



Procurement of Goods, Services and Works Policy

Policy – CP083

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1. The purpose of this policy is to:

Clearly set out the requirements to be met by all staff, councillors and temporary employees when procuring and/or contracting goods and services on behalf of Mildura Rural City Council.

2. Policy statement

Section 186a of the *Local Government Act 1989* (The Act) requires the Council to prepare, approve and comply with a procurement policy that outlines the principles to be applied to the purchase of all goods, services and works. In doing so, the objectives of this policy are to:

- provide guidance to ensure consistency and control over procurement activities
- demonstrate accountability to stakeholders
- provide guidance on ethical behaviours in local government purchasing
- support the application of best practice in purchasing
- obtain the right outcome when purchasing goods and services.

3. Principles

3.1 Best value principles

Listed below are the best value principles that must be applied to all procurement irrespective of its value and complexity:

- Value for money
- Open and fair competition
- Accountability
- Risk management
- Probity and transparency.

3.1.1 Value for money

The concept of value for money is centred on obtaining the best quality and value for the price and ensuring that the quality of the goods/services/works meet Council's criteria and cost constraints. Obtaining value for money does not mean that Council is obliged to accept the lowest price. Section 186(4) of the *Local Government Act 1989* specifically provides that a Council does not have to accept the lowest tender.

3.1.2 Open and fair competition

All prospective suppliers/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 proposed procurement to enable them to submit quotations/tenders on the same basis. It is imperative that Council treats all prospective suppliers/vendors in the same manner without any bias or perception of bias.

3.1.3 Accountability

Council will have a consistent approach to procurement across the organisation through having in place a robust 'procurement framework' that sets out the guidelines and the processes for all procurement activity, as well as nominating/identifying the relevant Council officers and their responsibilities in relation to procurement.

3.1.4 Risk management

All procurement carries some risk and it is expected that Council's risk management processes and tools will be applied to all procurement activities to mitigate any identified risks.

This includes a requirement, where appropriate, that suppliers or contractors will meet the criteria to be an approved supplier or contractor.

Officers should refer to Council's Risk Management Framework and associated Risk Management Policy (CP024) and procedures.

3.1.5 Probity and transparency

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

Council's Protected Disclosure Policy (CP014) establishes a framework for reporting protected disclosures of corrupt, improper or specified conduct as defined in the *Protected Disclosure Act 2012*.

3.2 General principles

3.2.1 Methods of purchase

Standard methods for purchasing goods, services and works shall be:

- petty cash
- purchasing card
- electronic purchase order following a quotation process in accordance with thresholds
- under contract following a tender process
- using aggregated purchasing arrangements with other councils, Municipal Association of Victoria Procurement, Procurement Australia Ltd, Victorian Government, or other bodies.

3.2.2 Treatment of GST

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

3.2.3 Responsible financial management

The principle of responsible financial management must be applied to all procurement activities.

Accordingly, to give effect to this principle, the availability of existing funds within an approved budget, or source of funds, must be established prior to the commencement of any procurement action for the supply of goods, services or works.

Council staff must comply with the expenditure of funds in accordance with their financial delegation.

3.2.4 Social and sustainable procurement

Council is committed to contributing to social and sustainability outcomes through procurement processes. Council may consider selection of products or services that maximise these outcomes provided other evaluation criteria are met.

Council requires that as a minimum, all evaluation criteria for tenders and electronic requests for quotations must include the following:

Evaluation criteria	Minimum weighting
The social and sustainable outcomes provided to the community through this procurement activity	15%

Examples of how this evaluation criteria may be defined include, but are not limited to:

- businesses that support the local economy
- businesses that promote environmentally friendly practices
- products that consume minimal energy, water or other resources
- delivery of social outcomes, such as employment of indigenous people or people with disabilities.

