



PROCUREMENT POLICY

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1. Purpose

Council is required under section 186 of the *Local Government Act 1989* (the Act) to prepare, approve and comply with a Procurement Policy. In accordance with the Act, this Procurement Policy sets out the key principles and processes applied to the purchases of Goods, Services or Works by Council.

The purpose of this Procurement Policy is to:

- provide a framework that seeks to achieve best value through consistent, competitive and transparent processes;
- achieve compliance with relevant legislative requirements;
- minimise and manage risks in procurement; and
- prioritise, where practical, the procurement of locally sourced goods, services or works and procurement of environmentally sustainable goods, services or works.

The key principles of the Procurement Policy provides:

- Best Value - provide a procurement framework for Council that achieves the best value mix of cost, quality, environmental and social responsibility, sustainability and where possible, locally sourced.
- Probity – demonstrate fairness, impartiality, transparency, accountability, confidential and effectively manage any perceived and actual conflict of interest.
- Efficiency – minimize the cost of procurement activities to the organization and participants without compromising other procurement principles or quality.
- Continuous improvement – promote continuous improvement and innovation in design and delivery of services, goods and works.
- Collaboration – collaborate with other councils and relevant bodies where appropriate, share better practices and achieve best value.
- Advanced practice – achieve advanced practice in procurement.
- Risk management–minimizing and manage risk in procurement through ensuring issues are identified, mitigated and documented.
- Compliance – comply with relevant legislation requirements.
- Source and procure locally – procure from local sources, where appropriate demonstrating value for money

2. Scope of Policy

This policy applies to all procurement activities undertaken by Council and is binding upon Councillors, Council officers, contractors and consultants while engaged by Council. This Procurement Policy does not cover contract management activities.

3. Policy Statement

Council is committed to the effective procurement of Goods, Services and Works through adopting key principles and policies. It is recognised this will support the achievement of Council objectives about sustainable and socially responsible procurement, support for the local economy and obtaining Value for Money, which in turn, will lead to a better outcome for Council in the provision of services for the community.

Councillors, Council officers, contractors and consultants while engaged by Council are required to comply with this Procurement Policy.

3.1 Treatment of GST

All monetary values stated in the Policy include GST except where specifically stated otherwise.

3.2 Value for Money

The principle of Value for Money underpins Council's procurement function. It is the achievement of a desired procurement outcome at the best possible price, not necessarily the lowest price, based on a set list of financial and non-financial criteria relevant to the procurement. It is a common, internationally recognised method for benchmarking expenditure to achieve policy objectives. Value for Money considers the total cost of procurement from planning to disposal and everything in between. This is commonly known as total cost of ownership.

Value for Money will be facilitated by:

- developing, implementing and managing procurement frameworks that support the co-ordination and streamlining of activities throughout the lifecycle;
- development, implementation and management of a procurement strategy to encourage and facilitate procurement that supports and stimulates the local economy;
- effective use of competition;
- using aggregated contracts where appropriate;
- identifying and rectifying inefficiencies in procurement processes;
- developing cost efficient Tender processes including appropriate use of e-solutions;
- working with suppliers to create relationships that are professional and productive.

3.3 Conduct of Councillors and Council Officers

Council officers must exercise the highest standards of integrity in a manner able to withstand the closest possible scrutiny. In accordance with section 95 of the Act, Council officers have an overriding responsibility to act impartially and with integrity, avoiding conflicts of interest.

Councillors and Council officers, must:

- 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;
- not participate in any action or matter associated with the arrangement of a Tender or contract (i.e. evaluation, negotiation, recommendation, or approval) where that person has a direct or indirect conflict as defined by the Act;
- becoming aware of a conflict, promptly declare the direct or indirect Conflict of Interest to the Procurement team, or in the case of councillors declaring a conflict to the Mayor or the Committee Chair, depending on whether the matter is to be considered by Council or an Assembly of Councillors, as well as the Chief Executive Officer.

Councillors cannot participate in any aspect of the procurement process unless acting in the capacity of Council at a formally constituted Council meeting to consider the awarding of a contract.

3.4 Gifts and Hospitality

Councillors and Council officers must not, either directly or indirectly, solicit or accept gifts or hospitality from any member of the public where:

- it is made during a procurement or tender process by a person or organisation involved in the process;
- acceptance could be perceived as endorsement of Goods, Services or Works; or
- acceptance could be seen to advantage the member of the public in future procurement decisions.

3.5 Accountability and Transparency

Accountability and Transparency in procurement means being able to explain and provide evidence on the process followed to procure the goods, services or works. 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.

