

Procurement Policy 2018

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1 Introduction

1.1 Background

Maribyrnong City Council recognises that:

- It has a legal obligation to comply with the *Victorian Charter of Human Rights and Responsibilities Act 2006*.
- It has a legal obligation to comply with Section 186 and Section 186A of the *Local Government Act 1989*.
- Developing a procurement strategy and adopting appropriate best practice contracting and procurement principles, policies, processes and procedures for all goods, services and works by Council, will enhance achievement of Council's objectives such as sustainable and social procurement; bottom-line cost savings, supporting local economies; achieving innovation; and better services for communities.
- The elements of best practice 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 officers to approve and undertake a range of functions in the procurement process);
 - procurement processes, with appropriate procedures covering minor, simple procurement to high value, more complex procurement; and
 - a professional approach to all procurement related activities

Maribyrnong City Council's contracting, purchasing and contract management activities endeavor to:

- support the 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 review of procurement needs while continually assessing, reviewing and auditing its procedures, strategy and objectives;
- span the whole life cycle of an acquisition from initial concept to the end of the useful life of an asset, including its disposal, or the end of service contract;
- achieve value for money and quality in the acquisition of goods, services and works by Council;
- demonstrate that public money has been well spent;
- are conducted and are seen to be conducted, in an impartial, fair and ethical manner; and,
- seek continual improvement including the consideration of innovative and technological advances.

1.2 Scope

This Procurement Policy is made in accordance with Section 186A of the *Local Government Act 1989 (the Act)*.

This section of *the Act* requires Council to prepare, approve and comply with a Procurement Policy encompassing the principles, processes and procedures applied to all purchases of goods, services and works by Council.

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

This policy is to be read in conjunction with:

- Maribyrnong City Council, Instrument of Sub Delegation Operating Authority (Finance and General Administration);
- Maribyrnong City Council, Contract Management Procedure Manual;
- Information Management Guide No 6 Managing Tendering and Contract Records;
- Local Government Procurement Best Practice Guidelines;
- Maribyrnong City Council Fraud and Corruption Control Policy 2015;
- Maribyrnong City Council Employee Code of Conduct;
- Maribyrnong City Council Councillor Code of Conduct;
- Maribyrnong City Council Councillor Gifts and Hospitality Policy;
- Maribyrnong City Council Officer Gifts and Hospitality Policy;
- Maribyrnong City Council Election Period Policy 2016.

1.3 Purpose

The purpose of this Policy is to:

- Provide policy and direction to Council to allow consistency and control over procurement activities;
- Promote the highest levels of procurement probity and ethical behaviours;
- Demonstrate accountability to ratepayers;
- Provide guidance on ethical behaviour in public sector purchasing;
- Demonstrate the application of elements of best practice purchasing; and
- Increase the probability of obtaining the best outcome when purchasing goods and services.

1.4 Treatment of Goods and Services Tax (GST)

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

1.5 Definitions and Abbreviations

Term	Definition
the Act	<i>Local Government Act 1989.</i>
Commercial in Confidence	Information that, if released, may prejudice the business dealings of a party e.g., prices, discounts, rebates, profits, methodologies and process information.
Contract Management	The process that ensures both parties to a contract that fully meet their respective obligations as efficiently and effectively as possible, in order to deliver the business and operational objectives required from the contract and in particular, to provide value for money.
Council Employees	Includes full-time and part-time Council Employees, temporary employees, contractors and consultants while engaged by the Council.
Preferred Supplier Contract (PSC)	An agreement to deal with a single, or Panel, of suppliers after a competitive process has occurred.

Probity	Probity refers to uprightness, honesty, proper and ethical conduct and propriety in dealings. Within government, the word "probity" is often used in a general sense to mean "good process." A Procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with 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.
Procurement	Procurement is the whole process of acquisition of external 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 the end of a service contract.
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.
Standing Offer Arrangements	A contract that sets out rates for goods and services which are available for the term of the agreement. However, no commitment is made under the agreement to purchase a specified value or quantity of goods or services.
Sustainability	Activities that meet the needs of the present without compromising the ability of future generations to meet their needs.
Tender Process	The process of inviting parties to submit an offer or quotation by tender using public advertisement, followed by evaluation of submissions and selection of a successful bidder or tenderer.
Value for Money	Value for Money in Procurement is about selecting the supply of goods, services and works taking into account both cost and non-cost factors including: <ul style="list-style-type: none"> • contribution to the advancement of Council's priorities; • non-cost factors such as fitness for purpose, quality, service and support; and • 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.