3.3 Procurement processes and thresholds

3.3.1 Thresholds

Purchases of goods and services, and building and construction works must meet the minimum requirements specified in the following table:

Value	Requirement	Minimum Quotes Required
Up to \$2,000	No Quotation	0
\$2,000 to \$4,999	Request for Quotation	1
\$5,000 to \$24,999	Request for Quotation	2
\$25,000 to \$149,999 (goods & services) or \$199,999 (works)	Electronic Request for Quotation (Equote)	3
\$150,000 and over (goods & services) or \$200,000 and over (works)	Public Tender Process	

Note: The above thresholds are inclusive of
. Applicable taxes e.g. GST
. Any other known foreseeable cost e.g. delivery

3.3.2 Tenders

Purchase of all goods and services for which the estimated expenditure exceeds \$150,000 and building and construction works for which the estimated expenditure exceeds \$200,000 must be undertaken by public tender as per the thresholds contained in the *Local Government Act*.

However, should it be considered that the nature of the requirement and the characteristics of the market are such that the public tender process would lead to a better result for the Council, public tenders may be called for the purchase of goods, services and works for which the estimated expenditure is below the stated threshold.

Council will determine closing times and dates for public tenders. Late tenders will not be accepted. Non-conforming tenders may not be considered by Council. If innovative or alternative tenders are to be considered, they should accompany a conforming tender.

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.

Tender evaluation

Value for money is the essential test against which any procurement output is to be justified. It is also essential that the assessment of submissions is robust, systematic, and unbiased to ensure the application of proper processes and the achievement of the procurement objectives.

Achieving user and system requirements, quality standards, and service benchmarks may be considered more important than obtaining the lowest purchase/tender price. Value for money is the basis for comparing alternatives so that the optimal offer can be selected.

All submissions must be evaluated in a consistent manner against the evaluation criteria and weightings adopted for the tender and outlined in the tender documentation. The use of a weighted matrix analysis must be used to analyse and compare tenders in a detailed and consistent manner.

A tender evaluation panel of at least three members must be established for each tendering process. One of the three members must be independent of the branch that instigated the tender. When evaluating a tender for which an internal Council unit has submitted a response, at least one member of the panel must be a person who is independent of Council and who has expertise relevant to the tender. When an internal Council unit is not a respondent to a tender, it is not a requirement to have a person who is independent of Council as a member of the panel but this does not preclude these persons as panel members. The tender evaluation report must disclose the names and positions of the panel members. All panel members must complete a declaration of confidentiality and conflict of interest.

A due diligence investigation of the preferred or short-listed tenderers for all high value and/or highly complex projects may be considered by the Chief Executive Officer or relevant general manager to ensure that the tenderers have the capacity and financial stability to comply with the requirements of the contract.

The tender evaluation process may necessitate requests for further information. If material information is omitted, the panel may determine the tender is invalid. It is important that this process remains open and transparent, and as such, the same additional information should be sought from all tenderers.

Post-tender negotiations

The objective of post-tender negotiations is to obtain the optimal solution and commercial arrangements and not merely the lowest price. The conduct of any discussions after the close of the tender advertising period and before the selection of the preferred tenderer(s) can be considered a clarification activity prior to entering into the formal assessment of the tenders.

Following selection of preferred tenderer(s), Council must exhaust negotiations with one tenderer before beginning negotiations with another tenderer. These negotiations must only be undertaken with the preferred tenderer or the short-listed tenderers. The same general questions and propositions must be put to all short-listed tenderers. A detailed record must be kept of the negotiation process for audit purposes and details of meetings are to be treated as commercial-in-confidence.

Council must not use the negotiations as an opportunity to trade the price of one tenderer against that of another tenderer.

Matters that could be discussed include additional value adding options, specific contract management arrangements, accountable personnel for various contract stages or commitments, further intellectual property transfer opportunities, warrantees, service/supply arrangements etc.

While the Council may negotiate with tenderers to determine the award of the contract, it must have regard to the scope of the Request for Tender at all times. Post-tender negotiations must not materially alter the scope or intent of the tender. Any material deviation from the scope or intent of the tender would make the tender process void.

Council may also request preferred or short-listed tenderers to provide a best and final offer (BAFO) in relation to all or certain aspects of their tender.

3.3.3 Quotations

Request for quotation: \$2,000 to \$4,999

Council must seek a minimum of one quotation. Subject to it being within budgetary constraints and demonstrating best value, the order will be placed with that supplier or contractor.

