



13.1 UPDATE TO PROCUREMENT POLICY

EXECUTIVE MEMBER: LACHLAN JOHNSON, GENERAL MANAGER, OPERATIONS AND INFRASTRUCTURE

PREPARED BY: TONY MCGANN, EXECUTIVE MANAGER CONSTRUCTION CONTRACTS AND OPERATIONS
WAYNE MOORE, COORDINATOR PROCUREMENT, CONTRACTS & FLEET
BEN MCLAUGHLIN, PROCUREMENT CONTRACTS MANAGEMENT BEST PRACTICE LEAD

1. PURPOSE

1.1 To present the updated Procurement Policy (**Policy**) 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 1 July 2021. Council endorsed the Policy in accordance with the requirements of the Act on 1 December 2021 and became effective on 1 January 2022.

2.2 A number of minor adjustments and enhancements have been identified since the Policy has come into operation. These relate to an omission from the Policy regarding exempting the engagement of legal advice from quoting requirements, the efficient application of the Policy to panel arrangements that have been established through a competitive process assessing best-value and the requirements around the form of agreement used in the engagement of service providers.

2.3 This report outlines a number of recommended alterations to the Policy, including:

2.3.1 Exempting legal services from the requirement of a competitive procurement process in recognition of the unique nature of the provision of legal advice and the alignment of this exemption with Council's previous Procurement Policy.

2.3.2 Streamlining the quote process when procuring from suitable panel contracts that have been established through a competitive procurement process where best-value has been assessed.

2.3.3 The adjustment of the form of agreement requirements for the engagement of professional services and labour from \$15,000 (Inc. GST) to \$50,000 (Inc. GST) in recognition of an increase in the effectiveness and maturity of other risk management controls.

2.3.4 The amendment of the documentation requirements for the engagement of urgent building maintenance works, permitting the engagement of such services up to a value of \$1,000 (Inc. GST) without a purchase order.

2.4 The proposed changes are designed to deliver the following benefits:

2.4.1 Aligning the City of Port Phillip with procurement practices adopted by most councils in the case of legal services and allowing Council to obtain the advice it needs, when it needs it in order to help manage the risks it faces.



- 2.4.2 Making the City of Port Phillip a better place to do business with. By carefully freeing up our quote process from some panel contracts we remove the need for businesses that have effectively already provided their price to us, and been judged to provide value for money, to continually engage in competitive price contests.
- 2.4.3 Increasing project and programme delivery through simplified procurement practises involving suppliers on panel contracts and the appointment of legal providers.
- 2.4.4 Ensuring that minor reactive and urgent building maintenance works are completed as soon as possible to keep assets operational and safe for public use.

3. RECOMMENDATION

That Council:

- 3.1 Adopts the updated draft Procurement Policy (at attachment 3).
- 3.2 Authorises the Chief Executive Officer (or delegate) to finalise and make minor changes that do not materially alter the draft Procurement Policy.

4. KEY POINTS/ISSUES

Legislation

- 4.1 Council's Procurement Policy is designed to ensure Council's compliance with the requirements of sections 108 and 109 of the Local Government Act 2020 and associated regulations.
- 4.2 The Policy also supports section nine of the Act, which includes an overarching governance principle that applies to every procurement that "the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted¹", and "collaboration with other councils and governments and statutory bodies is to be sought²".

Revision history

- 4.3 The last revision of the Policy was adopted by Council at the 1 December 2021 Council meeting. The Policy went into effect on 1 January 2022.

Annual review

- 4.4 In accordance with the requirements of the Policy, in January 2023, a review was completed. The review collated feedback and identified minor adjustments to the Policy that will improve the application of the Policy and address identified gaps.

Proposed revisions

- 4.5 The proposed changes to the Policy are:
 - 4.5.1 Exempting legal services from the requirement of a competitive procurement process in recognition of the unique nature of the provision of legal advice and the alignment of this exemption with Council's previous Procurement Policy.

¹ Local Government Act 2020 (Vic) s 9(2)(c)

² Ibid s 9(2)(f)



- 4.5.2 Streamlining the quote process when procuring from suitable panel contracts that have been established through a competitive procurement process where best value has been assessed.
- 4.5.3 The adjustment of the form of agreement requirements for the engagement of professional services and labour from \$15,000 (Inc. GST) to \$50,000 (Inc. GST) in recognition of an increase in the effectiveness and maturity of other risk management controls.
- 4.5.4 The amendment of the documentation requirements for the engagement of urgent building maintenance works, permitting the engagement of such services up to a value of \$1,000 (Inc. GST) without a purchase order.

4.6 Each proposed amendment is further outlined in the following sections.

Exemption of legal services

- 4.7 It is proposed in Section 4.3 of the Policy to exempt legal services exceeding \$300,000 from a public tender process, and for amounts less than \$300,000 (Section 10.2) to be granted a blanket exemption from the quote requirements in Table 5.
- 4.8 Legal services were exempt from the requirement to conduct a public tender process under the *Local Government Act* (1989). As a result of the removal of this provision by the *Local Government Act* (2020), to date, 54 of the remaining 78 Victorian councils have exempt legal services from their current procurement policies. These include Glen Eira City Council, Bayside City Council, Stonnington City Council, Boroondara City Council, and Yarra City Council.
- 4.9 Procurement decisions are made based on specialised expertise, prior history and knowledge of specific topics, availability, and value for money.
- 4.10 Over the last six months, Council has sought legal counsel from approximately twelve different law firms, which is an indication that market scanning is taking place.
- 4.11 This proposed change is designed to ensure that Council is able to obtain the legal advice it needs, when it needs it, in order to manage the risks that Council faces.
- 4.12 Council officers will conduct ongoing annual reviews of expenditure with its legal service providers to ensure that Council continues to receive value for money in this category of spend.

