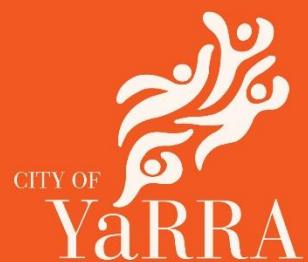


Yarra City Council

# Procurement Policy

1 July 2018 - 30 June 2019



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## 1. OVERVIEW

This policy represents the governance, principles, processes and procedures to be applied to the purchase of all goods, services and works by Council. The Policy will apply to all Councillors and council staff undertaking procurement activities on Council's behalf. The aforementioned persons will be responsible and accountable for compliance to all relevant Federal and State Government legislation, regulations and guidelines, this Procurement Policy and any associated Procurement Manual or Guidelines.

This policy is prepared in accordance with Section 186A of the *Local Government Act 1989* (the Act) which also requires that a review of the Policy is conducted annually and is available for public inspection. Council will provide public access to the Policy via;

- Council's offices located at the Richmond and Collingwood Town Halls and Libraries; and
- On Council's website.

## 2. LEGISLATIVE COMPLIANCE

The key 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 208B of the Act [Best Value Principles];
- Sections 77A, 77B, 78, 78A to 78E, 79, 79B to 79D, 80, 80A to 80C and 95 of the Act [Conflict of Interest];
- Section 98 of the Act [Delegations];
- Section 140 of the Act [Accounts and Records]; and
- The relevant provisions of the *Competition and Consumer Act 2010*.

Council is required to comply with the provisions of the above Acts in all procurement matters.

## 3. OBJECTIVES

The objectives of this policy are to:

- establish a procurement framework for Yarra City Council to achieve value for money and continuous improvement in the provision of works and services for the community;
- achieve high standards in probity, transparency, accountability and risk management in all procurement activities;
- achieve compliance with relevant legislative requirements;
- give preference to the procurement of environmentally sustainable goods, services or works;
- encourage and promote the use of local business;
- identify social procurement opportunities with local social enterprises and other relevant parties;

- incorporate the requirements of Council's Ethical Procurement and Investment Commitment into all relevant procurement activities;
- ensure that council resources are used efficiently and effectively to improve the overall quality of life of people in the local community;
- achieve Best Practice in accordance with the Victorian Local Government Best Practice Procurement Guidelines; and
- identify opportunities to facilitate or participate in collaborative procurement and shared services alternatives.

## **4. POLICY PROVISIONS**

### ***4.1 Procurement principles***

Council will apply the following fundamental best practice principles to each procurement activity irrespective of the value or complexity of that procurement:

- value for money;
- best value principles;
- open and fair competition;
- confidentiality;
- accountability;
- risk management;
- sustainability;
- social diversity and inclusion;
- probity and transparency; and
- climate change mitigation and adaptation.

Consideration will be given to the impact and cost of an acquisition over its whole life-cycle.

Council is committed to reducing any negative social and environmental impacts and preferential purchasing of products and services that have been produced to ethical standards which have minimal negative impacts on the environment and human health.

These procurement principles align with Yarra City Council's organisational values, including the values of Integrity, Accountability and Sustainability.

### ***4.2 Organisational procurement structure***

Yarra City Council will operate a centre-led procurement structure wherein all strategy, policy, processes, technology, best practice, document control, processes and networking in procurement matters will be the responsibility of the Strategic Procurement Branch.

The structure, duties and responsibilities of the Strategic Procurement Branch is detailed in the *Procurement Manual*.

Council shall:

- establish a procurement management structure and appropriate delegations ensuring accountability, transparency and auditability of all procurement decisions made over the lifecycle of all goods, services and works purchased by Council;

- ensure that Council's procurement structure:
  - is flexible enough to purchase in a timely manner the diverse range of material, goods, works and services required by Council;
  - ensures that prospective contractors and suppliers are afforded an equal opportunity to tender/quote;
  - encourages competition between tenderers; and
  - ensures all policies that relate to purchasing practices are communicated and implemented.

#### **4.3 Procurement officers**

Council will ensure that all Procurement Officers will have sufficient relevant qualifications and provide and encourage relevant training and networking opportunities to ensure that the delivery of procurement activities within the organisation are conducted in accordance with best practice principles.

### **5. DELEGATIONS**

#### **5.1 Authorisations**

Council is responsible for authorising an Instrument of Delegation to the Chief Executive Officer (CEO).

The CEO delegates authorisations to staff relating to procurement matters. These authorisations are facilitated by Council's Governance Branch and are reviewed annually.

Whilst this Policy must be adhered to by all employees engaged in procurement activities for Council, only delegated officers are authorised to approve expenditure relating to contracts, quotations or purchasing cards.

