



# Baw Baw Shire Council

## Procurement Policy 2024

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## Definitions and Abbreviations

Term	Definition
Contract	An agreement between two or more authorised persons on behalf of their organisations to perform or not perform a specific act/s enforceable in law. A contract may be verbal or written or inferred by conduct.
Contract Management	The criteria used to evaluate the compliance and/or relative ranking of RFX submissions. All evaluation criteria must be clearly stated in the RFX documentation
Expression of Interest (EOI)	A response to an open approach to the market requesting submissions from respondents 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 RFX process.
Evaluation Criteria	The criteria used to evaluate the compliance and/or relative ranking of proposals. Evaluation criteria must be clearly stated in the request for tender documentation.
Goods	Anything which is legally capable of being owned including but not limited to physical goods and real property as well as intangibles such as intellectual property, contract options and goodwill.
IBAC	The Independent Broad-based Anti-Corruption Commission
Monopoly Market Conditions	When goods, services or works can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons: <ul style="list-style-type: none"> <li>- the requirement is for works of art;</li> <li>- to protect patents, copyrights or other exclusive rights, or proprietary information (e.g. Melbourne Water-owned assets, licenses or subscriptions); or</li> <li>- due to an absence of competition for technical reasons.</li> </ul>
Probity	In the context of an RFX process probity is a defensible process which can withstand internal and external scrutiny – one which achieves both accountability and transparency, providing respondents with fair and equitable treatment.
Probity Advisor	A supplier with extensive experience and skills in procurement who may develop probity plans and other key documents and provide advice and training to Council staff on probity principles and guidelines.
Probity Auditor	A supplier who provides the Chief Executive Officer with an independent and appropriate sign-off on probity requirements at the end of the RFX process.
Procurement	Procurement is the whole process of acquisition of external goods, services and works. It can include planning, design, standards determination, specification writing, preparation of RFX documentation, selection of suppliers, financing, contract administration, disposals, and other related functions. It also includes the organisational and governance frameworks that underpin the procurement function.

Term	Definition
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 in writing, confirming the contractual situation between the buyer and supplier.
Quotation	A formal statement setting out the price or costs, including any relevant conditions, for the supply of goods, services and/or works. For the purpose of this policy the term 'quotation' can include, but not be limited to, 'pricing proposals' and 'works requests' or any other such formal statement that meets the definition of a quotation.
Request for tender (RFT)	A request for submissions against a set of clearly defined and specified requirements. Respondents are advised of all requirements involved, including the RFT conditions and proposed contract conditions.
Request for quotation (RFQ)	A written process of inviting submissions to supply goods, services and/or works involving simple documentation, a limited number of potential suppliers and generally of lower values.
RFx	A collective term for procurement processes. These processes may include RFQ, RFT, RFP, EOI and RFI processes.
Services	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.
Social Enterprise	<p>Social Enterprises are:</p> <ul style="list-style-type: none"> <li>- led by an economic, social, cultural, or environmental mission consistent with a public or community benefit;</li> <li>- derive a substantial portion of their income from trade; and</li> <li>- reinvest the majority of their profit/surplus in the fulfilment of their mission.</li> </ul>
Specification	A statement of needs or requirements. It provides a detailed description of the goods or services or works a supplier is expected to deliver during the term of the contract. It defines payment and performance criteria and forms part of the formal agreement.
Tender Process	The process of inviting parties via public advertisement to submit an offer by tender followed by evaluation of submissions and selection of a successful bidder or tenderer in accordance with pre-determined evaluation criteria.
Thresholds	The value above which a procurement, unless exempt, is subject to the mandatory procurement procedures.
Value for Money	The optimal combination of financial and non-financial factors through the lifecycle of the goods and services procured. This includes fitness for purpose, supplier capability, broader government objectives, total cost of ownership, timeliness, and risk.

## 1. Governance Principles

Section 9 of the Local Government Act 2020 (the Act) specifies the overarching governance principles and supporting principles that Council must adhere to in the performance of its role and functions.

This policy gives effect to the following overarching governance principles outlined in Section 9(2) of the Act:

- Council decisions are to be made and actions taken in accordance with the relevant law;
  - Priority is to be given to achieving the best outcomes for the municipal community, including future generations;
  - The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
  - The municipal community is to be engaged in strategic planning and strategic decision making;
  - Innovation and continuous improvement are to be pursued;
  - Collaboration with other Councils and Governments and statutory bodies is to be sought;
  - The ongoing financial viability of the Council is to be ensured;
  - Regional, state and national plans and policies are to be considered in making strategic planning and decision making; and
  - The transparency of Council decisions, actions and information is to be ensured.
- This report also considers the following supporting principles defined in Section 9(3) of the Act:
- The public transparency principles (Public Transparency Policy);
  - The financial management principles; and,
  - The service performance principles.

## 2. Purpose

This Procurement Policy has been developed in accordance with Sections 108 and 109 of the Local Government Act 2020 (the Act). Council is required under these Sections to:

- Prepare and adopt a procurement policy which sets out the principles, processes and procedures that apply for the purchase of goods, services, and works carried out by the Council; and
- Review its procurement policy at least once during each four-year term of Council.

