

# Procurement Policy 2021



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Yarra City Council acknowledges the Wurundjeri Woi Wurrung people as the Traditional Owners and true sovereigns of the land now known as Yarra. We also acknowledge the significant contributions made by other Aboriginal and Torres Strait Islander people to life in Yarra. We pay our respects to Elders from all nations and to their Elders past, present and future.

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<b>Title</b>	Procurement Policy 2021
<b>Description</b>	This policy represents the governance, principles, processes and procedures to be applied to the purchase of all goods, services and works by Council.
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# 1. Principles

## 1.1 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 Manuals, Policies or Guidelines.

This Procurement Policy is written and compliant with the requirements of Section 108 and 109 of the *Local Government Act 2020* (the Act).

The Act requires each council to:

- Prepare and adopt a procurement policy which specifies the principles, processes and procedures applying in respect of the purchase of goods and services and carrying out of works by the Council;
- Must seek to promote open and fair competition and provide Value for Money

## 1.2 Policy Review Process

In accordance with the Act, Council will review its Procurement Policy at least once during each 4-year term of the Council.

## 1.3 Legislative Compliance and Related Policies

The key legislative requirements include compliance with:

- Part 5 Division 1 – Service Performance Sections 106 (c) LGA2020;
- Part 5 Division 2 – Procurement Sections 108 & 109 LGA2020;
- Division 7 – Delegations by Chief Executive Officer Section 47 LGA2020– Chief Executive Officer and members of council staff;
- Part 6 - Division 2 LGA2020 – Conflict of Interest;
- The relevant provisions of the Competition and Consumer Act 2010;
- Charter for Human Rights and Responsibilities Act (2006);
- Protected Disclosure Act 2012;
- Procurement Manual;
- Credit Card Policy;
- Financial Delegations Register;
- Fraud and Corruption Policy & Procedure;
- Staff Gifts, Hospitality Disclosure Policy;
- Corporate Records Management Policy;
- Conflict of Interest Policy;
- Code of Conduct for Tender Panel Members; and
- Council's Access and Inclusion Plan.

Council is required to comply with the provisions of the above related Legislation, Policies and Manuals in all procurement matters.

## 1.4 Procurement principles

Council will apply the following fundamental procurement practice principles to procurement activities:

- promote open and fair competition and provide Value for Money;
- achieve high standards in probity, transparency, accountability and risk management in all procurement activities;
- comply with relevant legislative requirements;
- respond to the climate emergency in proportionate urgency and scale and give preference to the procurement of environmentally sustainable goods, services or works and providers who preference the same;
- identify social procurement opportunities with local social enterprises and other relevant parties;
- identify and support indigenous businesses and enterprises; and

- promote collaborative procurement.

Council is committed to reducing any negative social and environmental impacts by conducting preferential purchasing of products and services that have been produced or manufactured 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 associated with Accountability.

### 1.5 Procurement Manual

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

The Manual will conform to the Procurement Policy and will be updated in line with any amendments/additions applied to this Policy.

### 1.6 GST

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

## 2. Organisation Procurement Structure

Council has delegated a range of powers, duties and functions to the CEO in relation to procurement. The delegation aims to ensure that the Council's procurement structure operates according to processes that:

- Are flexible enough to procure in a timely manner the diverse range of goods, works and services required by Council;
- Guarantee that prospective contractors and suppliers are afforded an equal opportunity to tender or submit a quotation; and
- Encourage competition and collaboration, even where the CEO runs a procurement process under delegation.

The Strategic Procurement Unit is responsible for all strategy, policy, processes, technology, best practice, document control, and networking in procurement matters. They also provide support, advice and training on procurement matters. The structure, duties and responsibilities of the Strategic Procurement Unit are detailed in the Procurement Manual.

## 3. 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;

- Tenders – a contract following a public tender process;
- Expression of Interest – a contract following a restricted tender process;
- Under a sole-sourcing arrangement;
- Quotations – a purchase order following a quotation process from suppliers for goods, services or works that represent Value for Money under the specified quotation threshold;
- 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;
- A contract entered into under an arrangement approved by the Minister for Local Government; and
- Collaborative procurement

### 3.1 Procurement Thresholds and Competition

Section 108 of the Act details that each Council will set the contract value above which the Council must invite a tender or seek an expression of interest via a public tender process.

