



# Procurement Policy

## Purpose

The purpose of this policy is to:

- provide policy and guidance to the Council to allow consistency and control over procurement activities;
- demonstrate accountability to rate payers;
- provide guidance on ethical behaviour in public sector purchasing;
- demonstrate the application of elements of best practice in purchasing; and
- increase the probability of obtaining the right outcome when purchasing goods, services and works.

## Definitions

Term	Definition
LGA or Act	<i>Local Government Act 1989</i>
CEO	Chief Executive Officer
Commercial in Confidence	Information provided by a tenderer or contractor that is deemed to be confidential and if released may prejudice the business dealing of a supplier: e.g. prices, discounts, rebates, profits, methodologies and process information.
Contract Management	The process that ensures both parties to a contract fully meet their respective obligations as efficiently and effectively as possible, in order to deliver the business and operational objectives required from the contract.
Corporate Social Responsibility (CSR)	Corporate Social Responsibility (CSR) is about taking positive action to demonstrate the Council's commitment to the local community and environment on which it impacts.
Council Staff	Includes full time and part-time Council staff, and temporary employees, contractors and consultants while engaged by the Council.
e-Procurement	e-Procurement is integral to the overall development of procurement processes and involves the use of an electronic system/s to acquire and pay for supplies, services` and works.
Emergency Circumstances	A situation that the Council or CEO has resolved to be an emergency.
Expression of Interest	A response to an open approach, usually by public advertisements, to the market requesting submissions from prospective suppliers

	interested in procurement. The list of potential suppliers who have provided expressions of interest may be used as the basis for conducting a select tender process.
Goods	Includes tangible, quantifiable material requirements which are capable of being moved or transported i.e. photocopiers, stationary catering supplies
Local business	Any business based within the municipality of Baw Baw Shire.
Probity	The definition of probity refers to uprightness, honesty, proper and ethical conduct and propriety in dealings. A procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with the Council's policies and legislation are established, understood and followed from the outset. These procedures need to consider the legitimate interests of suppliers and ensure that all potential suppliers are treated equitably.
Probity advisor	A contractor with extensive experience and skills in procurement who may develop probity plans and other key documents and provide advice and training to staff on probity principles and guidelines.
Probity auditor	A contractor who provides the Chief Executive Officer with an independent and appropriate sign-off on probity requirements generally at the end of the procurement process.
Procurement	Procurement is the whole process of acquisition of goods, services and works. This process spans the whole life cycle from initial concept through to the end of the useful life of an asset (including disposal) or end of service contract.
Services or provision of Services	Means any task, consultancy work or advice performed or provided. i.e. management consultancies, cleaning or waste removal, equipment repairs, audit services and utilities
Schedule of Rates Contract	A contract that sets out rates for goods, services and works which are available for the term of the agreement. However, no commitment is made under the agreement to purchase a specified value or quantity.
Social Procurement	Social Procurement uses Procurement processes and purchasing power to generate positive social outcomes in addition to the delivery of efficient goods, services and works.
Sustainability	Activities that meet the needs of the present without compromising the ability of future generations to meet their needs.
Tender/Quotation Process	The process of inviting suppliers to submit a tender/quotation followed by evaluation of submissions and selection of a successful bidder or tenderer.
Total cost of ownership (TCO)	Is a financial estimate intended to assist Council to determine the direct and indirect costs of works, a product or a system.
Value for Money (Best Value)	Value for money is the optimum combination of quality, quantity, risk, timelines, and cost on a whole-of-contract and whole-of-asset life basis. Value for money in procurement is selecting the supply of goods, services and works, taking into account both cost and non-cost factors including:

	<ul style="list-style-type: none"> <li>• contribution to the advancement of Council’s priorities</li> <li>• non-cost factors such as fitness for purpose, quality, service and support</li> <li>• cost related factors including whole-of-life costs and transaction costs associated with acquiring, using, holding, maintaining and disposing of the goods, services or works.</li> </ul>
Works	Works relate to civil works; including new construction of structures of all kinds (buildings, highways, bridges, etc), renovations, extensions, improvements and repairs. This category also includes, water and sanitation, transportation and electrical plant infrastructure. This also applies to anything that is considered a fixed structure or item.

## Scope

This policy applies to all contracting and procurement activities at Council and is binding upon Councillors, Council Staff and temporary employees, contractors and consultants while engaged by the Council.

The *Local Government Act* (The Act), this Procurement Policy and the the Victorian Local Government Best Practise Procurement Guidelines are the primary reference point for how all procurement should be performed.

## Legislative context

The Council’s procurement activities will be carried out to the professional standards required by best practice and will comply with the:

- *Local Government Act 1989*;
- Employee Code of Conduct;
- *Protected Disclosure Act 2012*;
- *OH&S Act 2004*;
- Baw Baw Shire Council Plan;
- Information Management Policy;
- Risk Management Policy;
- Council Fleet Policy;
- Local Government Procurement Best Practice Guidelines;
- *Competition and Consumer Act 2010*;
- Victorian Local Government Best Practice Procurement Guidelines 2013;
- Election Caretaker Period Policy and Procedures;
- Australian Standards Code of Tendering AS4120;
- Fraud Policy; and

- other relevant legislative requirements such as but not limited to the *Trade Practices Act, Goods Act* and the *Environmental Protection Act*. Legislative and regulatory provisions.
- Victorian Charter of Human Rights – Council will ensure that all of its procurement operations are fully consistent with prescribed rights and responsibilities and that they respect the 20 fundamental rights within the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

## Related policies and documents

Purchasing Tendering and Contract Management Procedural Guidelines

## Policy principles

To ensure that Council's resources are used efficiently and effectively, and services are provided in accordance with Best Value principles to best meet the needs of the local community and to improve the overall quality of life of people in the local community.