Panel contracts

- 4.13 Under the current Policy, it is a requirement to follow the quote requirements in Table 5 when engaging suppliers from panel contracts. It is proposed in Section 3.6 of the Policy to allow the seeking of less than the quoting requirement, with a minimum of one quote, from panel suppliers that meet the following requirements:
 - 4.13.1 A value for money assessment was undertaken as part of the establishment of the panel. This includes the requirement that schedule of rates were provided from the suppliers as part of the tender process, these rates were accepted, and the amounts are chargeable under the contract.
 - 4.13.2 The individual procurement does not exceed \$300,000 (including GST).
 - 4.13.3 The panel was formed through a public tender or a two-stage expression of interest process.



- 4.13.4 The CEO has given permission for the panel to be used in this manner, and this decision has been published on Council's website.
- 4.14 If the panel contract fails to meet all the above requirements, then procurement must follow the quote process outlined in Table 5 of the Policy.
- 4.15 The direct approach to suppliers from a panel is consistent with other councils, albeit with varying financial limits, for example:
- City of Melbourne up to \$275,000 (including GST).
 - City of Monash up to \$250,000 (including GST).
 - City of Stonington up to \$50,000 (including GST).
 - City of Kingston up to \$330,000 (including GST).
- 4.16 The nomination of the \$300,000 (Inc. GST) limit to these quoting rules is intended to align with Council's public tender threshold.
- 4.17 This proposed change is intended to increase the speed at which projects and programs can be delivered. It will also make Council a more attractive client to do business with by removing the need for suppliers who have already provided their pricing in their tender submission to continue to engage in competitive processes to win work. Officers are required under the new Policy to ensure that it aligns with the contracted prices and provides value for money.

Form of agreement for professional services & labour engagement

- 4.18 The current Policy requires that the engagement of professional services and labour exceeding \$15,000 (Inc. GST) in value is to be undertaken with a short-form contract in addition to a purchase order with standard terms and conditions.
- 4.19 The inclusion of this control in the Policy was intended to address potential risks associated with the engagement of services under standard purchase order terms.
- 4.20 The stipulation of the adherence to Council's short-form contract conditions for engagements at this level of procurement, whilst mitigating some risks, has presented a barrier to some engagement where the value of the engagement does not align with an organisation's willingness to adjust their risk profile.
- 4.21 Additionally, since the adoption of the Policy, other controls have been put into place across the organisation that better manage the engagement of embedded professional services and labour hire that ensure adherence with relevant employment law and regulations.
- 4.22 The proposed adjustments to the Policy lift the threshold at which the short-form contract is required from \$15,000 (Inc. GST) to \$50,000 (Inc. GST).

Purchase orders for minor reactive and urgent building works

- 4.23 The proposed change listed in Table 5 of the Policy will allow permit the direction of suppliers to perform minor reactive and urgent building maintenance work up to \$1,000 (Inc. GST) before issuing an approved purchase order.
- 4.24 This proposed change will ensure that minor reactive and urgent building maintenance works are completed as soon as possible to keep assets operational and safe for public use.



5. CONSULTATION AND STAKEHOLDERS

- 5.1 Extensive consultation across the different areas of Council was undertaken as part of the review.
- 5.2 Benchmarking and comparative assessments against other councils was undertaken as part of the review.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The proposed adjustments to the Policy will ensure that Council continues to maintain a high level of probity and financial control and reduces procurement and contract management risk.
- 6.2 The adjustment to the requirements around the engagement of professional services and labour providers is considered prudent in the context of other control measures that have been put in place and matured since the original adoption of the Procurement Policy in December 2021.

7. FINANCIAL IMPACT

- 7.1 The proposed changes have no direct financial impact but are likely to enable more seamless use of panel arrangements and potentially greater value being achieved through the use of these contracts.

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. The Policy has embedded environmental requirements to support reducing its environmental impact as well as achieve community outcomes and reduce operational costs.
- 8.2 The proposed changes are unlikely to have any direct impact on environmental outcomes.

9. COMMUNITY IMPACT

- 9.1 The 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 that keep people healthy and well.
- 9.2 As with Council's environmental and sustainability objectives, the proposed changes are unlikely to have any direct impact on environmental outcomes.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The 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.

11. IMPLEMENTATION STRATEGY

11.1 Subject to Council endorsement, the updated Policy will commence on 5 April 2023.

11.2 The updated Policy will be made available through Council's website.

11.3 In accordance with the requirements of the proposed Policy, a CEO determination in accordance with clause 3.6 will be accompanied by the publication on Council's website.

12. OFFICER DIRECT OR INDIRECT INTEREST

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

ATTACHMENTS

- 1. Procurement Policy – Version 6.1 - Endorsed**
- 2. Procurement Policy – Version 6.2 – Marked Up**
- 3. Procurement Policy – Version 6.2 – Clean**