These delegations give relevant officers the power to:

1. procure goods, services or works;
2. expend amounts for the procurement of goods, services or works (this includes expenditure relating to any contract variations in accordance with Council's Variations Policy);
3. approve quotations or tenders;
4. award contracts; and
5. sign contract documentation

arising out of or connected with any duty imposed, or function or power conferred on Council by or under any Act and as provided for in Council's adopted Budget.

The following table identifies the authorisations and conditions to undertake procurement activity on Council's behalf. All values are inclusive of GST.

### Schedule of General Authorisations Approved by the Council

Officer	Amount (GST incl)	Conditions and Limitations
Council	No limit	Subject to compliance with the Local Government Act 1989.
Chief Executive Officer	Up to \$750,000	Subject to all conditions set out in the Instrument of Delegation from Council to the CEO.

The Chief Executive Officer delegates expenditure amounts to relevant Council officers based on the positions held within the organisational structure and associated responsibilities. These delegations are contained in Council's Instrument of Sub-Delegation.

The Chief Executive Officer may approve additional delegation to individual officers where operational circumstances require this authority.

#### 5.2 Variations

The terms of a Contract will usually entitle Council to direct a Variation. Variations can involve Council directing the Contractor to make a change to the supply of goods, the provision of services or the execution of works which are the subject matter of the relevant Contract.

Variations can also result from a provision in the Contract which deems a certain event or circumstance to be treated as a 'Variation' even if Council has not issued a direction to the Contractor to change the subject matter of the Contract. Examples in this context include a change arising from the introduction of a new law or ambiguities or inconsistencies within contract documents.

Variations can result in either an increase or in a decrease to the amount which Council is liable to pay to the Contractor under the Contract.

The Variation Policy provides guidance to Delegated Officers for the purposes of:

- identifying a Variation; and
- authorising or obtaining authorisation for expenditure relating to Variations.

## 6. PROCUREMENT PLANNING

The term 'strategic procurement' is applied to several different concepts including:

- a coordinated approach by an organisation in influencing supply markets to support Council business objectives;
- the purchase of high value, high risk, important and complex goods, services or works, often a multi-faceted project;
- long term plans for ensuring timely supply of goods, services or works that are critical to an organisation's ability to meet its core business objectives; and

- the process used to take a project from its early planning phase through to contract completion.

The essence of strategic procurement is that it should be aligned with and contribute to Council's overall long term strategy. It should be consistent with the Council Plan and include projections of revenue and expenditure in Council's budget.

Strategic procurement places an emphasis on:

- detailed analysis of council's spending pattern;
- ensuring procurement efforts correspond with risk and expected return;
- optimising the procurement process to reflect market conditions;
- aligning procurement with Council's aspirations for social and environmental responsibility;
- including continuous improvement and value for money in contractual arrangements with suppliers;
- developing a strategic procurement program for long term evolution of the procurement functions; and
- exploring collaborative and shared services procurement opportunities.

## **7. PROCUREMENT MANUAL**

A Procurement Manual (*the Manual*) has been developed and details the implementation of all relevant legislative requirements. Council will maintain and periodically review its Procurement Manual to ensure that best practice principles are updated and communicated to its staff. The primary objective of the Manual is to provide guidance to staff on all operational aspects of procurement. Staff will have access to the Manual via Council's Intranet website.

The Manual will conform to the Local Government Best Practice Guidelines and will be reviewed on an annual basis.

## **8. PROBITY REQUIREMENTS**

### ***8.1 Requirement***

Council's procurement activities shall be performed with integrity and in accordance with all relevant legislation, policies and processes.

### ***8.2 Conduct of Councillors and Council Staff***

Councillors and council staff shall at all times conduct themselves in a manner that is ethical, of the highest integrity and *will*:

- treat potential and existing suppliers with equality and fairness;
- not seek or receive personal gain;
- maintain confidentiality of Commercial in Confidence information such as contract prices and other sensitive information;
- present the highest standards of professionalism and probity;
- provide all suppliers and tenderers with the same information and equal opportunity; and

- be able to account for all decisions and provide feedback on them.

Council staff with responsibilities for managing or supervising contracts are prohibited from performing any works under the contract they are supervising.

#### MEMBERS OF PROFESSIONAL BODIES

Councillors and council staff belonging to professional organisations shall, in addition to the obligations detailed in this policy, ensure that they adhere to any code of ethics or professional standards required by that body.

#### COUNCILLORS

A Councillor must:

- comply with the Primary Principle of Councillor Conduct and avoid conflicts between his or her public duties as a councillor and his or her personal interests and obligations [Section 76BA of the Act]. Councillors and members of audit committees must disclose a conflict of interest in accordance with Section 79 of the Act;
- comply with the Councillor Code of Conduct; and
- 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.