## Policy detail

### Background

Developing a Procurement Policy and adopting appropriate best practice contracting and procurement principles, policies, processes and procedures for all goods, services and works, will enhance the opportunity for Council to reach its strategic objectives as outlined in the current Baw Baw Shire Council Plan.

### Elements of best practice

The elements applicable to local government procurement incorporate:

- broad principles covering ethics, value for money, responsibilities and accountabilities;
- guidelines giving effect to those principles;
- a system of delegations (i.e. the authorisation of staff to approve a range of functions in the procurement process); and
- procurement processes, with appropriate procedures covering minor simple procurement to high value complex procurement.

### Contract and Purchasing activities

Baw Baw Shire Council requires that all activities:

- support Council's corporate strategies, aims and objectives including, but not limited to those related to sustainability, protection of the environment, and corporate social responsibility;
- take a long-term strategic view of its procurement and taking into account the whole life cycle of an acquisition while continually assessing, reviewing and auditing its procedures, strategy and objectives;

- provide a robust and transparent audit trail which ensures that procurement projects are delivered on time, within cost constraints and that the needs of end users are fully met;
- are conducted, and are seen to be conducted, in an impartial, fair and ethical manner;
- achieve value for money, demonstrates that public money has been well spent; and ensures the quality in the acquisition of goods, services and works by the Council;
- ensure that risk is identified, assessed and managed at all stages of the procurement process;
- use strategic procurement practices and innovative procurement solutions to promote sustainability and best value, in particular making use of collaboration and partnership opportunities;
- use social procurement to enhance sustainable and strategic procurement to effectively contribute towards building stronger communities, supporting local businesses and meeting the wider social objectives of the Council;
- comply with legislation, corporate policies or other requirements, ensuring that all staff responsible for procurement and contract management are aware of and adhere to the legislative requirements, Council standards and best practice; and
- seek continual improvement including embracing of innovative and technological initiatives and the review of the Procurement Policy on an annual basis to ensure that it continues to meet its wider strategic objectives.

## Major policy decisions during a caretaker

Council is prohibited from making certain prescribed decisions during a care taker period. This includes entering into a contract the total value exceeding the greater of:

- (i) \$150,000 for the provision of goods or services or \$200,000 for the carrying out of works, or
- (ii) One (1) per cent of the council's revenue from rates and charges levied in the preceding financial year.

As per the *Local Government Act* Section 55D Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.

Council staff should refer to Councils Election Caretaker Period Policy and Procedures.

## Effective Legislative, Policy Compliance and Control

### Ethics and Probity

The Council's procurement activities shall be conducted with integrity and in a manner that can withstand the closest scrutiny.

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

Councillors and Council staff will conduct themselves in a manner that is, and is seen to be 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 matters and information such as contract prices and other sensitive information;
- present the highest standards of professionalism, probity and transparency;
- deal with suppliers in an honest and impartial manner that does not allow conflicts of interest;
- 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 that are responsible for managing or supervising contracts are prohibited from either being engaged by a Council contractor or performing any works under the contract they are supervising.

## **Staff Training**

All staff will be expected to adhere with and will be made aware of the requirements of Council's Procurement Policy and processes through the provision of documentation and training programs.

## **Procurement Processes**

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

## **Probity Advisors/Auditors**

An independent probity advisor or auditor shall be appointed in the following circumstances:

- if the procurement activity exceeds \$2 million; or
- if the relevant Manager, Director or Chief Executive Officer requests the inclusion of a probity advisor or auditor.

A Probity Plan must be developed for all project that require an independent probity advisor or auditor.

## **Strategic Procurement Plan and Conduct Plan**

For more high risk, complex or larger scale procurements a strategic procurement and procurement conduct plan will be required to be developed. The Plan will be prepared by the Procurement Coordinator in conjunction with the Project Sponsor and Project Manager.

A Strategic Procurement Plan and Conduct Plan must be developed for all projects \$1 million dollars or greater. Project that may be lower in value but considered high risk the requirement to develop a Strategic Procurement Plan and Conduct Plan will be determined by the Procurement Coordinator in conjunction with the Project Sponsor and Project Manager.

## Conflicts of Interest

Councillors and Council staff shall at all times avoid situations in which private interests' conflict, or might reasonably be thought to conflict, or have the potential to conflict, with their Council duties.

Councillors and Council staff involved in the procurement process, in particular preparing tender documentation, including writing tender specifications, tender opening, and tender evaluation panels, must:

- **avoid** conflicts, whether actual, potential or perceived, arising between their official duties and their private interests. Private interests include the financial and other interests of Councillors and Council Staff, plus their relatives and close associates;
- **declare** that there is no conflict of interest. Where future conflicts or relevant private interests arise Council Staff must make their manager or the chairperson of the relevant tender assessment panel or board aware and allow them to decide whether the officer should continue to be involved in the specific Procurement exercise; and
- **observe** prevailing Council 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.

Councillors shall also comply with the Baw Baw Shire Councillor Code of Conduct  
Members of staff must also comply with the Employee Code of Conduct (Section 95AA LGA)  
Councillors are precluded from membership of an assessment panel making a recommendation in regard to any procurement related decision.

