



13.2 **PROCUREMENT POLICY**

EXECUTIVE MEMBER: **CHRIS CARROLL, GENERAL MANAGER, CUSTOMER, OPERATIONS AND INFRASTRUCTURE**

PREPARED BY: **LACHLAN JOHNSON, EXECUTIVE MANAGER CONSTRUCTION, CONTRACTS AND OPERATIONS**
WAYNE MOORE, COORDINATOR PROCUREMENT, CONTRACTS & FLEET
TIM BROWN, PROCUREMENT ADVISOR
BEN MCLAUGHLIN, PROCUREMENT CONTRACTS MANAGEMENT BEST PRACTICE LEAD

1. PURPOSE

- 1.1 To provide a report back to Council on the submissions received from the community consultation process on the proposed Procurement Policy.
- 1.2 To present the final Procurement Policy updated in response to community feedback for Council's consideration and adoption.

2. EXECUTIVE SUMMARY.

- 2.1 In March 2020 the Local Government Act 2020 (Act) was proclaimed. The provisions pertaining to procurement came into operation on the 1 July 2021. A transition period of six months (1 July 2021 to 31 December 2021) has been provided to councils to adopt a procurement policy that is in accordance with the new framework. Councils must adopt a procurement policy in accordance with the Act by 31 December 2021 to ensure they are compliant with legislation.
- 2.2 Since the last report to Council on the 18 August 2021 several steps have been taken to prepare the proposed Procurement Policy (Policy) attached to this report.
- 2.3 The requirements of the Act have been incorporated into the proposed Policy namely:
 - Specification of the principles, processes and procedures applying in respect of the purchase of goods, services or works.
 - Embedment of processes and controls to ensure value for money is achieved through fair and open processes.
 - Stipulation of a threshold of \$300,000 for when a public tender must be sought, description of the public tender process, and criteria to be used to evaluate whether the proposed contracts to be entered into provide value for money.
 - Council's commitment to exploring collaborative opportunities with other councils and public bodies.
- 2.4 The Gender Equality Act 2020 (GEA Act) commenced on the 31 March 2021. The GEA Act promotes gender equality by requiring the Victorian public sector, local councils and universities to take positive action towards achieving workplace gender equality. As an initial step in the process, Council's conditions of tender have been amended to include a questionnaire relating to gender equality.
- 2.5 The community consultation process for the proposed Policy was undertaken between 19 August 2021 and 30 September 2021 (six-week period).



- 2.6 Six submissions were received from a mix of organisations and individuals. While most suggestions provided were already contained in the current Policy, several other suggestions were agreed to and incorporated into the proposed Policy including:
- Disaggregating the three elements of Corporate Social Responsibility (CSR) (social, economic and environmental) for evaluation purposes.
 - A commitment to annual CSR targets that increase over time and are specific to the purchase of recyclable and other sustainable products.
 - Emissions reporting in specifications for contracts valued over \$1 million wherever feasible with reporting to be strongly encouraged for smaller contracts.
 - Sustainability clauses, compliance provisions and reporting requirements incorporated in all contract management plans and ensuring suppliers set minimum sustainability requirements that are reviewed annually.
- 2.7 A further submission requested that Council's Procurement and Contract Management Standard Procedures be made publicly available to help assist business and other organisations to engage with Council more effectively.

3. RECOMMENDATION

That Council:

- 3.1 Acknowledges the written submissions received from the community consultation process.
- 3.2 Thanks the submitters for their submissions.
- 3.3 Adopts the updated Procurement Policy (Version 6.0) as attached to this report.
- 3.4 Makes publicly available Council's Procurement and Contract Management Standard Procedures once updated.
- 3.5 Authorises the CEO to make minor editorial amendments to the document that do not materially alter the intent of the Policy.

4. KEY POINTS/ISSUES

Previous Report to Council

- 4.1 The requirement for an updated Policy was reported to Council on 18 August 2021.

The Council resolved to:

- Note the requirements of the Local Government Act 2020 for Council to prepare a Procurement Policy.
- Note that Council's current Procurement Policy provides a sound foundation upon which to base the review and update to achieve compliance with the Local Government Act 2020 requirements.
- Endorse the consultation period of community engagement on the new Procurement Policy and encourage the community to provide input into the process.