All procurement activities must be in accordance with the Act, this Procurement Policy, other relevant Council policies and all other legislation.

3.6 Fair and Honest Dealings

Council is committed to providing equal opportunity for all businesses, irrespective of their size and location, to bid for work through open and transparent market processes. Impartiality is to be maintained throughout the procurement process so it can eliminate the prospect of any bias in decisions and withstand public scrutiny.

3.7 Fraud and Corruption Control

Council takes allegations of fraudulent activity and corrupt conduct seriously. Council is committed to preventing, deterring and reporting corrupt and fraudulent behaviour. Council has developed a Fraud and Corruption Control Policy which provides a framework for preventing the risk of fraud and strengthening organisational integrity.

3.8 Disclosure of Information

The commercial interests of existing and potential suppliers must be protected. Confidentiality of information provided by existing and prospective suppliers must be maintained, particularly commercially sensitive material such as, but not limited to prices, discounts, rebates, profit, manufacturing, intellectual property and product information.

At no stage should councillors or Council officers have discussions with potential suppliers about active procurements prior to the approval process being finalised, other than authorised procurement negotiations. Councillors and Council officers should take care that their duty to consider issues fairly and properly is not compromised by participating in discussions with suppliers where the intent of the supplier is to influence the decision-making of a councillor or Council officer in procurement related matters.

3.9 Financial Delegations and Authorisations

Delegations define the limitations within which individual Council officers are permitted to work. Delegation of procurement authority allows specified Council officers to approve certain purchases, quotations, Tender and contractual processes without referral to Council. This enables the organisation to conduct procurement activities in an efficient and timely manner while maintaining transparency and integrity.

3.10 Matters not Delegated to Council Officers

Tender recommendations and contract approvals for all expenditure over \$500,000 including GST must be approved by Council.

3.11 Expenditure thresholds

Procurement Value (Including GST)	Market Engagement Minimum Requirement - (*exemptions apply)	Agreement Council Contract	Record Keeping Requirements (Council Use Only)
\$0 to \$5,000	One (1) verbal quote	Not Required	Receipt of purchase.
\$5,001 to \$20,000	Two (2) verbal quotes	Not Required	Verbal Quote Form must be stored in the financial system.
\$20,001 to \$75,000	Two (2) written quotes	Not Required	Along with the written quotes received, a Council Quote Form (\$75k) must be stored in the financial system, if the minimum number of quotes has not been obtained or the lowest priced quote has not been accepted.
\$75,001 to \$100,000	Three (3) written quotes	Required for strategic procurement	Along with the written quotes received, a Council Quote Form (\$100k) must be stored in the financial system if the minimum number of quotes has not been obtained or the lowest priced quote has not been accepted.
\$100,001 to \$150,000 (Goods and Services) or \$200,000 (Works)	Public Request for Quote (RFQ) (In partnership with the Procurement Team)	Required	In accordance with the Procurement Policy

Procurement Value (Including GST)	Market Engagement Minimum Requirement - (*exemptions apply)	Agreement Council Contract	Record Keeping Requirements (<i>Council Use Only</i>)
More than \$150,000 (Goods and Services) or \$200,000 (Works)	Public Request for Tender (RFT) (In partnership with the Procurement Team)	Required	In accordance with the Procurement Policy

3.12 Exemptions from thresholds

An exemption to the procurement levels detailed in section 3.11 above may be requested under the following circumstances:

- in matters of Emergency including public health, security or safety as a result of an unforeseen event or occurrence (see also section 3.12.1 below);
- where a competitive process has been undertaken in line with the requirements of S186 of the Act through third party organisations e.g. MAV Procurement, Procurement Australia, State Government;
- installations where a change in supplier would necessitate the procurement of goods and services that do not meet the requirements for interoperability or interchangeability; and
- an absence of competition for technical reasons for example, one vendor having legal ownership of design or intellectual property.

3.12.1 Exemptions from thresholds - Emergencies

Circumstances under which procurement may be undertaken under this clause are as follows:

- an Emergency exists as defined by the *Emergency Management Act 1986* (see Section 7 - Definitions); and
- the Chief Executive Officer has declared in writing that an Emergency exists; and the Chief Executive Officer is satisfied that procurement needs to be undertaken immediately.

Situations where this might occur include:

- during the period where a natural disaster has been declared such as flooding, bushfire or epidemic that 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 to Council resulting in a need to appoint a replacement service provider on the grounds of public safety;
- an unforeseen event which impacts heavily and unsustainably on Council's level of service to the community and represents an immediate risk to health or safety; or
- any other situation which may constitute a risk to health, life or property.