## Fair and Honest Dealing

All prospective contractors and suppliers must be afforded an equal opportunity to tender or quote having regard to the procurement methods.

Impartiality must be maintained throughout the procurement process so that it can withstand public scrutiny.

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.

## Accountability and Transparency

Council is committed to ensuring accountability and transparency in its procurement activities. Accountability means that all those involved in procurement activities are responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes.

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.

Transparency involves relevant entities taking steps to enable appropriate scrutiny of their procurement activity.

All processes by which all procurement activities are conducted will be in accordance with Councils Procurement Policy and related Council policies and procedures.

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

## **Gifts and Hospitality**

In accordance with Councils Code of Conduct 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 relates to the duties of the officer, or in which the Council is interested.

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

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

## **Disclosure of Information**

Information received by the Council will have regard to the Council Information Management Policy. Information that is Commercial in Confidence must not be disclosed to any external third party without express permission to do so and is to be stored in a secure location.

Councillors and members of 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; 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 with any tendering party or its representative or agent who could have potential contractual implications



prior to the contract approval process being finalised, other than authorised pre-contract negotiations.

## **Governance**

The Council has established a procurement management responsibility and delegations structure to ensure accountability, traceability and audit ability of all procurement decisions made over the lifecycle of all goods, services and works purchased by the Council, this ensures that the Council's procurement structure:

- is flexible enough to purchase in a timely manner the diverse range of material, goods, services and works required by Council;
- ensures that prospective contractors and suppliers are afforded an equal opportunity to tender/quote;
- encourages competition; and
- ensures policies that affect this policy are communicated and implemented.

## **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. Purchase Orders required by the procurement activity, must be raised through the Finance system prior to commencement of services or works, receipt of goods and receipt of any supplier's invoice for payment. Procurement of \$150,000 and above will be coordinated through the Procurement Team and the Purchase Order raised by them through the Contract system.

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.

## **Fraud Prevention**

Council is committed to fraud prevention and as part of the requirements under this Policy

Council will support a fraud-resistance culture by:

- reporting breaches of the Procurement Process to the Risk Management Committee;
- investigate potential breaches of the Procurement Policy;
- run quarterly and annual reports to identify potential fraudulent transactions;
- require all Tender Evaluation panel members to sign conflict of interest and confidentiality declarations prior to evaluating any tenders; and

- ensure that Procurement chair all Tender Evaluation meeting to ensure probity and best practice principles are applied to avoid fraudulent or unfair activity in relation to the tender processes.

## Reporting Fraud and Complaints

Council regards all allegations of improper conduct and complaints about the procurement process as serious and is committed to handling such disclosures in a sensitive and confidential manner.

Members of the public, suppliers and Council staff are encouraged to report allegations of improper or corrupt conduct by a public officer involved in any Council procurement process. A disclosure relating to alleged improper or corrupt conduct of a public officer of Council can be made in person, via phone, in writing (letter or email) or anonymously. Disclosures can be made to:

- Council's Protected Disclosure Coordinator, by mail to Baw Baw Shire Council marked confidential, PO Box 304 Warragul VIC 3820, in person or by phone on (03) 5624 2863 or email marked confidential to: [protected.disclosure@bawbawshire.vic.gov.au](mailto:protected.disclosure@bawbawshire.vic.gov.au); and/or
- the Independent Broad-Based Anti-Corruption Commission (IBAC), GP Box 24234, Melbourne Victoria 3000, Internet [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au), or phone 1300 735 135.

Disclosures about Councillors should be directed to IBAC.

Feedback and general complaints about procurement process and procedures should be directed to the Procurement Coordinator and/or Finance Manager:

[procurement@bawbawshire.vic.gov.au](mailto:procurement@bawbawshire.vic.gov.au)

## Measures which intentionally avoid public tendering

Measures which intentionally seek to avoid the requirement to give public notice – for example, contract splitting, placing multiple orders, seeking multiple quotations with a single supplier or engaging in effect a single supplier under different guises will be considered a breach the requirement to call public tenders as per S186 of the Act. When the intent is to avoid the appropriate procurement method for a planned spend this will be considered a breach of this Policy. Policy breaches or suspected breaches will be reported to the CEO.

## Procurement Methods

Council's standard methods for purchasing goods, services and works shall be by some or several of the following methods:

- authorised corporate credit card;
- purchase order following a quotation process from suppliers for goods or services that represent best value for money under directed quotation thresholds;
- under contract following a tender process;
- using aggregated / collaborative purchasing arrangements with other Council's, MAV Procurement, Procurement Australia, Victorian Government or other bodies;

- by other arrangements in accordance with section 186 of the Act; and
- other arrangements authorised by the Council or the CEO on a needs basis as required by abnormal circumstances such as emergencies.

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

Typically, a multi-stage tender process will commence with a registration of interest stage followed by a tender process involving the organisations selected as a consequence of the registration of interest stage.

## **Procurement Processes and Thresholds**

Council procurement processes are based on a number of principles:

### **Best Value**

The benefits of the purchase are weighted against the costs necessary for the optimum result for the Council and local community. Council and its Officers are not required to accept the lowest tender. Instead, the Council is required to take into account issues of quality, cost, the accessibility of the service and other factors relevant to both the overall objectives of the *Local Government Act*.

Best value is often mistaken for meaning the lowest price, however, in terms of the contracting process, best value requires us to balance quality and price with as much transparency as is reasonably achievable. In this context price should take into account the whole life cost of the provision so far as is practicable. It follows that the delivery of Best value is dependent upon Council priorities.