Procurement Expenditure

- 4.2 Council procures approximately \$135 million worth of goods, services and works per annum. This covers small one-off transactions, long standing contractual



arrangements, and various approaches to market through quoting, expressions of the interest, and public tenders. Table 1 provides a summary of procurement activity over the last three financial years.

Table 1 Procurement Profile

INDICATOR	2018/19	2019/20	2020/21
TOTAL NUMBER OF PURCHASE ORDERS	12,970	10,199	13,679
TOTAL \$ OF INVOICES PAID	\$159,544,514	\$119,609,241	\$134,610,410
NUMBER OF PUBLIC TENDERS	70	54	37

4.3 All procurement activity at Council is governed by Council's Procurement Policy (Policy). It outlines the principles, objectives and requirements that must be adhered to when purchasing goods, services and works on behalf of Council.

Legislative Context

4.4 In March 2020 the Local Government Act 2020 (Act) was proclaimed. The provisions pertaining to procurement came into operation on the 1 July 2021.

4.5 A transition period of six months (1 July 2021 to 31 December 2021) has been provided to councils to adopt a procurement policy that is in accordance with the new framework.

4.6 Councils must adopt a procurement policy in accordance with the Act by 31 December 2021 to ensure they are compliant with legislative requirements.

4.7 There are no regulations or amendments pertaining to the procurement provisions contained in the Act; however, it should be noted that if regulations were introduced in the future this may have an effect on the Policy.

Legislative Changes

4.8 The procurement provisions under the Act are a significant departure from the Local Government Act 1989 (1989 Act) in many respects. The key outcome that the legislators sought to achieve was to remove the 'unnecessary and outdated prescription' from the 1989 Act to enable councils to 'develop their own procurement policies that embrace collaboration and economies of scale'.

4.9 Compared with the 1989 Act, there are no:

- Prescribed thresholds at which councils must go out for tender.
- Provision for the Minister for Local Government to grant exemptions from tendering requirements.
- Reference to agency arrangements whereby a council can engage an agent such as the Municipal Association of Victoria to act as its agent in conducting a tendering process.
- Provision to novate contracts (i.e.: transfer the contract to another contractor if the current contractor is bought out, merged etc.).



Legislative Requirements

4.10 In accordance with sections 108 and 109 of the Act, Council must prepare and adopt a procurement policy that include or outline the following:

- A council must specify principles, processes and procedures applying in respect of the purchase of goods, services and carrying out of works.
- A council must seek to promote open and fair competition and provide value for money.
- The contract value above which the council must invite a public tender or seek an expression of interest
- A description of the criteria to be used by council to evaluate whether a proposed contract provides value for money.
- A description of how a council will seek collaboration with other councils and public bodies in the procurement of goods and services.
- The conditions under which the council may purchase goods and services without inviting a public tender or expression of interest.
- A description of the process to be undertaken in inviting a public tender or expressions of interest.
- Any other matters prescribed by the regulations.
- The contract value must not exceed that stated in the regulations.
- A council must review the procurement policy at least once during the four-year term of a council.
- A council must comply with its procurement policy before entering into a contract for the purchase of goods, services or carrying out of works.
- The council's Chief Executive officer must ensure that any report to Council that recommends entering into a procurement agreement includes information in relation to any opportunities for collaboration with other councils or peak bodies which may be available.

Proposed Policy

4.11 The proposed Policy has been prepared on the basis that a policy:

- Is a high level document which reflects the Council's position.
- Is supported by the Procurement and Contract Management Standard Procedures (PCMS Procedures) which deal with operational matters.

4.12 The following key principles form the basis of the proposed Policy:

- Value for Money – the best mix of cost, quality (i.e. ability to meet user requirements) and sustainability (environmental, social and economic).
- Efficiency and Effectiveness – the cost of procurement to Council, tenderers and respondents should be minimised while delivering procurement objectives.
- Probity – procurement should demonstrate fairness and impartiality, transparency and accountability, confidentiality and effective management of conflicts of interest.