2 Effective Legislative and Policy Compliance and Control

2.1 Ethics and Probity

2.1.1 Requirement

Council's procurement activities shall be performed with integrity and in a manner able to withstand the closest possible scrutiny.

2.1.2 Conduct of Councillors and Council employees

2.1.2.1 General

Councillors and Council employees shall at all times conduct themselves in ways that are, and are seen to be, ethical and of the highest integrity and will:

- Treat potential and existing suppliers with equality and fairness;
- Use consistent and transparent processes;
- Not seek or receive personal gain;
- Maintain confidentiality of Commercial in Confidence information such as contract prices and other sensitive information;
- Present the highest standards of professionalism and probity;
- 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;
- Be able to account for all decisions and provide feedback on them, taking into account Commercial in Confidence issues, so that all decisions are understood and can be subsequently justified;
- Ensure their actions embody the principles of sound financial and risk management;
- Comply with all legal and policy requirements;
- Comply with the Councillor Code of Conduct;
- Comply with the Employee Code of Conduct.

Council employees, who are responsible for managing or supervising contracts, are prohibited from performing any works under the contract they are supervising.

2.1.2.2 Members of professional bodies

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

2.1.3 Tender processes

All tender processes shall be conducted in accordance with the requirements of this policy and any associated procedures and *the Act*. In addition, a Probity Advisor may be appointed for high value or high risk procurements as determined by the Chief Executive Officer.

Tender conditions shall contain the evaluation criteria for each tender or expression of interest. Evaluation criteria allow for the meaningful assessment of tenders by ensuring for a fair comparison of responses received. Evaluation criteria shall be determined as part of the preparation of the tender or expression of interest documentation and be approved by the relevant Director as part of the Tender Evaluation Plan, prior to the release of the tender documentation. The Evaluation Criteria shall include where deemed relevant to the goods, works and services – price, relevant experience, environmental sustainability, risk

management, quality assurances, occupational health and safety and satisfactory referee checks.

Weighting shall be assigned to each of the evaluation criteria and must be approved by the relevant Director as part of the Tender Evaluation Plan. Cost related factors including tender price, whole-of-life costs and transaction costs associated with acquiring, using, holding, maintaining and disposing of the goods, services or works will account for at least 45% of the weighted criteria.

Tender Evaluation Panels will be formed to evaluate all tenders and Expressions of Interest. The appointment of the Chairperson and the members of the Panel will be made by the relevant Director, as part of the Tender Evaluation Plan. The membership of the Evaluation Panel should be appropriate to the operational and technical aspects of the tender and preferably represent stakeholders as well as those employees who will be responsible for the supervision of the contract. The Evaluation Panel must comprise of at least three officers, one being a member of the Governance and Commercial Services Department. Panels will be chaired as follows:

- Coordinator or Manager – for procurements up to a total value of \$250,000
- Manager or Director – for procurements up to a total value of \$1million.
- Director – for procurements exceeding a total value of \$1million.

Tender Evaluation Panels shall adhere faithfully to the tender conditions including strictly applying the selection criteria set out therein and must apply the highest probity standards including executing confidentiality and conflict of interest declarations.

At the conclusion of the evaluation process, the Tender Evaluation Panel shall be responsible for preparing a report for consideration by the Delegated Authority, inclusive of a recommendation for appointment of a preferred tenderer. Tender Evaluation Panels shall function autonomously throughout the evaluation process but may seek expert technical, legal and probity advice as required.

As a minimum, public tenders shall be in the market for no less than 15 business days; however this period may be increased due to the complexity of the task or response.

Tenders that are not lodged in the electronic tender box, by the closing date and time will not be accepted.

2.1.4 Conflict of Interest

Councillors, Council employees and independent tender evaluation panel members 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 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.

Councillors, Council employees and independent tender evaluation panel members shall not participate in any action or matter associated with the arrangement of a contract (i.e. evaluation, negotiation, recommendation, or approval) where that person or any member of their immediate family has a significant interest, or holds a position of influence or power in a business undertaking tendering for the work.

The onus is on the Councillor, Council employees and independent tender evaluation panel members involved being alert to and promptly declaring an actual or potential conflict of interest.

2.1.5 Fair and Honest Dealing

All prospective contractors and suppliers must be afforded an equal opportunity to tender or quote.