Achieving best value also requires challenging the need for the procurement and the way in which the service may be reconfigured to achieve improvements in service delivery, comparing service provision options against all those available, consulting with key stakeholders and ensuring competition in the open market.

Achieving best value for money must be the basis of all procurement decisions within the Council.

Council will also consider collaborative arrangements have been explored to deliver value for money for the council.

### **Open and Fair Competition**

All suppliers are treated fairly in an open and transparent manner and have access to the same information.

### **Accountability**

The Council maintains consistency in the approach to procurement across the whole organisation through coherent frameworks, policies and procedures. 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 able to account for all procurement decisions made over the lifecycle of all goods, services and works purchased by the Council and provide feedback on them; and
- all procurement activities are to provide for an audit trail for monitoring and reporting purposes.

## **Risk Management**

Strategies for managing risks associated with all procurement processes are in place and consistent.

## **Probity and Transparency**

All Council procurement processes must be conducted in a fair, honest and open manner, with the highest levels of integrity and in the public interest.

## **Minimum Spend Competition Thresholds**

Any Council procurement under the threshold must comply with the Council's own policy and procedures.

The Council will publish in this policy clear guidelines for minimum spend competition thresholds. These will be decided by the Council based on the size and complexity of the proposed procurement activity and of proposed procurement activities.

Procurement activities must not be split into smaller amounts to circumvent the thresholds or financial delegate levels and must be calculated on Total Cost of Ownership (options to extend the contract, contingency and travel or out of pocket expenses).

**Councils minimum spend thresholds are set out below:**

## **Tenders**

The acquisition of goods, services or works for which the estimated expenditure is equal to or exceeds \$150,000 for goods and services and \$200,000 for works including GST, must be undertaken by public tender. The total purchase cost for the supply of goods, services or works, is to be calculated by considering the initial term of any engagement plus any options for extension. However, consideration should be given to the nature of the requirement and the characteristics of the market to assess if a public tender process would lead to a better result for the Council, if so, public tenders may be called for purchase of goods, services and works for which the estimated expenditure is below these thresholds.

## Tenders Best and Final Offer

Council may, if it receives sufficient tenders which (in its absolute discretion) it considers acceptable, select two or more tenderers (Short-Listed Tenderers) to negotiate (and if desired by the relevant Tenderer, revise) their tender and provide to the Principal a best and final offer in relation to all or certain aspects of their tender.

Without limiting the general nature of the previous paragraph, the stage of the tender process contemplated by this clause, the Best and Final Offer (BAFO) Stage may involve:

- the Short-Listed Tenderers refining their tenders, including by investigating any value management proposals put forward by the relevant Short-Listed Tenderer.
- Council and the Short-Listed Tenderers negotiating the Contract Documents including:
  - if the relevant Short-Listed Tenderer desires to do so, the Short-Listed Tenderers re-submitting their tenders to Council;
  - Each Short-Listed Tenderer confirming to Council in writing that the offer contained in their tender (or, if relevant, revised tender), is binding and will be open for acceptance by Council for up to 120 days from the date of such written confirmation; and
  - Council determining which, if either, of the tenders it will accept.

Council is under no obligation to give Tenderers the opportunity to submit a best and final offer in the BAFO Stage

## Quotations

Purchase of goods, services less than \$150,000 and less than \$200,000 for works having a total valuation of including GST, in a single contract or supply arrangement may be undertaken using the procurement by quotation method as described in the Procurement Methods Matrix (**Refer Attachment A**)

When requesting quotations Officers need to ensure sufficient time is given for the suppliers to respond, as a minimum Officers must allow Suppliers at least 3 business days to respond, however the number of days should increase depending on the complexity of the Quote. The quotation offering the best value for money must be confirmed by the supplier in writing and the order placed with that firm.

Where a minimum of three quotes are required details of the suppliers contacted and their quotations must be recorded on the Quotation Recommendation Report (available on DARCI) and stored in Councils' Finance system.

Quotations returned by the nominated closing date must be evaluated and a recommendation made in favour of the supplier offering the best value for money outcome.

The original supplier's quotations must be maintained in Councils' Finance system.

The original quotations and supporting documentation must be maintained in line with the Information Management Policy.

If there is any likelihood of the final cost being in excess of the quotation threshold, a public tendering process must be followed

### **Insufficient Quotations**

Council staff should ensure that request for quotes are sent to a number of suppliers in order to increase the likelihood of obtaining the minimum three quotations.

The number of required quotations must be obtained in line with the Procurement Methods Matrix at **Attachment A**.

The situation may arise where insufficient quotations are received to satisfy the above requirements. This may occasionally occur when there are few suppliers for the goods, services or works being sought, or the work is highly specialised.

If less than three quotations are to be sought, then the purchase is not to proceed unless the reasons for proceeding with the purchase are completed on the Quotation Waiver Form (available on DARCI) and approved by the Director and Procurement Coordinator. Waivers will not be approved unless it can be demonstrated that the reasons for the Waiver meet the criteria as outlined in the Procurement Waiver Form. The approved Quotation Waiver will then be stored in Councils Finance System.

If less than the required amount of quotations was received it is considered that the requirement of this Policy has been met. Evidence of the invitation to respond to the Request for Quote should be documented in the quotation recommendation report, approved by the Procurement Coordinator and the report stored in Councils Finance System. It must be demonstrated that a sufficient number of suppliers/contractors were invited to respond to the Request for Quotation.

