



PROCUREMENT POLICY

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OBJECTIVES

The objectives of this policy are to:

- Establish a procurement framework for Council;
- Achieve value for money and continuous improvement in the provision of services;
- Ensure that Council resources are used efficiently and effectively to improve the overall quality of life of people in the local community;
- Achieve compliance with relevant legislative requirements;
- Achieve high standards of probity, transparency, accountability and risk management, and
- Give preference to the procurement of environmentally sustainable goods, services and works.

LEGISLATIVE COMPLIANCE

Legislative requirements include:

- Section 186 of the Act (Power to enter into Contracts);
- Section 186A of the Act (Procurement Policy);
- Section 3C of the Act (Objectives of a Council);
- Sections 208C of the Act (Applying Best Value Principles);
- Sections 77A, 77B, 78, 78A to 78E, 79 79B to D, 80, 80A to C and 95 of the Act (Conflict of Interest);
- Section 98 of the Act (Delegations);
- Section 140 of the Act (Accounts and Records);
- The relevant provisions of the Competition and Consumer Act 2010;
- Occupational Health and Safety Act 2004.

Council will adhere to all these provisions in all procurement matters.

APPLICATION

This policy will be applied to the purchase of all goods, services and works by Council. Policy implementation commences from identification of a need for procurement. It continues through to the delivery of goods or completion of works. This policy applies to Councillors, Council staff and all persons undertaking procurement on Council's behalf and who are accountable for complying with all relevant procurement legislative and policy requirements.

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1 PROCUREMENT PRINCIPLES

Council will apply the following principles to procurement, irrespective of the value and complexity of that procurement, including:

- Value for money;
- Open and fair competition;
- Accountability;
- Risk management;
- Probity and transparency;
- Sustainability;
- Diversity;
- Support of local business;
- Social procurement;
- Effective and substantial preference.

1.1 Value for Money

Procurement activities will be carried out on the basis of obtaining value for money. Evaluation of procurement options will take into account whole of life costs and triple bottom line non-price factors including environmental, economic and social outcomes.

Value for money is the core principle underpinning Council procurement. In a procurement process this principle requires a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement cycle (whole-of-life costing).

Value for money is enhanced by:

- Encouraging competition by ensuring non-discrimination in procurement and using competitive procurement processes;
- Promoting the use of resources in an efficient, effective and ethical manner; and
- Making decisions in an accountable and transparent manner.

In order to be in the best position to determine value for money when conducting a procurement process, requested documentation needs to specify logical, clearly articulated, comprehensive and relevant conditions for participation and evaluation criteria which will enable the proper identification, assessment and comparison of the costs and benefits of all submissions on a fair and common basis over the whole procurement cycle.

Cost is not the only determining factor in assessing value for money. Rather, a whole-of-life value for money assessment would include consideration of factors such as:

- Fitness for purpose;
- The performance history of each prospective supplier;
- The relative risk of each proposal;
- Environmental, economic and social outcomes;
- The flexibility to adapt to possible change over the lifecycle of the property or service;
- Financial considerations including all relevant direct and indirect benefits and costs over the whole procurement cycle; and
- The evaluation of contract options (for example, contract extension options).

1.2 Open and Fair Competition

All prospective suppliers and vendors must be treated and be seen to be treated fairly in an open and transparent manner with the same access to information about the procurement to

enable them to submit prices, quotations and tenders on the same basis. Council must adequately test the market in a consistent manner without any bias, or perception of bias, so that potential suppliers and the public have confidence in the outcome.

1.3 Accountability

Council staff are responsible for the actions and decisions they take in relation to procurement and for the resulting outcomes. Staff are answerable for such activities through established lines of accountability and delegation, and ultimately to the Chief Executive Officer (CEO).

Staff must also ensure they provide adequate and reliable advice to the elected council to allow it to make sound decisions on procurement matters.

1.4 Risk Management

All procurement carries some level of risk. It is important for Council to recognise this risk and to develop appropriate strategies to deal with it.

The risks associated with any new purchase of goods or services should be assessed prior to confirming the decision to purchase. Employees must be consulted regarding any purchasing decision which could affect occupational health and safety, in particular new equipment, plant or substances. This consultation should conform to the requirements of the Occupational Health and Safety Act 2004 and any relevant Council occupational health and safety policies and procedures.

Labelling on incoming substances should be checked by the goods receiver to ensure legibility, and actions to be taken in the case that labels are damaged or missing.

Occupational health and safety risks should be assessed at the design stage of any project, of any value.

1.5 Probity and Transparency

In all commercial dealings, the highest standards of honesty must be observed. Council must conduct business in a fair, honest and open manner, demonstrating the highest levels of integrity consistent with the public interest.

