



## Council Policy

### 3.2 – PROCUREMENT POLICY

#### PURPOSE

Council is required under section 186 of the *Local Government Act 1989* to prepare, approve and comply with a Procurement Policy. In accordance with the Act, the Procurement Policy sets out the key principles and processes applied to the purchases of Goods, Services and Works by Council.

#### SCOPE

This policy applies to all procurement activities undertaken by Council and is binding upon Councillors, Council Officers, contractors and consultants while engaged by Council. This Procurement Policy does not cover contract management activities.

#### DEFINITIONS

In this Policy:

**Act (the)** means the *Local Government Act 1989* (as amended).

**Conflict of Interest** means where a Councillor or Council Officer has private interests that could influence, or be seen to influence, their decisions or actions in the performance of their public duties, defined under the Act as a direct or indirect interest.

**Content Manager** means Council's Electronic Document and Records Management System.

**Council** means Colac Otway Shire Council.

**Councillor** means a person who has been elected to the office of councillor of Council.

**Council Officer** means a current member of Council staff with the authority to engage in activities on behalf of Council.

**Emergency** means 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 any person in Victoria or which destroys or damages, or threatens to destroy or damage, any property in Victoria or endangers or threatens to endanger the environment or an element of the environment in Victoria including, without limiting the generality of the following:

- (a) an earthquake, flood, wind-storm or other natural event;
- (b) a fire;
- (c) an explosion;

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CM reference		Date of adoption	27 November 2019
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- (d) a road accident or any other accident;
- (e) a plague or an epidemic or contamination;
- (f) a warlike act or act of terrorism, whether directed at Victoria or a part of Victoria or at any other State or Territory of the Commonwealth;
- (g) a hi-jack, siege or riot; and
- (h) a disruption to an essential service.

**Goods, Services or Works** means the deliverable(s) the preferred Invitee will be required to provide to Council, once the conditions of contract have been agreed between the preferred Invitee and Council.

**Invitee** means a company, person or entity (including representatives) which submits a tender or quote; and includes, where the context permits, prospective Invitees and other recipients of the request for tender or request for quote.

**Local Content** means the labour, materials, plant and supervision that is sourced from within Colac Otway Shire.

**Market Engagement Method** means the market mechanism for the procurement of Goods, Services or Works.

**Value for Money** means the achievement of a desired procurement outcome at the best possible price, not necessarily the lowest price, based on a balanced judgement of financial and non-financial factors relevant to the procurement.

**Variation** means any change to the contract either agreed to by the superintendent and contractor or resulting from a direction to undertake Goods, Services or Works that differ from those in the contract.

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## REFERENCES

This policy should be read in conjunction with the following:

- (a) *Competition and Consumer Act 2010*;
- (b) *Freedom of Information Act 1982*;
- (c) *Local Government Act 1989*;
- (d) *Privacy Act 1988*;
- (e) *Public Records Act 1973*;
- (f) *Security of Payments Act 2002*;
- (g) Council's Procurement Procedure;
- (h) Council's Fraud Prevention Policy;
- (i) Council's Information Privacy Policy;

### Uncontrolled when printed

CM reference		Date of adoption	27 November 2019
--------------	--	------------------	------------------



- (j) Council's Gifts, Benefits and Hospitality Policy;
- (k) Council's Staff Code of Conduct Policy; and
- (l) Council's Councillor Code of Conduct Policy.

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## STATEMENT OF POLICY

### 1. Statement

Council is committed to the effective procurement of Goods, Services and Works through adopting best practice principles, policies and procedures. It is recognised this will also support the achievement of Council objectives regarding sustainable and socially responsible procurement, support of the local economy and obtaining Value for Money, which in turn, will lead to a better outcome for Council in the provision of services for the community.

Councillors, Council Officers, contractors and consultants while engaged by Council are required to comply with this Procurement Policy and Councils Procurement Procedure in all circumstances.

### 2. Treatment of GST

All monetary values stated in this policy include GST except where specifically stated otherwise.

### 3. Best Practice Principles and Framework

#### 3.1 Value for Money

The principle of Value for Money underpins Council's procurement function. It is the achievement of a desired procurement outcome at the best possible price, not necessarily the lowest price, based on a set list of financial and non-financial criteria relevant to the procurement. It is a common, internationally recognised test for benchmarking expenditure to achieve policy objectives. Value for Money considers the total cost of procurement from planning to disposal and everything in between. This is commonly known as total cost of ownership. Achieving Value for Money will be facilitated by:

- (a) developing, implementing and managing a procurement framework that supports the co- ordination and streamlining of activities throughout the lifecycle;
- (b) development, implementation and management of the local procurement strategy;
- (c) effective use of competition;
- (d) using aggregated contracts where appropriate;
- (e) identifying and rectifying inefficiencies in procurement processes;

**Uncontrolled when printed**

CM reference		Date of adoption	27 November 2019
--------------	--	------------------	------------------



- (f) developing cost efficient tender processes including appropriate use of e-solutions; and
- (g) working with suppliers to create relationships that are professional and productive.