Impartiality must be maintained throughout the procurement process so 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, intellectual property and product information.

2.1.6 Accountability and Transparency

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

Therefore the processes by which all procurement activities are conducted will be in accordance with the Council's procurement policies as set out in this policy and related relevant Council policies and procedures.

2.1.7 Gifts and Hospitality

No Councillor or member of Council employees shall, either directly or indirectly solicit or accept gifts or presents from any member of the public involved with any matter that is connected with the duties of the Officer or in which the Council is interested.

Councillors and Council employees must exercise the utmost discretion in accepting hospitality from contractors and their representatives or from organisations, firms or individuals with whom they have official dealings. Councillors and Council employees 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 must be promptly brought to the attention of the Chief Executive Officer.

All gifts/hospitality that fall within the definition of gift/hospitality as described in Council's Gifts and Hospitality Policy are to be declared and recorded - regardless of the value - by completing the Gifts/Hospitality Registration Form.

2.1.8 Reward and Loyalty program participation

Council employees cannot accumulate reward or loyalty program credits in purchases made on behalf of Council or accept any discounts through the use of Council credit or fuel cards.

2.1.9 Disclosure of Information

Commercial in Confidence information received by Council must not be disclosed to any third party.

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

- Information disclosed by organisations in tenders, quotations 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, Council employees and independent tender evaluation panel members are to avoid references to current or proposed contracts in discussion with acquaintances or outside interests.

Discussion with potential suppliers during tender evaluations should not go beyond the extent necessary to resolve doubt on what is being offered by that supplier.

At no stage should any discussion be entered into which could have potential contractual implications prior to the contract approval process being finalised other than authorised pre contract negotiations.

2.2 Governance

2.2.1 Structure

Maribyrnong City Council shall:

- Maintain a procurement management responsibility structure and delegation ensuring accountability, traceability and auditability of all procurement decisions made over the lifecycle of goods, services and building and construction purchased by the Council;
- Ensure that the council's procurement structure:
 - Is flexible enough to purchase in a timely manner the diverse range of material, goods, works and services required by Council;
 - Ensures that prospective contractors and suppliers are afforded an equal opportunity to tender/quote;
 - Encourages competition; and
 - Ensures that policies that impinge on the purchasing policies and practices are communicated and implemented.

2.2.2 Standards / Legislation

Maribyrnong City Council's procurement activities shall be carried out to the professional standards required by best practice and in compliance with:

- The *Local Government Act 1989*,
- Council's policies and procedures
- Council's Codes of Conduct for Councillor's; and Council employees and
- Other relevant legislative requirements such as, but not limited to the, *Competition and Consumer Act 2010* (previously Trade Practices Act), *Goods Act 1958*, the *Occupational Health and Safety Regulations 2007* and the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

2.2.3 Methods

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

- Petty cash;
- Corporate purchasing card;
- Purchase order following a quotation process from suppliers for goods, services or works that represent value for money under directed quotation thresholds;
- 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 (eg. State Purchasing Contracts, Whole of Government Contracts);

unless other arrangements are authorised by Council or the Chief Executive Officer on a needs basis as required by abnormal circumstances such as emergencies.

2.2.4 Expressions of Interest

Maribyrnong City 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 stage followed by a tender process involving the organisations selected as a consequence of the expression of interest stage.

Expressions of Interest (EOI) may be appropriate where:

- The requirement is complex, difficult to define, unknown or unclear;
- The requirement is capable of several technical solutions;
- Council wishes to assess the capacity of the respondents prior to a formal tender process and whether those tendering possess the necessary technical, managerial and financial resources and experience to successfully complete the project;
- Tendering costs are likely to be high and Council seeks to ensure that companies incapable of supplying the requirements don't incur unnecessary expense;
- It is necessary to pre qualify suppliers and goods to meet defined standards; and
- The requirement is generally known but there is still considerable analysis evaluation and clarification required (both of the objective and the solution).

2.2.5 Exemptions to Procurement Levels and Procedures

An exemption to the procurement levels and procedures detailed in Clause 2.3 may be requested under the following circumstances:

- in matters of emergency including public health, security or safety as a consequence of an unforeseen event or occurrence;
- for additional delivery of goods and services that are intended either as replacement parts, extensions or continuing services for existing equipment, software (eg warranty renewals), services or
- installations where a change in supplier would necessitate the procurement of goods and services that do not meet the requirements for interoperability or interchangeability;
- an absence of competition for technical reasons.