1.6 Sustainability

A sustainable procurement approach shall be adopted within the context of purchasing on a value for money basis through a preference for environmentally sustainable products whenever they achieve the same function, performance and value for money outcomes. Performance should include consideration of environmental effects of raw materials production, environmental effects of product manufacturing, environmental effects of delivery, the proportion of recycled content, re-use or disposal impacts and maintenance of the product over the whole life of the product. The decision process for procurement of products and services should consider an assessment of environmental and ethical performance, and a whole of life cost evaluation for alternatives.

Council will aim to make purchases that have the least impact on the environment and human health, within the context of purchasing on a value for money basis.

Preference will be given to purchasing products and services which:

- Minimise waste;
- Minimise greenhouse emissions;
- Minimise habitat destruction;
- Minimise pollution;
- Minimise soil degradation; and/or
- Maximise water and energy efficiency.

1.7 Diversity

Promoting equality through procurement can improve competition, value for money, the quality of public services, satisfaction among users and community relations. It should be a consideration in every procurement project and reflect corporate commitment to diversity and equal opportunities wherever possible.

1.8 Support of Local Business

Council is committed to buying from local business within the context of purchasing on a value for money basis consistent with whole-of-life costs and a triple bottom line approach.

Council will allocate a local content criterion with a weighting of 10% where evaluation criteria are used to assess proposals. Where this is applied, a Local Content schedule will be used to allow suppliers to accurately calculate the local content of their proposal such as labour, materials, plant and supervision.

The assessment of local content will include consideration of:

- Purchasing locally sourced materials and consumables;
- Subcontracting services from local businesses; and
- Employment of local people;

Local is defined as being from within the Wangaratta Rural City Council municipal boundaries.

The application of local content shall have consideration of both the Best Value Principles of the *Local Government Act 1989* and the *Competition and Consumer Act 2010*.

1.9 Social Procurement

Social procurement involves using procurement processes and purchasing power to generate positive social outcomes in addition to the delivery of efficient goods, services and works. A social procurement approach will be adopted within the context of purchasing on a value for money basis through consideration of opportunities for:

- *Local sustainability* - Strengthening the local economy and ensuring its financial and environmental sustainability;
- *Social inclusion* - Promoting openness and equal opportunity for disadvantaged and vulnerable community groups and building social capital in the community;
- *Employment and training* - Creating local employment opportunities through clauses and specifications in Council contracts and developing practical training to build long-term employment opportunities;

- *Diversity and equality* - Ensuring all businesses have the same opportunity to tender for Council contracts, ensuring that the supply markets around essential and key services for Council remains diverse and vibrant and ensuring that local suppliers such as small to medium-sized enterprises (SMEs), social enterprises and Indigenous businesses are well-positioned to prosper in the local economy;
- *Service innovation* - Fostering a new social economy, addressing service gaps by piloting joint ventures between Council and external partners; and
- *Fair trade* - Purchasing ethical and fair trade goods to support equitable local, national and international trade and ensuring Council supply chains adhere to local, national and international labour standards.

1.10 Effective and Substantial Preference

Whenever practicable, Council must give effective and substantial preference to contracts for the purchase of goods, machinery or material manufactured or produced in Australia and New Zealand.

Council expresses the extent of the effective and substantial preference through its determination that a price preference of 5% be extended to goods, machinery or material manufactured or produced in Australia and New Zealand.

2 BEST VALUE PRINCIPLES

In addition to the procurement principles, Council must also apply the Best Value principles of the Act to procurement.

Best Value principles require, among other matters, that:

- All services provided by Council must meet the quality and costs standards required by the Act;
- Council must achieve continuous improvement in the provision of services for its community; and
- Council must be able to demonstrate and report to the community that it effectively applies Best Value principles.

3 ORGANISATIONAL STRUCTURE

It is Council's policy to operate a centre-led procurement structure wherein the execution of all strategy, policy, technology, best practice and processes in procurement matters will be led by a specific Council business unit.

4 DELEGATIONS AND AUTHORITIES

Delegation of procurement authority allows specified Council staff to approve certain purchases, quotation, tender and contractual processes without prior referral to Council. This enables Council to conduct procurement activities in an efficient and timely manner whilst maintaining transparency and integrity.

Council procurement delegations will be consistent with the Deed of Delegation from Council to the CEO and the Deed of Delegation from the CEO to staff.

5 PROCUREMENT PLANNING

A strategic procurement plan and a procurement conduct plan must be completed and approved by the responsible director for all procurements of a value of \$1 million or greater.

6 PROCUREMENT MANUAL

Council will develop and maintain a manual to provide guidance to Council staff on all operational aspects of procurement. The manual will include checklists and forms required in Council's procurement process.

7 PROBITY AND ETHICS

Procurement activities shall be performed with integrity and in a manner able to withstand the closest possible scrutiny.

Councillors must comply with the Councillor Code of Conduct. Councillors must not improperly direct or improperly influence a member of Council staff in the exercise of any power in the performance of any duty or function.

Members of staff must comply with the Code of Conduct for Council Staff.