- Health and Safety – Council will describe the processes and management in the procurement of goods, services and works to ensure that identified hazards, are controlled so far as reasonably practicable.
- Social Sustainability – ensuring purchasing decisions include child safe standards, equity, inclusion, diversity, indigenous suppliers and social enterprise outcomes that will collectively generate social value and benefit.
- Environmental Sustainability - reducing the environmental impacts of goods, services and works, supporting Victoria’s transition to a circular economy and improving environmental outcomes for the organisation and community.
- Economic Sustainability - while remaining compliant with fair-trading legislation, encouraging procurement that supports local businesses and economic diversity and viability. The procurement process will also support the principles within the Small Business Charter.
- Advanced Practice – Council is committed to achieving advanced practice in procurement, including accreditation of contractors by relevant bodies and, where possible and beneficial, collaboration with other councils and public bodies.

4.13 The contract value for the calling of public tenders and EOI under the 1989 Act was a legislative requirement and set limits of \$150,000 for goods and services and \$200,000 for works. Although it is still a requirement to provide a contract value for the calling of public tenders and EOI, the monetary thresholds have been removed allowing councils to set their own limits.

Some thresholds now proposed for public tenders and EOI are:

- Northern Region Group of Councils (NRGC) - \$300,000.
- South East Regional Group of Councils (SERGC) - \$300,000.
- Monash City Council - \$250,000.
- Greater Geelong City Council - \$500,000.

A consistent monetary threshold level with other Councils from our region of \$300,000 will further support the principle of collaborative procurement.

Increasing the existing tender threshold from \$150,000 up to \$300,000 will also help streamline the procurement process and provide the flexibility to align the procurement process to the most efficient and value for money approach. Although a full public tender process may not be necessary, the procurement probity protocols and evaluation processes remain similar.

The proposed threshold uplift will be closely monitored by the Procurement, Contracts and Fleet unit.

4.14 A description of the criteria to be used in the evaluation of public tenders and EOI has been incorporated into the proposed Policy. The Act requires a description of the criteria that will be used for evaluations but does not go as far to require the actual criteria to be used. This is an important distinction as each procurement will require evaluation criteria that is tailored to the specific purchase in order to ensure value for money is obtained.

4.15 Greater detail on Council’s description of evaluation criteria will be included Council’s PCMS Procedures. This document will be updated to reflect the proposed changes to



the Policy and will be made publicly available subject to the endorsement by Council. Table 2 details the current mandatory and suggested criteria in the PCMS Procedures as a reference to the detail that is provided.

	Criteria	Comment
Mandatory	Price	<p>Depending on the service and specification, prices may be sought on a lump sum or schedule of rates basis over the contract term or a price sought for the initial contract term with indexation or negotiation to apply for any contract extension.</p> <p>In any case, the contract sum must be calculated over the contract term, that is, the initial contract term plus any extension period(s). For example, a three plus two contract is to be treated as a five-year contract and the contract sum calculated accordingly.</p> <p>All prices are to include GST.</p>
Mandatory	Capacity to meet the requirements of the specification	<p>This will include aspects such as:</p> <p>Appropriate resources: the equipment, facilities, intellectual property and other physical resources available to the tenderer</p> <p>Management skills: the availability within the tenderer's organisation of people and systems appropriate to the successful management of the execution of the contract.</p> <p>Technical skills: the quality of the personnel offered by the tenderer to provide the services, goods or works</p> <p>Methodology: the procedures the tenderer proposes to use to deliver the service</p> <p>Timeliness: assess whether or not the tenderer can meet any relevant deadline.</p>
Mandatory	Occupational Health and Safety	<p>Assess the tenderer's safety and risk management procedures such as whether or not there is a safety and risk management system in place which will ensure compliance over the contract term and whether the tenderer can meet Council's requirements</p>



