

CITY OF



WHITEHORSE

PROCUREMENT POLICY

June 2019

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1 Background

1.1 Purpose

The purpose of this Procurement Policy is to

- provide a framework to assist and ensure the efficient, effective, socially, ethically and sustainably responsible procurement of goods, services and works for Whitehorse City Council (Council);
- ensure consistency and control over procurement activities;
- manage the risk exposure to Council with all aspects of procurement
- demonstrate accountability and transparency to ratepayers and the broader community; and
- demonstrate the application of best practice in procurement.

Note: Procurement is defined as the whole process of ‘acquisition to pay’ of external goods (either outright or by rental or lease), services and works.

1.2 Best Practice

Council recognises that:

- Developing a procurement strategy and adopting appropriate best practice procurement policies, principles, processes and procedures for all goods, services and works will enhance achievement of Council objectives such as sustainable and social procurement, bottom-line cost savings, supporting local economies and achieving innovation to create better services for the community.
- The elements of best practice applicable to local government procurement incorporate:
 - broad principles covering ethics, value for money, responsibilities and accountabilities;
 - guidelines giving effect to those principles;
 - a system of delegations;
 - procurement processes with appropriate procedures;
 - an awareness of supply chain relationships and market conditions; and
 - a professional approach.

Council requires that Council's contracting, purchasing and contract management activities endeavour to:

- support Council's corporate strategies, aims and objectives;
- take a long term strategic view of its procurement needs whilst assessing, reviewing and auditing its procedures, strategy and objectives
- consider the whole life cycle of an acquisition from initial concept to the end of the useful life of an asset, including its disposal;
- achieve value for money;
- ensure that risks are identified, assessed and managed at all stages of the procurement process

- can demonstrate that public money has been well spent;
- are conducted, and are seen to be conducted, in an impartial, fair and ethical manner;
- use strategic procurement practices and innovative procurement solutions to promote Best Value and sustainability, in particular making use of collaborative and partnership opportunities;
- generate and support business in the local community; and
- comply with legislation, corporate policies or other requirements, ensuring that all staff responsible for procurement and contract management are aware of and adhere to the legislative requirements, Council standards and best practice.
- apply continuous improvement and innovation principles.

1.3 Scope

The procurement function for Council is currently both centre-led from a strategic, leadership, compliance and policy perspective with decentralised purchasing and contract management execution. Central control of the procurement function is currently achieved by the Procurement Policy. The Procurement Policy applies to all purchases made by Council, regardless of the funding source.

1.4 Training

All staff involved in procurement are required to undertake a mandatory 'Procure to Pay' training session including Contractor Health & Safety Management.

2 Framework Policies and Legislation

2.1 Standards

Council's procurement activities are carried out to the professional standards required by best practice and in compliance with the following relevant policies and legislation, including any subsequent amendments:

- the Local Government Act 1989 (Vic);
- Local Government (General Regulations) 2015;
- Local Government (Planning and Reporting) Regulations 2014;
- Occupational Health and Safety Act 2004;
- the Competition and Consumer Act 2010 (Cth);
- Privacy and Data Protection Act 2014
- Council's Code of Conduct;
- relevant Council policies; and
- Other relevant legislation.

2.2 Local Government Act

This Procurement Policy is made under Section 186A of the Local Government Act 1989.

This section of the Act requires Council to prepare, approve and comply with a procurement policy encompassing the principles, processes and procedures applied to all purchases of goods, services and works by Council.

The Local Government Act 1989, as amended, is the core legislation governing local government procurement.

It is important to note that the thresholds stipulated in the Act are inclusive of GST however, for the purposes of Council's governance and delegation with regard to procurement activity all financials stipulated in this policy are exclusive of GST.

2.3 National Competition Policy

The National Competition Policy (NCP) impacts on Council's procurement processes. In brief, NCP extends the Australian Consumer Law to Councils and introduces Competitive Neutrality Policy.

2.4 Competition and Consumer Act 2010

The Competition and Consumer Act (CCA) protects businesses and their customers from unfair trading practices. Council's rights and responsibilities under the CCA are considered in all procurement transactions.

The requirements of the CCA are applied to all aspects of Council business to ensure that it is operating fairly and competitively in the marketplace.

2.5 Competitive Neutrality

All tenders submitted by Whitehorse City Council comply with the Competitive Neutral Pricing Principles as outlined in the Victorian State Government's "Competitive Neutrality Policy" dated September 2012.

Competitive Neutrality pricing principles are applied when tendering against external or private companies. The State Government has introduced competitive neutrality policy to ensure that where government's business activities involve it in competition with private sector business activities, the net competitive advantages, or disadvantages that accrue to a government business as a result of their public ownership are offset. Competitive Neutrality policy promotes efficient competition between public and private businesses operating in the same market.

Competitive Neutrality pricing principles are also applied when evaluating tenders received from other Councils.

2.6 Achieving Best Value

The State Government's "Best Value" Principles (contained in sections 208A-208J of the Local Government Act) are applied to the procurement of all goods, services and works that form part of the provision of services to the community. 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 determinate of 'best value'.

Services to the community satisfy the following best value principles:

- meet quality and cost standards;

- responsive to the needs of the community;
- accessible to those for whom they are intended; and
- demonstrate continuous improvement in social, economic and environmental value.

2.7 Goods and Services Tax (GST)

- When obtaining quotations/tenders, the value of the GST is included in the quoted/tendered price unless the goods or services are GST-exempt under legislation.
- All monetary values stated in this policy exclude GST unless specifically stated otherwise.

2.8 Occupational Health & Safety

The requirements of the Victorian Occupational Health and Safety Act 2004 and Council's Occupational, Health and Safety Policy are applied to the procurement of goods, services and works.

