



### 13.1 **PROCUREMENT POLICY**

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#### 1. **PURPOSE**

- 1.1 To outline the process that is proposed for Council to achieve compliance with the procurement requirements of the 2020 Local Government Act.
- 1.2 To outline Council's current Procurement Policy.
- 1.3 To commence a submission period and invite members of the public to make submissions on Council's Procurement Policy

#### 2. **EXECUTIVE SUMMARY**

- 2.1 In March 2020 the Local Government Act 2020 (the Act) was proclaimed. The new procurement provisions of the Act do not come into effect until 1 July 2021. From 1 July 2021 councils have a period of time in which they can get ready and align their processes and policies with the new Act. Full compliance must be in place by 31 December 2021.
- 2.2 Under the Act, until the new Procurement Policy is adopted by Council the provisions of the previous Local Government Act (1989), Section 186 and 186A continue to apply.
- 2.3 The key characteristics of the Act that Council must incorporate in a Procurement Policy are:
  - Prepare and adopt a Procurement Policy that must specify the principles, processes and procedures applying in respect of the purchase of goods, services or the carrying out of works
  - Utilise the Procurement Policy to set thresholds for when a public tender must be sought and criteria to be used to evaluate whether the proposed contracts to be entered into provide value for money. The threshold set in the policy must not exceed the value prescribed by the regulations.
  - Ensure to test the market when carrying out procurement activities to promote open and fair competition and value for money.
  - Continue to implement and apply transparent and fair processes which record the basis for any decision.
  - Task the Audit and Risk Committee with independent, regular assessments and reporting of Council's Procurement Policy and Processes, with established



internal structures that provide for independent review of processes, decision making and robust financial management.

- Uphold an environment that is conducive to good governance, including establishment of processes with defined implemented clear roles and responsibilities that foster effective decision making processes and reflects transparency and accountability.
- Pursue innovation and continuous improvement.
- Establish and maintain an effective approach to the identification, assessment, monitoring and management of risks.
- Deal with finances and assets responsibly to appropriately manage financial risks and be transparent in their financial dealings.
- Promote economic, social and environmental sustainability.
- Collaborate with other councils and describe how the collaboration in the procurement for goods, services and works. The Chief Executive Officer must ensure any report to Council that recommends entering into a procurement agreement contain information in relation to opportunities for collaboration.
- The Procurement Policy must be reviewed at least once within each council term (four years).
- The conditions under which Council can purchase goods, services or works without inviting a tender or expression of interest.

2.4 A Council must plan and deliver services to the municipal community in accordance with service performance principles. The following are the Service Performance Principles;

- Services should be provided in an equitable manner and be responsive to the diverse needs of municipal community.
- Services should be accessible to the members of the municipal community for whom the services are intended
- Quality and cost standards for services set by the Council should provide good value to the municipal community
- A Council should seek to continuously improve service delivery to the municipal community
- Service delivery must include a fair and effective process for considering and responding to complaints about service delivery

2.5 Council's current Procurement Policy meets the majority of the requirements of the 2020 Local Government Act. It is proposed that Council use its current Policy as a basis upon which to prepare a new Policy.

2.6 Council invites the community and interested stakeholders to provide input on changes and improvements to the current Procurement Policy. A final report that summarises all



submissions and input and presents the new Procurement Policy will be tabled for Council consideration before end-2021.

### 3. RECOMMENDATION

That Council:

- 3.1 Notes the requirements of the Local Government Act 2020 for Council to prepare a Procurement Policy;
- 3.2 Notes 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.
- 3.2 Endorses the consultation period of community engagement on the new Procurement Policy and encourages the community to provide input into the process.

### 4. KEY POINTS/ISSUES

- 4.1 Council spends approximately \$160m per annum on procurement. 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	10,169	13,679
Total \$ of invoices paid	\$159,544,514	\$119,609,241	\$134,610,410
Number of public tenders	70	54	37

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

#### Legislative Context

- 4.3 Under the Local Government Act (LGA) of 1989, all councils must have a procurement policy in place.
- 4.4 The Local Government Act (LGA) of 1989 was replaced by the Local Government Act 2020 (the Act) in March 2020. The new Act contains significant changes to the governing law of procurement activities undertaken by councils.
- 4.5 Section 186 of the 1989 LGA prescribed the controls governing a council's procurement processes. This included threshold points at which a council must invite public tenders and expressions of interest. This is currently set at \$150k for services and \$200k for works. The 1989 LGA also prescribed tendering exemptions such as seeking approval from the Local Government Minister and the use of certain panel



arrangements. The 1989 LGA also required councils to review their procurement policies annually.