A probity plan will be prepared and a probity advisor or auditor is to be appointed by the relevant Council director to any tender evaluation panel where the estimated value of the subject tender is assessed to reach \$10 million in value.

7.1 Conflict of Interest

Councillors and Council staff shall 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.

Councillors and Council staff shall not participate in any matter associated with the arrangement of a contract (i.e., evaluation, negotiation, recommendation, or approval), where that person or any member of their immediate family has a significant interest, or holds a position of influence or power in a business undertaking tendering for the work.

The onus is on the Councillor or the member of Council staff involved being alert to and promptly declaring an actual or potential conflict of interest to Council.

7.2 Fair and Honest Dealing

Prospective contractors and suppliers shall be afforded an equal opportunity to tender or quote.

Impartiality shall be maintained throughout the procurement process.

The commercial interests of existing and potential suppliers shall be protected.

7.3 Canvassing

Prospective contractors and suppliers must not approach, or request any other person to approach any member of Council's staff or any Councillor to solicit support for their tenders or quotations or otherwise seek to influence the outcome of any procurement process.

The supply proposal of any prospective contractor or supplier which engages in canvassing must not be considered by Council.

7.4 Evaluation and Consistency

All prospective suppliers shall be evaluated in a systematic manner against explicit predetermined and disclosed evaluation criteria.

All staff engaged in the evaluation of proposals or tenders with a value of over \$15,000 must complete and lodge a Conflict of Interest Declaration and a Deed of Confidentiality.

Only officers with the level of financial delegation appropriate to the procurement activity can approve the evaluation criteria for that procurement activity. Once approved, the evaluation criteria shall be used consistently throughout all procurement process steps including concept briefs, business cases, advertising and evaluation.

Evaluation criteria will be weighted to assist in identifying suppliers offering best value for money and the most advantageous outcomes for the community.

Council will allocate a local content criterion with a weighting of 10% where evaluation criteria are used to assess proposals.

Late tenders will only be accepted in extreme circumstances and then only if approved in advance by the Chief Executive Officer.

7.5 Accountability and Transparency

An independent third party shall be able to see clearly that process has been followed and that the process is fair and reasonable.

All Council staff shall be able to account for all procurement decisions and provide feedback on them.

All procurement activities shall provide for an audit trail for monitoring and reporting purposes.

7.6 Gifts and Hospitality

No Councillor or member of Council staff shall, either directly or indirectly solicit or accept gifts or presents from any member of the public involved with any matter that is connected with the duties of the officer, or in which Council is interested.

Councillors and Council staff shall exercise the utmost discretion in accepting hospitality from contractors or their representatives, or from organisations, firms or individuals with whom they have official dealings. Councillors and Council staff should also avoid the ambiguous situation created by visiting the premises of a contractor, organisation, firm or individual uninvited whether or not on official business.

Offers of bribes, commissions or other irregular approaches from organisations or individuals shall be promptly brought to the attention of the CEO.

7.7 Disclosure of Information

Commercial in-confidence information received by Council shall not be disclosed.

Councillors and Council staff are to protect, by refusing to release or discuss the following:

- Information disclosed by organisations in tenders and quotations or during tender negotiations;
- All information that is commercial in confidence information; and
- Pre-contract information including but not limited to information provided in quotes and tenders or subsequently provided in pre-contract negotiations.

Councillors and Council staff shall avoid references to current or proposed contracts in discussion with acquaintances or outside interests.

Discussion with potential suppliers during evaluations of supply proposals should not go beyond the extent necessary to resolve doubt on what is being offered by that supplier.

At no stage should any discussion be entered into which could have potential contractual implications prior to the contract approval process being finalised other than authorised pre-contract negotiations.

7.8 Endorsement

Councillors and Council staff shall not endorse any products or services.

7.9 Governance

A procurement management responsibility structure shall be established: flexible enough to purchase in a timely manner the diverse range of material, goods, works and services required by Council; ensuring purchasing policies and procedures are communicated and implemented; and, encouraging competition. Essentially this structure is prescribed through a combination of the organisational structure and delegations.

Procurement activities shall be carried out to the professional standards required by best practice and in compliance with:

- The Act;
- Council policy;
- Councillor Code of Conduct;
- Code of Conduct for Council Staff;
- Relevant Australian Standards or codes;
- National Competition Policy incorporating the competitive neutrality pricing principles; and
- Other relevant legislative requirements.

8 RISK MANAGEMENT

Council will manage all aspects of its procurement processes in accordance with its risk management policy and in such a way that all risks are identified, analysed, evaluated, treated, monitored and communicated to the standard required.

8.1 Procurement Risk Management Plan

A procurement risk management plan must be completed and approved for all procurements of a value of \$1 million or greater. The risk management plan should address the following factors:

- *Risk Identification*: Identifying risks associated with the project;
- *Risk Assessment*: The likelihood and magnitude of the risks;
- *Risk Mitigation*: Strategies for pre-empting and treating the occurrence of a risk;
- *Risk Allocation*: Detailing responsibility for managing a risk; and
- *Monitoring and Control*: Identifying new risks as they emerge.