Whitehorse City Council is obliged to ensure that its employees and Suppliers/Contractors/Consultants (and their employees) carry out their activities:

- in a safe manner;
- using proper and safe plant and substances; and
- employing systems of work that are safe and in which there has been adequate instruction, training and supervision.

Note: All vendors with medium to high risk areas of supply are required to complete Council's on-line Contractor Manager Portal as part of their induction. They must also provide copies of their insurances, licenses and other safety documentation prior to commencing with Council.

2.9 Equal Opportunity

The requirements of the Victorian Equal Opportunity Act 2010, Council's Equal Opportunity Policy and Commonwealth anti-discrimination legislation are applied to the procurement of goods, services and works.

2.10 Disability Considerations

The legislative requirements of the Disability Discrimination Act 1992 and the current Whitehorse Disability Policy and Action Plan are considered to ensure that procurement processes and decisions do not directly or indirectly discriminate against people with a disability.

The Whitehorse Disability Policy and Action Plan details Council's commitment to the rights of people with a disability to access goods, services and facilities enjoyed by the whole community.

2.11 Privacy Compliance

Privacy protocols in accordance with the Privacy and Data Protection Act 2014 (Vic) and the Health Records Act 2001 (Vic) are observed in all transactions containing personal and health information held and gathered by Council.

Council ensures that personal information held is stored, managed, used, disclosed and transferred in a fair and appropriate way and that people have the right to access and correct information about themselves.

2.12 Sustainability

Council is committed to being sustainable and will ensure that it minimises adverse environmental impacts in the procurement of goods, services and works to the best of its ability.

Council constructs, operates and maintains economic, social and environmental infrastructure and leads by example through its own sustainable actions. The Whitehorse Sustainability Strategy 2016-2022 (the Strategy) forms the basis of Council's sustainable framework and guides all Council programs, outputs, services and facilities.

Council views sustainability in terms of achieving a triple bottom line with actions aimed at improving the environment, the health and well-being of the community, and promoting a sustainable local economy.

The Strategy is based on 16 Sustainability Outcomes, strategic directions and various sustainability targets, one of which is to increase Council's purchasing of green products to 10% of Council's total purchasing expenditure.

2.13 Human Rights

The requirements of the Victorian Charter of Human Rights and Responsibilities Act 2006 ensure that Council gives proper consideration to human rights during the procurement of goods, services and works.

Council does not knowingly support suppliers involved in the exploitation of children, women or the mistreatment of animals.

3 Key Purchasing Principles

3.1 Responsible Financial Management

The principle of responsible financial management is applied to all procurement activities by ensuring that:

- the availability of funding within an approved budget, or other source of funding, is established prior to the commencement of any procurement activity;
- delegated officers do not authorise expenditure of funds in excess of the approval levels detailed in clause 4.3;
- funds are spent efficiently and effectively;
- every attempt is made to contain the costs of the procurement process without compromising any of the procurement principles set out in this Policy;
- Council considers the overall need for a purchase across the various functions of Council and over time before approaching the market;
- smaller contracts are consolidated where practical into a single procurement;

- contracts are not split (either intentionally or inadvertently) to avoid the application of the financial thresholds in section 4.2; and
- active consideration is given to reuse of existing solutions already in place with Council and major procurement activities are viewed strategically, in the context of Council's priorities and market factors, to ensure Council is best placed to achieve its objectives and obtain maximum value for money.

3.2 Risk Management

Risk management is considered at all stages of procurement activities which are planned and carried out in a manner that protects and enhances Council's ability to prevent, mitigate and recover from interruption to the supply of goods, services and works. This section should consider any of Council's risk management policies, procedures and the Corporate Risk Register.

3.3 Ethics and Probity Principles / Conflict of Interest

Probity is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty. Procurement processes must be visible, defensible and auditable. The integrity of the procurement process is upheld to ensure that stakeholders have utmost confidence that procurement outcomes can be justified and that policy and legislative obligations are being met.

When engaging a probity advisor and/or a probity auditor staff must ensure that these roles in no way overlap and are from separate organisations with very clear roles and responsibilities outlined.

In accordance with, and further to, the conduct principles outlined in Section 95 of the Local Government Act, procurement is conducted ethically to enable Council to deal with its suppliers on a basis of mutual trust and respect, and conduct business fairly, reasonably and with integrity.

All personnel (eg: Council staff, consultants, contractors or other persons that will have any input to the development of the specification documents, criteria and weightings, in an advisory or other capacity or will be privy to any of the submissions) involved in a procurement process, subsequent evaluation and the ongoing contract management including payment of invoices must at all times conduct themselves in a way that is, and is seen to be ethical and of the highest integrity and will:

- ensure that they avoid personal or private interests either real or perceived that intersect or overlap with their official duties;
- treat potential and existing suppliers equally and with fairness;
- not seek or receive personal gain
- seek external probity advice and/or appoint an external probity auditor where there is a higher than usual level of complexity or for high value purchases - anything over \$10M;
- seek ad hoc probity advice as soon as an ethical issue or policy breach is identified, in order to minimise the risk of harm to tenderers and Council;
- be scrupulous in their use of public property;
- comply with all legislative obligations including those required by safety and consumer protection legislation;

- be accountable for all decisions made and be able to provide evidence to support outcomes;
- invite quotations and tenders only where there is a clear intent to procure the goods/services/works in the near future;
- observe Council's Code of Conduct;
- protect Commercial in Confidence and other sensitive information;
- not receive gifts or hospitality under any circumstances
- not endorse any unauthorised products or services;
- not use Council's purchasing system for personal use items;
- disclose all personal or private interests associated with the supplier (including interests from previous employment, personal business dealings and matters affecting family members) that might compromise their ability to act solely in the public interest;
- complete and sign a Conflict of Interest & Confidentiality Declaration Form; and
- remove themselves from decision-making processes in the event that a conflict of interest is identified.