This policy applies to all contracting and procurement activities at Council and is binding upon Councillors, Council staff (including temporary employees), contractors and consultants while engaged by the Council. The Procurement policy has been developed to recognise the need to ensure its procurement framework establishes best practice

principles including value for money, open and fair competition, accountability, risk management, probity, and transparency.

This Policy provides direction on the conduct of procurement activities throughout the sourcing, management, and disposal phases. It also covers the general procurement framework but does not extend to the related accounts payable processes.

Council must comply with this Procurement Policy before entering a contract for the purchase of goods or services or the carrying out the works.

### 3. Procurement Policy

This Policy is consistent with the requirements of S108 (2) of the Act and:

- promotes open and fair competition and provide Value for Money;
- provides policy and direction to Council to allow consistency and control over procurement activities;
- promote the highest levels of procurement probity and ethical behaviours;
- demonstrates accountability to ratepayers;
- provides guidance on ethical behaviour in public sector procurement;
- demonstrates the application of best practice in procurement activities;
- demonstrates the consideration of sustainability in procurement with respect to social, economic and environmental factors;
- implements Risk Management practices throughout the RFX process;
- increases the probability of obtaining the best outcome when purchasing goods and services; and
- promotes collaborative procurement.

These objectives will be achieved by requiring that Council's contracting, purchasing and contract management activities:

- Support the Council's corporate strategies, aims and objectives;
- Span the whole life cycle of an acquisition and take sustainability considerations into account;
- Take a long-term strategic review of procurement needs while continually assessing, reviewing and auditing its procedures, strategy and objectives;
- Achieve demonstrable value for money; are conducted and are seen to be conducted, in an impartial, fair, and ethical manner;
- Seek continual improvement including the consideration of innovative and technological advances; and
- Generate and support local business through inclusion wherever practicable.

## 4. Procurement Governance Structure

Councillors, staff, and persons undertaking procurement on Council's behalf are responsible for complying with this Policy.

Council maintains a procurement function responsible for:

- Maintaining the Procurement Policy and associated guidelines, processes and procedures;
- Maintaining appropriate purchasing, procurement, and contract management systems and tools;
- Providing procurement-related advice and support to the organisation as required;
- Building organisational procurement and contract management capability (including delivery of training and provision of guidance materials);
- Promoting awareness and monitoring of compliance with this Policy;
- Ensuring legislation is followed, reporting breaches and corrective actions in a timely manner;
- Collaborating with other councils and organisations to identify best practice in and achieving better value from procurement.

The Council will maintain internal procurement control documents detailing the processes, procedures and systems related to procurement. The Council will maintain details of tendered contracts.

The Procurement team will provide a Quarterly Procurement Report, reporting on Council's procurement practices (including procedural non-compliance) to the Audit & Risk Committee, which is comprised of three independent members, two Councillors, Council's CEO, Executive Leadership Team.

## 5. GST

All monetary values stated in this Policy exclude GST unless specifically stated otherwise.

## 6. Probity, Accountability and Transparency

All people undertaking procurement activities on Council's behalf are responsible for the actions and decisions they take in relation to Procurement process.

Therefore, the processes by which all Procurement activities are conducted will be in accordance with the Council's procurement policies and procedures as set out in this Policy, relevant Legislation, Australian Standards, Commercial Law and the *Local Government Act 2020*.

Where a third-party agent is engaged to procure goods, services or works on behalf of Council, they must ensure they are compliant with the relevant legislation including *the Act*.

## 6.1 Probity

Council has a responsibility to obtain Value for Money (as defined), and this must be achieved by acting with probity. Procurement probity is a defensible process, able to withstand internal and external scrutiny, one which achieves accountability, transparency and provides tenderers with fair and equitable treatment. Probity is about ensuring the procedural integrity of the procurement process, guarding against collusion and fraud and anti-competitive conduct, and not receiving personal gain.

Council may choose to engage Probity services depending on the nature, complexity, risk, and value of a procurement activity. Guidance on engagement of Probity services will be provided by the Procurement function.

The benchmark value at which a proposed contract should be subject to a probity plan is \$10 million.

## 6.2 Risk Management

The principles of risk management are to be appropriately applied at all stages of Procurement activities, which will be properly planned and carried out in a manner that will protect and enhance the Council's capability to prevent, withstand and recover from personal injury, property damage, reputational loss, financial exposure and interruption to the supply of goods, services and works.

The provision of goods, services and works by a supplier or contractor potentially exposes Council to risk.

## 6.3 Conduct of Councillors and Council Staff

Councillors and Council Staff shall always conduct themselves in accordance with the Councillor Code of Conduct (*Local Government Act 2020 Sect 139*) or the Employee Code of Conduct (*Local Government Act 2020 Sect 49*) and respectively, perform their duties ethically and with integrity.

## 6.4 Conflict of Interest

In adherence to *Local Government Act 2020 Section 130* Councillors and Council Staff shall at all times avoid situations which may give rise to an actual or perceived conflict of interest. A conflict of interest may be a 'general' or a 'material' conflict of interest. A member of Council Staff has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.