8.2 Statement of Requirements

Specifications used in quotations, tenders and contracts shall be written in a manner that:

- Ensures impartiality and objectivity;
- Encourages the use of standard products;
- Eliminates unnecessarily stringent requirements; and
- Includes the consideration of risk and safety.

8.3 Supply by Contract

Risk exposure will be minimised by applying such measures as:

- Using standardised contracts;
- Applying security deposits where appropriate;
- Referring specifications to relevant experts;
- Requiring contractual agreement before allowing the commencement of work; and
- Use of, or reference to, relevant Australian Standards or equivalent.

8.4 Contract Terms

All contractual relationships shall be documented in writing based on standard terms and conditions.

Where this is not possible, approval must be obtained from the appropriate member of Council staff listed in the Council Delegations. A request for such an approval should be supported with procurement and legal advice as relevant.

Terms and conditions shall be settled in advance of any commitment being made with a supplier.

8.5 Dispute Resolution

All Council contracts shall incorporate dispute management and alternative dispute resolution provisions to minimise the chance of disputes getting out of hand and leading to legal action.

8.6 Contract Management

All Council contracts shall include contract management requirements and shall be proactively managed according to those requirements.

9 INTERNAL CONTROL

Council will establish, document and maintain a framework of internal controls over procurement processes in order to ensure:

- A framework for supplier engagement is in place;

- More than one person is involved in, and responsible for, each transaction;
- Transparency in the procurement process;
- A clearly documented audit trail exists for procurement functions;
- Appropriate authorisations are obtained and documented; and
- Systems are in place for appropriate monitoring and performance measurement.

All persons engaged in procurement processes must diligently apply all internal controls.

Council's internal audit committee charter will include provision for the committee to monitor and review this procurement policy and its implementation and the related internal controls.

10 METHODS OF PROCUREMENT

Council's standard methods of procurement may use include:

- Purchasing card;
- Purchase order following a request for quotation process, a request for proposal process or a request for tender process from suppliers for goods or services;
- Contract following a request for proposal process or a tender process;
- Contract established by a third party agent where Council is eligible to participate;
- State purchase contract or a whole of Victorian Government contract;
- A Panel of providers, where the panel has been established on the basis of a competitive tender process; and
- Contract entered into under an arrangement approved by the Minister for Local Government.

Council's CEO or a director may determine to seek expressions of interest prior to a tender process where there is:

- Likely to be many tenderers, tendering will be costly or the procurement is complex and Council does not wish to impose the costs of preparing full tenders on all tenderers; or
- Uncertainty as to the willingness and/or interest of parties or vendors to offer the potential products or services or to undertake the proposed works.

An expression of interest process can be undertaken where determined by the CEO or a director, and where Council advertises publicly the:

- Purpose and nature of the contract; and
- Date by which it will invite tenders.

A request for information can be used to determine whether the:

- Available technologies, products or services available in the marketplace meet Council needs;
- Proposed terms and conditions or deliverable expectations are acceptable in the marketplace; or
- Proposed budgets are adequate to meet non-standard procurement needs. Inadequate budgets should not become apparent when tenders are opened.

10.1 Purchasing Cards

Refer to Council's Purchasing Cards policy for guidance on the use of purchasing cards.

10.2 Use of Agents

It is common practice for Council to use the services of a third party agent (also variously called buying groups, buying companies, aggregators and local government group purchasing schemes).

Council can use third party agencies for procurements valued at below the threshold amounts set out in the Act. Council is required to ensure that resources are used efficiently and effectively and to ensure transparency and accountability. Once the threshold amounts are reached, Council is required to adhere to section 186 of the Act.

In using the services of a third party agent, Council is required to take the following actions in order to comply with its statutory duties and powers:

1. Make an initial decision to purchase goods, services or works, including reviewing and settling contract specifications, conditions of contract and other contract documentation before public tenders are called.
2. Ensure that probity is in place for the procurement, including obtaining and reviewing the documented probity policies, processes and procedures of the agent.
3. Make the decision to appoint an agent.
4. Make a decision to either accept one of the tenders or reject all tenders as allowed under the Act, including reviewing all the tenders received and the tender evaluation and selecting one of the tenders or a panel of tenderers subject to obtaining value for money and not simply a panel of convenient tenderers.
5. Exercise discretion in accepting one of the tenders and not merely rely on the work undertaken by an agent.

Above all, Council must determine that the tender represents 'value for money' to its community through undertaking analysis of the benefits of the contract on offer.

10.3 Sole Supplier

Situations arise where there may only be a single supplier of a good or service who is capable of carrying out work. Often, however, the ability to tap a competitive market will vary, particularly given that Council is located in a regional area. The only transparent means of demonstrating that multiple suppliers do not exist is to place a public notice, this shall be required for all spends that are estimated to exceed \$15,000. If that action demonstrates that there is only one supplier then Council is free to enter into a contract with that supplier (mindful of its obligation to obtain value for money).