Mandatory	Evidence of Required Insurances	The tenderer holds the appropriate type and value of insurances nominated in the invitation to tender
Mandatory	Attendance at pre – tender meeting	The tenderer must attend any mandatory pre tender briefing.
Recommended	Relevant Experience and track record	Assessment of the previous experience of the tenderer, particularly in technical areas comparable to the requirements under the proposed contract. This may include knowledge of local conditions, familiarity with legal requirements, standards and procedures.
Recommended	Corporate and Social Responsibility	Assess the tenderer’s record in addressing social, environmental and economic sustainability issues on similar contracts.
Optional	Quality	Assessment of whether the record of the tenderer in providing a quality service/product and their ability to deliver is credible. The quality criteria may include a requirement for third-party accreditation and/or the submission of a quality assurance plan.
Optional	Risk Management Practices	Assess the tenderer’s commitment to and history of proactive management of risk.
Optional	Transition Plan	Depending on the nature of the service, tenderers may be asked to submit a transition plan indicating how, if they were successful, they would transition from the existing service provider to themselves.
Optional (Mandatory if relevant)	Child Safe Standards	Ensuring relevant tenderers include Child Safety Standards declarations

- 4.16 Council will collaborate with other councils and public bodies where there are opportunities identified and the proposed specification, conditions of tender and contract are satisfactory. Any report to Council recommending entering a procurement will include information in relation to any opportunities for collaboration. Council has previously been party to collaboration arrangements with The City of Melbourne, The City of Yarra, and The City of Maribyrnong.
- 4.17 In addition to the public tender and EOI process, the proposed Policy outlines the following methods of procurement for the sourcing of goods, services and works:
- Request for quotation.
 - Panel contracts, including Council established panels and third-party contracts from the State Government, Municipal Association of Victoria and Procurement Australia.



- 4.18 The proposed Policy prescribes the process by which Council must invite public tenders and EOI, including the following:
- The circumstances in which an EOI is recommended.
 - Approval requirements prior to inviting tenders or EOI.
 - Public advertising requirements.
 - The treatment of late submissions.
 - The establishment of an evaluation panel including management of conflicts of interest.
 - The evaluation and award process.

- 4.19 Council's proposed Policy classifies Corporate Social Responsibility (CSR) as the following:

- Sustainable procurement.
- Circular economy principles (recycling, waste avoidance, material reuse, local sourcing, etc.).
- Indigenous and social procurement.
- Access & inclusion (including gender equality).
- Modern slavery.
- Alignment of tenderer's affiliations with offshore detention, tobacco, fossil fuel generation, gambling, entertainment involving animals, arms sales.

Following the community consultation process more comprehensive environmental aspects relating to procurement were included in the proposed Policy, namely:

- Disaggregation of the three separate elements of CSR (social, economic and environmental) for evaluation purposes.
- A commitment to annual CSR targets that increase over time and are specific to the purchase of recyclable and other sustainable products.
- Emissions reporting in specifications for all relevant contracts valued over \$1 million and reporting will be strongly encouraged for smaller contracts.
- Sustainability clauses, compliance provisions and reporting requirements to be incorporated in all contract management plans and suppliers will be required to set minimum sustainability requirements that are reviewed annually.

- 4.20 The proposed CSR monitoring thresholds will be reviewed annually to ensure they remain practical and meaningful.
- 4.21 The proposed Policy aligns with Council resolutions on Declaring a Climate Emergency (18 September 2019), Treaty on Prohibition of Nuclear Weapons (16 October 2019) and other relevant positions including that of a local economic emergency arising from the COVID-19 pandemic.
- 4.22 The Gender Equality Act 2020 (GEA Act) commenced on the 31 March 2021. The GEA Act promotes gender equality by requiring the Victorian public sector, local councils and universities to take positive action towards achieving workplace gender equality.