A public tender process must be used for all procurement valued at \$300,000 and above for goods, services or works. The amount is based on the estimated expenditure over the total contract life, including extension options, contingency funds and GST.

A council may undertake a public tender where the value of goods, services or works does not reach the threshold sums. These may be situations where a public tender is preferred or prudent, managing risk considerations are paramount, or there is a desire for greater transparency of the procurement.

Council will invite offers from the supply market for goods, services and works in accordance with the thresholds listed in the table below.

The public tender and quotation threshold and related exemptions also apply to collaborative procurement and Agency Contracts.

Amount	Process	Authority for exemption	CMS*	T&C*
<\$5k	1 verbal quote	Manager	No	No
\$5k - <\$20k	1 written quote	Manager	No	No
\$20k - <\$50k	2 written quotes	Manager	Yes	No
\$50k - <\$150k	3 written quotes	Director/Group Manager	Yes	No
\$150k - <\$300k	3 written quotes	Director/Group Manager	Yes	Yes
>\$300,000	Public tender	CEO	Yes	Yes

\*CMS - Contract Management System, refer to 3.9.3 Recording of quotation details.

\*T&C – refer to 3.9.1 Terms and Conditions

### 3.2 Tenders

All public tenders invited by the Council will be published via Council's eTendering Portal and be advertised in the media.

Further assistance in capturing a greater competitive advantage is gained through Council's e-tendering system (TenderSearch). The details of any supplier that registers on this system as a user, are archived within the system. At the time of registering, these suppliers must provide information relating to their core business activities. When Council releases a tender to the market, the system automatically sends a notification to every registered supplier that has identified its core business as being relative to the tender.

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 Unit will collaborate with the relevant Council Officers to determine the best news media to provide the widest access to the marketplace.

The Strategic Procurement Unit will collaborate with the relevant Council Officers to determine the appropriate period for open tender.

### **3.3 Tender evaluation**

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. Tender evaluation panels may include external personnel in order to ensure transparency of the process and/or professional knowledge to the panel;

Once a preferred tenderer is selected a value management process may be conducted in order to obtain the optimal solution and commercial arrangements, providing they remain within the intent and scope of the tender.

### **3.4 Evaluation Criteria**

There are two separate components to be taken into consideration when determining Value for Money, Qualitative (Non-Financial) and Quantitative (Financial).

- The Qualitative component relates to Tenderers responses to selected criteria to determine the capabilities and capacity of each tenderer.
- The Quantitative component relates to the tendered costs for the delivery of the goods, services or works.

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

- Mandatory compliance criteria (e.g. OH&S, Insurance, Financial Viability, Statutory Declaration);
- Tendered price;
- Capability of the Tenderer to provide the goods, or services or works;
- Capacity of the Tenderer to provide the goods, services or works;
- Project Management, Methodology or Provision of Services;
- Customer Service and Innovation;
- Quality, Environmental & Social Sustainability;
- Child safeguarding;
- Industrial Relations; and
- Other specific criteria as required.

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

To complement the Value for Money solution Council may include relevant clauses to 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 as a final stage with shortlisted tenderers when the evaluation panel consider it beneficial. 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.

The panel may also consider the inclusion of a value management process to review possible alternatives to certain nominated items such as materials, fixtures and fittings, appliances or service delivery processes that may realise a reduction in the overall costs submitted.

### **3.6 Exemptions from tendering**

The following circumstances are exempt from the general publicly advertised tender and expression of interest requirements.

In addition, the CEO may approve ad-hoc exemptions in circumstances where it can be demonstrated that it is in the best interests of the community to do so.