If Council can demonstrate that there is not a competitive market for a given procurement that has an estimated total value exceeding the Local Government Act 1989 public tendering thresholds then it can also apply for a Ministerial Approved Arrangement. This may occasionally occur where there are few suppliers for the goods, services or works being sought or the work is highly specialised.

10.4 Panel Supply Arrangements

A panel is an arrangement established through a tender process, under which multiple suppliers are selected to supply agreed goods and services. Council buyers may then purchase directly from suppliers on the panel, as required, consistent with requirements of the Panel Supply Buyers' Guide table below.

Typical services provided through panels include legal, accountancy, human resources, building and maintenance, design and project management services.

No minimum amount of work is guaranteed to panel members, however, Council will seek to ensure that equitable access to Council work for panel members is available, consistent with requirements of the Panel Supply Buyers' Guide table.

Table 1 Panel Supply Buyer's Guide

Value	Risk	Buying Process
Spend < \$100,000	Low	Purchase direct from a suitably qualified panel member consistent with ensuring, where practicable, equitable access to Council work for members of the panel. It must be determined that value for money is being obtained through the process.
	High	Seek submissions from all suitably qualified panel members to test responses to price and risk criteria. Provide an evaluation report and recommendation to the officer approving the purchase. It must be determined that value for money is being obtained through the process.
Spend > \$100,000	All	Not applicable, go to public tender

11 QUOTATIONS, TENDERS AND COMPETITION THRESHOLDS

Council will from time to time decide and publish in this policy clear guidelines for minimum spend competition thresholds. These will be decided by Council through analysis of the historical size and complexity of the procurement activity and of proposed procurement activities.

11.1 Purchasing with Estimated Total Value < \$1,000

Standard purchasing process using a purchase order or purchasing card shall apply. A formal competitive process is not required. Officers shall ensure that Council is receiving value for money and that proper accountability and probity is applied.

11.2 Purchasing with Estimated Total Value \$1,000 To \$15,000

A request for quotation process shall be used such that a minimum of two written quotations shall be obtained and the details recorded before placing an order (similar details shall be recorded where more than two suppliers have quoted) and documented in Council's quotation recording system.

Requests for quotations may be advertised at the Council staff member's discretion in addition to the methods above. This may occur, for example, when a field of potential suppliers hasn't been established, or an innovative approach is required, or the project has broad appeal that may attract keen prices.

The situation may arise where insufficient quotations are received to satisfy the above requirements. This may occasionally occur where there are few suppliers for the goods,

services or works being sought or the work is highly specialised. In this case, the details of the contacted suppliers and an appropriate comment shall be recorded.

11.3 Purchasing with Estimated Total Value \$15,001 To \$100,000

A request for proposal process shall be used such that Council will obtain a minimum of three written proposals and the details recorded before placing an order (similar details shall be recorded where more than three suppliers have quoted) and documented in Council's quotation recording system.

A request for proposal will be provided to prospective suppliers. The evaluation criteria that will be used to assess proposals will be included in the request for proposal. An evaluation panel consisting of the officer conducting the procurement process and an officer who is independent of the procurement process will be established to assess proposals received. An evaluation report showing the assessment results and recommending the successful supplier will be provided to the officer approving the procurement.

Requests for proposal may be advertised at the council staff member's discretion in addition to the methods above. This may occur, for example, when a field of potential suppliers hasn't been established, or an innovative approach is required, or the project has broad appeal that may attract keen prices.

The situation may arise where insufficient proposals are received to satisfy the above requirements. This may occasionally occur where there are few suppliers for the goods, services or works being sought or the work is highly specialised. In this case, the details of the contacted suppliers and an appropriate comment shall be recorded in the evaluation report.

11.4 Purchasing with Estimated Total Value > \$100,000

Purchase of all goods and services for which the estimated total value exceeds \$100,000 shall be undertaken by public tender.

Tenders shall be sought by either:

- Issuing of a public notice of the purpose of the contract and inviting tenders from any person wishing to undertake the contract; or
- Issuing a public notice of the purpose of the contract or the project to which the contract relates and inviting expressions of interest from any person interested in undertaking the contract or all, or any part of, the project

Funds will be available and approved for the tender process.

A request for tender document will be provided to prospective suppliers. The evaluation criteria that will be used to assess proposals will be included in the request for tender. An evaluation panel consisting of the officer conducting the procurement process and at least two officers who are independent of the procurement process will be established to assess proposals received. An evaluation report showing the assessment results and recommending the successful supplier will be provided to the officer approving the procurement or to Council where Council approval is required.

When a shortlist of preferred tenderers is selected, negotiations can be conducted with those shortlisted tenderers in order to obtain the optimal solution and commercial arrangements, providing the solution and commercial terms remain within the intent and scope of the tender.

