

Management report to Council

Agenda item 6.2

Procurement Policy Review

Council

Presenter: Phu Nguyen, Chief Financial Officer

26 August 2014

Purpose and background

1. The purpose of this report is to seek endorsement of the revised draft Procurement Policy.
2. Section 186A of the *Local Government Act 1989* (Act) requires Council prepare a Procurement Policy (Policy). The Policy must be reviewed at least once each financial year and be made publicly available, at its office and on its website.
3. The Policy was first endorsed by Council in September 2009 and most recently amended and endorsed by Council in May 2013.

Key issues

4. The Act requires that Council must have regard to the Victorian Local Government Best Practice Procurement Guidelines (Guidelines) with respect to form or content of the Policy.
5. A revised Policy has been prepared:
 - 5.1 in accordance with the Guidelines issued in 2013
 - 5.2 to provide further clarity to the existing Policy, in particular in relation to sustainability to more effectively capture's focus and objectives in relation to Corporate Social Responsibility (Clause 5.4)
 - 5.3 to demonstrate a preference to local suppliers, defined as being "suppliers whose businesses are registered in Victoria" (refer to the last dot point under clause 2 - Policy Objectives on page 1 of Attachment 2). This replaces the previous objective of giving preference to procurements manufactured or produced in Australia and New Zealand.

Recommendation from management

6. That Council:
 - 6.1 notes its obligations under section 186A of the *Local Government Act 1989* to review its current Procurement Policy, at least once every financial year
 - 6.2 endorses the amended Procurement Policy.

Attachments:

1. Supporting Attachment
2. Procurement Policy

Supporting Attachment

Legal

1. The revised Policy is aligned with the 2013 Guidelines, which are designed to assist councils to better understand their obligations under the *Local Government Act 1989* (the Act).

Finance

2. The revised Policy summaries processes that are currently in place and does not propose new financial implications.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

4. The 2013 Guidelines were reviewed through the Policy update process.

Environmental sustainability

5. The revised Policy demonstrates Council's commitment to sustainability, which is about taking positive action to demonstrate Council's commitment to the local community and environment. In procurement activities, Council will undertake to support opportunities with social enterprises, Aboriginal and Torres Strait Islander groups and sustainability.

City of Melbourne Procurement Policy

1 Background

The *Local Government Act 1989* (the Act) requires each council to:

- publicly tender contractual procurements over certain thresholds
- prepare, approve and comply with a procurement policy encompassing principles, processes and procedures applied to all purchases.

2 Policy Objectives

The objectives of this Procurement Policy (Policy) are to:

- establish a procurement framework for the Melbourne City Council (Council) to achieve value for money and continuous improvement in the provision of services for the community
- ensure that Council resources are used efficiently and effectively
- achieve compliance with relevant legislative requirements
- achieve high standards of probity, transparency, accountability and risk management
- give preference to procurements which provide environmentally sustainable benefits
- give preference to procurements which provide social benefit
- whenever practicable give preference to local suppliers whose businesses are registered in Victoria (Local Suppliers).

3 Legislative Compliance

The key legislative requirements for this Policy include:

- Section 186 of the Act (Power to enter into Contracts)
- Section 186A of the Act (Procurement Policy)
- Section 3C of the Act (Objectives of a Council)
- Section 208B of the Act (Best Value Principles)
- Sections 77A, 77B, 78, 78A to 78E, 79, 79B to D, 80, 80 A to C, 81, 95 and 95AA of the Act (Conflict of Interest)
- Section 98 of the Act (Delegations)
- Section 140 of the Act (Accounts and Records)
- The relevant provisions of the *Competition and Consumer Act 2010* (Cth).

Council will adhere to all these provisions in all procurement matters.

4 Scope and Application

This Policy represents the principles, processes and procedures that will be applied to all purchases by Council. The scope of this Policy commences from when Council has identified a need for procurement and it continues through to the delivery / completion of that procurement.

This Policy will apply to Council, Council staff and all persons undertaking procurement on behalf of Council.

5 Policy provisions

5.1 Procurement Principles

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

- value for money
- open and fair competition
- accountability
- risk management
- probity and transparency.

These principles are detailed in Council's Corporate Contract Management System.

5.2 Corporate Contract Management System

Council has an online Corporate Contract Management System (CCMS) which prescribes best practice methodologies for all stages of procurement and contract management. CCMS provides advice, process guides and templates for procurement, including tenders and all other required contract documents.