A member of Council Staff has a material conflict of interest in a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit or loss may be direct or indirect and pecuniary or non-pecuniary. Affected persons include, among others, the member of Council Staff and their family members.

Councillors cannot participate in any aspect of the procurement process unless acting in the capacity of Council at a formally constituted Council meeting and/or an assembly of Councillors and or Council to consider the awarding of a contract. Council Staff involved in the procurement process, in particular preparing tender documentation, writing tender



specifications, opening tenders, participating in tender evaluation panels, preparing a recommendation report; and Councillors and Council Staff awarding tenders must:

- Avoid conflicts of interest, whether material, general, or actual, potential or perceived.
- Declare that they do not have a conflict of interest in respect of the procurement. Council employees participating in tender evaluation panels must complete a Conflict-of-Interest declaration.
- Council staff who present verbal advice to a meeting of council or a delegated committee should disclose any general or material conflict of interest. They must also disclose any conflict of interest to the meeting when they make a presentation to council or a delegated committee.
- Council Staff must declare any actual or perceived conflicts in line with Council's internal processes for reporting conflicts of interest; and
- Observe prevailing Council and Government guidelines on how to prevent or deal with conflict-of-interest situations; and not take advantage of any tender related information whether or not for personal gain.

## 6.5 Fair and Honest Dealing

All prospective contractors and suppliers must be treated impartially and afforded an equal opportunity to tender or submit a quotation. Any suspected improper conduct, collusion, undeclared conflict, including suspected fraud, corruption, substantial mismanagement of public resources, risk to public health and safety, risk to the environment, or detrimental action should be managed in accordance with Council's internal policies and processes.

## 6.6 Financial Accountability

All Council staff must ensure that when conducting a procurement process, it is in accordance with Councils financial delegations and procurement thresholds before commitment to any purchase. Council funds must be used efficiently and effectively to procure goods, works and services and every attempt must be made to contain the procurement costs without compromising any of the procurement principles as set out in this Procurement Policy. Council staff must:

- ensure the availability of funds is within the approved budget allocation prior to the commencement of any procurement;
- not authorise the expenditure of funds in excess of the applicable financial delegation for their position (delegated level of authority);
- not authorise or write multiple purchase orders or split purchase orders to avoid procurement process requirements or circumvent their procurement or financial authority;
- not approve expenditure that relates to them personally – any expenditure of this nature must be referred to the next higher level of authority for approval; and
- ensure that any purchase order generated in the relevant system is issued to the supplier when the goods, services or works are ordered and not when an invoice is received by Council.

## 7. Procurement Practice Principles

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

- Value for Money;
- Sustainability (social, economic and environmental);
- Open and fair competition;
- Accountability;
- Risk management, and
- Probity and transparency.

## 8. Procurement Processes, Thresholds and Competition

Section 108 of the Act details that each Council will set the public tender threshold levels that require tenders for contracts. All public tenders or similar competitive procurement processes invited by Council will be published via Council's e-Tendering Portal and may be advertised in the media or social channels as determined by the Council.

Council will invite tenders, proposals, quotes, and expressions of interest from the supply market for goods, services, and or works in accordance with the thresholds listed in Appendix 1 of this Policy unless otherwise stated in this policy to ensure compliance with the Act. These thresholds will only be varied with Council approval. The thresholds must represent the estimated value of the whole of term of the contract (i.e. the initial term plus any options to extend the initial contract term) and are exclusive of GST.

The options for a procurement process compliant with the public tendering requirements contained in the Act include:

- Council running its own publicly advertised tender process and a variety of advertising mediums may be chosen such as national newspapers, local newspapers, and web-based forums;
- Council participating in collaborative tender processes for similar services in conjunction with other councils and public bodies;
- Council appointing an external agent to run a tender process on its behalf. Examples of this include but are not limited to, Procurement Australia and MAV Procurement;
- Council accessing Victorian State Government contracts (e.g. State Purchase Contracts, Whole-of-Government contracts) that are available to Local Government and which Local Government can access without the need to comply with the requirements of Division 2 Section 108 (1) of the Act; or
- Council accessing contracts for panels of suppliers where those panels have been put in place through a compliant tender process. For example, these panel contracts may have been put in place through a Council-run tender process, a tender process run for Council by an external agent or be a Victorian State Government panel made available to Local Government; or

- Seek an exemption as outlined in section 108 3 (d) of the Act (refer to section 8 of this Policy).

## 8.1 Procurement Methods

The standard methods for procurement will be:

- Purchasing Card (i.e. Credit Card, fuel card);
- Purchase Order;
- A quotation process (refer Appendix 1) followed by a purchase order;
- Under approved purchasing schemes (i.e. Panel contracts);
- An Expression of Interest or Request for Proposal; and
- A tender process (refer Appendix 1) followed by contract and purchase order.

More than one person will be involved in, and responsible for, each transaction with appropriate authorisations obtained and documented.

## 8.2 Procurement Exemptions and Breaches

Procurement and spend non-compliance and breaches will be reported to the Executive Leadership Team and Council's Audit and Risk Committee on a quarterly basis.

The following circumstances are exempt from the general tender, proposal, quotation, and expression of interest requirements. Approval for these exemptions is to be endorsed by the Coordinator Procurement and Contract Management. Use of any exemption must be endorsed in accordance with the financial delegations.