Exemption	Explanation, limitations, responsibilities and approvals
Emergency or Critical Incident	Where the Chief Executive Officer or a person acting in the position has resolved that a contract must be entered because of an emergency (e.g. to provide an immediate response to a natural disaster or a situation declared an emergency by Council).
A contract made with, or a purchase from a contract made by, another government entity, government-owned entity or other approved third party.	<p>Allows for the engagement with a government entity or government owned entity. E.g. Federal, State or Local Government or an entity owned by the Federal, State or Local Government.</p> <p>Agreements established by local government group purchasing scheme, Municipal Association of Victoria (MAV), Procurement Australasia (PA) or National Procurement networks.</p>
Extension of contracts while Council is at market	<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 are taking longer than expected.</p> <p>This exemption may be used 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.</p>
Professional services unsuitable for tendering	<p>Legal Services</p> <p>Insurance</p>
Novated Contracts	Where the initial contract was entered into in compliance with the relevant Local Government Act and due diligence has been undertaken in respect to the new party.
Information technology	Allows Council to renew existing 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.
Regional Waste and Resource Recovery Groups	Situations where a Regional Waste and Resource Recovery Group proposes to conduct or has conducted a public tender for and on behalf of its member councils.
Operating Leases	Where a lessor leases an asset to the Council and assumes the residual value risk of the property or item.
Other specific Council exemptions	<p>Advertising – Newspapers, Media;</p> <p>Contributions;</p> <p>Donations, Grants to Community charities;</p>

Exemption	Explanation, limitations, responsibilities and approvals
	Fees & Subscriptions – Conference/Forum expenses, membership fees and subscriptions; Medical Expenses, Police Checks; Postal Services – Postage and Delivery Charges; Venue Hire, External Training; Travel Expenses – Airfares, Accommodation, Taxi, Car Hire, Public Transport & Tolls; Water Utilities

### 3.7 Expression of Interest

An Expression of Interest (EOI) may be sought 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.

### 3.8 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) where it is consistent with this Procurement Policy and:

- It is in the public interest;
- There is one or a limited number of available tenderers in the market or suppliers able to submit quotations;
- The marketplace is restricted by statement of license or third-party ownership of an asset (excluding public utility plant); or
- Council is party to a joint arrangement where Council jointly owns the Intellectual Property with a third-party provider.

### 3.9 Quotations

The purchase of all goods, services and works with a value of less than the prescribed threshold of \$300,000 (inclusive GST) may be undertaken using Council's internal quotation procedures.

The Quotation process allows council officers to acquire goods, services or works via processes that are more expedient than that of going to public tender.

Refer to the Procurement Manual for further details on quotation process.

#### 3.9.1 Terms and Conditions

Generally, goods, services or works delivered via a quotation process are not governed by any terms and conditions of contract and this elevates the risks associated with the delivery of such goods, services or works. This can result in difficult negotiations in an attempt to resolve any disputes between the parties. Staff must consider the degree of risk associated with the delivery of relevant goods, services or works to ascertain the necessity for conditions of contract to be applied.

Staff should consult procurement to determine requirements for terms and conditions for the purchase of services and works with a value of greater than \$150,000.

Where there is a requirement for Council to sign a supplier's agreement for the purchase of goods, services and works with a value of greater than \$150,000, such agreements should be forwarded to the Strategic Procurement Unit for review prior to being signed by any Council Officer.

### 3.9.2 Reviewing of quotes

For the purchase of goods, services and works with a value of greater than \$20,000, at least two (2) council officers are required to review the quotes received to reasonably satisfy the requirement of achieving Value for Money.

### 3.9.3 Recording of quotation details

For the purchase of goods, services and works with a value of greater than \$20,000, the quotation details must be recorded and uploaded into the relevant quotation process located on Council's Contract Management System.

## 3.10 Collaborative Procurement

In accordance with section 108 (3) (c) of *the Act*, the Council will first give consideration to potential collaborative opportunities with other Councils and public bodies or utilise Collaborative Procurement arrangements when procuring goods, services and works in order to take advantage of economies of scale.

Council staff must consider any opportunities for collaborative procurement in relation to any proposed procurement process being undertaken by Council. Any council report that recommends entering into a procurement agreement must set out information relating to opportunities for Collaborative Procurement, if available, 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 that procurement process.

Opportunities for collaborative procurement are available to council via the IMAP group of councils, through the Western Regional Procurement Enterprise Network (WRPEN) or approved agencies such as Procurement Australasia (PA) or Municipal Association Victoria (MAV).

Council specific construction / works projects, where the specifications for the works required are unique to an individual Council site and are not applicable to the other Councils will for instance not be considered for collaboration.

Any Federal or State Government grant funded projects may be excluded from collaborative procurement.

### 3.10.1 Agency Contracts

There are two organisations that have been endorsed by the State Government as Agencies. They are:

- Municipal Association Victoria (MAV); and
- Procurement Australia;

Each Agency conducts full tender processes for the engagement of supplier and enters into individual contracts with each successful tenderer.