#### **8.3 Tender Processes**

All tender processes shall be conducted in accordance with the requirements of this policy and any associated procedures, relevant legislation, relevant Australian Standards and *the Act*.

#### **8.4 Conflict of Interest**

Councillors and Council staff shall at all times avoid situations in which private interest's 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 action or 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 an interest, or holds a position of influence or power in a business undertaking tendering for the work.

The onus is on Councillors and the members of Council staff to promptly declare any actual, potential or perceived conflict of interest to Council.

#### **8.5 Fair and Honest Dealing**

All prospective contractors and suppliers must be afforded an equal opportunity to tender or quote for goods, services or works.

Impartiality must be maintained throughout the procurement process.

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

Confidentiality of information provided by existing and prospective suppliers must be maintained at all times, particularly commercially sensitive material such as, but not limited to prices, discounts, rebates, profit, manufacturing and product information.

#### **8.6 Accountability and Transparency**

Accountability in procurement means being able to explain and provide evidence on the process followed. The test of accountability is that an independent third party must be able to see clearly that a process has been followed and that the process is fair and reasonable.

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 and related relevant Council policies and procedures.

Additionally, all Council staff must be accountable for all procurement decisions made over the lifecycle of all goods, services and works purchased by the Council and record and document all performance and other relevant matters to ensure a transparent audit trail for monitoring and reporting purposes.

#### **8.7 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 the Council is interested.

Councillors and Council staff are to apply the Councillors and Staff Code of Conduct respectively in dealing with offers of 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 and/or not on official business.

Offers of bribes, commissions or other irregular approaches from organisations or individuals (no matter how minute the evidence available), must be promptly brought to the attention of the CEO.

#### **8.8 Disclosure of Information**

Commercial in-confidence information received by the Council must not be disclosed and is to be stored in a secure location.

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

- information disclosed by organisations in tenders, quotation 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 are to avoid references to current or proposed contracts in discussion with acquaintances or outside interests.

Discussion with potential suppliers during tender evaluations 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 authorized pre-contract negotiations.

### **8.9 *Probit Plan Audits***

A Probit Plan must be prepared and a probit auditor is to be appointed to any tender evaluation panel where the value of the required goods, services or works is assessed to exceed a total value of \$10 million over the life of the contract.

## **9 RISK MANAGEMENT**

### **9.1 *General***

Risk Management is 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 interruption to the supply of goods, services and works.

Council will manage all aspects of its procurement processes in such a way that all risks, including Occupational Health and Safety, are identified, analysed, evaluated, treated, monitored and communicated to the standard required by the law, in accordance with Australian Standards and Council Policy.

### **9.2 *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 where appropriate;
- referring specifications to relevant experts;
- requiring contractual agreement before allowing the commencement of work;
- use of or reference to relevant Australian Standards (or equivalent); and
- effectively managing the contract including monitoring and enforcing performance.

### **9.3 *Responsible Financial Management***

The principle of responsible financial management shall 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, shall be established prior to the commencement of any procurement action for the supply of goods, services or works.

Council staff must not authorise the expenditure of funds in excess of their financial delegations.

Council funds must be used efficiently and effectively to procure goods, services and works and every attempt must be made to contain the costs of the procurement process without compromising any of the procurement principles set out in this Policy.

#### **9.4 Dispute Resolution**

All Council Contract Managers must be cognisant of Council's dispute resolution process in order to minimise the chance of disputes escalating to possible legal action. In the event that a dispute cannot be resolved amicably, the Council officer is required to contact the Strategic Procurement Branch for assistance.

#### **9.5 Contract Management**

The purpose of contract management is to ensure that both parties to an agreement, meet their individual obligations as specified in the contract.

Council contract managers are responsible for the delivery of all specified contractual outcomes that comply with qualitative and quantitative requirements as per the contract by:

- establishing a monitoring system to ensure the responsibilities and obligations of both parties under the contract are met;
- providing a means for the early recognition of issues and performance problems and the identification of solutions;
- Develop and maintain a sound business relationship with relevant suppliers for the duration of any contractual agreement;
- Innovative methodologies to realise potential cost savings through the encouragement and promotion of continuous improvement in service delivery; and
- adhering to Council's Risk Management Framework and including Occupational Health and Safety Contractor compliance procedures.

#### **9.6 Occupational Health and Safety Management Systems (OHSMS)**

It will be mandatory for all relevant contractors engaged by Council to provide services or works, to have a documented OHSMS that conforms to the requirements of the OHS Act 2004 and that the system is implemented during the conduct of those services or works.