Details of the suppliers contacted and their quotations must be recorded and available for audit purposes in Council's electronic document records management system, or in Authority.

Request for quotation: \$5,000 to \$24,999

Council must seek a minimum of two quotations. The quotation offering the best value for money shall be confirmed, subject to it being within budgetary constraints, and the order placed with that supplier or contractor.

Details of the suppliers contacted and their quotations must be recorded and available for audit purposes in Council's electronic document records management system,

or in Authority.

It is acknowledged that for some procurement processes in this range, the obtaining of two quotes is either inefficient or impractical. In these circumstances, written authorisation must be provided by the relevant manager.

Request for quotation: \$25,000 to \$149,999/ \$199,999

Council must seek a minimum of three quotations through Council's e-procurement system. Public advertising is not required but may be an alternative if the project is politically sensitive or there is a limited market for that particular item or service.

Quotations must be electronically returned by the nominated closing date, be subject to the same evaluation process that applies to public tenders, and a recommendation made in favour of the supplier offering the best value for money outcome.

The invited suppliers quotations and signed contract documentation is to be scanned and be maintained in Records Manager.

It is acknowledged that for some procurement processes in this range, the obtaining of three quotes is either inefficient or impractical. In these circumstances, written authorisation must be approved by the relevant general manager.

3.3.4 Supply by contract

The provision of goods, services and works by contract potentially exposes Council to risk.

Council will minimise its risk exposure by measures such as:

- standardising contracts to include current, relevant clauses
- requiring security deposits or bank guarantees where appropriate
- detailed and appropriate tender specifications, which may include referring specifications to relevant experts
- requiring contractual agreement before allowing the commencement of work
- use of or reference to relevant Australian Standards
- effectively managing the contract, including monitoring and enforcing performance.

Contract terms

To protect the best interests of Council, terms and conditions must be settled in advance of any commitment being made with a supplier. All contractual relationships must be documented in writing based on standard terms and conditions.

Standard conditions of contract, as per relevant Australian Standards, should be utilised where practicable.

Where this is not possible, advice should be sought from senior management who may make a determination regarding engaging appropriate legal advice.

3.4 Delegations and internal controls

Delegations define the limitations within which Council staff are permitted to work. Delegation of procurement authority allows specified Council staff to approve certain purchases, quotation, tender and contractual processes. This enables the Council to conduct procurement activities in an efficient and timely manner while maintaining transparency and integrity.

Council staff

Council must maintain a documented scheme of financial delegations, identifying the Council staff authorised to make such procurement commitments in respect of goods, services and works on behalf of the Council and their respective delegations contained in Financial Delegations policies:

- acceptance of tenders
- acceptance of quotes
- contract term extensions (within authorised budget)
- credit card purchases.

Delegations reserved for the Council

Procurement activities which exceed the CEO's financial delegation must be determined by Council. The CEO may exercise financial delegation between \$250,000 and \$1,000,000 only upon recommendation of the Finance Advisory Committee.

Internal controls

The CEO will maintain a framework of internal controls over procurement processes that will ensure:

- there is sufficient segregation of staff duties involved in and responsible for a transaction end-to-end
- transparency in the procurement process
- a clearly documented audit trail exists for procurement activities
- appropriate authorisations are obtained and documented
- systems are in place for appropriate monitoring and performance measurement
- that documentation comprising the contract is signed by both parties before works commence.

3.5 Exemptions

Urgent or emergency expenditure

Sub-section 186(5) of the Act provides specific circumstances where Council can enter into a contract without first having put that contract to public tender if the CEO or relevant general manager resolves that the contract must be entered into because of an emergency or urgent situation. Situations where this may occur include:

- the occurrence of a natural disaster such as flooding, bushfire or epidemic that 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 impacts business continuity.

The definition of urgent or emergency expenditure is not intended to be a convenient fall-back position for last minute procurement that could reasonably have been expected to be purchased under standard processes in the normal course of business.

Approval for urgent or emergency expenditure under this section may be provided by the relevant general manager, regardless of whether the expenditure exceeds their financial delegation.