Procurement made under the Emergency provisions must be in accordance with

Council's Financial Delegations and be limited in scope to what is necessary to deal with the immediate emergency.

The Emergency provision must not be used for new or extended works and services after the need for an Emergency response has passed. Immediately the Chief Executive Officer declares that an Emergency no longer exists, the use of this power ceases.

3.13 Risk Management

Appropriate risk management is to be applied at all stages of procurement activities. This must be properly planned and carried out in a manner that will protect and enhance Council's capability to prevent, withstand and recover from interruption to the supply of Goods, Services or Works. Council's risk exposure will be minimised by measures such as:

- standardisation of contracts including necessary and relevant clauses;
- requiring security deposits where appropriate;
- referring specifications to relevant industry experts;
- contracts must be fully executed before acceptance of the good or prior to the commencement of the service or work; and
- use of or reference to relevant Australian Standards (or equivalent).

3.14 Insurance Requirements

In order to minimise Council's risk exposure, Council will ensure that contractors and consultants have appropriate insurances in place and that the insurance remain valid throughout the entire life of the contract including any defects liability period.

Types of insurance required and indicative liability limits may include but are not limited to current:

- WorkCover insurance for the State of Victoria;
- Public Liability insurance with a minimum liability limit of \$20,000,000;
- Product Liability insurance with a minimum liability limit of \$20,000,000;
- Motor Vehicle, Plant and Equipment and Tools of Trade insurance;
- Business Interruption insurance and
- Professional Indemnity insurance with a minimum liability limit of \$10,000,000.

Council will maintain a register of contractors' and consultants' insurance details in a manner that will ensure that Certificates can be easily reviewed for currency and for updates to be requested as required.

3.15 Competition and Consumer Act Compliance

Council will comply with the *Competition and Consumer Act 2010* and other fair-trading legislation applicable to its operations. Council is committed to the public policy goals embodied by these laws, which include the protection and promotion of competition.

Council is committed to ensuring staff are informed of their obligations arising under competition and consumer legislation, and to not allow the following to occur:

- restrictive trade practices (including price fixing and exclusionary provisions relating to a division of territories);
- market sharing (including allocation of customers), anti-competitive agreements, exclusive dealing and misuse of market power;
- inaccurate communication or promotion (including misleading or deceptive conduct, false claims and unsubstantiated predictions); and
- unconscionable and / or unfair business practices.

3.16 Determining the appropriate method of Procurement

Council's standard methods for purchasing goods, services and works are:

- corporate credit card;
- purchase order following a quotation process undertaken with suppliers for goods, services or works that represents Value for Money under directed quotation thresholds (refer to section 3.11 for more information);
- under contract following a request for quotation or request for Tender process, or;
- using aggregated purchasing arrangements with other Councils or other bodies such as MAV Procurement, Procurement Australia, Victorian Government (e.g. State Purchasing Contracts, Whole of Government Contracts); and Commonwealth Government (e.g. Federal Purchasing Contracts).

3.17 Ministerial Approval

The requirements of section 186 of the Act do not apply if a contract is entered into in accordance with arrangements approved by the Minister.

3.18 Support for Local Content

Council will include in its Tender process a mandatory weighting of five (5) percent for Local Content when engaging and contracting with suppliers. This is to acknowledge the suppliers whose activities contribute to the financial and social wellbeing of the region.

3.19 Support for Sustainability and Environment

Council will include in its Tender process a mandatory weighting of five (5) percent for Sustainability and Environment when engaging and contracting with suppliers. This is to acknowledge the suppliers whose activities contribute to the sustainability and environmental wellbeing of the region.

4 Roles and Responsibilities

These management positions are responsible for the implementation, communication and compliance monitoring of the policy in their work areas:

Party / Parties	Roles and Responsibilities
Chief Executive Officer	Ensure overall organisation compliance with the policy.
General Managers	Ensure compliance with the policy by all Council officers under their supervision.
General Manager Business Excellence	Overall responsibility for the policy implementation and compliance.
Managers	Ensure compliance with the policy by all Council officers under their supervision.
Manager Governance	Responsible for review, updating and implementing policy. Together with the Procurement team, primary source for procurement advice, training and guidance.

5 References and Supporting Documents

5.1 Applicable Legislation:

This policy is consistent with the following Council Plan 2017-2021 Good Governance goals – “East Gippsland Shire is inclusive, engaged and open”, and “Council is in a strong financial position and can provide for future generations of East Gippslanders”.