Contract Managers will be required to ensure that an OHSMS is sighted and assessed for conformance prior to the commencement of any relevant services or works.

#### **9.7 Endorsement of products or services**

Council staff must not endorse any external products or services. Individual requests received for endorsement must be referred to Director level or above.

## **9.8 Fraud and Complaints**

Council takes allegations of fraudulent activity and complaints about procurement seriously and is committed to handling such disclosures sensitively and confidentially. Members of the public, suppliers and Council employees are strongly encouraged to report fraud allegations or complaints about procurement processes and/or staff taking part in procurement activity to Council's Director Corporate Business and Finance.

### 9.8.1 Whistle Blowers Protection Act

The *Whistle Blowers Protection Act 2001* is an instrument which provides a mechanism for the disclosure of improper conduct by public officers and public bodies and to investigate alleged corruption and misuse of power. The Act also provides protection to those that make any disclosures or may suffer reprisals in relation to those disclosures.

Should any Council officer have knowledge of any such fraudulent activities, the matter must be reported to the Group Manager Governance or the Ombudsman for Local Government.

## **10 INTERNAL CONTROL**

The Council will establish and maintain a framework of internal controls over procurement processes that will ensure:

- more than one person is 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; and
- systems are in place for appropriate monitoring and performance measurement.

### **10.1 Contract Management System (CMS)**

Council's CMS is a central repository for all matters associated with the acquisition of, and the end to end management of goods, services or works.

From the initiation of a Tender or Quotation process, to the award of a contract and the subsequent management of a contract, the CMS accommodates all necessary functionalities necessary for the successful delivery of goods, services or works. The system also allows for regular auditing of contractor performance, financial summaries relating to expenditure, capture of contract variations, documentation storage, reporting, contract compliance issues and supplier relationship management.

To accommodate the requirements of those points listed in clause 10, all council staff involved in the acquisition of, or end to end management of goods, services or works, are required to utilise the CMS to the fullest.

## 11 PROCUREMENT METHODS

The acquisition of goods, services or works may be achieved through different methods. These methods are determined by several factors such as overall estimated cost, procurement strategy, the competitive landscape, the term of the contract or period of construction, the scope of the contract and the amount of risk involved in the delivery of the service or works.

Project values are inclusive of GST, provisional sums and all amounts payable under any optional extension periods. The scope of projects must not be split into smaller portions to avoid proper process unless there is significant savings to be realised or there are specialised components required that are not generally a core activity for suppliers/contractors and require separate consideration.

Council procurement methods encompass the following:

- Purchasing Card;
- Quotations – A purchase order following a quotation process from suppliers for goods, services or works that represent value for money under specified quotation thresholds;
- Tenders – A contract following a public tender process;
- External Agents – A contract established by a third party agent where council is eligible to participate;
- State Purchase Contract or a Whole of Victorian Government Contract; and
- A contract entered into under an arrangement approved by the Minister for Local Government.

An Expression of Interest (EOI) may be sought in accordance with Section 186[1] of the Act where:

- There is the potential of receiving many tenders, tendering would be costly, or the procurement is complex and council does not wish to impose the costs of preparing full tenders on all tenderers;
- Uncertainty of the degree of interest of suppliers to offer the proposed goods or services or undertake the works.

The Procurement Manual addresses the requirements for each of these Procurement methods.

## 12 PROCUREMENT THRESHOLDS AND COMPETITION

### **12.1 Tenders**

The thresholds prescribed by the Local Government Act for the purchase of all goods and services with an estimated expenditure of \$150,000 (inclusive GST) or greater, and building and construction works with an estimated expenditure of \$200,000 (inclusive GST) or greater for the whole term of the Contract must be undertaken by a public tender process. These thresholds will apply to all tendering processes conducted by Council unless one of the nominated exemptions applies (e.g. Legal Services).

These thresholds will be amended in accordance with any future promulgations that may be initiated by the Victorian State Government. (*A list of all nominated exemptions is available on the Strategic Procurement Intranet Site*).

A public tender process may be used for values less than \$150,000 (inclusive GST) for goods or services and less than \$200,000 (inclusive GST) for works if deemed of benefit to Council and produce a better outcome in the context of this Policy.

All tender processes must be initiated by an advertisement in a newspaper that has a state-wide distribution. Council currently advertises through “The Age” news media.

In the circumstance that a strong focus on local supply is required, an advertisement may also be placed in one of the local news media that is distributed throughout the municipality’

Similarly there may be a requirement for national distribution. In this case the Strategic Procurement Branch will collaborate with the relevant Council Officers to determine the best news media to provide the widest access to the marketplace.

All tenders will remain open to the public for a minimum period of 21 days.