It is a requirement for relevant Council staff and agents to be trained in the use of, and comply with, CCMS for all purchases over the value of \$25,000. Managers will regularly review the performance of their staff to ensure this Policy and Council's contract management objectives are achieved. Council's Employee Code of Conduct also applies to contract management practice.

All values referred to in this Policy are inclusive of GST.

CCMS does not apply to contracts arising from the statutory requirements of Government, Government Departments, Statutory Authorities, Utility Companies or Government Franchisees for works affecting those bodies' assets and which are only permitted to be undertaken by those bodies or their approved contractors.

CCMS will be regularly reviewed for relevance, contemporary best practice and improvement through received Council staff change requests, Procurement and Contracts Unit meetings and regular management reviews.

5.3 Organisational Structure for Procurement

Council operates a structure wherein all strategy, policy, technology, best practice and networking in procurement matters is led by Council's Procurement and Contracts Unit.

5.4 Sustainability

Council's supply chain has a material impact on the organisation's sustainability performance. Therefore, Council has a strong focus on sustainable procurement. To deliver on Council's commitment to the local community and the environment, Council uses procurement as a vehicle to generate social, environmental and economic benefits beyond the purchases required. This demonstrates Corporate Social Responsibility (CSR) which is about taking positive action to demonstrate the Council's commitment to the local community and environment on which it impacts.

When making purchases Council will consider the following:

5.4.1 Social Sustainability

Social sustainability focuses on the social (or people) aspects of sustainability and in particular social equity. Actions on social equity address disadvantage and are underpinned by principles of diversity, acceptance, fairness, compassion, inclusiveness and access for people of all abilities. Socially sustainable procurement generates positive outcomes for people and contributes towards building stronger communities by:

- Improving the overall quality of life of the local community;
- Improving equity of access to services;
- Improving equity of access to opportunities;
- Increasing purchases of ethical and fair trade goods (or equivalent).

A focus is placed on people who are underrepresented and people with less opportunity.

5.4.2 Environmental Sustainability

Council will reduce its impact on the natural environment by making decisions which reduce natural resource and biodiversity depletion.

- Reducing greenhouse gas emissions;
- Reducing waste to landfill and increasing amount of waste recycled;
- Reducing water consumption and improving water management;
- Encouraging improved environmental management in Council's supply chain;

- Selecting products/services that have minimal effect on the depletion of natural resources and biodiversity;
- Improving our ability to adapt to climate change

5.4.3 Economic Sustainability

Council is committed to supporting local businesses and economic diversity and viability by:

- Generating local employment (particularly among disadvantaged communities);
- Taking into account the life cycle impacts of products purchased (purchase, operation and disposal);
- Building relationships and encouraging purchasing from local suppliers, including social enterprises to help build their capacity;
- Explore, where appropriate and possible, the opportunity to maximise the social benefits of a contract by offering 'social tender';
- Fostering innovation and emerging sectors;
- Allowing a price preference of up to 10 per cent for sustainable purchases (as below).

5.5 Expressions of Interest

A Branch Manager may determine to seek Expressions of Interest (section 186 (1) of the Act) where:

- there are likely to be many tenderers
- tendering will be costly or the procurement is complex and Council does not wish to impose the costs of preparing full tenders on all tenderers
- there is uncertainty as to the willingness and / or interest of vendors to offer the required procurement or
- Council requires advice from the market regarding how best to address a particular need.

Expressions of Interest must be publicly advertised.

5.6 Delegations, Authority and Levels of Procurement

Council's instrument of delegation determines the seniority levels of staff authority, required for expenditure on each procurement.

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, are considered to breach the requirement to call public tenders (refer to 5.6.2 below) where threshold values would otherwise be reached.

5.6.1 Procurements under \$150,000

For procurements under \$150,000 staff are required to follow processes in accord with the Corporate Contract Management System. These procedures apply unless the procurement is being made under an existing Council Contract or approved State Government Contracts. A Purchase Order is required to be raised in Council's Technology One finance system.

A public tender process may be used for values less than \$150,000, if this will service Council interests and produce a better outcome in the context of this Policy.

5.6.2 Procurements equal to or over \$150,000

Staff are required to follow processes in accord with CCMS.