- 4.6 Section 208 of the 1989 LGA outlined the 'best value' principles that councils were to apply in their procurement activities. Best value was outlined as procurement that achieves the optimal mix of cost, quality (being the ability to meet user requirements) and sustainability (environmental, social and economic).
- 4.7 The Victorian Local Government Best Practice Procurement Guidelines (2013) is a publication that was used by most councils in helping to achieved and maintain compliance with the 1989 Act.
- 4.8 The 2020 LGA is a significant departure from the 1989 LGA in many areas. There are some key changes with regards to procurement requirements of councils. In general, the Act is much less prescriptive when it comes to procurement. The Act empowers each council to make determinations, namely:
- Under section 108 of the Act, each council has the ability to set their own procurement business rules regarding when and how to approach the market (i.e., the tender threshold).
  - Councils are required to develop their own processes, but must ensure that they achieve broad objectives including promoting open and fair competition, collaboration and ensuring value for money.
- 4.9 To be in compliance with the procurement requirements of the 2020 LGA, Council must prepare a Procurement Policy that includes and outlines 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.

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- 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.
- 4.10 Under the Gender Quality Act 2020, 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 Procurement Policy is reasonably expected to have both a direct and significant impact on the public, as such a GIA will be undertaken on Council's Procurement Policy.
- 4.11 Procurement is a powerful vehicle to advanced gender equality within an organisation, with suppliers and across the supply chain. There is a strong business case linked to overall performance for suppliers demonstrating gender equitable practices.
- 4.12 Undertaking a GIA of Council's Procurement Policy will consider the impact of options available to Council to advanced 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 Federal Workplace Gender Equality Act (where relevant) or have gender equitable practices in place.

### Current Procurement Policy

- 4.13 Council's current Procurement Policy already achieves many, if not most, of the requirements of the 2020 LGA.
- 4.14 Council's Procurement Policy is founded on the following key principles:
- Advanced Practice – Council is committed to achieving advanced practice in procurement, including accreditation by relevant bodies and collaboration with other councils and bodies.
  - Best Value – The best mix of cost, quality (ability to meet user requirements) and sustainability (environmental, social and economic)
  - Efficiency & Effectiveness – The cost of procurement to Council and participants should be minimised while delivering procurement objectives.
  - Health & Safety – Council will describe the processes and management in the procurement of goods and services to ensure that identified hazards are controlled so far as reasonably practicable (this includes Child Safety)
  - Probity – Procurement should demonstrate fairness and impartiality, transparency and accountability, confidentiality, and effective management of conflict of interest.
  - Social Benefit – Council will use procurement to further the social, economic and environmental wellbeing of the community.



- 4.15 Council's current Procurement Policy provides for a graduated procurement approach that seeks to balance testing the market with the cost to procure for Council and companies. The current approach requires public tenders (or expressions of interest) to be called for procurement estimated at over \$150k.
- 4.16 The current Procurement Policy outlines the procedures, processes, approvals and record keeping requirements for different levels of procurement. Once again, the Policy aims to find an agile balance.
- 4.18 The current Policy defines the level of financial delegation afforded to Council officers and stipulates the requirement at which a decision to award a contract is made by Council, and not under delegated authority. The current Policy sets this level as procurement over \$1M.
- 4.19 The current Policy requires that Council prepare a list of criteria (with weightings) that will be used to evaluate a procurement prior to approaching the market. The Policy does not outline the evaluation criteria specifically. Mandatory and suggested criteria are contained in separate operating standard procedures (internal document), they include:

	Criteria	Comment
<b>Mandatory</b>	Price	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.
	Capacity to meet the requirements of the specification	<p>This will include aspects such as:</p> <ul style="list-style-type: none"> <li>• Appropriate resources: the equipment, facilities, intellectual property and other physical resources available to the tenderer</li> <li>• Management skills: the availability within the tenderer's organisation of people and systems appropriate to the successful management of the execution of the contract.</li> <li>• Technical skills: the quality of the personnel offered by the tenderer to provide the services, goods or works</li> <li>• Methodology: the procedures the tenderer proposes to use to deliver the service</li> <li>• Timeliness: assess whether or not the tenderer can meet any relevant deadline.</li> </ul>
<b>Recommended</b>	Relevant experience & 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.



	Criteria	Comment
	Corporate 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.
	Occupational Health & Safety	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.
	Risk Management Practices	Assess the tenderer's commitment to and history of proactive management of risk.
	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.
	Child Safety Standards <sup>1</sup>	Ensuring relevant tenderers include Child Safety Standards declarations

- 4.20 The current Policy requires that for the procurement of 'works' that OHS compliance be set as a filter criterion, that being a criterion that must be met prior to analysis of other criteria. If a filter criterion is not satisfied, a submission is excluded from progressing to a more detailed assessment. Filter criterion represent the minimum requirements of a submission.
- 4.21 Whilst the current Policy encourages collaboration with other councils and bodies, there is no stipulated or mandated process that must be followed to explore these opportunities. Council has previously been party to collaboration arrangements with The City of Melbourne, The City of Yarra, and The City of Maribyrnong.
- 4.22 Council's current Procurement Policy identifies corporate social responsibility (CSR) as a key principle that Council looks to achieve through its procurement activity. CSR is a recommended criterion for the assessment and evaluation of submissions. The current Policy recommends that CSR outcomes are sought to be achieved through procurement activity.