Exemption Name	Explanation, limitations, responsibilities and approvals
Genuine emergency	Where the works or services are required in response to an emergency. (e.g. significant risk to persons or property or provide a response to a natural disaster or declared emergency). For these guidelines the usual meaning of 'emergency situation' should be taken to be a sudden or unexpected occurrence requiring immediate attention. Refer to Section 8.3.
Purchasing from Government & Government Owned Entities	This general exemption allows engagements with another government entity or government owned entity. Federal, State or Local Government or an entity owned by Government.  Contracts and arrangements established by another government entity, local authority or local government group purchasing scheme. Examples are State Purchasing Contract (SPC), Municipal Association of Victoria (MAV) Procurement Australia (PA), Victorian Energy Collaboration (VECO), or National Procurement network members (e.g. Local Buy)
Utilities & Network Charges	Utilities and non-contestable services and work undertaken by and on behalf of utility and service owners including water, electricity, gas and other utility-based services, telecommunications and ISPs
Legislative Payments	Payments with statutory/legislative requirements - e.g.: Payments to the ATO, SRO & VEC
Payroll Expenses	<ul style="list-style-type: none"> <li>• Superannuation</li> <li>• WorkCover and Injury Management related expenses</li> </ul>

Exemption Name	Explanation, limitations, responsibilities and approvals
	<ul style="list-style-type: none"> <li>Payroll deductions;</li> </ul>
Council Investments	Investments / term deposits;
Community Grants	Grants awarded to Council to deliver Community and Council Projects
Refunds	Sundry refunds (e.g. pension rate rebates, deceased animal refunds);
Councillor Expenses	Mayor and Councillor allowances and expenses;
Property	Property purchases and sales
Warranties	Warranty renewals
Professional services unsuitable for tendering	<ul style="list-style-type: none"> <li>Legal Services.</li> <li>Insurance.</li> <li>Probity Services.</li> </ul>
Performing Arts	Exemption applicable for individual / groups of artists and / or shows, defined as forms of creative activity that are performed in front of an audience, such as drama, music and dance.
Information technology resellers and software developers	Allows Council to renew software licenses and maintenance and support, or upgrade existing systems, where there is only one supplier of the software who holds the intellectual property rights to the software.
Extension of contracts while Council is conducting a market tender	<p>Allows Council to extend an existing contract where the procurement process to replace the contract has commenced, and where the tender process or negotiations will take or have taken longer than expected.</p> <p>This exemption may be used when the establishment of an interim short-term arrangement is considered not to be in the public interest, as it may be cost prohibitive and/or present a risk in the delivery of critical public services to the municipality.</p>
Novated Contracts	Where the initial contract was entered into in compliance with the Act and due diligence has been undertaken in respect to the new party.
Regional Waste and Resource Recovery Groups	Situations where a Regional Waste and Resource Recovery Group constituted under the Environment Protection Act 1970 had already conducted a public tender for and on behalf of its member councils.
Lack of Competition	Where it can be sufficiently demonstrated there is an absence of competition (e.g. Memberships) or where an attempt to obtain the required number of quotes can be demonstrated and a lack of response was received within the required timeframes.
Contracts for regional and public libraries	This exemption allows Council to enter into agreements with, including the provision of funding to or procuring services from, regional libraries established under section 196 of the Local Government Act 1989 (Vic) and any entity, or entities established to replace them to deliver public library services (as required under the Local Government Act 2020 (Vic)).
Developer Contributions	This exemption allows for works being delivered by developers as works-in-kind in lieu of cash contribution.

Where Council expenditure is funded from State or Federal Government grant monies the requirement to comply with Division 2 Section 108 of the Act remains unless there are grant conditions which provide alternative arrangements.

Should the nature of the requirement and the characteristics of the market be such that it is considered a public tender process is not possible, an exemption as outlined in Section 108 3 (d) will apply.

All exemptions will be sent to the Coordinator Procurement & Contract Management for review and approval prior to the relevant Director for approval.

### 8.3 Emergency & Disasters

The use of this emergency provision, includes but not limited to situations where a real emergency has arisen including:

- the occurrence of a natural disaster such as flooding, storms, 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 council assets, 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 or a contractor due to bankruptcy and a need to appoint a replacement service provider on the grounds of public safety; and
- any other situation which is liable to constitute a risk to life, property or assets including a disruption to a service that could risk life, property, assets and or infrastructure.

Emergency in the procurement context is viewed at three levels:

- Level 1 Immediate Response – Reactive procurement action taken immediately before, during and in the first period after an emergency to reduce the effects and consequences of the emergency on people, their livelihoods, wellbeing and property; on the environment; and to meet basic human needs;
- Level 2 Disaster Relief – Emergency procurement for the provision of assistance to meet the essential needs of individuals, families and the wider community during and in the immediate aftermath of an emergency; and
- Level 3 Post-Disaster Recovery – Accelerated procurement to assist the council and the community to achieve a proper and effective level of functioning.

All Emergency exemptions will be sent to the Coordinator Procurement & Contract Management for review and approval prior to the relevant Director for approval.