- (a) For procurements where there is an existing Panel Contract, staff are required to:
 - Prepare a project brief and obtain quotes from suitable Panel members
 - Raise a Purchase Order in Technology One. Details of the successful Panel member's quote are to be included in the Purchase Order.
- (b) For Building and Construction Works where there are suitable building industry contractors or consultants on the Construction Supplier Register maintained by the Department of Transport Planning and Infrastructure for and on behalf of the State Government ("Register"), staff are required to:

- Receive a minimum of three tenders from suppliers on the Register
 - Raise a Purchase Order in Technology One. Details of the successful tender are to be included in the Purchase Order.
- (c) Where there is a contract in place and Council have appointed a Tendering Agent, for example Procurement Australia, staff are required to:
- Prepare a project brief and obtain a quote from the contracted supplier
 - Raise a Purchase Order in Technology One. Details of the quote are to be included in the Purchase Order.
- (d) Where there is a suitable State Government Contract in place approved for Council use by the Minister for Local Government, staff are required to follow the process required by the State Government.
- (e) Where there are no current contracts in place, staff are required to:
- Use the appropriate Invitation to Tender template in CCMS
 - Conduct a publicly advertised, open and competitive Tender for the procurement, in accord with Council's CCMS procedures.

Note: Exemptions from advertising are set out in section 186 (5 and 5A) of the Act.

5.7 Risk Management

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

A Procurement Risk Management Plan must be completed and approved for all procurements of a value of \$25,000 or greater.

5.8 Probity Requirements

Members of staff (and all persons engaged in procurement on Council's behalf) must exercise the highest standards of integrity in a manner able to withstand the closest possible scrutiny. All members of staff have an overriding responsibility to act impartially and with integrity, avoiding conflicts of interest (section 95 of the Act).

In procurement matters:

- Council staff must disclose a direct or indirect interest (and the type of interest) before providing advice or reports (or any other matter) (section 80C of the Act)
- Council staff who have been delegated Council powers, duties or functions are prohibited from exercising those powers, duties or functions if they have a Conflict of Interest (section 80B of the Act)
- A Councillor must comply with the Primary principle of Councillor conduct (section 76B of the Act) and avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations (section 76BA of the Act). Councillors (and members of Council audit committees) must disclose a Conflict of Interest (section 79 of the Act)
- Councillors must also comply with the Councillor Code of Conduct (section 76C of the Act)
- Councillors must not improperly direct or improperly influence a member of Council staff in the exercise of any power or in the performance of any duty or function (section 76E of the Act)
- Council staff must also comply with Council's Employee Code of Conduct (section 95AA of the Act)
- Council staff engaged in the evaluation of quotations or tenders must complete and lodge a Disclosable Interests and Confidentiality Declaration
- Council staff must make their interests known in any situation where it could be perceived that an interest might unduly influence them
- Council staff must declare to their Manager any items delivered to Council which were not part of the requirements of the contract and which could be construed as gifts or new assets to Council. Such items must also be referenced on supplier invoices.

5.9 Tender Evaluation

Council Staff must ensure that:

- Late tenders will not be accepted under any circumstances
- Tender evaluations will be conducted in accordance with the methodology set out in CCMS
- A tender evaluation panel will be established to evaluate each tender submission against the tender's selection criteria and the tender evaluation panel's composition will be determined by the respective Branch Manager
- Tender evaluation panels can include external personnel in order to ensure best value
- A probity advisor may be appointed to any tender evaluation panel
- A probity auditor may be appointed to oversee the evaluation process
- The evaluation process must be robust, systematic and unbiased
- A price preference of up to 10 per cent can be collectively applied to:
 1. the purchase of recycled and environmentally preferable items
 2. procurements which provide social benefit
 3. purchases from local suppliers.
- Once a preferred tenderer is selected, negotiations can be conducted in order to obtain the optimal solution and commercial arrangements, providing negotiations remain within the intent and scope of the tender. Such negotiations must be exhausted with one tenderer before beginning with another tenderer.
- Tender evaluation panels will produce a written report of their evaluation using the appropriate prescribed CCMS template.

5.10 City of Melbourne Tenders' Webpage

Information regarding Current Tenders, Closed Tenders, Awarded Tenders and Future Tenders is placed on Council's website.

5.11 Internal Control

Council will establish, document and maintain a framework of internal controls over procurement processes in order to ensure:

- more than one person is involved in and responsible for each transaction
- transparency in the procurement process
- a clearly documented audit trail exists for procurement functions
- the required authorisations are obtained and documented.

All persons engaged in procurement processes must diligently apply all internal controls.

5.12 Evaluating Performance

In order to continually improve its processes and outcomes, Council will evaluate and report on the following aspects of procurement:

- evaluate contractor performance
- evaluate opportunities to improve processes
- incorporate process improvements.