### **Quotation Waivers**

Where there are insufficient quotations are sought or it is deemed that there are insufficient suppliers to provide the works or goods the Quotation Waiver form needs to be completed and submitted to the Procurement Coordinator and Director for approval. The Waiver will only be approved if it meets the criteria outlined in the form.

### **Expression of Interest**

The Council may, at its discretion and based on the complexity and cost of the project, conduct one stage or multi-stage tenders. Typically, a multi-stage tender process will commence with an Expression of Interest (EOI) stage followed by a tender process involving the organisations selected as an outcome of the EOI stage.

Expression of Interest may be appropriate where:

- the requirement is complex, difficult to define or unclear;
- the requirement is capable of several technical solutions;
- the Council wishes to consider ahead of formal tender processes such issues as whether those tendering possess the necessary technical, managerial and financial resources to successfully complete the project;
- tendering costs are likely to be high and Council seeks to ensure that companies incapable of supplying the requirement don't incur unnecessary expense;
- it is necessary to pre-qualify suppliers and goods to meet defined standards; and/or
- the requirement is generally known but there is still considerable analysis, evaluation and clarification required (both of the objective and the solution).

## Appointment of a Panel of Tenderers

One of the valid outcomes of a public tender process is the appointment of a panel of tenderers to promote security of supply. This is most likely to be the case where Council requires a range of services to be performed. The subsequent use of quotes on a job-by-job basis further promotes competition and value for money, quotes on a job by job basis must be undertaken where the works are likely to exceed \$50,000, quotes are to be sought from those on the Panel. Where it is likely that requesting prices from outside the panel will result in better value for money i.e. larger projects, Council Officers should seek prices outside the panel in line with the thresholds set out in the Procurement Methods Matrix (Attachment A). Works where it can be clearly demonstrated are within the scope of the Panel Contract and are above the CEO's delegation will require approval by Council as per the delegation's matrix.

## Exemptions Under the Policy

The following areas are exempt from the terms of the policy:

- payments with statutory/legislative requirements - e.g.: payments to the ATO
- Superannuation
- WorkCover and Injury Management related expenses
- legal costs (exempt under provisions of Local Government (General) Regulations 2015)
- payments to the Victorian Electoral Commission (VEC) as the VEC is now mandated to conduct all council elections (clause 1 Schedule of the *Local Government Act 1989*);
- payroll deductions;
- investments / term deposits;
- sundry refunds (e.g.: pension rate rebates, deceased animal refunds);
- payments under the *Building and Construction Industry Security of Payments Act*;

- Mayor and Councillor allowances and expenses;
- property purchases, sales or rentals;
- utilities and non-contestable services and work undertaken by and on behalf of utility and service owners including water, electricity, gas and other energy based services, telecommunications and ISPs whereby the infrastructure is owned and managed by a particular party;
- warranty renewals;
- community grants;
- procurement of works of art;
- procurement of performing arts (including individual / groups of artists and / or shows) defined as forms of creative activity that are performed in front of an audience, such as drama, music and dance;
- whereby the purchase of an alternate provider is untenable for Council due to the presence of patents, IP and other stipulations necessitating Council to replace current systems or infrastructure with no allowable budget (ie: upgrades, licensing, enhancements and maintenance on existing IT systems, municipal access keys, specialised replacement parts for fleet or plant etc).

Where an exemption applies, the Key Purchasing Principles set out in this Policy still apply, in particular:

- maintaining probity;
- demonstrating ethical conduct;
- avoiding and managing conflicts of interest; and
- obtaining Best Value for money.

## Leases

Section 186 of the Act does not generally apply to leases, although there are exceptions, however to ensure value for money, transparency and accountability Council will undertake a competitive process for all leasing arrangements and for both the finance/lease and the acquisition of goods and/or equipment.

## Finance Lease

A finance lease is generally one where the lessor effectively transfers to the lessee substantially all the risks and benefits incidental to the lease, but where legal ownership of the goods may, or may not, be transferred to the lessee. Section 186 of the Act is likely to apply in the case of finance leases only where, under the terms of the lease, the council will acquire the goods under lease (and hence there is contract for goods; a lease not otherwise being a contract for services) and, of course, the lease is over the threshold amounts.



## **Asset and Operating Lease**

The asset under an operating lease does not vest in the council and therefore section 186 of the Act does not apply. In this context section 186 is generally concerned with the purchase of goods and services and entering an operating lease is not a purchase of a good or service. Council will undertake a competitive process for all leasing arrangements and for both the finance/lease and the acquisition of goods and/or equipment

## **Software Licences**

Software licences are contracts for services. By making available a product to a council, the owner of the software licence is providing a service. Section 186 of the Act therefore applies. Where council establishes electronic systems and is subsequently (after the initial contract period) renewing software licences (or upgrading systems), and the cost reaches the thresholds set out in this Policy, a Quotation Waiver must be completed. Where the threshold reaches the amounts set out in section 186, Council Officers will need to seek a Ministerial Approved Arrangement to a public tender process (see Section 3.7.3 Ministerial Approved Arrangements) where a Tender process cannot be conducted i.e. if there is only one supplier of the software.

## **Cumulative Spend Thresholds**

Council will monitor cumulative spend with suppliers at least annually. If expenditure with a supplier or a number of suppliers providing similar goods, services or works is ongoing in nature and the cumulative spend is likely to exceed the thresholds outlined in this Policy over a three-year period, then Council will review the opportunity to pursue a contract for such goods or services through a competitive process.