A minimum of three (3) tenders must be received by Council to constitute a competitive process, however if the market being tested is deemed to be of a specialist nature and the relevant industry is limited in suppliers and less than 3 tenders are received, Council may consider that a competitive process has been conducted and accept the submitted tenders.

Under no circumstance will late tenders be accepted by Council.

#### 12.1.1 Tender Process

Council’s tendering process will:

- Comply with the procurement principles set out in this Policy;
- Utilise a pre-tender briefing; evaluations will be conducted in accordance with the methodology set out in Council’s procurement manual;
- An evaluation panel will be established to evaluate each tender against the selection criteria and its composition will be determined by the respective Manager and Strategic Procurement Branch;
- Tender evaluation panels may include external personnel in order to ensure transparency of the process and/or professional knowledge to the panel;
- A tender process will be robust, systematic and unbiased;
- A price preference of 10% may be applied to the purchase of environmentally or socially preferable products – all other considerations being equal;
- Once a preferred tenderer is selected negotiations can be conducted in order to obtain the optimal solution and commercial arrangements, providing they remain within the intent and scope of the tender. Such negotiations must be exhausted with one tenderer before beginning with another tenderer;
- Tender evaluation panels will produce a report of their evaluation using the appropriate prescribed template;

- Minutes of all meetings will be produced by the chairperson of the evaluation panel;
- The chairperson will maintain details records of all commercial-in-confidence negotiations if any occur.

## **12.2 Quotations**

The purchase of all goods, services and works with a value of less than the prescribed thresholds (\$150,000 (inclusive GST) for Goods and Services or \$200,000 (inclusive GST) for Works, may be undertaken using Council's internal quotation procedures.

The Quotation process was introduced into Local Government to allow for a more expedient manner with which to purchase low value goods, services and works that are below the specified thresholds and are a one off acquisition. This process was not intended to be applied to goods, services or works that will be required for extended periods of time.

Where there is a need to have goods, services or works delivered on a recurrent basis over an extended period of time, a tender process must be initiated.

The reason for this is that generally, goods, services or works delivered via a quotation process are not governed by any terms and conditions of contract and there is a possibility that the prescribed thresholds may be realised prior to the completion of the Goods, Services or Works.

The lack of terms and conditions elevates the risk factors associated with a quotation process and can result in difficult negotiations in an attempt to resolve any dispute between the parties.

Upon completion of the initial term of a quotation agreement where the expenditure is in excess of \$100,000 for Goods and Services or \$150,000 for Works, staff members will not be permitted to initiate a second quotation process so that they may continue to receive the same goods, services or works from the same supplier for a further period if:

- The total expenditure will exceed the thresholds;
- The total expenditure is within the same financial year.

These actions will be considered to be price splitting and is not permitted under this Council Policy.

Where there is a requirement for Council to sign a supplier's agreement, such agreements must be forwarded to the Procurement branch for review prior to being signed by any Council Officer.

Staff are strongly urged to consider the expenditure and period that all goods, services or works will be required so that the appropriate process can be adopted.

The Strategic Procurement Branch is available for any assistance in this matter.

### **12.2.1 Value \$0 to \$19,999 (incl GST)**

Council officers are required to seek at least one (1) written quote. One (1) Council officer to determine value for money.

Received quotation details must be recorded and uploaded onto Council's quotation purchasing and records management systems.

### **12.2.2 Value between \$20,000 and \$49,999 (incl GST)**

Council officers are required to receive at least two (2) written quotes to reasonably satisfy themselves that they will achieve value for money.

Received quotation details must be recorded and uploaded onto Council's quotation purchasing and records management systems.

A minimum of two (2) Council officers are required to evaluate quotes within this price range.

### **12.2.3 Value between \$50,000 and \$149,999 or \$199,999 (incl GST)**

Goods, services or works with a value between \$50,000 and \$149,999 (goods and services) or \$199,999 (works) must be procured via a full quotation process. If the brief is of a complex nature or the estimated total value is close to the nominated threshold amounts, consideration must be given to conducting a tender process.

A minimum of three written (3) quotations must be received by Council for assessment.

Should less than the required number of quotations be received, the Council officer must assess and determine whether the quotations(s) received still demonstrate best value outcomes. This may be through comparison with established cost estimates or experience from other similar projects. If value for money outcomes are not achieved, further suppliers must be sought and invited to submit quotes.

A minimum of three (3) Council officers must be involved in the evaluation of quotes within this price range.

## **13. ACHIEVING VALUE FOR MONEY**

### **13.1 Requirement**

Council's procurement activity will be carried out on the basis of obtaining Value for Money. This means minimising the total cost of ownership over the lifetime of the requirement consistent with acceptable quality, reliability and delivery considerations. Lowest price is not the sole determinate of value for money.