Where a conflict of interest is declared, the matter will be referred to Procurement for consideration. The affected panel member will comply with all reasonable directions of Procurement in relation to the management of the issue, so as to minimise any reputational risk to Council.

3.4 Value for Money

All procurement activities are carried out on the basis of obtaining value for money.

Value for money is achieved by minimising the total cost of ownership over the lifetime of the requirement consistent with fitness for purpose and acceptable quality, reliability and delivery considerations. Lowest price is not the sole determinant of value for money.

In accordance with Section 186(3) of the Local Government Act, Council gives preference to goods, equipment, material or machinery manufactured in Australia and New Zealand when practical.

3.5 Socially and Environmentally Sustainable Purchasing

3.5.1 Principles

Socially and environmentally sustainable principles and practices are considered in all procurement decisions.

Council actively pursues the use of quality products that have recycled content and are environmentally responsible, over products made from virgin or inappropriate materials.

Council may give preference to:

- companies or organisations that follow environmentally sustainable and Fair Trade work practices;
- environmentally sustainable goods and services within the context of

purchasing on a value for money basis; or

- tenders that will deliver a social benefit to the local community in addition to or as part of delivering the required goods or services.

3.5.2 Objectives

Council strives to:

- minimise unnecessary purchasing through the conscious and thoughtful purchasing of goods and services;
- minimise waste by using the waste hierarchy to assess purchases (Avoid, Re-use, Recycle, Treatment, Containment & Disposal);
- minimise greenhouse gas emissions by considering the energy efficiency rating of products, including the manufacture & transport energy costs;
- minimise habitat destruction by purchasing goods and services from sustainable and renewable resources;
- minimise toxicity by purchasing goods that are free of toxic or polluting materials;
- minimise soil degradation by using goods and services that do not degrade or pollute the soil, or result in erosion through their use;
- maximise recycled content by giving preference to high quality products containing recycled content; and
- maximise water efficiency by purchasing goods or services that conserve water.

3.6 Buy Local

The Council Vision 2013-2023 aims to develop a regionally significant economy and as such encourages the procurement of goods, services and works within the City of Whitehorse. Local providers are given an equal opportunity to quote and tender. Where a local provider can match or better other providers on price, quality and availability, preference is given to the local provider.

3.7 Buy Safe

All suppliers have obligations under the act to ensure their actions do not pose a health and safety risk. Council tenders / quotations must have a questionnaire around contractor safety requirements within the submission response to ensure that supplier obligations are being met to the correct standards required for each type of procurement.

3.8 Buy Fairtrade

Fairtrade products are given consideration where practical. These are products labelled as Fairtrade or produced under Fairtrade conditions.

Fairtrade is an internationally recognised trading system that ensures decent working conditions, local sustainability, gender equity and fair terms of trade for farmers and workers in the developing world.

Fairtrade certification ensures that small-scale farmers and plantation workers work under safe conditions and receive a fair price for their crops and labour. Fairtrade actively encourages better environmental practices such as organic production methods.

3.9 Understanding the market

Purchasing is always informed by a good understanding of the supply chain (that is, the individuals and organisations that manufacture, sell or provide the goods and services needed by Council).

Council actively seeks to understand and influence the supply chain and to develop relationships with suppliers, within the bounds of probity. This can be done by:

- actively engaging in discussions with key suppliers to better understand issues that are important to suppliers;
- seeking feedback from suppliers about the way Council does business;
- agreeing to meet with new suppliers and encouraging them to bid for Council business where appropriate;
- actively researching issues affecting the supply chain such as regulatory changes or availability of raw materials that may have a follow-on impact on Council; and
- participating in industry groups and maintaining dialogue with peak bodies representing suppliers to ensure a good understanding of the market.

3.10 Disclosure of Information

Council deals with large volumes of confidential information in the context of its procurement activities. Improper disclosure of this information can undermine the competitive nature of Council's procurement, and breach legal obligations to maintain confidentiality owed to third parties.

Council representatives are not permitted to disclose the following types of information:

- information (including pricing) disclosed in any tender or quote submitted to Council;
- matters discussed during negotiations with a supplier; and
- any details of the evaluation process or weighted criteria that are not contained in the formal request documentation issued by Council.

All confidential information held by Council in relation to procurement activities is stored in a secure location, and steps are taken to prevent unauthorised access or disclosure.

3.11 Governance

Council shall:

- establish a procurement management responsibility structure and delegations ensuring accountability, traceability and audit ability of all procurement decisions made over the life-cycle of all goods, services and works purchased; and
- ensure that Council's procurement structure:
 - is flexible enough to purchase in a timely manner
 - ensures that prospective contractors and suppliers are afforded an equal opportunity to tender/quote/submit an EOI

- o encourages competition

3.12 Information Technology Considerations

Council shall:

- ensure that any purchases that are for IT-based systems, Cloud-based systems, IT enhancements to current systems, Digital-based projects or any projects whereby there are potential or real privacy or security issues must be approved by Council's IT Steering Committee prior to commencing the procurement process.