This means that if Council engages a supplier, the services will be provided under the existing conditions of contract between that supplier and the relevant Agency.

To ensure that Council meets its obligations in relation the Value for Money, the same quotation threshold and related exemptions applies, although a public tender is not required.

To capture all expenditure via these agency arrangements, a contract number will be generated for each service provided to council. The Strategic Procurement Unit will assist with this requirement.

### 3.10.2 State Purchase Contract or Whole of Victorian Government Contracts and State Government Supplier Registers

The State Government has State Purchase Contracts (SPC) or Whole of Victoria Government Contracts and State Government Supplier Registers. SPC's are the same as Agency contracts, where State Government have sent out requests for tender, engage in a tender process and subsequently awarded a contract to either a sole supplier or a panel of suppliers.

State Government Supplier Registers do not go through these processes, rather they advertise Expressions of Interest for suppliers in different type service or works and have the respondents address a series of criteria relating to their business and if the business has the relevant qualifications they are accepted as a pre-qualified supplier.

In the event that Council decides to utilise suppliers listed in a State Government Supplier Register, it must follow the processes as promulgated by the State Government on its website.

Further, upon Council completing the required selection process, a contract is required to be generated prior to the commencement of any services or works.

Apart from the Construction Supplier Register there are other services (such as e-services) suppliers available for use by Local Government entities.

Refer to Council's Procurement Manual for further information relating to the use of SPC's and State Government Supplier Registers.

## 4. Achieving Value for Money

### 4.1 Requirement

Council's procurement activities 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 determinant 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; and
  - 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; and
  - impacts on other Council priorities

### 4.2 Approach

The process for achieving Value for Money may be facilitated by:

- Developing, implement and managing processes that support the co-ordination and streamlining of activities throughout the lifecycle;
- Effective use of competition;
- 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.

## 5. Contract Management

The purpose of contract management is to ensure that both parties of 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. This may be achieved through:

- 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;
- Developing and maintaining 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.

Guidelines have been developed by the Strategic Procurement Unit to assist any council officer that has contract management within their portfolio. The guidelines are located in the Procurement Intranet site.

## 5.1 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.

Generally, a Variation may be required due to:

- An increase or decrease to the scope of services or works;
- A change to quantities;
- A change to quality;
- A change to the value of the services or works;

Where a contract for goods or services has not yet expired and does not contain any extension options, or has no further extension options available, the contract may be extended before expiration by enacting a mutually agreed variation to the contract.

Where a contract has expired without an approved variation to extend, but the supply of goods and/or services under the expired contract is required to continue for a short term, the contract may be extended by enacting a mutually agreed variation to the contract.

## 6. Supplier Relationships

A wide range of suppliers are encouraged to compete for Council work. The focus for new work need not always be with the larger more familiar businesses. Other types of organisations offering business diversity include:

- Green suppliers;
- Local, small to medium sized enterprises (SMEs) and Social enterprises;
- Ethnic and minority businesses (e.g. Indigenous Business); and
- Volunteer and community organisations.

# 7. Effective Legislative and Policy Compliance and Control

## 7.1 Delegations

Delegations define the limitations within which council staff are permitted to commit Council to the procurement of goods, services or works and the associated costs. The Instrument of Delegation allows specified council staff to undertake certain purchases, quotation, tender and contractual processes without prior referral to the Council. This enables the Council to conduct procurement activities in an efficient and timely manner whilst maintaining transparency and integrity.

Council has delegated responsibilities relating to the expenditure of funds for the purchase of goods, services and works, the acceptance of quotations and tenders and for contract management activities to the CEO. The CEO has further delegated some of those responsibilities to other members of council staff, subject to specified conditions and limitations.

## 7.2 Probity Requirements

### 7.2.1 Requirement

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

### 7.2.2 Conduct of Councillors and Council Staff

Councillors and council staff shall at all times conduct themselves in a manner that is ethical and 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;
- be able to account for all decisions and provide feedback on them; and
- not perform any work under any Council contracts they are supervising i.e. council staff cannot also work for the relevant supplier.

### 7.2.3 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. All tender panel members will be required to familiarise themselves with the Code of Conduct For Tender Evaluation Panel Members

### 7.2.4 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 goods, services or works.

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 must:

- **Avoid** conflicts of interest, whether material or general or actual, potential or perceived.