In assessing value for money, staff are responsible for giving due consideration to:

- Whole-of-life monetary cost, i.e.
  - procurement price

- operating and maintenance costs
- cost of environmentally responsible disposal or recycling/re-use/re-sale of the product
- Non-monetary impacts (both negative and positive) over the life of the product or service, including
  - environmental impacts
  - social impacts – particularly on marginalised or vulnerable people
  - impacts on other Council priorities

Council recognises that in some cases environmentally or socially preferable products may be more expensive than less expensive options. Council staff are empowered and expected to apply a price preference of 10% to these options (see Section 15). This means that when weighing up the value for money of different options, staff can and should consider the most environmentally or socially preferable option(s) to be 10% less than the purchase price. Note that even after applying this price preference, if the most environmentally or socially preferable option is still more expensive it can and should be selected if it provides the best overall value for money.

### **13.2 Approach**

The process for achieving value for money will be facilitated by:

- Developing, implement and managing procurement strategies that support the co-ordination and streamlining of activities throughout the lifecycle;
- Effective use of competition;
- Using aggregated contracts and Standard Offer Arrangements (SOA) where appropriate;
- Identifying and rectifying inefficiencies in procurement processes;
- Developing cost efficient tender processes including appropriate use of e-solutions;
- Council staff involved in procurement acquisitions or management providing competent advice in terms of available products and services; and
- Working with suppliers to create relationships that are professional and productive, and are appropriate to the value and importance of the goods, services and works being acquired.

### **13.3 Best and Final Offer (BAFO)**

To complement the Value for Money solution Council will include relevant clauses to all tender conditions associated with Construction and Major Service tenders where a Lump Sum price is requested. These tender conditions will provide Council the option to initiate a BAFO with short listed tenderers that may result from the overall tender process.

Primarily, a BAFO process is conducted after the close of the tender process, during the evaluation stage. It is described as a means to assist selection of a preferred tender when the offerings provided by two or more tenders are of similar weighting or are difficult to distinguish between, or in the event that all tenderers have submitted prices that exceed the budgeted amount.

A set of guidelines associated with the application of a BAFO procedure have been produced for the benefit of council staff engaged in tender evaluation processes and are articulated in the Procurement Manual.

## **14. PERFORMANCE MEASURES & CONTINUOUS IMPROVEMENT**

Wherever possible, Contracts must contain measurable performance criteria and reporting systems to establish the monitoring of contractor performance and compliance.

These criteria must be measurable and relevant to the goods, services or works being provided to accommodate the following requirements:

- Highlights performance trends and exceptions in the areas of specified qualitative and quantitative deliverables;
- Provides high level capabilities in auditing and monitoring service delivery; and
- Encourages continuous improvement in service delivery methodologies.

## **15. SUSTAINABILITY & SOCIAL PROCUREMENT**

Council is committed to procuring products and services in alignment with its values of environmental, social, economic and cultural sustainability. This section details the specific policy and operational implications of such considerations.

Overall, tender documents or Requests for Quotation should contain:

- Clauses and weightings to assess environmental and social costs and benefits;
- Appropriately designed response statements to allow suppliers to clearly articulate how they will address social and environmental impacts; and
- Clauses that are framed as measurable deliverables rather than aspirations with regard to environmental, social, economic and cultural sustainability.

A pre-tender briefing may be necessary to explain the detail of such clauses, particularly if they refer to complex matters with which mainstream suppliers may not be familiar.

### **15.1 Environmental Sustainability**

#### **15.1.1 Sustainable procurement statement**

It is Council policy to purchase environmentally preferable products and services whenever they meet Council's needs and are available at a competitive price.

Council's sustainable procurement practices demonstrate to the community that Council is:

- stimulating the market for environmentally preferable products;
- taking responsibility for limiting its impact and use of resources;
- enabling improvement of environmental performance of existing providers;
- using financial resources wisely and ethically.

#### **15.1.2 Requirements**

When purchasing any goods and services on behalf of Council, staff are responsible for appropriately considering the environmental impact of those goods and services and factoring this into their decision-making. This means that staff are empowered and expected to give priority to environmentally preferable

choices, as long those choices meet Council's needs in terms of performance, fit-for-purpose, the other requirements of this policy (e.g. meet the ethical standards outlined at 15.4), and value for money. As outlined at 13.1, value for money includes both the monetary costs and non-monetary impacts over the whole life of the product or service.