## 9. Panel Contract Arrangements

### 9.1 Internal Annual Supply and Panel Contract Arrangements

Council may appoint a panel of suppliers as the result of a competitive procurement process, in an annual supply or panel arrangement. Once a panel arrangement is

established, this is a continuing offer by one or more suppliers to provide specified goods, works or services for a predetermined length of time, at a predetermined unit rate, and in accordance with pre-agreed terms and conditions of the Contract.

When obtaining goods or services from suppliers on these panels, Council is not obligated to seek public tenders, formal quotations or similar, however quotations from one or more panellists may be obtained on a job-by-job basis (subject to terms of the contract) to promote competition, retain competitive tension, and obtain value for money.

Council will seek a minimum of two quotations for works more than \$50,000 ex GST procured through a panel of suppliers or a minimum of three quotations for works more than \$250,000 ex GST. This requirement does not apply to a panel of suppliers resulting from a competitive procurement process which has less suppliers included within it than the minimum number of quotations to be sought. For example, if a panel only has two suppliers included in an annual supply or panel arrangement, the requirement to seek three quotations for works more than \$250,000 ex GST would be reduced to the number of suppliers on the panel i.e. two quotations. Please see Appendix 2 Panel Procurement Thresholds.

## 9.2 External Panel Contracts

Under an existing externally approved Tendering Agent or Victorian Government Contract, such as Procurement Australia, Municipal Association of Victoria or Victorian State contracts, all of which have been market tested, staff are required to:

- Prepare a project brief and if the panel does not require multiple quotes, Council will obtain a minimum of two quotes from suitable Panel members or arrangement to assess value for money; (i.e. exempt from procurement thresholds).
- Evaluate quotes; and
- Follow the rules of the panel arrangement.

## 10. Collaborative Procurement

In accordance with Section 108 (3) (c) the Act, the Council will seek to collaborate with other councils, especially those in the Gippsland Region and public bodies for the procurement of goods, services and works to take advantage of potential economies of scale.

Collaboration will be sought where it can be demonstrated that the value for money proposition will be improved by the scaling up of the opportunity with the inclusion of other Councils and Public Bodies.

Council staff must consider any opportunities for collaborative procurement when conducting a major procurement process on Council's behalf. Reports recommending contract awards (procurement in excess of \$300,000) should contain information relating to opportunities for collaborative procurement, including:

- The nature of those opportunities, if any, and the councils or public bodies with which they are available; and
- Why Council did, or did not, pursue the identified opportunities for collaboration in relation to the procurement process.

## 11. Sole or Select Sourcing

Supply of goods, services or works can be sought from one supplier (sole sourcing) or a restricted group of suppliers (select sourcing) without tenders, expressions of interest, proposals or quotes where it is consistent with this Procurement Policy and either:

- it is in the public interest;
- the marketplace is restricted by statement of license or third-party ownership of an asset (including when utility authorities are required to undertake work on their assets); or
- Council is party to a joint arrangement where Council jointly owns the IP with a third-party provider.

If there is a current procurement or disposal process in place, that process must be terminated prior to sole sourcing being implemented. Sole sourcing is subject to existing delegations. Select sourcing is subject to endorsement by the appropriate Financial Delegate or the CEO.

## 12. Contract Value

The value of all contracts for the purposes of compliance with the policy unless explicitly stated otherwise, includes:

- costs for the full term of the contract, including any options for either party to extend the contract (ex GST);
- anticipated contingency allowances or variations; and,
- all other known, anticipated and reasonably foreseeable costs.

In certain circumstances, for example, where the contract price is nominal, it will be the market value of the goods, services or works which must be considered for the purpose of compliance with the Council's policy. That is, it is the value of the contract rather than its price which applies.

Best practice requires that if doubt exists as to the likely value of an intended contract, then a public RFX process should be undertaken.

## 13. Accumulated & Cumulative Spend

The threshold to determine the procurement approach must allow for the potential accumulated spend with the supplier across the same project or initiative across a period of the initial term and extension options. The value of the accumulated spend determines the procurement approach.

Council will also monitor and report on cumulative spend of non-contract purchase orders with suppliers at least annually. If expenditure with an individual supplier or a number of suppliers providing similar goods, services or works is ongoing in nature and the cumulative spend is likely to exceed the public tender expenditure threshold over a rolling two-year

period, then Council will review the opportunity to pursue a contract for the aggregated purchase of such goods, services or works through a competitive procurement process.

## 14. Public Tender Requirements

### 14.1. Procurement Plan

An appropriately detailed procurement plan should be developed at the outset and should be scalable depending on the level of risk, complexity, and value. The plan may include but is not limited to:

- Project summary;
- Scope of the requirement;
- Estimated value/financial considerations;
- Strategic analysis – business case including key objectives, business needs, critical success factors, current/ proposed spend (volume/trends) and demand profile;
- Policy matters affecting the procurement activity (for example, sustainable procurement, local and social procurement, circular economy, environmental sustainability, Aboriginal and Torres Strait Islander and collaborative procurement options etc.);
- Market analysis;
- User/stakeholder expectations;
- Evaluation criteria, methodology and evaluation panel members;
- Contract KPIs;
- Procurement methodology/options (for example, pre-invitation submissions, public market approach and information briefings);
- Procurement timeframe;
- RFX management;
- Risk management and mitigation issues;
- Reporting and monitoring arrangements;
- Transitional issues (in/out);
- Asset management and disposal arrangements;
- Probity requirements; and,
- Procurement plan signoffs.