## **Public Advertising.**

Quotations may be advertised at the Council staff member's discretion in addition to the methods above. This may occur when a field of potential Tenderers hasn't been established, or an innovative approach is required, or the project has broad appeal that may attract keen prices, etc. or the project is seen to be of high risk to Council. Value for money principles should be applied. For quotations that exceed \$50,000 it is encouraged that staff advertise these on Council's e-Tender Portal, this increases the transparency around the process and gives all registered suppliers/contractors the opportunity to provide a quotation and encourages competitive pricing.

## **Emergency Circumstances**

The CEO has the discretion in emergency circumstances to waive all or part of these Procurement Policy requirements.

In the event of an emergency circumstance and the waiver of all or part of these Procurement Policy requirements, a report will be presented as soon as practicable to Council, outlining the circumstances.

Council should set the scope, timeframe and value of works to be covered by a contract entered into because of an emergency and to report this publicly in the interests of transparency.

As a matter of policy and principle, the use of this emergency provision, should be limited to situations where a real emergency has arisen.

Situations where this might occur include:

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

## Tender Evaluation

When inviting pricing for goods, services or works, it is important to develop evaluation criteria that shall be applied to the quotation or tender. These criteria will form part of any specification or brief prepared for the procurement.

The tenders and quotations will be evaluated against the mandatory and discretionary evaluation criteria which are stated in the Request for tender/quotation documents and include Occupational Health and Safety requirements, sufficient insurances and financial capacity if applicable.

Quotations or tenders returned by the nominated closing date must be evaluated in accordance with the selected evaluation criteria published in the Request for Tender/Quotation documentation

Examples of criteria that may be considered are:

- sustainability –local economic contribution, use of recycled and renewable goods;
- conformance with requirements;
- capacity to undertake the project – timeframe/resources/financial viability;
- experience of personnel and management nominated for the project;
- understanding of the project; and
- reference checks.

Evaluation Panels should be formed to evaluate all Procurement \$50,000 and above. Tender evaluation panels must consist of a minimum of three panel members.

All Procurement that is \$150,000 and above will have the evaluation meeting chaired by a member of the Procurement team to ensure evaluations are conducted in accordance with the Tender Conditions, the evaluation criteria set out in the Request for Tender and to ensure probity, transparency and consistency is maintained throughout the evaluation.

### **Third Party Funding Reporting Requirements**

Where funding for procurement is provided either entirely or in part from a third-party funding source (such as grants) prospective Tenderers are to be notified of the funding arrangement. Prospective Tenderers are also to be notified as part of the tender process of any requirements on Baw Baw Shire Council to share tender or contract information with the third-party funding body as required.

Any response to a tender providing notification of third-party funding arrangements will be considered as agreement to release details regarding the tender/contract to any relevant third-party funding body as required.

### **Third Party Contribution Plans**

Council can request a third party to undertake works-in-kind in lieu of a cash contribution. Pursuant to the Victorian Best Practice Procurement Guideline 2013, such an arrangement does not amount to a contract, so it does not activate section 186 of the Act, regardless of whether the threshold amounts are reached. However, were Council to enter into a contract with the developer to undertake further works on Council's behalf, such works would be subject to compliance with section 186 of the Act.

### **Delegation of Authority**

Delegations define the limitations within which Council staff members are permitted to work. Delegation of procurement authority allows specified Council staff members to approve certain purchases, quotations, tenders 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.

The Council shall maintain a documented record of procurement delegations, identifying the Council staff authorised to make such procurement commitments in respect of goods, services and works on behalf of the Council.

Staff may not approve a purchase order of which they are the beneficiary of the goods or services procured:

- their own training, conference attendance, coaching, or other professional development;
- their own attendance at a networking event;
- their own personal work arrangements (e.g. accessories for a work car); and

- anything else for which a staff member could be seen as receiving some kind of benefit.

All staff are responsible for making themselves aware of and familiarised with the Procurement Policy and associated processes.

## Delegation Reserved for the Council

Commitments and processes which exceed the CEO's delegation, and which must be approved by the Council are;

- tender recommendations and Contract approval for all expenditure over the CEO's delegation level;
- variations and contract term extensions (requiring additional budget);
- variations with a value of over the CEO's delegation level;
- cumulative variations with a value above the CEO's delegation need to be reported to Council for Information.

## Internal Controls and Monitoring

The Council will install 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;
- where quotations or Tenders are required evidence of the process is to be attached to the purchase requisition in the Finance System.

## Monitoring

Procurement will run quarterly reports to monitor compliance with this Policy.

Monitoring procedures will include:

- review cumulative spend by suppliers over a three-year period and investigate efficiencies, cost savings and potential contract opportunities;
- monitor purchase orders and requisitions ensuring evidence of required amount of quotations have been obtained and attached;
- review purchase orders by supplier and officer to identify order splitting;
- review transactions to identify multiple transactions to one supplier under the purchase order threshold to identify invoice splitting; and

- review suppliers by spend category to identify potential for efficiencies, cost savings and potential contract opportunities.

A weekly duplicate amount by supplier report is run prior to supplier payment run. This is checked by Procurement to ensure that payments to suppliers are not duplicated and potential for incorrect or fraudulent payments are identified prior to payment being made.

## **Commercial Information**

Procurement activities will be carried out in a manner that supports Council staff in meeting their obligations to ensure information of a commercially sensitive or confidential nature is obtained, stored, processed and published (where applicable), in an appropriate manner in accordance with the relevant Council guidelines.