Specifically Council officers must seek products, services and providers that

- **reduce the consumption of resources and minimise waste (e.g. through reuse, recycling, the acquisition of products manufactured from recycled materials and effective waste avoidance and management);**
- reduce greenhouse emissions (e.g. through energy efficiency, renewable energy, carbon neutrality and offsets, local purchasing, and emissions management);
- reduce other emissions (e.g. avoid toxic materials; avoid or limit emissions to soil, air or water; seek organic or otherwise sustainably produced options);
- reduce water use (e.g. through water conservation, water quality and emissions management, Water Sensitive Urban Design);
- avoids impacts to habitat and biodiversity (e.g. certified sustainable forestry products, palm-oil free);
- reduce the impact of buildings (e.g. through Environmentally Sustainable Design as identified in the Green Building Green Star Rating tool);
- meet and where possible exceed recognised environmental standards throughout their supply chains (e.g. high Energy, Water and Green Vehicle Star Ratings; Eco-buy preferred; ISO-accredited; Greenhouse Friendly) and demonstrate good environmental practice (e.g. through effective Environmental Management Plans, accreditation, certification, voluntary memberships, providing examples of good practice in operations).

A range of tools, training and resources have been developed to assist staff to meet these requirements, and are available in the Procurement Manual.

#### **15.1.3 Special mechanisms**

In recognition of the fact that environmentally preferable options sometimes come at a premium, and yet may offer superior value for money, there are also two particular operational mechanisms designed to empower staff and managers to implement the preference of environmentally responsible products and services.

(i) **Price Preference**

Whenever a product or service presents as the most environmentally preferable option, staff can and should apply a 10% to 20% reduction to the overall price of the tenderers offer.

(ii) **The 10% Sustainability Weighting**

When developing assessment criteria for contracts and tenders, it is expected that Sustainability will be included as one of the criteria and that its weighting will be at least 10%. If there is a reason why this is not applicable or workable, or does not provide sufficient value for money, this must be detailed in the tender report or Quotation Acceptance Form.

#### **15.2 Social Procurement**

Council is also committed to supporting social procurement because of the positive social impacts this provides to both Council and the community. Council has

developed processes to ensure that social enterprises become part of a diverse and dynamic supplier market.

The decision within Council to engage with social procurement may originate in a number of ways. For example, if:

- Council has scope for the inclusion of social benefits when issuing a tender;
- A current contract is soon to expire, allowing for a revision of service delivery and contracting arrangements; and/or
- When particular social issues in a community are not being addressed using traditional approaches.

Existing contracts may also be varied so that social impacts are incorporated for the delivery of goods and services. In this case Council officers should engage all suppliers in social procurement practices where appropriate and seek their cooperation to explore possibilities for subcontracting to social benefit suppliers.

Tender documents and Requests for Quotation should make Council's commitment to social procurement clear (see Clause 12).

### **15.3 Diversity**

Yarra draws pride and strength from our diverse community and recognises that our procurement practices can have substantial benefit to reducing barriers faced by some people and help to address inequality in our community. This includes people with disability, Aboriginal and Torres Strait Islander people, culturally, religiously and linguistically diverse people, young people, older people, women, and people who identify as gay, lesbian, bisexual, transgender, intersex or queer.

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

Council officers are encouraged to seek products, services and providers that:

- undertake corporate social responsibility activities;
- actively support or employ people who may face employment or other social barriers; and
- are inclusive of the needs of people with disabilities,

### **15.4 Support of Local Business and Industry**

Council recognises the need to support the local economy. To encourage this, Council will actively seek offers from local suppliers where possible by:

- encouraging participation from local suppliers and
- including evaluation criteria that favours suppliers that support the local economy

To accommodate this support, Council will develop and maintain a registration of interest listing. This listing will comprise of local traders that submit an expression of interest in being notified of any goods, services or works that have been listed by the

traders as a core business. This will enable the traders to submit a competitive offer during any open tender or quotation process.

### **15.5 *Support for Indigenous businesses***

The community of Yarra consists of a diverse accumulation of both ethnic and Indigenous groups. It is Council's aim to encourage Aboriginal entrepreneurship, business development and employment by providing the Aboriginal community with increased opportunities to participate in the delivery of goods, services and works through Council's Procurement framework to ensure equal opportunity for all suppliers.

Council will wherever possible, commit to explore opportunities for the engagement of Aboriginal businesses. These opportunities may be in the form of contracting, subcontracting or individual engagement.

#### **15.5.1 Social Enterprise**

Social Enterprises can be described as organisations that:

- (i) Are led by an economic, social, cultural, or environmental mission consistent with public or community benefit;
- (ii) Trade to fulfil their mission;
- (iii) Derive a substantial proportion of their income from trade; and
- (iv) Reinvest the majority of their profits in the fulfilment of their social mission.