3.13 Property Considerations

Council shall:

- ensure that the Manager Property & Rates has obtained an independent valuation report, which is not more than six months old, prior to:
 - o purchasing property
 - o entering into either a property lease or a property license where Council is the tenant or sub-tenant
 - o entering into an agreement for the management of Council owned propertyAdditional Considerations:
 - A resolution of Council is required prior to Council purchasing any property
 - Council is an "acquiring authority" under the Land Acquisition and Compensation Act 1986 and this act places additional obligations on Council when purchasing property

4 Procurement – General Requirements

4.1 Total Value - Definition

For quotations, the total value is the estimated value or reasonably anticipated value of the goods, services or works over the lifetime of the contract to be procured.

The annual cumulative expenditure against all suppliers, contractors and consultants is audited annually by the Procurement Department to determine whether tendering of the goods/services/works is required.

For contracts, the total value is the estimated value or reasonably anticipated value of the goods, services or works to be procured over the term of the contract, including project management costs, contingencies, provisional sums and any contract extension options that may or may not eventuate.

4.2 Thresholds

A record of all verbal quotations and written quotations received and all other documentation supporting procurement processes and decisions is stored in Council's Corporate Records Management System and/or Council's Procurement Portal.

The following procurement thresholds are applied to the procurement of all goods, services and works, including fee-for-service retainer arrangements:

| Amount (including GST) | Requirement | Notes |
|--|---|--|
| \$0 - \$10,000 | Best Offer | This must be justified and approved under the relevant delegation. |
| \$10,001 - \$150,000 (Goods and Services) | Request for Quote - Min 3 Written Quotations Received | All goods and services acquired through a supplier totaling more than \$150k over a 3 year period requires a Public Request for Tender |
| \$10,001 - \$200,000 (Works) | Request for Quote - Min 3 Written Quotations Received | All works acquired through a supplier totaling more than \$200k over a 3 year period requires a Public Request for Tender |
| >\$150,001 (Good and Services) | Public Request for Tender | |
| >\$200,001 (Works) | Public Request for Tender | |

For all purchases in excess of \$50,000 a formal contract / agreement must be put in place.

4.3 Delegations

The approval levels for the procurement of goods, services and works are based on the “total value” of those goods, services or works, as defined in Clause 4.1.

Delegation of procurement authority allows specified Council staff to approve certain purchases, quotations and award contracts without referral to Council. This enables Council to conduct procurement activities in an efficient and timely manner whilst maintaining transparency and integrity

Council shall maintain a documented scheme of procurement delegations, identifying Council staff delegated to make such procurement commitments in respect of goods, services and works.

The procurement of all goods, services and works and the refund or reimbursement of moneys (including cash refunds, bank guarantees, bonds etc.) is approved by delegated officers in accordance with the following levels:

Delegations table (figures excluding GST)

| Council Officer | Purchase Orders and awarding of Contracts | Petty Cash | Staff Reimbursements |
|-------------------------|---|------------|----------------------|
| Council | Unlimited | Unlimited | Unlimited |
| Chief Executive Officer | \$750,000 | \$100 | \$5,000 |
| General Manager | \$250,000 | \$100 | \$1,000 |

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| Manager | \$125,000 | \$50 | \$100 |
| *Approved Level 4 Officers | \$20,000 | \$50 | \$50 |
| Level 4 Officers | \$5,000 | \$0 | \$0 |

Note:

*Managers may nominate specific level 4 staff to the higher amount based on operational need. Nominations will be accepted by the Procurement and Contract Specialist and approved by the Head of Finance. *All staff are required to obtain prior approval for any expenditure that involves petty cash or staff reimbursements

*Staff undertaking higher duties in excess of a week will be delegated authority in accordance with the above table. If the tenure is less than a week in duration staff will be directed to other senior officers to sign-off.

*To enable the processing of transactions that have been approved by Council and for administrative purposes only the Head of Finance & Corporate Performance has unlimited delegation in ERP (Enterprise Resource Planning) system.

The procurement of goods, services and works with a total value exceeding \$750,000 is approved by the Council at a Council Meeting or a Special Committee Meeting. Procurement of goods, services and works under \$750,000 that are deemed to be high risk or high sensitivity as determined by the Chief Executive Officer will be required to go to Council also.

4.3.1 Transfer of Approval Authority

The authority to approve the procurement of goods, services and works can be transferred to an authorised officer by the Procurement Department if requested by a delegated officer in writing when the delegated officer is on leave or is unavailable due to other reasons.

4.3.2 Additional Approvals

The following additional approvals are obtained:

| Item | Approval required |
|---|---|
| Additional Fleet | Chief Executive Officer |
| Interstate / International Attendance at Conferences | Chief Executive Officer |
| Engagement of Temporary Staff (for periods >3 months where it is additional to EFT) | General Manager & CEO |
| Permanent Position – Statutory requirement within existing budget | Manager |
| Permanent Position within exiting budget | General Manager & Chief Executive Officer |

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| Additional Permanent Position requiring an NBI | Council under the budget cycle |
| Permanent Position – Position Description Variation and Budget Implications | General Manager, General Manager Corporate Services and CEO |
| Permanent Position – Charged to Capital Works | General Manager, General Manager Infrastructure and CEO |
| Financial Leases and Agreements | Head of Finance and Corporate Performance & General Manager Corporate Services |
| Property Leases / Licenses | Manager Property and Rates |
| IT Applications / Hardware | Head of Digital & Business Technology |
| Capital Works Expenditure | Manager Assets and Capital Works |
| Replacement of Fleet | General Manager Infrastructure |

4.4 Purchase Orders

4.4.1 Raising and Approving Purchase Orders

A purchase order is raised and approved for the procurement of all goods, services and works using Council's electronic purchasing system.

All officers must ensure that purchase orders are raised and approved for all goods, services and works prior to ordering and receiving the goods, services or works.

Officers must not authorise or raise multiple purchase orders (ie: tender/invoice split) to avoid the procurement process and/or delegated approval levels specified in this Policy.