### 3.2 Conduct of Councillors and Council Officers

Council Officers must exercise the highest standards of integrity in a manner able to withstand the closest possible scrutiny. In accordance with section 95 of the Act, Council Officers have an overriding responsibility to act impartially and with integrity, avoiding conflicts of interest.

Councillors and Council Officers, must:

- (a) at all times avoid situations in which private interests conflict, or might reasonably be thought to conflict, or have the potential to conflict, with their Council duties;
- (b) not participate in any action or matter associated with the arrangement of a tender or contract where that person has a direct or indirect conflict as defined by the Act; and
- (c) when becoming aware of a conflict, promptly declare the direct or indirect Conflict of Interest to the Procurement and Contracts Department, or in the case of Councillors declaring a conflict to the Mayor or the Committee Chair, depending on whether the matter is to be considered by Council or an Assembly of Councillors, as well as the Chief Executive.

Councillors cannot participate in any aspect of the procurement process unless acting in the capacity of Council at a formally constituted Council meeting to consider the awarding of a contract.

### 3.3 Fair and Honest Dealing

Council is committed to providing equal opportunity for all businesses, irrespective of their size and location, to bid for work through open and transparent market processes. Impartiality is to be maintained throughout the procurement process so it can eliminate the prospect of any bias in decisions and withstand public scrutiny.

### 3.4 Accountability and Transparency

Accountability in procurement means being able to explain and provide evidence on the process followed to procure the goods, services or works. The test of accountability is that an independent third party must be able to see clearly that a process has been followed and that the process is fair and reasonable.

All procurement activities must be in accordance with the Act, this policy, Council's Procurement Procedure and related relevant Council policies and procedures.

Uncontrolled when printed

CM reference		Date of adoption	27 November 2019
--------------	--	------------------	------------------



### 3.5 Fraud and Corruption Control

Council takes allegations of fraudulent activity and corrupt conduct seriously. Council is committed to preventing, deterring and reporting corrupt and fraudulent behaviour. Council has developed a Fraud and Corruption Control Policy which provides a framework for preventing the risk of fraud and strengthening organisational integrity.

### 3.6 Competition and Consumer Act Compliance

Council will comply with the *Competition and Consumer Act 2010* and other fair-trading legislation applicable to its operations. Council is committed to the public policy goals embodied by these laws, which include the protection and promotion of competition.

Council is committed to ensuring staff are informed of their obligations arising under competition and consumer legislation, and to not allow the following to occur:

- (a) restrictive trade practices (including price fixing and exclusionary provisions relating to a division of territories);
- (b) market sharing (including allocation of customers), anti-competitive agreements, exclusive dealing and misuse of market power;
- (c) inaccurate communication or promotion (including misleading or deceptive conduct, false claims and unsubstantiated predictions); and
- (d) unconscionable and / or unfair business practices.

### 3.7 Risk Management

Risk management is to be appropriately applied at all stages of procurement activities. It is to be properly planned and carried out in a manner that will protect and enhance the Council's capability. This is to prevent, withstand and recover from interruption to the supply of Goods, Services or Works. The Council will minimise its risk exposure by measures such as:

- (a) standardisation of contracts including current and relevant clauses;
- (b) requiring security deposits where appropriate;
- (c) where required, referring specifications to relevant industry experts;
- (d) contracts must be fully executed before the commencement of the Good, Service or Work; and
- (e) use of or reference to relevant Australian Standards (or equivalent).

The Procurement and Contracts Department provides assistance to Council Officers to obtain Goods, Services and Works using the most appropriate purchasing method. This includes:

**Uncontrolled when printed**

CM reference		Date of adoption	27 November 2019
--------------	--	------------------	------------------



- (a) providing assistance and advice regarding Council’s procurement procedures and delegations;
- (b) developing appropriate documents and forms used in the procurement process; and
- (c) managing and coordinating Council’s tenders.

To protect the best interests of the Council, terms and conditions will be settled in advance of any commitment being made with a contractor or supplier. Any exception to this requirement exposes Council to risk.

### 3.8 Probity Auditor

The use of an external, independent probity auditor is mandated when the value of the Goods, Services or Works exceeds \$2,000,000 (including GST) or where the procurement has a high-risk rating.

A probity auditor ensures process compliance and helps ensure high standards of probity in the conduct of the procurement activity. The role of the probity auditor includes:

- (a) endorsement of the procurement plan;
- (b) attendance at tender closing, briefing sessions and tender evaluation meetings;
- (c) endorsement of the tender evaluation panel report; and
- (d) submission of an independent report.