Unique item/s expenditure

Some items are of such a unique character that standard purchasing processes (obtaining three quotes or public tender) do not apply. An example of a “unique” item purchase is the purchase of art works for Mildura Arts Centre. In these circumstances, written authorisation for the purchase must be provided by the relevant general manager, regardless of whether the expenditure exceeds their financial delegation.

3.6 Agency arrangements

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

3.7 Confidentiality

The confidentiality of all information provided in the tendering and quoting process must be fully preserved. This includes the forwarding and discussing of information including quotations to other parties, both internal and external, who is not involved in any formal or informal evaluation process.

3.8 Conflict of interest

Councillors and Council staff must comply with the requirements of Council's Conflict of Interest Policy (CP057) and Gifts Policy (CP095).

Any Councillor or Council staff member involved in the decision to award a tender or quote who determines that they have a conflict of interest must remove themselves immediately from the process.

A Conflict may also arise by having a perceived conflict of interest. An evaluation panel member who has a perceived conflict of interest with a respondent must make a declaration to the Procurement Unit. The Manager Financial Services and/or CEO will make a determination as to whether that declaration presents a conflict of interest and whether the person can participate in the evaluation panel.

3.9 Record management

Staff are responsible for ensuring all records associated with a procurement process are completed to the standard required using designated Council templates and maintained in the appropriate storage system.

3.10 Supplier relationships

Council will establish and foster mutually beneficial relationships with suppliers, recognising that how these relationships are managed has a significant impact on the cost and quality of the end product (goods, services or works) delivered to the organisation and/or the community.

3.11 Order “splitting”

Order “splitting” is defined as the practice of dividing the full cost of a single purchase or project into a number of smaller segments to intentionally avoid the requirement to seek formal tenders or quotations. This practice is unlikely to achieve good value for money and is prohibited by Council in its procurement process. Council will identify “order splitting” in its procurement process through regular reporting systems that identify multiple orders raised on the same supplier.

4. Who is responsible for implementing this policy?

CEO, general managers, managers, coordinators and team leaders, and any other staff who use procurement processes are responsible for implementing this policy.

5. Definitions

<i>Approved contractor or supplier</i>	A contractor or supplier becomes approved when they meet: <ol style="list-style-type: none">1. the requirements for prequalification; and2. any other qualitative requirements, as required by council.
<i>Conflict of Interest</i>	In this Policy, a conflict of interest is either: <ul style="list-style-type: none">• As defined in Council’s Conflict of Interest Policy; or• A perceived conflict of interest.
<i>Contract</i>	An agreement between Council and a supplier of goods and/or services evidenced by a legal binding document containing conditions relating to the supply of goods/services and responsibilities assigned.
<i>Contractor</i>	An external person/business that provides a service to Council.
<i>Contract owner</i>	Officer who is ultimately accountable for the contract/project. (This is normally in line with Financial Delegations or Delegation of Council).
<i>Contract supervisor</i>	Council officer or agent assigned by the contract owner to have the responsibility for the operational administration of the contract.
<i>Goods</i>	A physical or tangible item that does not include a labour component.
<i>Finance Advisory Committee</i>	A committee established consisting of three councillors and three Council officers that may, from time to time, assess tenders and make

	recommendations.
<i>Multi-stage tender</i>	Tender process requiring an Expression of Interest (EOI) to test the market “expertise” followed by a Request for Tender (RFT)
<i>Perceived Conflict of Interest</i>	Personal or professional relationships where the interests of someone or something close to you may be affected. These relationships may include friends, associates, mentors, previous colleagues, team members.
<i>Pre-qualified</i>	<p>A contractor or supplier becomes pre-qualified when the following requirements are met:</p> <ul style="list-style-type: none"> • Certificate of currency provided for: <ul style="list-style-type: none"> i. Public liability insurance to a minimum of A\$10 million where physical services are provided on Council sites ii. Professional indemnity insurance to a minimum of A\$5 million where intellectual services are provided iii. Workcover insurance • OH&S system(s) in place that is/are acceptable to Council • copies of current trade certification, license(s) permits and competencies relevant to the work required are provided • referee checks indicate suitability to be engaged by Council.
<i>Purchasing</i>	The process by which an organisation contracts with another party to obtain the goods and services required to fulfil its business objectives.
<i>Procurement</i>	Procurement is a process and incorporates a range of elements: from the definition of business needs and the preparation of a business case; through assessment of market capability, the development of procurement strategies and the calling of tenders for example; to managing contracts, evaluating performance and cost, and disposals.
<i>Quotation</i>	Written advice from a supplier confirming price, terms and conditions for goods and/or services.
<i>Risk analysis</i>	The process of determining the likelihood and consequences of an event in the context of existing risk control measures. These estimates are combined on the Risk Ranking Matrix to arrive at a given level of risk.