A blanket order can be raised for repetitive purchases from a single vendor if the vendor is under a formal contractual arrangement with Council.

Council's Purchase Order Terms and Conditions applies to all purchases under \$50k and can be found on Council's website.

4.4.2 Use of Electronic Purchasing System

The electronic purchasing system must not be used by any Council officer for personal purchases or for any financial gain by themselves, friends or relatives. Misuse of the Council purchasing system is contrary to Council's Employee Conduct Policy.

Access to the electronic purchasing system is not granted to any Council officer until an approved training course has been completed.

4.4.3 Purchase Order Tolerances

The amount of the invoice should not exceed the value of the purchase order. Invoices where the invoiced amount exceeds the purchase order amount by a value of up to 10% and \$300 whichever is lesser can be approved without the need for an additional purchase order.

4.4.4 Exemptions for Purchase Orders

Purchase orders are not raised for:

- postage service charges
- reimbursements and refunds
- Council networked multifunction device and printer charges
- telecommunication charges and utilities;
- corporate credit card and purchasing card transactions; and
- where payments for approved purchases are made by direct debit transactions.

4.5 Payment Terms

Vendor invoices are paid on a 30 day payment cycle from the date of the invoice received and after completion/receipt of the goods, services or works, whichever is the latter (generally within 30 days).

Payment terms are only changed with the approval of the Head of Finance & Corporate Performance and Corporate Performance.

The preferred payment method is by electronic funds transfer, directly to the relevant bank. Bank account details must be obtained for all new vendors.

Consideration must be given to milestone payments for larger projects, there is a requirement for contractors to meet certain obligations under the contract prior to receiving any lump sum payment. Council will not accept 100% upfront payment for any works or consultancy contracts.

4.6 Purchasing – Other

4.6.1 Corporate Credit Cards and Purchasing Cards

Corporate credit cards and purchasing cards are used in accordance with Council's Credit Card Usage Policy which states that corporate credit cards are not used for personal use. Furthermore, all corporate training is required to be directed via the Corporate Training Credit Card held by the Executive Assistant to the General Manager Corporate Services.

4.6.2 Personal Credit Cards

Personal credit cards are not to be used for Council business purchases under any circumstances unless prior written approval has been gained from a General Manager.

The use of personal credit cards to avoid the Procurement and Approval Levels detailed in this Policy is not permitted.

4.6.3 Petty Cash

The petty cash system operates to reimburse legitimate, urgent and operational business expenses incurred by Council officers in the conduct of Council activities. The maximum claim for petty cash reimbursement is \$100 per receipt and will be authorised as per the delegations listed under 4.8 of this document. In using this methodology staff are required to refer to the Petty Cash Policy

4.6.4 New Vendors

If a new vendor is created following a robust procurement process and awarded a contract for goods, services and/or works, approval is not required for them to be added to the ERP system.

All other new vendor requests are to be approved by the Procurement and Contracts Specialist.

5 Tendering and Quotation Requirements

5.1 Quotations

Quotations are awarded to the supplier providing the Best Value for money outcome, following a transparent and defensible evaluation process conducted in accordance with Council's Tendering and Contract Administration Guidelines.

Verbal and written quotations and invoices for goods, services and works, are approved in accordance with the Approval Levels detailed in clause 4.3.

The approval of a purchase order or invoice using the electronic purchasing system is deemed to be an approval under delegation.

The conflict of interest requirements detailed in clause 3.3 apply equally to approving officers.

5.2 Expression of Interest

Expression of Interest may be invited prior to tendering where Council wishes to:

- Identify which companies are able to meet its requirements
- Seek innovative proposals from industry where specifications are not yet fully defined
- Ensure only the most suitable tenderers are put to the expense of preparing a full tender
- Give the market early notice of the upcoming procurement

5.3 Public Tender Considerations

A public tender for goods and services that are below the financial thresholds of \$150,000 (for goods or services) and \$200,000 (for works) is also considered when:

- Council does not have a sound and current knowledge of the suppliers in the marketplace;
- there has been no comparable recent procurement from which Council can determine a reliable pre-tender estimate of the likely cost of the goods or services required;
- Council is unhappy with its current suppliers' performance or price, and wishes to encourage competition;
- Council is seeking innovative proposals or has an unusual requirement;

or

- one or two suppliers have been servicing this requirement for a period exceeding 5 years, during which time the market has not been tested for alternatives.

5.4 Risk Management and Procurement Planning

A risk management plan is prepared and a probity auditor is appointed for all purchases over \$1,000,000 and projects of lower value but of a complex nature and services that are critical to the continuity of Council business. The risk management plan considers all stages of the procurement cycle.

A Procurement Plan is prepared to sit alongside the Risk Management Plan and detail:

- the business case for the procurement;
- the method of procurement selected and justification for that selection (by reference to the value and risk profile of the purchase and prevailing market conditions);
- the key roles and responsibilities for the procurement to ensure individual accountability; and
- evaluation criteria and weightings that will be used to select the preferred tenderer.

5.5 Advertising Tenders

All tenders for the procurement of goods and services and works with a value exceeding \$150,000 for goods and services and \$200,000 for works, are publicly advertised.

All tender advertisements are approved by the relevant General Manager and Procurement prior to being publicly advertised.

Letters appointing an authorised third party to act as a tendering agent on behalf of Council are approved by Procurement and signed by the CEO prior to the tender being publicly advertised unless other arrangements have been put in place by the Victorian Minister for Local Government whereby a letter of authority is not required. The third party must ensure compliance with the requirements of the Local Government Act including the requirement for a publicly advertised tender and (where applicable) this Procurement Policy.