- **Declare** that they do not have a conflict of interest in respect of the procurement. The onus is on Councillors and the members of council staff to promptly declare any actual, potential or perceived conflict of interest to Council. This is inclusive of any Collaborative Procurement processes that council staff may be involved in.
  - All personnel involved in a tender process be they internal or external entities, must complete and sign a Conflict of Interest Declaration prior to the commencement of tender evaluation process. These declarations are to be forwarded to the relevant Procurement Officer for record keeping.
  - Any council officers involved in the engagement of preferred suppliers from the Construction Supplier Register (CSR) or authorised agencies such as Procurement Australasia (PA) or the Municipal Association Victoria (MAV) must also complete and sign a Conflict of Interest Declaration prior to commencing a selection process for a supplier. These declarations must be forwarded to the Strategic Procurement Unit for record keeping
- **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.

#### 7.2.5 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.

All personnel involved in a tender process be they internal or external entities, must complete and sign a Deed of Confidentiality prior to the commencement of such tender process. These declarations are to be forwarded to the relevant Procurement Officer for record keeping.

#### 7.2.6 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.

#### 7.2.7 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 Director Corporate Business and Finance.

### 7.2.8 Disclosure of Information

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

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.

### 7.2.9 Probity Plan Audits

A formal probity plan should be developed, and a probity advisor appointed in the following circumstances:

- Where the proposed Total Contract Sum exceeds \$10 million over the life of the contract or for a lesser value set by Council from time to time; or
- Where a proposed contract is considered by Council or the CEO to be particularly complex, of a high risk or controversial nature, and requiring a high level of public confidence.

A probity advisor may be appointed to any tender evaluation panel and may be appointed to oversee the evaluation process.

## 7.3 Risk Management

### 7.3.1 Management of Procurement Risk

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. The Council could minimise its risk exposure through measures including:

- providing sufficient planning and lead-time for Procurement preparation and consideration.
- using appropriate Council standard-form contracts provided by Council's Strategic Procurement Unit or Australian Standard contracts which include current, relevant clauses to mitigate risk to Council;
- requiring security deposits where appropriate;
- referring specifications to relevant experts;
- requiring contractual agreement before allowing the commencement of work;
- ongoing and timely Contract management; and
- effectively managing the contract including monitoring and enforcing performance.

### 7.3.2 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.

### 7.3.3 Dispute Resolution

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

### 7.3.4 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.

### 7.3.5 Insurance and Indemnity Requirements

A minimum of \$20,000,000 Public Liability and \$10,000,000 Professional Indemnity cover is generally required, dependent on the type of Contract. Evidence of cover in the form of a Certificate of Currency will be required. Council will also ensure any other appropriate insurance, i.e. Product Liability, Motor Vehicle or Fiduciary or Work Cover details are obtained prior to the commencement of the Contract.

Any exemption to minimum requirements must be authorised by the relevant Executive member (i.e. Director or Group Manager).

### 7.3.6 Endorsement of products or services

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

### 7.3.7 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 staff are strongly encouraged to report fraudulent allegations or complaints about procurement processes and/or staff taking part in procurement activities to the Chief Financial Officer or Council's Director Corporate Business and Finance.

### 7.3.8 Public Interest Disclosure Act

The Public Interest Disclosure Act 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.

## 7.4 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;
- systems are in place for appropriate monitoring and performance measurement; and
- compliance with the procedure and ongoing contract management will be subject to internal reviews and audits.

## 8. 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 could be used to explain the detail of such clauses, particularly if they refer to complex matters with which mainstream suppliers may not be familiar.

### 8.1 Environmental Sustainability

#### 8.1.1 Sustainable procurement statement

Council is committed to addressing the climate emergency to the strongest degree possible.

Council's adopted Climate Emergency Plan sets out our role in responding to this unprecedented challenge, and includes the following key objectives:

- achieve zero-net emissions across the entire Yarra community by 2030, and accelerate the removal of excess carbon emissions;
- activate our community to take effective climate action - pushing for urgent change and changing the way we live and work;
- ensure our community is safe, healthy and resilient - especially those most vulnerable to severe climate impacts;
- create a city that continues to adapt to a changing climate and is ecologically healthy for all species; and
- collaborate and advocate with others in the climate emergency movement to increase our impact.