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). Provisions from the new Act are being commenced in four stages. The first tranche of provisions commenced on 6 April 2020 with other tranches commencing on 1 May 2020 and 24 October 2020. All remaining provisions are commencing on 1 July 2021. The *Local Government Act 1989* applies in circumstances where the new Act has not commenced.

The East Gippsland Shire Council is required to make decisions under both Acts as the transition occurs. Council has implemented mechanisms to ensure decisions are made according to the relevant provisions of either the *Local Government Act 1989* or the *Local Government Act 2020* as in force at the date of the decision.

This policy is made under section 186A of the Act. The Act is the key legislative framework that regulates the process of all local government procurement in Victoria.

The policy should be read in conjunction with the following:

- *Privacy Act 1988*;
- *Competition and Consumer Act 2010*;
- *Security of Payments Act 2002*; *Local Government Act 1989*; and
- *Local Government Act 2020*.

5.2 Applicable Policy:

- Credit Card Policy;
- Cash Handling Policy;
- Councillor Code of Conduct;
- Instrument of Delegation and Instrument of Sub-Delegation by the Chief Executive Officer;
- Fraud and Corruption Control Policy;
- Access to Information (Records) Policy;
- Risk Management Policy; and
- Staff Code of Conduct.

6 Privacy and Human Rights Consideration

All personal information collected by Council in connection with procurement activities will be handled in accordance with all applicable privacy legislation and will be used only for the purpose of investigating procurement matters.

The procurement policy has been assessed as compliant with the obligations and objectives of the Victorian Charter of Human *Rights and Responsibilities Act 2006*. Please refer to www.humanrightscommission.vic.gov.au for assistance with this section.

7 Definitions

Term	Meaning
Conflict of Interest	Where a Councillor or Council officer has private interests that could improperly influence, or be seen to influence, their decisions or actions in the performance of their public duties, defined under the Act as a direct or indirect interest.
Council	East Gippsland Shire Council
Councillor	Person who has been elected to the office of 'councillor' of East Gippsland Shire Council.
Council officer	A current member of East Gippsland Shire Council staff with the authority to engage in activities on behalf of Council.

Term	Meaning
Emergency	<p>Means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person in Victoria or which destroys or damages, or threatens to destroy or damage, any property in Victoria or endangers or threatens to endanger the environment or an element of the environment in Victoria including but not limited to:-</p> <p>(a) an earthquake, flood, wind-storm or other natural event; and</p> <p>(b) a fire; and</p> <p>(c) an explosion; and</p> <p>(d) a road accident or any other accident; and</p> <p>(e) a plague, epidemic, pandemic or contamination; and</p> <p>(f) a warlike act or act of terrorism, whether directed at Victoria or a part of Victoria or at any other State or Territory of the Commonwealth; and</p> <p>(g) a hi-jack, siege or riot; and</p> <p>(h) a disruption to an essential service.</p>
Goods, Services or Works	<p>The deliverable(s) the preferred Invitee will be required to provide to Council, once the conditions of contract have been agreed between the preferred Invitee and Council.</p>
Local Content	<p>Defined as labour, materials, plant and supervision which are sourced from within the East Gippsland Shire region.</p>
Tender	<p>An offer in writing to supply Goods, Services or Works, usually submitted in response to an invitation such as a request for tender.</p>
Value for Money	<p>The achievement of a desired procurement outcome at the best possible price, not necessarily the lowest price, based on a balanced judgement of financial and non-financial factors relevant to the procurement.</p>

8 Revision History and Review

Version Control	Approved Amended Rescinded	Date Effective	Council / Management	ECM Document Reference	Summary of Changes
1	Approved	06/10/09	Council	4350630	
2	Approved	05/06/12	Council	4858155	
3	Approved	19/11/13	Council	5523287	
4	Amended/Approved	16/12/14	Council	6050822	
5	Approved	15/12/15	Council	6553548	
6	Approved	13/12/16	Council	7012421	
7	Approved	12/12/17	Council	7441835	Update to market engagement method table, procurement and variation thresholds. Inclusion of Multi User List clause. Removal of Purchase card procurement method.
8	Approved	13/11/18	Council	7824121	Full rewrite of policy
9	Approved	23/06/20	Council		Minor revisions to record keeping requirements, inclusion of insurance requirements, removal of Supplier Register, minor revision to Support for Local Content, inclusion of Support for Sustainability and Environment, minor revisions due to changes in organisational structure