NOTE: Only the Victorian Minister for Local Government can approve a third party to act as an agent on behalf of Victorian Councils.

5.6 Tender Period

The tender period is a minimum of 21 days unless otherwise approved by the Procurement & Contracts Specialist.

5.7 Charges for Tender Documents

Tender documents are issued to tenderers free of charge.

5.8 Receipt of Tenders

Tenders are received exclusively in the electronic tender box by the specified

closing time.

5.9 Availability of Project / Contract Manager and Evaluation Panel Members during Procurement Phase

Project / Contract Managers allocated to manage the procurement process must be available to manage the process from inception to contract execution as well as the ongoing contract management. Staff allocated these roles must be available to respond to questions for the duration of the time the tender is in the market. It is also expected that the Project / Contract Manager will chair the evaluation panel and that the panel is available to assess all tender / quote submissions during the timeframe allocated within the procurement plan. It is expected that the tender/quotation evaluation is concluded within 45 days from the closing date.

5.10 Receipt of Tenders in the Electronic Tender Box

The use of the electronic tender box is approved by the Procurement & Contracts Specialist prior to inviting tenders. For Tenders over \$500k all tender associated documentation must be approved by the Contracts and Procurement Unit a minimum of two weeks prior to being uploaded to the procurement portal and one week for those under \$500k.

Tender submissions, will only be received via the electronic tender box, emailed or mailed submissions will not be accepted under any circumstances.

5.11 Communication during the tender period

No verbal or email communication from Tenderers to any Council Officers will be accepted during the Tender time. All request for information or clarification must be submit via Council's eTender portal.

5.12 Opening of Tenders

Tenders are opened in the presence of two officers, one of whom is an officer from the Procurement Department. The second officer is the Contract Manager or a nominated representative. Tenders are recorded and signed by the officers present at the tender opening.

5.13 Late Tenders

Tenders submitted after the advertised closing date and time are not accepted under any circumstances and are considered to have never been received. The date and time of receipt is recorded. The late tender is returned to the tenderer with an explanation that it arrived too late to be eligible for consideration.

Late or incomplete tenders due to delays in electronic transmission or system faults by either party will not be accepted under any circumstances.

5.14 Non-Conforming Tenders

Submission of non-conforming tender / quotation responses may risk exclusion at Council' sole discretion.

5.15 Application of Best and Final Offers (BAFO)

Prior approval must be obtained from the relevant GM. Council Staff must justify

the use of a BAFO and engage a probity advisor and a probity auditor. Council's intent or reservation to consider this methodology must be stated within the tender specification.

Use of a BAFO in a competitive procurement process will be subject to review by Procurement prior to going to market.

*NOTE: A BAFO process cannot alter the intent or the scope of services, contract terms and conditions or standards being requested or have any impact on non-conforming tender submissions

A BAFO can be used:

- when there is a clear benefit to Council
- when all tender responses do not sufficiently address the RFT requirements
- where there are project specific requirements and Council will clearly benefit from being able to drill down on certain technologies or methodologies
- only when all aspects of probity are clearly understood and Council is not exposed to risk by being perceived to favour one supplier/contractor over another
- when Council Staff reserve the right to negotiate using this methodology and this is highlighted as part of the conditions of tender
- when all tender submissions received are over the allocated budget and the process will serve to bring the financials back within budget

6 Evaluation of Tenders

6.1 Evaluation Panel Composition

Tender Evaluation Panel Composition must include as follows:

| Contract Value | Panel Number | Panel Composition |
|----------------|--------------|---|
| Under \$1M | 3 | 2 x Subject Matter Experts from Business Area 1 x Independent Stakeholder |
| \$1M - \$10M | 4 | 1 x Subject Matter Expert from Business Area Senior Executive Officer of relevant Department 1 x Independent Stakeholder Procurement (Probity Oversight non-scoring) |
| Over \$10M | 4-6 | 1 x Subject Matter Expert from Business Area Senior Executive Officer of relevant Department 1 x Independent Stakeholder Head of Finance & Corporate Performance or delegate |

| | | |
|--|--|--|
| | | Procurement (Oversight non-scoring) Probity Advisor (non-scoring) *Major Projects & Capital Works Only Probity Auditor (non-scoring)*Major Projects & Capital Works Only |
|--|--|--|

NOTE: Engagement of a Probity Advisor and/or Auditor is undertaken by the Procurement Team who will maintain oversight of the roles via a panel contract arrangement and funded via the individual project budgets.

6.2 Weighted Attribute Method

Tenders are evaluated using the weighted attribute method.

6.3 Evaluation Panel Composition, Criteria and Weightings

Evaluation criteria and their associated weightings must be established and agreed to by the Evaluation Panel prior to the tender being officially open to the market. Criteria, weightings and use of BAFO must have the rationale / justification signed off as per the following delegations:

| Contract Value (Ex GST) | Delegated Evaluation Criteria & Weightings Sign-Off |
|-------------------------|---|
| <\$750,000 | Manager |
| \$750,000 - \$5,000,000 | General Manager |
| >\$5,000,000 | EMT |

***Note:** The contract value includes the whole life cycle of an acquisition from initial concept to the end of useful life of an asset including disposal. You must include any extensions in the total cost.

*For contracts valued over \$5M that require prior EMT approval for criteria and weightings the nominated evaluation team, procurement advisor, probity advisor and probity auditor must be listed on the report.

*Contracts valued less than \$5M may also require prior approval of the above it deemed necessary by the CEO.

*All tender or quotation documentation between \$50,000 - \$500,000 in value must be submitted to and approved by Procurement one week prior going to the market, any that are valued over \$500,000 are required 2 weeks prior.