Yarra Council was one of the first local governments in the world to declare a climate emergency, acknowledging both the scale and urgency of action needed to avoid the catastrophic impacts of global heating.

Effectively responding to the climate emergency requires transformational societal and economic change. It will require changing our resource intensive and high consuming ways of life, as well as adapting to living on a hotter planet.

Procurement choices which respond proportionately to the climate emergency will contribute to the rapid reduction in carbon emissions in order to restore a safe climate. A key aspect of sustainable procurement is the application of circular economy principles (in which finite resources are valued and kept circulating within it) and lifecycle approaches to consider the full environmental impact of products and services, including embodied emissions.

Council purchases 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 responding to the climate emergency at commensurate urgency and scale and supporting the circular economy by stimulating the market for environmentally preferable products.

### 8.1.2 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, and Value for Money.

Specifically, Council officers should seek products, services and providers that:

- support the circular economy i.e. reduce the consumption of resources and minimise waste e.g. through re-use and repair, the acquisition of products manufactured from recycled materials and/or minimum inputs, maximise resource recovery and effectively manage waste);
- do not use single use plastic;
- reduce greenhouse emissions including embodied energy (the sum of all the energy required to produce any goods or services), performance and end-of-life considerations (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 the environment impact of buildings including zero net emissions, through meeting all requirements of the ESD Buildings Policy;
- reduce potable water use (e.g. through water conservation Water Sensitive Urban Design e.g. rainwater capture and reuse);
- avoid impacts to habitat and biodiversity (e.g. certified sustainable forestry products, palm-oil free, Water Sensitive Urban Design e.g. rain gardens);
- meet and where possible exceed recognised best practice environmental standards throughout their supply chains (e.g. high Energy and Water Star Ratings, ISO-accreditation) and demonstrate leading environmental practice (e.g. through effective Environmental Management Plans, accreditation, certification, voluntary memberships, providing examples of good practice in operations such as use of zero emissions vehicles).

### 8.1.3 Special mechanisms

In recognition of the fact that environmentally or socially 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.

- The 10% Price Preference

Whenever a product or service presents as the most environmentally preferable option and is significantly better than the other tender submissions in terms of environmental impact, staff are empowered to apply a price preference up to 10% to these options. This means that when weighing up the Value for Money of different options, staff could consider the most environmentally or socially preferable option(s) to be up to 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 must be selected only if it provides the best overall Value for Money.

- The 10% Sustainability Weighting

When developing assessment criteria for contracts and tenders, 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 should be detailed in the tender report or Quotation Acceptance Form.

#### 8.1.4 Acquisition of Single Use Plastic products

Eliminating single-use plastic from council facilities aligns with Council's commitment to urgent action on climate change and key actions identified in the City of Yarra's Climate Emergency Plan 2020-2024 and Single-use Plastic Events Policy.

In supporting and promoting the Policy, relevant clauses are included in specifications for the acquisition of goods and services. These clauses will identify banned single use plastics and provide information relating to acceptable alternatives.

Relevant evaluation criteria are included in Tender Conditions associated with goods and services, requesting Tenderers to not only provide details of proposed alternatives to single use plastics but to provide samples. A weighting will be applied to such criteria emphasising Council's intent in the total elimination of single use products within Council's jurisdiction.

## 8.2 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.

A list of Social Enterprises registered with Social Traders is available on the Procurement intranet.

## 8.3 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.

## 8.4 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. To assist, Council has registered as a member of Supply Nation which will allow Council to have access to the biggest national database containing in excess of 2,100 verified indigenous businesses.

## 8.5 Social Enterprise

Social Enterprises can be described as organisations that:

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

Council is a member of the Social Traders organisation which provides its experience and expertise in assisting with the advancement and escalation of engagement by Council with social enterprises organisations.

Their primary role is to create jobs for disadvantage persons through the use of social enterprises by enabling business and government buyers to procure from certified social enterprises.

## 8.6 Buy Australian

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 to that of alternative brands, council staff may purchase the alternative brand.

## 8.7 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 Tenderers will need to demonstrate their commitment to observing ethical standards in the supply of its products to Council. All tenderers will be required to provide evidence of their compliance with the Fair Work Act specifically in relation to its employees, and supply chain partners.