## **Risk Management**

In accordance with Baw Baw Shire Council's current Risk Management Policy Council will ensure that risk management is 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 Councils capability to prevent, withstand and recover from interruption to the supply of goods, services and works.

## **Occupational Health and Safety**

Council undertake due diligence assessments on all suppliers to ensure compliance to legislative and business requirements. Baw Baw Shire Council requires all contractors, service providers and volunteers to comply with all Occupational Health and Safety legislative requirements. These are mandatory requirements and non-compliance will disqualify prospective suppliers. Suppliers will be required to provide evidence of insurances in providing goods, services or works.

This policy requires all contractors and service providers comply with all legislative and regulatory requirements, particularly in relation to OH&S. This is a mandatory requirement and non-compliance will disqualify prospective suppliers.

Section 30 of the OH&S Act 2004 requires suppliers to ensure that what is supplied is safe and without risk to health if it is used for a purpose for which it was designed, manufactured or supplied and that adequate information is supplied on its purpose and use.

Preferred suppliers will need to share Councils commitment and demonstrate that they have appropriate systems and processes to manage risks and hazards and that they provide appropriate education and training for all of their staff.

## **Supply by Contract**

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

The Council will minimise its risk exposure by measures such as:

- standardising contracts to include current relevant clauses
- requiring security deposits, bank guarantees or warranties where appropriate

- referring specifications to relevant experts for their advice prior to seeking tenders
- requiring contractual agreement before authorising the commencement of work
- use of or reference to relevant Australian Standards (or equivalent); and
- effectively managing the contract including monitoring and enforcing performance.

## **Contract Terms**

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

Where this is not possible, approval must be obtained from the Manager or Director that has the delegated authority to approve. A request for such approval should be supported with procurement and legal advice as relevant.

To protect the best interest of the Council, terms and conditions must be settled in advance of any commitment being made with a supplier. Any exceptions to doing this may expose the Council to risk and thus must be authorised by the appropriate member of Council staff listed in the Delegations.

## **Dispute Resolution**

All Council contracts will incorporate dispute management and alternative dispute resolution provisions in the General Conditions of Contract.

## **Contract Management**

The purpose of contract management is to ensure that Council, and where applicable its clients, receive the goods, services or works provided to the required standards of quality and quantity as intended by the contract by:

- establishing a system monitoring and achieving the responsibilities and obligations of both parties under the contract;
- providing a means for the early recognition of issues and performance problems and the identification of solutions; and
- adhering to Council's Risk Management Framework and adhering to relevant Occupational Health and Safety Contractor Compliance Procedures.

All Council contracts are to include contract management requirements. Furthermore, contracts are to be proactively managed by the member of Council staff responsible for the delivery of the contracted goods, services or works to ensure the Council receives Value for Money.

## **e-Procurement**

e-Procurement is integral to the overall development of procurement processes and involves the use of an electronic system/s to acquire, manage and pay for goods, services and works. By utilising e-procurement the Council aim to:

- reduce transaction costs;
- achieve greater leverage;
- make processes more efficient;
- improve management information and visibility of spend;
- increase control and consistency of process; and
- improve spend compliance.

## Demonstrate Sustained Value

### Performance Indicators and Management Information

Performance indicators will assist Council in measuring procurement performance across all areas of the organisation.

They will include criteria such as:

- the proportion of expenditure against corporate contracts;
- user and supplier satisfaction levels;
- knowledge and skill of Council employees in procurement process;
- level of compliance and understanding of Council procurement policies; and
- measuring the success of procurement initiatives.

### Corporate Social Responsibility

Corporate Social Responsibility (CSR) is about taking positive action to demonstrate the Council's commitment to the local community and environment. This means maximising the benefits of the services the Council provide across the community and minimising the negative aspects of their activities.

The Council recognises its role in furthering social development, through its procurement of goods, services and works and the potential impact this spend has on the environment and where applicable will integrate sustainability, environmental and social issues into the procurement process.

The Council integrates CSR into its organisational policies and practices through social procurement, sustainability and diversity.

### Sustainable Procurement

The Council recognises its role in furthering sustainable development, through its procurement of goods, services and works and the potential impact this spend has on the environment and where applicable will integrate sustainability, environmental and social issues into the procurement process.

The council aims to achieve this by:

- encourage and support the use of recycled products in the goods, services and works;
- minimise the waste generated, and level of energy being consumed during the life cycle of goods or services;
- support the use of clean technologies for Council's direct use, and for the use by its suppliers where possible;
- encourage local suppliers to bid for the Council's business in line with the procurement policy;
- promote Fairtrade, or equivalent and ethically sourced and produced goods/services; and
- comply with all Australian regulations and legislation and ensuring our suppliers do the same.

## **Diversity**

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

## **Support of the Local Economy and Local Business**

Council recognises that it is a major purchaser of goods, services, design and construct works within the municipality, and is keenly aware that its procurement policies, practices and processes have the potential to influence the local economy.

Council recognises the benefits of purchasing locally and is committed to increasing and promoting a sustainable Baw Baw Shire economy. To achieve this, Council will use its best endeavours to support the local community including business and industry within the Baw Baw Shire, and maximise local opportunities by means that are consistent with achieving demonstrated sustained value

Requesting quotations or tenders from within the local community is highly encouraged and is to be balanced with suppliers further afield to ensure open and effective competition. Value for Money (refer Definitions) is the expected outcome for each procurement activity, resulting in the best possible outcome for Baw Baw.