Prior to commencing the sourcing process, Council 's Procurement team will:

- Identify and assess viable solutions to achieve the desired outcomes of the procurement, including opportunities for innovation and collaboration;
- Clearly define the procurement objectives to ensure business needs are met; and
- Accurately estimate the value of the procurement and confirm funding arrangements.



## 14.2. Evaluation Plan

Whilst all procurement plans will establish evaluation methods, where it is considered that a RFX is of high value, Procurement will require the development of a specific RFX Evaluation Plan. The evaluation plan must include detail of the:

- Evaluation Methodology;
- Specific criteria, conditions and the approved weightings to be applied to each of the evaluation criteria;
- Procurement details, including objectives, requirements and deliverables;
- Governance, including decision making, probity and administration; and
- Evaluation team details, roles and responsibilities, subject matter experts;

All RFX over \$10M will require a detailed evaluation plan to be developed.

## 14.3. Tender Evaluation

An appropriately qualified and briefed Evaluation Panel will be established to evaluate each tender submission against the tender selection criteria. Evaluation Panel must comprise of at least three persons and will be chaired by a member of the Procurement Team.

Where appropriate or deemed necessary by the Procurement team, an evaluation panel member will be selected from an independent department or engaged as a Subject Matter Expert. External representatives may be part of, or an advisor to, the panel to ensure appropriate skills, experience and/or probity.

The evaluation process must be robust, transparent, and evidenced and unbiased and executed in accordance with the Procurement Plan and Council's procedures. Each Panel Member will be required to formally declare any Conflicts of Interest, prior to receiving any tender documentation and commencing their evaluations.

## 14.4. Probity Advisor & Probity Auditor

An external probity advisor may be appointed to any public tender procurement process to oversee the development of the tender and tender evaluation process.

All RFX over \$10M will require an external Probity Advisor to be appointed to oversee the Procurement process.

Where a proposed contract is under \$10m that is deemed to be of high complexity, high risk, and or requiring a high level of public confidence, at the discretion of Procurement, Executive Leadership Team or the responsible Director, an external probity advisor will be engaged.

A Probity Auditor may also be engaged to provide the CEO with an audit report on a specific public tender procurement process.

## 14.5. Evaluation Criteria and Value for Money

The Council may include the following evaluation criteria categories to determine whether a proposed contract provides Value for Money:

- Mandatory Compliance criteria (e.g. ABN registration, Insurances, Licences);

- Tendered price;
- Capacity of the Tenderer to provide the goods and/or services and/or works;
- Capability of the Tenderer to provide the goods and/or services and/or works;
- Local and Social Sustainability;
- Environmental Sustainability; and
- Financial Sustainability.

## 14.6. Shortlisting and Negotiations

Council may conduct a shortlisting process during a RFX process. Shortlisting can be based on any criterion or criteria but only in pursuit of the most advantageous outcome for the Council. Shortlisted tenderers may be invited by the Council to submit a best and final offer in relation to all or certain aspects of their respective tenders. If one or more preferred tenderers are selected, negotiations can be conducted to obtain the optimal solution, best value and commercial arrangements within the original scope and intent of the tender. Internal procurement probity requirements apply to all negotiations.

## 14.7. No Award

Council is not obligated to award a contract, if there are not satisfactory submissions evaluated by Council during a tender evaluation. Factors may include value for money and risks.

## 14.8. Early Market Engagement

At Councils discretion, Council may conduct early market engagement in the form of an Expression of Interest, Request for Proposal or Request for Information, to:

- Foster Innovation and Collaboration;
- Refine Councils requirements;
- Understand the market dynamics, supply chains and trends;
- Assess the broad scope for achieving evaluation criteria objectives;
- Identify and manage issue and risks;
- Inform subsequent RFX activities; and
- Understand likely costs (via a request for information or expression of interest process only).

## 15. Contract Management

To continually improve its outcomes, Council will evaluate and seek to improve on all aspects of procurement and contract management, in accord with procurement processes and Contract Management Guidelines.

Council contracts are to include contract management requirements and Key Performance Indicators commensurate with the complexity of the procurement. Furthermore, contracts are to be proactively managed by the member of Council responsible for the delivery of the

contracted goods, services and works to ensure Council, and therefore the community receives Value for Money.

Council awards some contracts that are strategically critical and of relatively high value. Council will provide additional senior oversight of the management of a significant contract.

### **15.1. Contract Variations**

All contract variations must be assessed to determine whether they are properly characterised as variations, or whether they are in effect a new contract. This will depend on factors like:

- The monetary value of the proposed variation, i.e. the value of the variation in the context of the thresholds fixed by the Procurement Policy; and
- The subject matter of the proposed variation, and whether it is consistent with the scope of the original contract.

Approval of contract variations must be in accordance with the approved financial delegations and consideration made to available and approved budget allocation.