## 9. 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.

### 9.1 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

### 9.2 Gender Equality

The *Victorian Gender Equality Act 2020* (The Gender Equality Act) was passed by the State Government in February 2020.

The purpose of the Gender Equality Act requires “defined entities” (entities that have 50 or more employees) within the public sector, Councils, and Universities to take positive action towards achieving workplace gender equality, and to promote gender equality in their policies, programs and services.

The Gender Equality Act also states that a “defined entity” must, in developing policies and programs and in delivering services that are to be provided to the public, or have a direct and significant impact on the public:

- Consider and promote gender equality; and
- Take necessary and proportionate action towards achieving gender equality.

In consideration of the Gender Equality Act, the Council’s tender evaluation processes should include interested persons on tender panels regardless of origin, age, disability, ethnicity, gender identity, race, religion or sexual orientation.

To complement the requirements of the Gender Equality Act, criteria relating to Gender Equality will be included in Tender documents seeking information from suppliers as to their commitment to:

- Ensuring an integrated and comprehensive approach to the promotion of gender equity;
- Supporting respectful relationships by modelling safe, flexible workplace practices;
- Driving positive action that safeguards fair treatment to all employees of suppliers regardless of gender in line with Yarra's organisational values and obligations, enforced as per the Equal Opportunity Act 2010 (Vic).

### 9.3 Safeguarding Children and Young People

The *Child Wellbeing and Safety Act 2005 (Vic)* requires organisations that contract facilities and services from third parties to have procurement policies that ensure the safety of children and young people in online and physical environments (Child Safe Standard 9). This is to ensure that all personnel who may be working with children and young people are appropriately screened for that purpose.

A child safe clause should be included in contracts where the contract is to provide services directly to children and young people, or for activities that will, or are likely to involve contact with children and young people that is a usual part of, and more than incidental to, the services.

Please refer to the Procurement Manual for further details on the child safeguarding clause.

### 9.4 Access and Inclusion Strategy 2018-2024

In accordance with Council's Access and Inclusion Plan 2018 – 2024, persons involved in the development of specifications and tender documentation should be cognisant of the requirements under this plan to ensure that relevant service delivery and/or design aspects are incorporated into the scope of services and works so that products and services purchased by Yarra are inclusive of the needs of people with disability.

## 10. Positive and Negative Screen

The procurement process will ensure that all procurement decisions are made having regard to the values expressed in the preamble, the Council plan and relevant policy positions and to Council's requirement to exercise effective financial stewardship.

Effective financial stewardship can be achieved by the evaluation of negative and positive screens together with a focus on appropriate economic returns, investment risks and sustainability.

### 10.1 Positive screen

Council seeks to procure from companies which promote human welfare, dignity and respect, and the general benefit to the community and environment. Examples include companies produce goods or services which enhance the health and welfare of individuals and communities, and companies which produce goods or services which preserve, restore and enhance the environment.

### 10.2 Negative screen

Council seeks to avoid procuring from companies whose products, services or practices cause or perpetuate injustice and suffering, infringe human rights, specifically slave or child labour or cause unacceptable damage to the natural environment including investment in fossil fuels.

### 10.3 Neutral

Some procurement will be from companies which are considered to be neutral in terms of the positive and negative screens. Such procurement will be made on the basis of investment and procurement criteria contained within the assessment processes.

# 11. Glossary of Terms

**“The Act”** means the *Local Government Act 2020*.

**“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.

**“Collaborative Procurement”** means a procurement process conducted collectively between Council, and government entities, a nominated authorised agent such as Procurement Australasia, Municipal Association of Victoria (MAV) or a collective of Local Government Councils, for the benefit of achieving best value by leveraging combined economies of scale.

**“Fraud”** means deception resulting in financial or personal gain.

**“IMAP”** means the Inner Melbourne Action Plan (IMAP), which is a collaborative partnership between the Cities of Yarra, Melbourne, Port Phillip, Stonnington and Maribyrnong.

**“Indigenous Business”** As per Supply Nation’s definition, an Indigenous Business is one that is at least 50% owned by an Aboriginal or Torres Strait Islands person(s).

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

**“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.

**“Risk”** means anything that could prevent Council from achieving its objectives. Risk may arise from an event, an action, or from a lack of action. It is measured in terms of consequences and likelihood.

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

**“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.