11.5 Multi-Stage Tenders

Council may, at its discretion and based on the complexity and cost of the project, conduct one stage or multi-stage tenders.

Typically a multi-stage tender process will commence with an Expression of Interest (EOI) stage followed by a tender process involving the organisations selected as a consequence of the registration of interest stage.

Additionally, for highly complex projects Council may run sequential tenders, the first to solicit solutions, the second to compete to provide the solution selected by Council. Such sequential tenders may or may not be preceded by the registration of interest phase as required by Council based on the actual needs of the project.

Wherever appropriate, the request for tender should be made available in draft form to the marketplace for comment before the document is finalised. This allows suppliers to put their case where they consider the draft RFT could be improved is deficient, onerous or biased. The draft request for tender should include the proposed evaluation criteria.

Industry briefings should be held with suppliers before or during the request for tender process. Because potential suppliers who will be competing against each other will be represented at the industry briefing, try to obtain questions from potential tenderers before the briefing. These questions can then be answered during the briefing without identifying the originators. In this way problem areas common to all prospective suppliers can be handled without some vendors being provided with more information than others. Any questions unable to be answered at the meeting should be taken on notice with written answers circulated to attendees as soon as possible following the meeting.

When a shortlist of preferred tenderers is selected, negotiations can be conducted with those shortlisted tenderers in order to obtain the optimal solution and commercial arrangements, providing the solution and commercial terms remain within the intent and scope of the tender.

12 EXEMPTIONS TO REQUIREMENT FOR PUBLIC TENDERING

The Act allows for specific circumstances where Council may enter into a contract without first undertaking the public tender. These circumstances are:

- Where Council has resolved that the contract must be entered into because of an emergency;
- Where the contract is entered into with Council acting as the agent for a group of councils and Council has otherwise complied with this Act;
- Where the contract is entered into in accordance with arrangements approved by the Minister; or
- The contract is a type of contract that has been exempted by regulation.

12.1 Emergencies

Council may enter into a contract, the value of which reaches the threshold amounts, for the provision of goods, services or works without first putting that contract to public tender if the council resolves that the contract must be entered into because of an emergency.

For the purposes of this policy the usual meaning of the term is used and an emergency should be taken to be *'a sudden or unexpected occurrence requiring immediate action'*.

Council has delegated to the CEO the power to declare that a contract must be entered into because of an emergency and thus will avoid delays in responding to an emergency.

The use of this emergency provision is to be limited to situations where a real emergency has arisen. Situations where this might occur include:

- The occurrence of a natural disaster such as flooding, bushfire or epidemic which may require the immediate procurement of goods, services or works to provide relief;
- The occurrence of an event such as flooding or fire at a Council property which may require the immediate procurement of goods, services or works to ensure business continuity;
- The unforeseen cessation of trading of a core service provider due to bankruptcy and a need to appoint a replacement service provider on the grounds of public safety; or
- Any other situation which is liable to constitute a risk to life, property or good governance.

The emergency provisions cannot be relied upon for extended works and services after the need for an emergency response has passed.

12.2 Agency Arrangements

The Act allows for Council to join groups of councils for the procurement of goods, services or works with one member of the group, acting as an agent for the other councils, undertaking a single competitive process.

The ability to use agents does not prevent a group of councils jointly undertaking a procurement process without appointing an agent. However, if participating in such an arrangement Council must be involved in:

- The initial decision to undertake the procurement;
- The preparation of, and agreement to, the specifications;
- Ensuring probity for the procurement;
- Deciding which tenders to accept or reject.

12.3 Ministerial Approved Arrangements

The Minister for Local Government has discretionary power to approve as an arrangement for the purposes of the Act, a contract which Council wishes to enter into without first exposing that contract to public tender. The Minister for Local Government will not act to restrict competition by exercising his or her powers to grant exemptions which will limit competition. Ministerial Approved Arrangements should only be sought in exceptional circumstances.

Council must demonstrate that it is not a viable option for it to undertake a public tender or expression of interest process. This can be demonstrated in one of three ways:

1. The contract is non-contestable and/or other providers cannot meet specialised requirements of the proposed contract.
2. Whilst the contract is contestable the contract proposed by Council clearly provides value for money and Council can demonstrate how this is achieved.
3. There are current arrangements in place that restrict Council to engaging a certain provider and value for money can be demonstrated.