Mandatory Criteria includes the following minimum weightings:

| Criteria | Definition | Mandatory Minimum Weighting |
|--------------------|---|-----------------------------|
| The Offer | The final price whether Lump Sum or Schedule of Rates | 30% to max 50% |
| Capability | The ability to deliver the required scope / specification within the timeframe, budget and to the standards required. | 30% |
| Credibility | Includes the qualifications and experience of the key personnel, business/financial viability, referee check and past performance | 20% |

*See 6.4 Business Viability Assessment

Other criteria can be weighted and include but are not limited to:

- Technical
- Local Content
- Social Procurement Elements; and
- Sustainability

A rationale must be stipulated as to how and why the criteria were determined and % weightings applied. Staff are also required to provide a methodology on how they will allocate scoring to each weighted criteria. Council will give preference to local, social and sustainable (including recycled products) outcomes when commercial viability and fit for purpose can be obtained.

Council is committed to promoting child safety and ensuring compliance with the Victorian Child Safe Standards. As a Child Safe organisation, Council will formally review contractors who are undertaking work on behalf of Council and who may have direct or incidental contact with children.

***NOTE:** It is expected that low risk high cost procurements such as stationary or traffic surveys will be allocated 50% for price and a justification provided for all weightings where price remains at or substantially close to the minimum 30% (ie: under 40%).

6.4 Business Viability Assessment

A business viability assessment must be conducted for all short-listed suppliers on purchases over \$1M or are considered complex, high risk and critical purchases and/or projects. However, procurement value is not used as the sole indicator of risk. In assessing whether a business 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. Business viability assessments are not required for panel contracts.

Council's Procurement Staff will determine if a business viability assessment is required and will conduct this on behalf of the relevant area. Before a supplier can be considered for further evaluation beyond the financial assessment the assessment must be considered by Procurement and signed-off by the Head of Finance and Corporate Performance.

7 Approval

7.1 Signing of Tender Evaluation Form

The completed weighted attribute tender evaluation form is signed off by every member of the Tender Assessment Panel.

7.2 Signing of Letters of Offer, Contracts & Agreements

All legal agreements must be signed in accordance with the delegated approval levels detailed in clause 4.6. Prior to final execution of documents Procurement must have reviewed and approved.

7.3 Council Staff Responsibilities

Council staff must be aware of their role in ensuring that the principle of responsible financial management is maintained in their own procurement activities. For example,

- Council staff must not authorise the expenditure of funds in excess of their procurement authority (delegated level of authority);
- Council staff must not authorise or write multiple purchase orders to avoid the authorisation process requirements or their procurement authority;
- Expenditure must be recorded in a timely manner i.e. once the services or works have been completed (or payment certificates authorised by the project superintendent), or the goods have been received, the appropriate Council officer must ensure that the correct amount is delivered against the relevant purchase order.
- Failure to comply with this Policy has the potential to expose Council to financial loss, risks non-compliance with the 'Act' and damage of Council's reputation. In accordance with Councils staff code of conduct, which requires all staff to comply with all Council Policies, it is essential that the procurement criteria outlined in this Policy be strictly adhered to. Non-compliance with this Policy will constitute a breach of the Council's staff Code of Conduct and the Local Government Act.

7.4 Council Contracts

Existing Council contracts must be utilised for the procurement of goods, services and works unless the panel of providers cannot provide a specialist type of good, service or works.

Council is committed to developing constructive long-term relationships with suppliers.

7.5 Contractual Terms and Conditions

All contractual relationships must be documented in writing based on Council's standard terms and conditions. Council officers are not to accept changes to Council's standard terms and conditions proposed by a supplier and / or any

agreements provided by an external supplier under any circumstances.

In the event that difficulties are encountered with a supplier accepting Council's standard contractual terms and conditions, no changes are to be accepted without prior consultation and agreement with Council's Contracts and Procurement Unit and written approval from the appropriate delegated authority (General Manager for over \$50k and Manager for under \$50k). Such approval is to be supported with procurement, risk management and legal advice as relevant.

Furthermore, Council Officers are not permitted to sign any contracts, agreements, terms and conditions, leases or other similar purchasing documents without Council's Contracts and Procurement Unit first reviewing the documents.

Contractual terms and conditions must be settled prior to issue of the Acceptance Letter or Award Letter and the Contract Documents or any commitment is made to the supplier. To facilitate this, Council's proposed contractual terms and conditions must be issued as part of any request for quotation or tender documentation (on all purchases over \$50k) to ensure that suppliers are fully aware of the contractual terms and conditions that will be the basis of any contractual relationship between the parties. For purchases under \$50k Council's standard Purchase Order terms and conditions will apply.

Contract terms must be considered and selected to provide the best procurement outcome for Council. It is critical that Council enforce market testing and have rigor around the length of contracts to ensure receipt of Best Value and competitive pricing.

Council's contractual award arrangements are as follows:

| Description | Time Frame |
|---|--|
| IT contracts | 5 year + 3yr + 2yr extension |
| Panel Contracts for Goods and Services (includes consultants) | 3 year + 2yr extension Consulting Services (one off) within agreed project timeframe |
| Ongoing Services | Up to 10 years |
| Goods | Within agreed delivery timeframe |
| Major and Capital Works | Within agreed timeframe + Defects Liability Period |

Any decision made under delegation to award a contract does not include the awarding of any extension options for the contract.

Any extension of a contract containing an extension option requires a further, separate decision close to, and prior to, the expiry of the initial term.

The extension of a contract containing an extension option is approved by the same delegated officer or Council that approved the original contract. If the original contract was approved by Council, then the contract extension is also approved by Council, unless otherwise delegated and approved by Council.