<i>Risk assessment</i>	The overall process of risk identification, risk analysis and risk evaluation.
<i>Risk evaluation</i>	The process used to determine the risk management priorities by comparing the level of risk against predetermined standards, target risk levels or other criteria.
<i>Risk identification</i>	The process of determining what can happen (eg what can go wrong, why it can happen and when?).
<i>Service</i>	A contract for service is a contract for some task to be done rather than for the supply of materials or goods. It normally involves the provision of labour and/or professional services.
<i>Social procurement</i>	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.
<i>Specified amount</i> (Section 186 Local Government Act 1989)	<ul style="list-style-type: none"> • \$150,000 (or such higher amount as may be fixed by Order in Council) for contracts for goods or services; and • \$200,000 (or such higher amount as may be fixed by Order in Council) for contracts for the carrying out of works.
<i>Sub-contractor</i>	Service provider to the principal contractor. Must comply with the same requirements as the Contractor, and must provide the same documentation as the contractor to Council's contract owner.
<i>Tendering</i>	Formalised process of invitation, utilising Australian Standards documentation, to submit a price for the supply of goods and/or services.
<i>Works</i>	The construction, alteration, extension, restoration, repair, demolition or dismantling of buildings, structures or works that form, or are to form, part of Council's assets whether or not the buildings, structures or works are permanent.

6. Legislation and other references

6.1 Legislation

The applicable Acts and regulations include, but are not limited to, the following:

- The appropriate Australian Standard code of tendering conditions of contract and specifications AS 4120-1994
- *National Competition Principles Act 1995*
- *Freedom of Information Act 1982*
- *Freedom of Information (Amendment) Act of 1993*
- *Privacy & Data Protection Act 2014*
- *Section 186 Local Government Act 1989*
- *Trade Practices Act 1974*
- *Occupational Health and Safety Act 2004* and associated regulations
- *Local Government (General) Regulations 2004 (as amended)*
- *Protected Disclosure Act 2012*

6.2 Other References

External Documents

- Australian Standard 4000 – 1997: General Conditions of Contract
- Australian Standard 4122 – 2010: Conditions of Contract for engagement of Consultants
- Australian Standard 4305 – 1996 Conditions of Contract for Minor Works (projects up to \$250,000)
- Australian Standard 4902 – 2000: Conditions of Contract for Design and Construct
- Australian Standard 2124-1992: General Conditions of Contract
- General Conditions – Provision of Services
- Social-Procurement – A Guide For Victorian Local Government 2010
- Environmental Purchasing Guide – 2003: Department of the Environment and Heritage
- Local Government Guidelines – Department of Planning and Community Development, Local Government Victoria

Internal documents

This policy is implemented in conjunction with the overriding Procurement process, incorporating the following:

- Procurement Guidelines and processes
- Pre-approved Contractors and Suppliers' Application
- Risk Management Framework and policy
- Financial Delegations
- Conflict of Interest Policy
- Gifts Policy
- Protected Disclosure Policy

6.3 Risk assessment reference

Risk category	✓	Risk category	✓
Asset Management Committees		Financial Sustainability	✓
Compliance – Legal & Regulatory	✓	Human Resource Management	
Contract Management	✓	Leadership & Organisational Culture	
Contract Tendering & Procurement	✓	Occupational Health & Safety	
Corporate Governance		Organisational Risk Management	
Environmental Sustainability		Project Management	✓
		Public Image and Reputation	✓

6.4 File number and Records Manager reference number

- 18/02/01