Exemptions must be authorised by the Chief Executive Officer.

An Exemption only applies to the Procurement thresholds and procedures. When an exemption has been approved, a written contract based on standard terms and conditions appropriate to the goods, services or works being provided must still be established in advance of any commitment being made with a supplier. Appropriate insurance and indemnity is also required.

2.2.6 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 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.

2.2.7 Council employees responsibilities

Council employees must be aware of their role in ensuring that the principle of responsible financial management is maintained in their own procurement activities. For example,

- Council employees must not authorise the expenditure of funds in excess of their financial delegations;
- Council employees must not authorise or write multiple purchase orders to avoid the authorisation process requirements included in the financial delegations;
- Council employees must not approve expenditure that relates to them personally and expenditure of this nature must be referred to the next higher level of authority for approval;
- Council employees must ensure that any purchase orders are generated at the point where the commitment to purchase goods, services or works has been made i.e. a purchase order must be made in Council's financial system when the goods, services or works are ordered and NOT when the invoice is received; and
- Expenditure must be recorded in a timely manner i.e. once the services or works have been completed, or the goods have been received. The appropriate officer must ensure that the invoice is processed against the relevant purchase order in Council's Finance system.

2.3 Procurement Thresholds and Competition

2.3.1 Requirement

Maribyrnong City Council will from time to time publish in this Policy clear guidelines for minimum spend competition thresholds. These will be decided by the Council analysing the historical size and complexity of the procurement activity and proposed procurement activities.

2.3.2 Minimum Spend Competition Thresholds

2.3.2.1 Tenders

Purchase of all goods and services, for which the estimated expenditure exceeds \$150,000 (incl GST), and \$200,000 for building and construction works, must be undertaken by public tender.

For the purposes of this compliance with Section 186 of the Act, expenditures of \$150,000 (goods and services) and \$200,000 (works) and above over a two year period, must be undertaken by public tender. The two year period is defined as commencing from the date an obligation to purchase goods or services is first entered into by Council.

In circumstances where it is considered that the nature of the requirement and the characteristics of the market are such that the public tender process would lead to a better result for the Council, public tenders maybe called for purchase of goods, services and works for which the estimated expenditure is below this threshold.

2.3.2.2 Quotations

Purchase of goods and services through general suppliers having a total value of \$150,000 (incl GST) or less and works having a total value of \$200,000 or less, must be undertaken using the procurement by quotation method as described below:

\$0 to \$10,000 – One written quotation

A minimum of one written quotation must be obtained and approved by the appropriate delegate.

The quotation received must be retained and recorded in the Authority purchasing system.

\$10,000 to \$50,000 – Two written quotations

A minimum of two written quotations must be obtained and approved by the appropriate delegate.

A written brief will be issued to selected suppliers for items being procured within these thresholds.

The quotations received must be retained and recorded in the Authority purchasing system.

\$50,000 to \$150,000 (goods and services) and \$200,000 (works) – Three written quotations

A minimum of three written quotations must be obtained through a Request for Quotation Process facilitated by the Governance and Commercial Services Department. Quotations must be submitted through the electronic tender box by the nominated closing date and time. The quotations must be evaluated against pre approved Evaluation Criteria and the awarding of the contract approved by the Council officer with the delegated authority.

2.3.2.3 Preferred Supplier Contracts

A Preferred Supplier Contract (PSC) is an agreement to deal with a sole supplier or panel of suppliers after a competitive process has occurred, therefore, a PSC must be used when one exists. Seeking services from vendors specifically excluded from a PSC may amount to a breach of contract, so it is only to occur when there is clear and demonstrable evidence of inability of a PSC to deliver the supply required.

Clear and demonstrable reasons may include inability to meet timeframes, inability to provide the exact product needed, or inability to meet quality requirements at that time. On rare occasions price may indicate the PSC does not provide the best value outcome, however other factors would need to be assessed with price. The Director Corporate Services is to assess the evidence and approve any procurement outside the PSC.

A Preferred Supplier Contract may take the form of a Deed of Standing Offer. Standing offer arrangements (SOAs) are agreements to provide goods and services over a set period, according to agreed terms and conditions, including price. A contract is formed under a standing offer each time a service is purchased through the PSC.

Purchase of goods and services having a total value of \$150,000 (incl GST) or less and works having a total value of \$200,000 (incl GST) or less, must be undertaken using the procurement method as described below:

\$0 to \$10,000 for goods and services and \$0 to \$15,000 for works – One written quotation.