The probity auditor will provide their independent report once the tender evaluation panel report is finalised.

### 3.9 Disclosure of Information

The commercial interests of existing and potential suppliers must be protected. Confidentiality of information provided by existing and prospective suppliers must be maintained, particularly commercially sensitive material such as, but not limited to prices, discounts, rebates, profit, manufacturing, intellectual property and product information.

At no stage should Councillors or Council Officers have discussions with potential suppliers about active procurements prior to the approval process being finalised, other than authorised procurement negotiations. Councillors and Council Officers should take care that their duty to consider issues fairly and properly is not compromised by participating in discussions with suppliers where the intent of the supplier is to improperly influence a Councillor’s or Council Officer’s decision-making in procurement related matters.

### 3.10 Record Keeping

Council Officers need to ensure that all records relating to procurements are stored in Content Manager. This is to ensure that:

- (a) the processes followed and any decisions made during the procurement can be substantiated; and

**Uncontrolled when printed**

CM reference		Date of adoption	27 November 2019
--------------	--	------------------	------------------



- (b) there are adequate records to support contract matters or disputes.

The structure and extent of records kept will depend on the value and complexity of the procurement.

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

### 3.11 Gifts and Hospitality

Councillors and Council Officers must not, either directly or indirectly, solicit or accept gifts or hospitality from any member of the public where:

- (a) it is made during a procurement or tender process by a person or organisation involved in the process; and
- (b) acceptance could be perceived as endorsement of a Good, Service or Work; or
- (c) acceptance would unfairly advantage the member of the public in future procurement decisions.

Councillors and Council Officers should refer to Council’s applicable Code of Conduct for more guidance regarding the declaration of gifts/hospitality.

### 3.12 Support for Sustainable Procurement

Council will include in its tender process, where applicable, a weighting of five (5) percent for environmentally sustainable practices and content when engaging and contracting with suppliers.

Criteria	Description	Weighting
Sustainable Procurement	Percentage of sustainable content in the delivery of the Goods, Services or Works.	3.5%
	Documented evidence of the organisation’s commitment to its own environmental performance. This may include policies, initiatives and environmental management systems.	1.5%

Where applicable, Council Officers shall consider the following environmental principles as part of their procurement activity:

- (a) Refuse – Choose not to procure a good or service.
- (b) Reduce – Choose to procure less of a given good or service.

**Uncontrolled when printed**

CM reference		Date of adoption	27 November 2019
--------------	--	------------------	------------------



- (c) Reuse – Procure a product of extended life or of multiple uses.
- (d) Recycle – Procure a product that contains amounts of non-virgin materials.
- (e) Replace – Choose to replace or offset the resources purchased in a product.

### 3.13 Support for Local Content

Council will include in its tender process a mandatory weighting of five (5) percent for Local Content when engaging and contracting with suppliers. This is to acknowledge the suppliers whose activities contribute to the financial and social wellbeing of the region.

Criteria	Description	Weighting
Local Content	Principle place of business.	2.0%
	Percentage of Goods, Services or Works sourced from within the Shire.	1.5%
	Employment of trainees and apprentices from within the Shire.	1.0%
	Sponsorship of community or sporting groups from within the Shire.	0.5%

With the exception of contracts that are the subject of a tender, in every instance where it is reasonable to do so, Council Officers shall seek at least one quote from a local business.

### 3.14 Ministerial Approval

The requirements of section 186 of the Act do not apply if a contract is entered into in accordance with arrangements approved by the Minister.

### 3.15 Procurement Delegations

Delegations define the limitations within which Council Officers are permitted to work. Delegation of procurement authority allows specified Council Officers to approve certain purchases, quotations, tender and contractual processes without prior referral to Council. This enables Council to conduct procurement activities in an efficient and timely manner while maintaining transparency and integrity. There are two types of delegations relevant to procurement:

**Uncontrolled when printed**

CM reference		Date of adoption	27 November 2019
--------------	--	------------------	------------------





- (a) financial delegations specify the amount of money that Council Officers are authorised to expend on behalf of Council; and
- (b) procurement delegations specify the authority conferred on Council Officers to conduct specific procurement related functions.

Council Officers are authorised to undertake a procurement up to the limit of their financial delegation. Recommendations where the expenditure is over the Chief Executive’s delegation of \$300,000 including GST must be approved by Council.