An application seeking a Ministerial Approved Arrangement must:

- Set out the value of the proposed goods, services or works and describe in detail the nature of those goods, services or works and the overall project to which they relate;
- Demonstrate why Council considers a public tender or expression of interest process is not necessary. This must show that there is no competitive market and the contract is not contestable, or that there is no alternative for Council other than to contract with a specified contractor in the particular circumstances;
- Give an explanation as to why and how engaging a particular contractor will provide Council value for money, and provide other benefits to the Council and the community;
- Provide the date on which Council intends to enter into the contract for which the application relates. If the matter is urgent, reasons for the urgency must be provided;
- Give details or a copy of the funding agreement and identify the relevant funding department or agency and their contact details if the project to which the goods, services or works relate is subject to a government grant;
- Give details of any benchmarking of the quality and estimated costs of the goods, services or works that can be relied upon, such as comparing against similar projects undertaken by Council or other councils;
- Provide an estimate of the cost of goods, services or works. Where this is an internal Council estimate, further information needs to be provided which supports that this is an accurate estimate and will provide Council value for money (for example, other quotes obtained, quantity surveyor assessments or benchmarking against similar projects); and
- Include any other independent advice or reports obtained by Council that are relevant, or support the application.

12.4 Prescribed Exemptions

The Act allows for contracts which have been prescribed in a regulation to be exempted from complying with the Act. At this time only contracts for legal services have been exempted.

12.5 Novated Contracts

Council is exempt from the requirements of the Act where Council enters into a novated contract providing:

- The initial contract was entered into in compliance with the Act;
- Council has undertaken due diligence in respect to the new party to the contract.

13 EVALUATING PERFORMANCE

Council is committed to continuous improvement and will review the procurement policy on an annual basis, to ensure that it continues to meet its wider strategic objectives.

Appropriate performance measures shall be established and reporting systems will be used to monitor performance and compliance with procurement policies and procedures.

Procurement procedures, practices and costs will be benchmarked externally. Internal service standards will be agreed within Council and performance against these targets will be measured and reviewed regularly to support continuous improvement.

Council will evaluate and report on the following aspects of procurement in order to continually improve its processes and outcomes:

- Contractor performance;
- Opportunities to improve processes;
- Process improvements.

14 CHARTER OF HUMAN RIGHTS

Council will ensure that all of its procurement operations are fully consistent with prescribed rights and responsibilities and that they respect the 20 fundamental rights within the *Charter of Human Rights and Responsibilities Act 2006*.

DEFINITIONS

the Act	<i>Local Government Act 1989.</i>
Bid	An offer by one party to enter into a legally binding contract with another party, often used interchangeably with quote, tender, response and offer. See also 'tender'.
Bidder	The party offering to enter into a legally binding contract with another party, often used interchangeably with respondent and tenderer.
Canvassing	The solicitation of orders
CEO	Chief Executive Officer of the Rural City of Wangaratta
CMT	Corporate Management Team of the Rural City of Wangaratta
Commercial in Confidence	Information that, if released, may prejudice the business dealings of a party e.g., prices, discounts, rebates, profits, methodologies and process information, etc.

Competitive neutrality	A policy which aims to ensure that, where a government business is competing with the private sector, adjustments are made to remove any net advantage (or disadvantage) the government business has because it is owned by government.
Confidentiality agreement	A written legal document that is proof and record of the obligations agreed to between the parties; to protect the commercial interests of Council and/or the contractor. Often used interchangeably with the deed of confidentiality.
Conflict of interest	In Victorian local government the law provides that a staff member holding a delegation or advising Council or a special committee has a conflict of interest which they must disclose in writing when they have a personal or private interest of the type specified in the legislation.
Conflict of interest declaration	A declaration signed by staff, councillors and consultants involved with a procurement process to indicate they do not have a conflict of interest.
Contract	An agreement between two or more authorised persons on behalf of their organisations to perform or not perform a specific act/s that is enforceable in law. A contract may be verbal or written or inferred by conduct.
Contract documents	Documents construed together as an instrument of contract. They may include terms and conditions, specifications, drawings, tender responses, delivery schedules and payment schedules.
Contract management	A process that ensures that Council, and where applicable its clients, receive the goods, services or works provided to the required standards of quality and quantity as intended by the contract
Contract manager	The person nominated by Council to manage the day-to-day matters of the contract. See also superintendent.
Contract variation	An addition or alteration to the goods and/or services under a contract that is within the general scope of the original contract. A contract variation can be documented between the parties with a letter or a deed of variation.
Contractor	Respondent (person, firm, etc.) whose tender/quotation offer has been accepted by Council with or without modification.
Council	Rural City of Wangaratta

Council Staff	Includes full-time and part-time council officers, and temporary employees, contractors and consultants while engaged by Council.
Deed of confidentiality	See confidentiality agreement.
Delegate	A person authorised by Council or the Chief Executive Officer to make general or specified decisions constrained only by the instrument of delegation. Specifically, delegates commit and incur expenditure. The delegate is responsible for actions arising from their use of such power.
Delegation	A power handed down by Council or the Chief Executive Officer in an instrument to enable a delegate to act on Council's behalf.
Expressions of Interest (EOI)	A response to an open approach to the market requesting submissions from bidders interested in participating in procurement. It is used to identify potential suppliers interested in, and capable of, delivering the required goods or services. Potential suppliers are asked to provide information on their capability to do the work. It is usually the first stage of a multi-stage tender process.
Estimated total value	Includes: <ul style="list-style-type: none"> • Costs for the full term of the contract, including any options for either party to extend the contract; • Applicable goods and services tax (GST); • All forms of remuneration including premiums, fees, commissions, interest, other revenue streams applying to any contractual agreement including purchase, rental or lease; • Anticipated contingency allowances or variations; • All other known, anticipated and reasonably foreseeable costs.
Evaluation criteria	The criteria used to evaluate the compliance and/or relative ranking of responses to procurement requests. All evaluation criteria must be clearly stated in the request documentation.
General conditions of contract	Contractual terms which define the obligations and rights of the parties involved in the contract, and form the basis of the contract awarded to the successful tenderer.
Late tender	A tender received after the specified closing time and date.