Unless delegated in the contract award, any variation or accumulated variations exceeding CEO Delegation of \$750,000ex GST will be reported to Council.

Contract variations are reported to Council's Audit & Risk Committee on a quarterly basis.

### **15.2. Contract Extensions**

For contracts over \$300,000 that have approved extension options, delegation approval is required to exercise the extension for the value of the option.

Council may enter into an agreement to extend a current contract if:

- the procurement process to replace the contract has commenced, and where the tender process or negotiations will take or are taking longer than expected; and
- when the establishment of an interim short-term arrangement with an alternative supplier is considered not to be in the public interest, as it may be cost prohibitive and/or present a risk in the delivery of critical public services to the municipality.

### **15.3. Dispute Resolution**

Where relevant, Council contracts shall incorporate dispute management and alternative dispute resolution provisions to minimise the chance of disputes escalating to legal action.

## **16. Local and Sustainable Procurement Considerations**

Council will seek to advance economic, environmental and social objectives to benefit the community directly by purchasing from for-social benefit entities, and indirectly by including social clauses in its contracts with private sector providers and screening supply chains for ethical considerations.

Local Suppliers are defined as suppliers based in Baw Baw Shire Council and then extends out to the Gippsland region and other neighbouring Councils within close proximity to Council.

At its discretion and where relevant to specific tenders which can be sourced with local suppliers, Council may allocate a percentage of the weighted evaluation criteria of a tender for Local Economic Sustainability considerations.

## 16.1. Local Economic Sustainability

Council recognises that local businesses are an integral part of the community and is committed to improving opportunities for Local Suppliers to compete for Council contracts, while still achieving Value for Money.

Council supports Local Suppliers and economic development by:

- Encouraging purchases that are from Local Suppliers and that are made locally and/or from local inputs;
- Supporting small to medium enterprises (SMEs);
- Generating opportunities for local employment and supply chains;
- Designing competitive procurement processes that attract Local Suppliers;
- Considering the cost vs life cycle/durability of purchases;
- Considering opportunities for First Nations businesses, or suppliers with First Nation businesses in their supply chain;
- Considering opportunities for social enterprises or suppliers with social enterprises within their supply chain;
- Undertaking early local market engagement; and
- Fostering innovation and emerging sectors.

Council will give preference to goods manufactured in Australia and New Zealand whenever practical, in consideration of Value for Money outcomes.

## 16.2. Environmental Sustainability

Council seeks to make procurement decisions that reduce natural resource and biodiversity depletion by promoting:

- Green purchasing (i.e. making purchases that use materials made of recycled content, are energy efficient and greenhouse friendly, are from a Social Enterprise or are second hand/refurbished);
- Stimulating a circular economy by challenging existing and new suppliers to improve environmental management and collaborate where possible on delivering long-term circular economy practices;
- Reduced greenhouse gas emissions;
- Improved environmental management in Council's supply chain with consideration to waste reduction and water consumption;
- The selection of products/services that have minimal effect on the depletion of natural resources and biodiversity; and
- Improved adaptability to climate change.

### 16.3. Social Sustainability

Council seeks to address disadvantage by encouraging diversity, acceptance, fairness, compassion, inclusiveness, and access for people of all abilities in its purchasing by seeking to:

- Create new jobs and opportunities for people who may be facing barriers to find employment;
- Target cohorts that may be experience economic exclusion;
- Reinvigorate depressed or marginalised communities: and
- Improve equity to access to opportunities.

## 17. Governance

Council seeks to ensure we work with suppliers whose business practices meet legislative requirements and their principles align with our own.

### 17.1. Supplier Code of Conduct

Council is committed to ethical, sustainable and socially responsible procurement and expect the same high standards from our suppliers.

Suppliers undertaking work on behalf of Council are required to comply with the requirements of Council's Supplier Code of Conduct.

### 17.2. Child Safe Statement

Council is committed to promoting child safety and ensuring compliance with the Victorian Child Safe Standards. As a key priority, Council is actively promoting child safety and reducing the factors that lead to children and young people being harmed. Council will review all suppliers who undertake work on behalf of Council who may have direct or incidental contact with children and young people, in accordance with the principles established in the Child Safe Policy.

### 17.3. Gender Impact Assessment (GIA) Statement

In accordance with the Gender Equality Act 2020, a Gender Impact Assessment (GIA) was undertaken when developing this policy.

## 18. Relevant Legislation, Policy and Other Documents

The Council's procurement activities shall be carried out to the professional standards in accordance with best practice and in compliance with the Act and applicable policies and procedures including Codes of Conduct for Councillors, Council staff and Others.

All Council policies comply with the Victorian Charter of Human Rights and Responsibilities.