<sup>1</sup> Child Safety Standards is a mandatory criterion when applicable.





- 4.23 The current Procurement Policy provides for exemptions from the public tendering requirement if panel contracts are utilised although it is recommended that multiple quotes are sought from panel providers. Additional exemptions are permissible for emergency works if deemed necessary by the Chief Executive Officer.
- 4.24 The current Policy prescribes the process by which Council must invite submissions of expressions of interest (EOI) and public tenders, including the following:
- Approval requirements prior to inviting EOIs or tenders
  - The establishment of an evaluation panel including management of conflicts of interest
  - The circumstances in which an EOI is recommended
  - Public advertising requirements
  - The evaluation and award process.
- 4.25 Council currently reviews the Procurement Policy each year. Under the transition arrangements from the 1989 LGA to the 2020 LGA requirements, no review is required to be undertaken in 2021. The last review was undertaken in June 2020.
- 4.26 Council's current 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.
- 4.27 Under Council's current Procurement Policy, CSR requirements are not mandatory and are decided on a case by case basis. The 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. The Policy requires that CSR requirements be considered in the following ways:
- Suggested inclusions, exclusions and considerations in the preparation of requirements specifications for procurement.
  - The use of evaluation criteria to encourage CSR outcomes (this includes the use of a specific tender submission form wherein prospective tenderers outline their CSR commitments under a tender).

#### Gaps & Refinement Opportunities





4.28 As detailed, Council's current Procurement Policy meets the majority of the requirements of the 2020 LGA. There are some opportunities and a need to refine the Policy in some areas, these include:

- Review the threshold at which public tenders (or EOIs) must be called from \$150k (services) & \$200k (works). For example, this could be set at a new level of \$300k to reflect increases in costs since the current figures were set. This approach would also align with the likely approach of other inner metropolitan councils.
- Formalise opportunities for collaboration through existing networks such as M9.
- Include the evaluation criteria in the Procurement Policy.
- Review which evaluation criteria are mandatory and which are not.
- Consider whether CSR becomes a mandatory criterion in accordance with Council's other commitments. This could include mandating a percentage for CSR. Alternatively, set a threshold at which CSR requirements are considered, reflecting Council seeking to find a balance between the value of procurement and the cost and effort of tenderers in submitting a tender.
- Consider mandatory requirements around procuring from local businesses and the employment of local residents.

4.29 It is proposed to seek community feedback on Council's Procurement Policy and consider that feedback in the formulation of a revised Policy to be presented to Council later this year ahead of adoption by end-2021.

## **5. CONSULTATION AND STAKEHOLDERS**

5.1 Implementation of the Act provides an excellent opportunity to seek feedback from the community to inform decision making for the new Procurement Policy.

5.2 A community consultation process will commence in conjunction with the release of this report.

## **6. LEGAL AND RISK IMPLICATIONS**

6.1 The review and update of the Procurement Policy by end-December 2021 will ensure that Council complies with the requirements of the Local Government Act 2020.

6.2 Ongoing, the Procurement Policy will ensure that Council achieves value from its substantial procurement activity.

## **7. FINANCIAL IMPACT**

7.1 Council procures approximately \$160m worth of goods, services and works per annum. The updated Procurement Policy is a key tool that will enable Council to ensure that this spend provides value for money and procurement activity is undertaken with the upmost probity.



## **8. ENVIRONMENTAL IMPACT**

- 8.1 The review and update of the Procurement Policy will provide an opportunity to review Council's approach to considering Corporate Social Responsibility initiatives including environmental and sustainability purchasing practices.

## **9. COMMUNITY IMPACT**

- 9.1 The revised consideration of CSR in the review of the Procurement Policy provides an opportunity to incorporate a greater degree of local procurement and local employment with the aim to deliver significant community value from the large spend of Council.
- 9.2 As part of the review, Council officers will engage with local community groups and stakeholder associations to obtain their feedback on the current Policy.
- 9.3 All community members are encouraged to provide input into the review of the current Policy.

## **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 TIMELINE**

- 11.1.1 Council will use the current Procurement Policy as a foundation upon which to consult the community on updates and inclusions for the new 2021 Procurement Policy.
- 11.1.2 The following timeline of engagement and review is proposed:
- August – end-September 2021 – Community Engagement & Submission Period
  - October 2021 – Draft Provided to Council
  - November 2021 – Procurement Policy & Summary of Community Feedback Presented to Council for Endorsement
  - December 2021 – 2021 Procurement Policy Commencement

### **11.2 COMMUNICATION**

- 11.2.1 Council officers will publicise the review of the Procurement Policy through Council's website and provide the community with opportunities to provide input



**12. OFFICER DIRECT OR INDIRECT INTEREST**

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

**TRIM FILE NO: F21/1**

**ATTACHMENTS 1. Final Procurement Policy 2020**