- 4.23 Council is required to undertake a gender impact assessment (GIA) on any new policy that has a direct or significant impact on the public. The conduct of a GIA is a mechanism for Council to demonstrate reasonable and material progress towards gender equality as an organisation. The Policy is reasonably expected to have both a direct and significant impact on the public, as such a GIA has been undertaken on the proposed Policy.
- 4.24 Given the legislative requirements, when advertising relevant tenders, Council will consider the impact of options available to advance gender equality through procurement activity. This may include practices to support supplier diversity (e.g.: supporting women-led businesses) but also filter categories such as requiring suppliers to be compliant with the Workplace Gender Equality Act (Cth) or have gender equitable practices in place.
- 4.25 As an initial step in the process, Council's conditions of tender have been amended to include a questionnaire relating to gender quality. This will apply to procurement processes exceeding the \$300,000 public tendering threshold.
- 4.26 The Procurement Policy identifies the circumstances whereby a procurement process exceeding the \$300,000 threshold over the complete contract term that does not require a public tender process. This includes the following;
- the CEO has resolved that the contract must be entered into because of an Emergency (within the provision of the CEO delegation from Council)
 - the CEO has declared a situation of extraordinary circumstance. In this event, a report will be provided to Council at the next available opportunity dealing with the contract and grounds for providing the exception.
 - the contract results from an agency or government panel arrangement.
 - the expenditure relates to purchases from information technology resellers and software developers where there is a sole supplier who holds the intellectual property rights to the software.
 - the expenditure is in relation to statutory insurance schemes (e.g.: motor vehicle compulsory third party, WorkCover etc.).
 - infrastructure related services (electricity, gas, water and telephone).
 - superannuation.
 - taxes and levies.
 - external (financial) auditors.
 - elections.
 - valuations.
 - Australia Post services.
 - allowances and reimbursements.
- 4.27 Below the \$300k threshold, the relevant Executive Leadership Team (ELT) member (CEO or General Managers) may provide an exemption to the Procurement Policy and related procedures provided value for money and legislative compliance can be demonstrated and is documented.



5. CONSULTATION AND STAKEHOLDERS

- 5.1 A six-week community consultation process seeking feedback on the proposed Policy was undertaken on the 19 August 2021 and concluded on the 30 September 2021. A total of six submissions were received. Submitters were invited to speak to their submissions at the 1 December 2021 meeting of Council.
- 5.2 Submissions were received from:
- The Port Phillip Emergency Climate Action Network.
 - The Stop Adani Mine organisation.
 - Four individuals.
- 5.3 Four submissions were primarily focused on incorporating CSR provisions while the remaining submissions focused on cost efficiency. While the majority of suggestions were already contained in the current Policy, a number of other suggestions were agreed to and incorporated into the proposed Policy (refer to section 4.18).
- 5.4 In other instances the suggestions;
- Focused at an operational, rather than policy level.
 - Would require additional resources and systems in relation to contract management, supplier monitoring and reporting.
 - Would impose additional administrative and system requirements.
- 5.5 Full details on all submissions and officer responses can be found at Attachment 3 of this report.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The adoption of this proposed Policy prior to the 31 December 2021 will ensure that Council complies with the requirements of the Local Government Act 2020.
- 6.2 This proposed Policy will ensure the Council maintains a high level of probity and financial control and reduces procurement and contract management risk.
- 6.3 The provisions of sections 108 and 109 of the LGA 2020 are shown in the Attachment

7. FINANCIAL IMPACT

- 7.1 This proposed Policy is a key tool that will ensure Council's spend of approximately \$135 million per annum on goods, services and works provides value for money.

8. ENVIRONMENTAL IMPACT

- 8.1 As a large purchasing body, the City of Port Phillip can minimise the environmental impacts of procurement activities by influencing supply market practices. This proposed Policy has embedded environmental requirements to support reducing its environmental impact as well as achieve community outcomes and reduce operational costs.

9. COMMUNITY IMPACT

- 9.1 This proposed Policy has incorporated social requirements as Council recognises that not all in our community experience equal access to resources and opportunities, including participation in employment and economic activity, which are widely recognised as key factors keeping people healthy and well.



10. ECONOMIC IMPACT

10.1 The proposed Policy includes provisions to support local suppliers.

11. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

11.1 The proposed Policy supports the Council Plan 2021- 2031. The key alignments include:

- Direction 3 Sustainable Port Phillip - with a sustainable future, where our community benefits from living in a bayside city that is cleaner, greener, cooler and more beautiful.
- Direction 5 Well Governed Port Phillip - a leading local government authority, where our community and our organisation are in a better place as a result of our collective efforts.

12. IMPLEMENTATION STRATEGY

12.1 If adopted, the Policy will apply from 1 January 2022.

13. COMMUNICATION

13.1 The Policy will be published on the Council website.

13.2 Council staff will receive training in relation to the proposed Policy and standard documentation will be updated.

14. OFFICER DIRECT OR INDIRECT INTEREST

14.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS

- 1. Attachment A MAV Collaboration Procurement Guidance Note**
- 2. Attachment B Submissions**
- 3. Attachment C Procurement Policy Version 6**