This policy has clear linkages to a range of codes, charters, legislation, and Council documents including:

- Local Government Act 2020:

- section 3 of the Act (Objectives of a Council);
  - sections 11 and 47 of the Act (Delegations);
  - section 105 of the Act (Accounts and Records);
  - sections 108 and 109 of the Act (Procurement Policy); and
  - sections 126 to 131 of the Act (Conflict of Interest).
- Relevant provisions of the Competition and Consumer Act 2010 (Cth);
  - Gender Equality Act 2020;
  - Modern Slavery Act 2018 (Cth);
  - Occupational Health and Safety Act 2004 and Occupational Health and Safety Regulations 2017;
  - Working with Children Act 2005 and Working with Children Regulation;
  - Freedom of Information Act 1982;
  - Privacy and Data Protection Act 2014;
  - Public Records Act 1973;
  - Security of Payments Act 2002;
  - Local Government (General) Regulations 2015;
  - Local Government (Governance and Integrity) Regulations 2020;
  - Local Government (Planning and Reporting) Regulations 2020.
  - Social Procurement: A Guide for Victorian Local Government;
  - Victorian Local Government Best Practice Procurement Guidelines 2024
  - Procurement and Contract Management procedures and guidelines;
  - Purchasing and accounts payable manuals
  - Employee Code of Conduct;
  - Councillor Code of Conduct;
  - Supplier Code of Conduct;
  - Gifts and Hospitality Policy; and
  - Election Period Policy.

## 19. Monitoring Review and Audit

The Procurement Team will monitor procurement activity on an ongoing basis with respect to annual procurement activity and compliance with key internal controls. Council is committed to continuous improvement and will review the Policy in accordance with the requirements of the Act to ensure that it continues to meet its wider strategic objectives. This Policy is subject to amendment at any time if required and is to be reviewed at least once in every four (4) year Council term as required by the Act.

Approval date	4 September 2024
Approval authority	Council
Effective from	11 September 2024
Review term	2 Years
Next review date	11 September 2026
Responsible position	Coordinator Procurement and Contract Management
Responsible Director	Director Strategy and Organisational Performance
Version	1

## Revision History

Approval date	Version	Revision description
4 September 2024	1	Council adopted procurement policy

## APPENDIX 1 – PROCUREMENT THRESHOLDS

The Procurement process that must be followed by Council Staff is dependent on the value/risk of the purchase as shown below:

Spend Value (Excluding GST)	Procurement Method	Record Keeping
\$0 to \$1,000	Purchase Card to be used No written quote required No purchase order (PO) required	Records to be kept in accordance with Purchase Card Policy and in TechOne
\$1001 to \$5,000	One (1) written quote PO required & evidence attached to PO	Records to be kept in TechOne
\$5001 to \$25,000	Minimum two (2) written quotes PO required Quotation	Records of all quotations and evidence to be stored in TechOne and Team Folders
<b>Goods &amp; Services</b> \$25,001 to \$200,000	Minimum three (3) written quotes PO required One quote from local supplier if possible Quotation Selection Report required Formal contract may be required Can be issued as Public RFQ by Procurement	Records of all quotations and evidence to be stored in TechOne and Team Folders Public RFQs - All records are to be stored in Hive Contract Folder
<b>Works</b> \$25,001 to \$300,000	Minimum three (3) written quotes PO required Quotation Selection Report required Formal contract may be required One quote from local supplier if possible Can be issued as Public RFX by Procurement if market is limited	Records of all quotations and evidence to be stored in TechOne and Team Folders Public RFX - All records are to be stored in Hive Contract Folder
<b>Goods &amp; Services</b> Over \$200,001	Public or selective RFT for a contract for goods or services Process managed by Procurement	All records are to be stored in Hive Contract Folder & required documents in TechOne Finance System
<b>Works</b> Over \$300,001	Public or selective RFT for a contract for works Process managed by Procurement	All records are to be stored in Hive Contract Folder & required documents in TechOne Finance System

- a) The expected value of a procurement must be estimated before a decision on the procurement method is made. The expected value includes the maximum value of the proposed contract excluding GST, any extension options, renewals or other mechanisms that may be executed over the life of the contract.
- b) When Procurement is to be conducted in multiple parts with contracts awarded either at the same time or over a period of time, with one or more suppliers, the expected value of the goods, services or works being procured must include the maximum value of all the contracts.
- c) Procurement transactions will not be split to circumvent the above thresholds.
- d) Obtaining sufficient quotations can sometimes be difficult, e.g. if there are few suppliers for the goods, services or building and construction works being sought or where the work is highly specialised. In such a case an Exemption from Procurement Process (Form B) approved by CEO, will be required.



## APPENDIX 2 – PANEL PROCUREMENT THRESHOLDS

The Procurement process that must be followed by Council Staff in sourcing quotations under existing internal panels:

Spend Value (Excluding GST)	Procurement Method	Record Keeping
\$1000 to \$50,000	One written quote	Records of all quotations and evidence to be stored in TechOne and Team Folders
\$50,001 to \$250,000	Two written quotes from panel suppliers (where applicable)	Records of all quotations and evidence to be stored in TechOne and Team Folders
Over \$250,001	Minimum three written quotes from panel suppliers (where applicable)	Records of all quotations and evidence to be stored in TechOne and Team Folders

This requirement does not apply to a panel of suppliers resulting from a competitive procurement process which has less suppliers included within it than the minimum number of quotations to be sought. For example, if a panel only has two suppliers included in an annual supply or panel arrangement, the requirement to seek three quotations for works more than \$250,000 ex GST would be reduced to the number of suppliers on the panel capable of completing the works or services.