7.6 Rate Adjustments

For all contracts longer than 12 months, provisions are made in the contract for rate adjustments based on the Consumer Price Index (Melbourne All Groups Index Numbers), minimum wage increases as provided by the Australian Fair Pay Commission or other approved methods.

Reasonable requests for rate increases resulting from circumstances that are clearly beyond the control of the supplier/contractor/consultant or that could not have been foreseen at the time of submitting a tender are given due consideration.

If a contract is silent in relation to the rates payable during any contract extension, then because Council has discretion to exercise the option, it may also propose the applicable rates to apply during the extension period.

7.7 Contract / Purchase Order Variations

Contract variations must be approved and signed off as per the list of delegations under 4.3. Any variation must include a report including justification, type of variation (ie: time, cost, changes to goods, works, services etc), financial impact and any risks / implications involved.

Purchase order variations are allowable within a tolerance of 10% or up to \$300, whichever is the lesser.

7.8 Contract Security

Successful tenderers lodge a security deposit in the form of a bank guarantee, cash payment or cheque.

The amount of the security deposit is as follows, unless otherwise approved by the Manager Procurement & Contracts:

| Type of Contract | Security Payments / Bank Guarantees Required |
|---|--|
| Goods and Services (non-annual) | Not Required |
| Annual Supply Services (Sole Provider eg: waste) | The minimum amount of the security deposit is 2.5% of the contract sum or \$2,000, whichever is greater |
| Annual Supply Panels | Not Required |
| Works | The minimum amount of the security deposit is 5% of the contract sum or \$2,000, whichever is greater |
| Consultants | Not required if engaged under a panel arrangement however, if engaged for a specific project valued >\$500K then a security deposit of 5% of the contract sum will be applied. |

7.9 Insurances

Successful tenderers take out and maintain insurance cover for the term of the contract and provide evidence of cover prior to providing goods and services and prior to commencing works under the contract. The insurance policies do not contain policy exclusions that are relevant to the contract.

The type and minimum amount of insurance cover required varies depending on the type of contract, as follows:

| Type of Contract | Type of Insurance | Minimum Level Required |
|----------------------|------------------------|------------------------|
| Goods and Services | WorkCover | |
| | Public Liability | \$10M |
| | Professional Indemnity | \$5M (if applicable) |
| | Products Liability | \$10M |
| Annual Supply Panels | WorkCover | |
| | Public Liability | \$20M |
| | Professional Indemnity | \$1M (if applicable) |
| | Products Liability | \$20M |
| Works Contracts | Workcover | |
| | Public Liability | \$20M |
| | Professional Indemnity | \$10M (if applicable) |
| | Products Liability | \$20M |

8 Exemptions under the Policy

Under some circumstances. Exemptions under the policy will be approved by the Head of Finance & Corporate Performance and Corporate Performance following a review and recommendation made by Council's Procurement and Contracts Specialist.

The following areas are exempt from the terms of this policy:

- Payments with statutory/legislative requirements, such as payments to the ATO, fire levy etc
- Superannuation
- WorkCover and Injury Management Related Expenditure
- Legal Costs (exempt under provisions of Local Government (General) Regulations 2015)
- Payments to the Victorian Electoral Commission (VEC) as the VEC is now mandated to conduct all council elections (clause 1 Schedule of the Local Government Act 1989)
- Payroll Deductions
- Investments / Term Deposits
- Sundry Funds (including pension rebates, deceased animal refunds, crossing deposit refunds)
- Payments under the Building and Construction Security of Payments Act 2002
- Mayor and Councillor allowances and expenses
- Property Purchases, Sales or Rentals
- Non-contestable services and works undertaken by and on behalf of Utility and Service owners including water, electricity, gas and other energy based services, telecommunications and ISPs whereby the infrastructure is owned and managed by a particular party

- Warranty renewals
- Leases and Licenses (Refer Manager Property and Rates)
- Community Grants
- In an emergency where “emergency” is defined as:
 - a state disaster declared under the Emergency Management Act 1986, or any other declaration made by the State’s Premier under an enactment;
 - any local / regional disaster as declared by the CEO and whereby Council’s Business Continuity Plan or Emergency Management Plan is enacted;
 - any urgent circumstance which may present a risk to public health and/or safety;
 - the failure of a key service provider such as Council’s Waste Collection Service;
 - significant damage to a municipal building; or
 - major business disruptions such as an extensive IT failure resulting in a loss of services to the community.
- procurement of works of art; and
- procurement of performing arts (including individual / groups of artists and / or shows) defined as forms of creative activity that are performed in front of an audience, such as drama, music and dance.
- Whereby the purchase of an alternate provider is untenable for Council due to the presence of patents, IP and other stipulations necessitating Council to replace current systems or infrastructure with no allowable budget (ie: upgrades, licensing, enhancements and maintenance on existing IT systems, municipal access keys, specialised replacement parts for fleet or plant etc)

Where an exemption applies, the Key Purchasing Principles set out in this Policy still apply, in particular:

- maintaining probity;
- demonstrating ethical conduct;
- avoiding and managing conflicts of interest; and
- obtaining Best Value for money.

9 Policy Responsibilities

9.1 Responsible General Manager

The General Manager Corporate Services is responsible for this policy. The Procurement and Contracts Specialist is responsible for the delivery and management of the Policy

9.2 Review Date

The next review will be June 2020 or as required with the new Local Government Act and associated regulations.

9.3 Human Rights Charter Compliance

This policy has been reviewed for Human Rights Charter compliance and consideration of the *Modern Slavery Act (2108) Australia*.