Further to this, Council recognises the benefits for purchasing within the Gippsland region, and where possible Council will use its best endeavours to support the region.

Council will seek from prospective suppliers the financial and social contribution they will make to the Baw Baw Shire region and the wider Gippsland region. A weighting of 10% is applied to all tenders for support of the local economy and local business. The criteria assessment will consider:

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- Locally sourced – materials and consumables;
- Engaging locals – businesses, subcontractors, community;
- Employing locals – trade skills, apprentices, indigenous, disadvantaged groups;
- Enable business expansion, growth and servicing; and
- Contribution – to local clubs, groups, community.

## Increasing weighting for Local Content

Where a project or services being procured could potentially create significant financial or social benefit to the Baw Baw Region consideration should be given to increasing the local content weighting.

## Social Procurement

Social procurement is about ensuring procurement decisions help generate social value. Council will encourage procurement processes and purchasing power that generates positive social outcomes in addition to the delivery of efficient goods, services and works. Council's procurement processes can achieve positive social outcomes where it can be justified on a value for money basis including but not limited to:

- Promoting social inclusion and breaking cycles of disadvantage
- Opening new opportunities for strengthening the local skill base
- Strengthening local economic development

The Council is committed to Social Procurement by:

- Identifying opportunities for procurement models that deliver social benefits to the community
- Developing partnerships with community stakeholders and not-for-profit organisations;
- Building and maintaining a strong community by exploring ways to generate local employment (particularly among disadvantaged residents) and further strengthening the local economy; and
- Purchasing ethical and fair-trade goods to support equitable, local, national and international trade.

Council will include the tender evaluation criteria of "Social Procurement" where that service or project can generate positive social outcomes.

## Fleet Procurement

The Fleet Policy identifies methods to support the local businesses and economy in the procurement of Council's fleet. All fleet purchases will be purchased through the State Purchasing Contract refer to <http://www.procurement.vic.gov.au/State-Purchase-Contracts/Motor-Vehicles>

## Apply a Consistent and Standard Approach

The Council will implement effective and efficient processes for the acquisition of goods, services and works.

Council is committed to ensuring that it deals with suppliers in a fair and ethical manner and expects to be treated in a similar manner. To assist in ensuring that this occurs the Council will include standard clauses in all of its tender documentation that makes it clear that the Council will report any suspicion it has, relating to collusive behaviour by Tenderers or contractors, to the relevant authorities.

## Build and Maintain Supply Relationships

Council recognises that in order to achieve sustainable value, appropriate relationships must be developed and maintained with suppliers. The Council will consider which supply arrangement delivers best value outcomes in terms of its broader strategic objectives.

## Developing and Managing Suppliers

Council recognises the importance of effective and open working relationships with its suppliers, and is committed to the following:

- managing existing suppliers, via the appropriate development programs and performance measurements to ensure the benefits are delivered;
- maintaining approved supplier lists;
- developing new suppliers and improving the capability of existing suppliers where appropriate; and
- conducting pre and post tender briefings where applicable.

## Supply Market Development

A wide range of suppliers should be 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:

- Local businesses
- Green suppliers
- Small to medium sized enterprises (SME's)
- Social enterprises
- Voluntary and community organisations
- 

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Responsible position	Procurement Coordinator
Responsible Director	Director Corporate & Community Services
Version	VI



# Procurement Methods Matrix.

## Attachment A

Estimated expenditure (including GST)	1 Verbal quote	1 Written quote	2 Written quotes	3 Written quotes	Public tender (open)	Accepted commitment method	Record keeping requirement
Transaction limited by holders Purchase Card	✓	x	x	x	x	Purchase card	Transaction receipt kept locally
Up to \$1,000	✓	x	x	x	x	Purchase order NOT required	Records kept in Finance System
\$1,000 + to \$5,000	x	✓	x	x	x	Purchase order required	Quotations/evidence kept in Finance System
\$5,000+ to \$25,000	x	x	✓	x	x	Purchase order required	Quotations/evidence kept in Finance System
\$25,000+ to \$100,000	x	x	x	✓	x	Purchase order required	Quotations/evidence kept in Finance System
<b>GOODS AND SERVICES</b> – quantifiable material requirements or consultancy work or advice performed							
\$100,000 + to 150,000	x	x	x	✓	✓	Purchase Order and/or contract refer to Procurement	Quotations attached to Purchase Order
\$150,000 + Goods and Services	x	x	x	x	✓	Contract managed by Procurement	Tender Recommendation kept in Finance System
<b>WORKS</b> – Works relate to civil works; including new construction of structures of all kinds							
\$100,000 + to \$200,000	x	x	x	✓	✓	Purchase Order and/or contract refer to Procurement	Quotations/evidence kept in Finance System
\$200,000 + for the carrying out of works	x	x	x	x	✓	Contract managed by Procurement	Tender Recommendation kept in Finance System

**Non Order Purchase**<sup>1</sup> – A Purchase Order is not required to be raised in One Council, however evidence supporting the purchase must be maintained by the purchasing officer for audit purposes.

**Purchase Orders** – must be raised in One Council for amounts over \$1,000

**Three written Quotes** – It is recommended to maximise best value that a sufficient number of Request of Quotations (RFQ) are sent to prospective suppliers to increase the likelihood that three written quotes are received.

**Public Tender** – If doubt exists as to whether the likely value of an intended contract would exceed the threshold for a public tender, then a public tender process should be undertaken.