and do not require submitting a Procurement Exemption Form.

| CATEGORIES | EXAMPLES |
|--------------------------------------|---|
| Statutory Payments | <ul style="list-style-type: none"> • Legislative or statutory requirements such as payments to the Australian Taxation Office, fines • Roads Corporation of Victoria (VicRoads) payment for fleet management • VEC – payments to the Victorian Electoral Commission (VEC) • EPA Victoria Levy • Fire Services Property Levy |
| Council Staff and Councillors | <ul style="list-style-type: none"> • Superannuation (including Defined Benefits superannuation calls) • Payroll Deductions • WorkCover, Injury Management • Licences or Subscription or Membership Renewals • Recruitment advertising • Professional workshops, seminars and conference registration fees and travel arrangements • Mayor and Councillor allowances and expenses |
| Council Properties | <ul style="list-style-type: none"> • Sale or Purchase of Land • Lease or Licence of Property • Warranty Renewals • Investments/Terms deposits • Loan contracts • Contracts for sale of goods • Grants (from the Federal or State Government) where Council’s role in the funding arrangement is that of ‘fund manager’ and passes on funds from another level of government or other body. |
| Utility Services | <p>Gas, electricity, water, sewerage charges, telecommunication whereby the infrastructure is owned and managed by a single or particular party. This also applies to new or maintenance or service or upgrade of assets owned by the utility provider.</p> |
| Others | <ul style="list-style-type: none"> • Payments to other municipalities • Payments made by the administrator of a Special Rates Scheme • Venue hire • General advertising • Sundry Funds (such as pension rebates, deceased animal refunds) • Australia Post charges • Medical expenses • Couriers • Victorian Auditor – General’s Office (VAGO) fees |

APPENDIX 3: Definitions and Abbreviations

| TERM | DEFINITION |
|--|---|
| Act | The <i>Local Government Act 2020</i> (Vic) |
| Collaborative Procurement Arrangement | A contract established by the Council, government or a nominated agent, such as Procurement Australasia, Municipal Association of Victoria (MAV), or local government entity, for the benefit of numerous state, federal and/or local government entities that achieves best value by leveraging combined economies of scale. |
| Commercial in Confidence | Information that, if released, may prejudice the business dealings or commercial interests of Council or another party, e.g., prices, discounts, rebates, profits, methodologies and process information, etc. |
| Contract Management | The process that ensures all parties to a contract fully meet their respective obligations as efficiently and effectively as possible in order to deliver the contract objectives and provide Value for Money. |
| Council | Hepburn Shire Council. |
| Councillors | Council’s elected representatives (the Mayor and Councillors) or Administrator(s) appointed to act in this capacity. |
| Council Staff | Includes all Council officers, temporary employees, contractors, volunteers and consultants while engaged by Council. |
| Emergency | <ul style="list-style-type: none"> a. an emergency due to the actual or imminent occurrence of an event which destroys or damages, or threatens to destroy or damage, any Council property as a result of: <ul style="list-style-type: none"> i. a flooding, windstorm, earthquake or other natural event; ii. a fire; iii. an explosion; iv. a plague or an epidemic or pandemic or contamination which may require the immediate procurement of goods, services or works to ensure business continuity, safety and security; b. an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of Council staff; c. the occurrence of a natural disaster such as flooding, bushfire, earthquake, windstorm or other natural event, epidemic or pandemic or contamination which may require the immediate procurement of goods, services or works to provide, or support in the provision of, relief in the Hepburn Shire municipality; d. any sudden or unexpected disruption to Council’s essential services such as IT breakdown or failure or power outage which may require the immediate procurement of goods, services or works to ensure business continuity; |

| | |
|-----------------------------------|---|
| | <p>e. unforeseen cessation of trading of a core service provider and a need to appoint a replacement service provider on the grounds of public safety;</p> <p>f. a state of disaster declared under the <i>Emergency Management Act 1986</i>, or any other declaration made by the Premier of Victoria which will impact the Hepburn Shire municipality;</p> <p>g. any other situation which is liable to continue a risk to life or property. <i>(Section 3 of the Emergency Management Act 2013 and clause 3.7.1 of the Victorian Local Government Best Practice Procurement Guidelines 2013 have been used in the drafting the definition of ‘emergency’)</i></p> |
| IBAC | The Independent Broad-based Anti-corruption Commission. |
| Indigenous Business | An Indigenous Business is one that is at least 50% owned by an Aboriginal or Torres Strait Islands person(s) (consistent with Supply Nation’s definition). |
| Local Business | A commercial business within an operational premises that is physically located within the Hepburn Shire municipality or within the Central Highlands Region being Ararat, Pyrenees, Ballarat, Moorabool, Hepburn and Golden Plains municipalities. |
| Breach | <ul style="list-style-type: none"> • Policy Breach relates to a breach of non-compliant procedural process. • Material Breach relates to a breach of legislation such as fraud, corruption or occupational health and safety. |
| Probity | Within government, the term "probity" is often used in a general sense to mean "good process". A procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with the Council’s policies and legislation, are established, understood and followed from the outset. These procedures need to consider the legitimate interests of suppliers and ensure that all potential suppliers are treated equitably. |
| Procurement | Procurement is the whole process of acquisition of external goods, services and works. This process spans the whole life cycle from initial concept through to the end of the useful life of an asset (including disposal) or the end of a service contract. |
| Schedule of Rates Contract | A standing offer arrangement based on a Schedule of Rates contract that sets out rates for goods and services which are available for the term of the agreement but without a commitment to purchase a specified value or quantity of goods or services. |
| Sustainability | Activities that meet the needs of the present without compromising the ability of future generations to meet their needs. |
| Tender Process | The process of inviting parties from either a select list or via public advertisement to submit an offer by tender followed by evaluation of submissions and selection of a successful bidder or tenderer in accordance with pre-determined evaluation criteria. |
| Total Contract Sum | <p>The potential total value of the contract including:</p> <ul style="list-style-type: none"> • costs for the full term of the contract, including any options for either party to extend the contract; • applicable goods and services tax (GST); • anticipated contingency allowances. |

Value for Money

Value for Money in procurement is about selecting the supply of goods, services and works considering both cost and non-cost factors including:

- Non-cost factors such as contribution to the advancement of Council's priorities, fitness for purpose, quality, service and support; and
- Cost-related factors including whole-of-life costs and transaction costs associated with acquiring, using, holding, maintaining and disposing of the goods, services or works.