Council in its endeavour to maximise its social procurement opportunities will commit to the following actions:

- (i) Undertake an opportunity analysis of Council's procurement processes;
- (ii) Develop social procurement approaches to 'below threshold spends' of \$150,000 for goods and services and \$200,000 for works in the municipality;
- (iii) Develop tailored lists of social enterprise suppliers and certify these businesses in categories where Council can see opportunities to buy from social enterprises and other benefit suppliers;
- (iv) Develop case studies of social procurement occurring within Council to generate increased staff engagement; and
- (v) Provide direct advice on effective approaches to engage social enterprises in the supply chain.

To this end, Council will engage with relevant external parties to assist in the development and enhancement of current policies and procedures to realise greater opportunities to expand its interaction with such Social Enterprises.

### **15.6 *Buy Australian***

In accordance with Section 186(3) of the Local Government Act, Council will give preference to goods, equipment, material or machinery manufactured in Australia and New Zealand whenever practicable.

When contemplating any such acquisitions, council staff must consider Australian made products over similar products which have been manufactured overseas. Where the price of Australian brand is excessive (greater than 20%) to that of alternative brands, council staff may purchase the alternative brand.

### **15.7 Ethical Procurement and Investment Commitment**

Council has an Ethical Procurement and Investment Commitment that is an attachment to this Policy

This commitment will act as an overarching statement and approach for Council's key decisions as it relates to procurement and investment, including but not limited to major tenders and cash and share investments.

The commitment is intended to prescribe the avoidance of investment in, and procurement from enterprises whose products or practices cause or perpetuate injustice and suffering, infringe fundamental human rights or cause unacceptable damage to the natural environment.

### **15.8 Ethical Standards for the Acquisition of Textiles, Clothing and Footwear**

Council supports the application of ethical standards in the acquisition of textiles, clothing and footwear as espoused by industry associations such as Ethical Clothing Australia. These standards are designed to ensure that businesses are committed to taking practical steps to keep their Australian-based and International supply chains, accountable and transparent to ensure that they and any sub-contractors are compliant with relevant Australian laws.

Reference should be made to The Fair Work Amendment (Textiles, Clothing & Footwear Industry) Act 2012 which promotes and supports the elimination of outworkers in the textile, clothing and footwear (TCF) industry by providing consistent rights and protections to ensure that those out workers are employed or engaged under secure, safe and fair systems of work.

Prior to the engagement of any suppliers of TCF will need to demonstrate their commitment to observing ethical standards in the supply of products to Council.

## **16. CHARTER OF HUMAN RIGHTS**

The [Charter of Human Rights and Responsibilities Act 2006](#) (the Charter) sets out the basic rights, freedoms and responsibilities of all people in Victoria. It is about the relationship between government and the people it serves.

The Charter requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights in the Charter.

The Charter recognises that as human beings all persons have basic rights, including the right to be treated equally, to be safe from violence and abuse, to be part of a family and to have their privacy respected.

In certain circumstances some rights have limitations, however this only applies where necessary with the reasons for the decision being clear, transparent and reasonable.

Council expects all Councillors and staff members to be cognisant of the requirements of this Act and adopt and implement these fundamental rights in their day to day activities.

## 17. DISABILITY ACT

The Disability Act provides for:

- a stronger whole-of-government, whole-of-community response to the rights and needs of people with a disability, and
- a framework for the provision of high quality services and supports for people with a disability

The Act sets out principles for people with a disability and for disability service providers.

Council officers should be cognisant of the requirements of the Act and incorporate into Council dealings wherever applicable.

## 18. POLICY OWNER

The Chief Financial Officer is the designated owner of this Policy and is responsible to the Director Corporate, Business and Finance for the maintenance and annual review of this Policy.

## 19. GLOSSARY OF TERMS

**“The Act”** means the *Local Government Act 1989*;

**“Commercial-in-Confidence”** means information that if released may prejudice the business dealings of a party e.g. prices, discounts, rebates, profits, methodologies and process information;

**“Contract Management”** means the process that ensures both parties to an agreement fully meet their obligations and responsibilities in accordance the contract;

**“Council Officer”** means any full or part time staff member of Council including temporary employees;

**“Probity”** means uprightness, honesty, proper and ethical conduct and propriety in Council dealings;

**“Sustainability”** means activities that meet the needs of the present without compromising the ability of future generations to meet their needs;

**“Procurement”** means the whole process of acquisition of external goods, services or works. This process encapsulates the whole of life cycle from initial concept through to the end of the useful life of an asset (including disposal) or the end of a service or works contract;

**“Tender process” means** the process from the planning stages to the awarding of a contract. This includes the development of tender documentation, invitation to tender period, evaluation stage and recommendation of a preferred supplier/s;

**“Value for Money”** means the optimum combination of quantitative and qualitative components of a tender offer.