### 3.16 Market Engagement Methods

Procurement Value (Including GST)	Minimum Market Engagement	Payment Method	Agreement Type	Record Keeping
\$0 to \$2,000	One (1) verbal quote	Petty cash (\$50 limit); Corporate purchase card; or Purchase order.	Purchase order terms and conditions.	Receipt of purchase.
\$2,001 to \$10,000	Two (2) verbal quotes	Purchase order.		Verbal quote form must be attached to the purchase order in Council's finance system.
\$10,001 to \$50,000	Two (2) written quotes		Purchase order terms and conditions; or Consultancy contract.	Quotes and written quote form must be attached to the purchase order in Council's finance system.
\$50,001 to less than \$150,000 (Goods and Services) or \$200,000 (Works)	Three (3) written quotes		Contract.	In accordance with Council's Procurement Procedure.
\$150,000 (Goods and Services) or \$200,000 (Works) or greater	Request for Tender (RFT)			

Uncontrolled when printed

CM reference		Date of adoption	27 November 2019
--------------	--	------------------	------------------



### 3.17 Exemptions from Market Engagement Methods

An exemption to the Market Engagement Methods and procedures may be requested under the following circumstances:

- (a) in matters of Emergency including public health, security or safety as a result of an unforeseen event or occurrence;
- (b) where a competitive process has been undertaken in line with the requirements of S186 of the Act through third party organisations e.g. MAV Procurement, Procurement Australia or State Government;
- (c) installations where a change in supplier would necessitate the procurement of goods and services that do not meet the requirements for interoperability or interchangeability;
- (d) an absence of competition for technical reasons;
- (e) the Goods, Services or Works are required as part of a grant, funding agreement, lease or similar arrangement specifically stating how the Goods, Service or Works are to be provided or undertaken;
- (f) where the acquisition is of a cultural or artistic nature i.e. a live show or art piece; and
- (g) where the procurement is on Council's procurement exemptions list (refer to Appendix 1 – Procurement Procedure).

Procurement Value (Including GST)	Policy Exemption
\$2,001 to less than \$150,000	Approval must be sought from the relevant General Manager using the procurement exemption form.
\$150,000 to less than \$200,000 (Works)	Approval must be sought from the Chief Executive using the procurement exemption form.
\$150,000 (Goods and Services) or \$200,000 (Works) or greater	Ministerial exemption must be sought unless the Chief Executive has declared an emergency.

### 3.18 Mechanisms

Once a Market Engagement Method has been determined, Council Officers need to obtain authority to purchase the Goods, Services or Works on behalf of Council. There are three mechanisms available to purchase Goods, Services or Works:

Uncontrolled when printed

CM reference		Date of adoption	27 November 2019
--------------	--	------------------	------------------



- (a) petty cash (\$50 limit);
- (b) corporate purchase cards (recommended for procurements less than \$75); or
- (c) approved purchase order.

If petty cash or a corporate purchase card is not used for the procurement, then an approved purchase order must be generated before committing to the procurement.

### 3.19 Contracts

All procurement related contracts entered into by Council must be reviewed and endorsed by the Coordinator Procurement and Contracts prior to execution.

### 3.20 Variations

Contract Variations must be approved in accordance with Council’s delegations. Variations should not exceed the available budget.

Position	Variation (including GST)
General Managers	<p>up to the lesser of:</p> <ul style="list-style-type: none"> <li>• 20% of the original Contract value; or</li> <li>• a maximum of \$150,000.</li> </ul> <p>Where the aggregate of all Variations exceeds 20% or is greater than \$150,000 they must be referred to the CE for authorisation.</p>
CE	<p>up to the lesser of:</p> <ul style="list-style-type: none"> <li>• 30% of the original Contract value; or</li> <li>• a maximum of \$300,000.</li> </ul> <p>Where the aggregate of all Variations exceeds 30% it will be noted in the bi-annual report to the Audit Committee. For aggregate amounts greater than \$300,000 they must be referred to Council for authorisation.</p>

**Uncontrolled when printed**

CM reference		Date of adoption	27 November 2019
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## 4. Roles and Responsibilities

These management positions are responsible for the implementation, communication and compliance monitoring of the policy in their work areas:

Party / Parties	Roles and Responsibilities
Chief Executive	Ensure overall organisation compliance with the policy.
General Managers	Ensure compliance with the policy by all Council Officers under their supervision.
Corporate Services General Manager	Overall responsibility for the policy implementation and compliance.
Managers	Ensure compliance with the policy by all Council Officers under their supervision.
Coordinator Procurement and Contracts	Responsible for reviewing, updating and implementing policy. Together with the Procurement and Contracts Department, primary source for procurement advice, training and guidance.

## 5. Privacy and Human Rights Consideration

All personal information collected by Council in connection with procurement activities will be handled in accordance with all applicable privacy legislation and will be used only for the purpose of investigating procurement matters.

The procurement policy has been assessed as compliant with the obligations and objectives of the Victorian *Charter of Human Rights and Responsibilities Act 2006*. Please refer to [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au) for assistance with this section.

Uncontrolled when printed

CM reference		Date of adoption	27 November 2019
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DOCUMENT CONTROL

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Uncontrolled when printed

CM reference		Date of adoption	27 November 2019
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