A minimum of one written quotation must be obtained and approved by the appropriate delegate. Alternatively, if the procurement is straightforward, an assessment of the Schedule of Rates may be used to determine an appropriate supplier.

\$10,000 and \$50,000 for goods and services and \$15,000 and \$50,000 for works - Two written quotations.

A minimum of two written quotations must be obtained and approved by the appropriate delegate. Alternatively, if the procurement is straightforward, an assessment of the Schedule of Rates may be used to determine an appropriate supplier.

Managers may at their discretion issue a written specification for goods, services and works requiring quotations under these arrangements.

The quotations received must be retained in the relevant contract file within Council's electronic document management system and recorded in the Authority purchasing system.

\$50,000 and \$150,000 (goods and services) and \$200,000 (works) - Three written quotations.

A minimum of three written quotations must be obtained and approved by the appropriate delegate. Alternatively, if the procurement is straightforward, an assessment of the Schedule of Rates may be used to determine an appropriate supplier. Where there are only two suppliers on the panel then quotations need only be sought from those two suppliers.

Managers must issue a written specification for goods, services and works requiring quotations under these arrangements.

The quotations received must be retained in the relevant contract file within Council's electronic document management system and recorded in the Authority purchasing system.

2.3.2.4 Construction Supplier Register (CSR)

For Building and Construction Works having a total value greater than \$200,000 and services having a total value greater than \$150,000 and 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), a minimum of three tenders from suppliers on the Register (the process must be undertaken in accordance with the Ministerial Direction No 1) must be received through a process facilitated by Governance and Commercial Services.

Purchase of goods, services and works below the above thresholds must be undertaken in accordance with clause 2.3.2.2.

A Procurement Initiation Form is required to be completed and approved for all procurements utilising the CSR. Governance and Commercial Services will facilitate the procurement process including the selection and compilation of the appropriate contract for each CSR procurement.

2.4 Delegation of Authority

2.4.1 Requirement

Delegations define the powers, duties and levels of Authority within which Council employees are required to work. Delegation of procurement authority allows specified Council employees to approve certain purchases, quotation, tender and contractual processes without prior referral to Council. This enables Council to conduct procurement activities in an efficient and timely manner whilst maintaining transparency and integrity.

Procurement delegations ensure accountability and provide confidence to Council and the public that purchasing activities are dealt with at the appropriate level.

As such, Maribyrnong City Council has delegated responsibilities as detailed below relating to the expenditure of funds for the purchase of goods, services and works, the acceptance of quotes and tenders and for Contract Management activities.

2.4.2 Delegations

2.4.2.1 Council employees

Council shall maintain a register of all Instruments of Delegation containing procurement delegations, identifying Council employees authorised to make such procurement commitments in respect of goods, services and works on behalf of Council.

2.4.2.2 Tender Price Adjustment – Post Tender Negotiations

Where it is intended to reserve the right to conduct post tender negotiations, tender documentation must specify that Council reserves the right to negotiate with one or more of the preferred tenderers.

In circumstances where the Tender Evaluation Panel intends to undertake post tender negotiations, the Panel may select a preferred tenderer or a shortlist of tenderers who most closely meet the requirements of the contract and who have the capability of delivering the most advantageous outcome to Council. A shortlist of preferred tenderers must be defensible within the considerations of both weighted score and price. The Panel, or delegated Panel members, may negotiate with the preferred tenderer or tenderers to refine their tender submission(s) including price, in order to deliver the best outcome for Council.

In undertaking these negotiations, care must be taken so that the scope or intent of the contract is not reduced to such an extent that it creates a material difference from the advertised tender and in doing so, risks breaching S186 of the Local Government Act 1989. Where the proposed reduction in the scope of the work would lead to a price adjustment in excess of 20% of the submitted price, the specification is to be revised and the tender re-advertised.

2.4.2.3 Delegations reserved for Council

Commitments and processes which exceed the Chief Executive Officer's delegation must be approved by Council.

2.5 Internal Controls

Council maintains a framework of internal controls over procurement processes including regular internal audit review that ensures:

- More than one person is involved in and responsible for a transaction end to end;
- New suppliers to the Purchasing System are authorised by more than one employee;
- Procurements are not separated into parts from a single supplier for a single purchase in order to retain approval within a lower delegation;
- Transparency in the procurement process;
- A clearly documented audit trail exists for procurement activities;
- Appropriate authorisations are obtained and documented;
- Delegations are not exercised beyond the authority given in the Instruments of Delegation;
- Cross checking of suppliers details against the names and addresses of Council employees: and
- Systems are in place for appropriate monitoring and performance measurement.