Negotiation	The bargaining process between two or more parties. Each party has its own viewpoints and objectives, but seeks to reach an overall satisfactory arrangement.
Preferred tenderer	Tenderer who at the conclusion of the evaluation period has been selected to enter contract negotiations for the contract with the principal.
Probity	In the context of a procurement process probity is a defensible process which is able to withstand internal and external scrutiny – one which achieves both accountability and transparency, providing tenderers with fair and equitable treatment.
Probity advisor	A contractor with extensive experience and skills in procurement who may develop probity plans and other key documents and provide advice and training to staff on probity principles and guidelines.
Probity auditor	A contractor who provides the Chief Executive Officer with an independent and appropriate sign-off on probity requirements generally at the end of the procurement process.
Procurement	Procurement is the whole process of acquisition of external goods, services and works. This process spans the whole life cycle from initial concept through to the end of the useful life of an asset (including disposal) or the end of a service contract.
Purchase order	A form of contract, which is an official document used to authorise and record the purchase of goods or services by a buyer. It is the prime reference confirming the contractual situation between the buyer and supplier.
Quotation/quote	A document in the form of an offer to supply goods and/or services, usually in response to a request for quotation.
Request for expressions of interest (EOI)	An invitation for persons to submit an EOI for the provision of the goods, services or works generally set out in the overview of requirements contained in the document. This invitation is not an offer or a contract. It identifies potential suppliers interested in, and capable of, delivering the required goods or services. Potential suppliers are asked to provide information on their capability to do the work. It is usually the first stage of a multi-stage tender process. See also 'expression of interest'.

Request for information (RFI)	Formal request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies that may be available. It may be used to develop documentation for a future tender.
Request for proposal (RFP)	A written process of inviting proposals to supply goods and/or services involving simple documentation, a limited number of potential suppliers and generally of relatively lower values.
Request for quotation (RFQ)	A written process of inviting offers to supply goods and/or services involving simple documentation, a limited number of potential suppliers and generally of relatively lower values.
Request for tender (RFT)	A request for offer against a set of clearly defined and specified requirements. Tenderers are advised of all requirements involved, including the conditions of tendering and proposed contract conditions.
Small to medium enterprises (SMEs)	Firms with less than 200 full-time equivalent employees and/or less than \$10 million turnover (ABS).
Social procurement	The use of procurement processes and purchasing power to generate positive social outcomes in addition to the delivery of efficient goods, services and works.
Specification	The statement which clearly and accurately describes the essential requirements for goods, services or works. It may also include the procedures by which it will be determined that the requirements have been met and performance required under a contract.
Standing Offer Arrangements (SOA)	A contract that sets out rates for goods and services which are available for the term of the agreement. However, no commitment is made under the agreement to purchase a specified value or quantity of goods or services.
Strategic procurement plan (SPP)	Refers to a detailed plan for a proposed procurement process. It outlines the procurement strategy for major contracts and draws a strategic connection between the higher level project planning and implementation through procurement.
Superintendent	The person appointed to the position nominated as the superintendent in a contract for the purpose of overseeing Council's interests.

Sustainability	Activities that meet the needs of the present without compromising the ability of future generations to meet their needs.
Tender	An offer in writing to supply goods and/or services, usually submitted in response to a public or selective invitation such as a request for tender.
Tender briefing	A forum held where a Council representative(s) briefs prospective tenderers regarding a tender process and responds to questions.
Tender process	The process of inviting parties to submit a quotation by tender using public advertisement, followed by evaluation of submissions and selection of a successful bidder or tenderer.
Tenderer	Refer to 'bidder'.
Thresholds	The value above which a procurement, unless exempt, is subject to the mandatory procurement procedures.
Value for money	Value for money is about selecting the supply of goods, services and works taking into account both cost and non-cost factors including: <ul style="list-style-type: none"> • Contribution to council's triple bottom line priorities; • Non-cost factors such as fitness for purpose, quality, service and support; and • Cost-related factors including whole-of-life costs and transaction costs associated with acquiring, using, holding, maintaining and disposing of the goods, services or works.

REFERENCES

Victorian Local Government Best Practice Procurement Guidelines 2013;

Social Procurement: A Guide for Victorian Local Government.