2.6 Commercial Information

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

The confidence of information supplied by a tenderer, which has a commercial or intellectual property value, will be respected. However, the community under the *Freedom of Information Act 1982* has a right to know how public resources are managed. In addition the *Freedom of Information Act 1982* provides a right of public access to information held by the Council. In certain circumstances commercial information may be released, which may include details of contractual arrangements.

Commercial information will not be treated as confidential if:-

- the information is public knowledge
- the information came into the Council from other sources without any restriction in relation to disclosure

Contractors, consultants and businesses must clearly identify in writing particular information which they deemed confidential and the reasons for this view.

If Council considers whether to release any identified confidential information under a *Freedom of Information Act 1982* request, the contractor, consultant or business will be informed.

3 Risk Management

3.1 General

The principles of Risk Management are to be appropriately applied at all stages of Council's procurement activities; which will be properly planned and carried out and enhance the Council's capability to prevent, withstand and recover from any risk to personal injury, property damage, reputational damage, financial loss and interruption to the supply of goods, services or works. Council officers need to consider the inclusion of a formal, documented Risk Assessment as part of the recorded documentation if the procurement activity is particularly complex.

3.2 Supply by Contract

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

Maribyrnong City Council will minimise its risk exposure by measures such as:

- standardising contracts to include current, relevant clauses;
- requiring unconditional bank guarantees where appropriate;
- referring specifications to relevant experts for review where considered appropriate;
- requiring contractual agreements before allowing the commencement of work;
- systemically reviewing all relevant policies and procedures;
- use of or reference to relevant Australia Standards (or equivalent) where appropriate;
- and
- effectively managing the contract including monitoring and enforcing performance.

3.3 Occupational Health & Safety

Maribyrnong City Council requires all contractors and service providers to comply with all legislative and regulatory requirements, particularly in relation to Occupational Health and Safety. This is a mandatory requirement and non compliance may result in disqualification of current and prospective suppliers and Contractors.

3.4 Quotation/Tender Documentation

Council will ensure that quotation/tender documentation is clear and concise, and that it clearly defines the Scope of Works, Performance Requirements, OH&S Requirements, Insurance/Indemnity obligations and Evaluation Criteria.

3.5 Insurance and Indemnity Requirements

Successful tenderers must take out and maintain insurance cover for the term of the contract and any additional period specified within the contract. Evidence of cover must be provided prior to receipt of goods or services and prior to commencing works under the contract.

The type and minimum amount of insurance cover required is as follows:

- WorkCover Insurance
- Public Liability Insurance for a minimum of \$20M
- Professional Indemnity Insurance for a minimum of \$5M for consultancy services associated with building works
- Professional Indemnity Insurance for a minimum of \$2M for other types of consultancy services
- Insurance of the Works for building projects
- Product Liability for goods

Variations to the above require a completed risk assessment of the project/scope and written approval of the responsible Director based on the risk assessment results prior to the tender being released.

Limiting contractor or consultant liability may restrict Council's Insurer's rights to recover in the event of a loss which, in turn, could expose Council to uninsured losses. Where a limit on liability is being contemplated a risk assessment should be undertaken at the procurement planning stages to ascertain what the risk exposures might be and how that exposure is intended to be controlled. Any limits proposed must be approved by the responsible Director.

3.6 Contract Terms

All contractual relationships must be documented in writing based on standard terms and conditions appropriate to the goods, services or works being provided.

Where this is not possible, approval must be obtained from the appropriate Director. A request for such an approval should be supported with procurement and legal advice as relevant.

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

3.7 Endorsement

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

3.8 Dispute Resolution

All Council contracts shall incorporate dispute management and alternative dispute resolution provisions to minimise the chance of disputes becoming unmanageable and leading to legal action.

3.9 Contract Management

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

- establishing a system of 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 responsible for the delivery of the contracted goods, services and works to ensure Council receives Value for Money.

4 Demonstrate Sustained Value

4.1 Integration with Council Strategy

Maribyrnong City Council's procurement strategy shall support the corporate purpose, strategy and objectives, including a vision of

"A diverse and vibrant city dedicated to community wellbeing through democracy, sustainable growth and opportunity for all."

4.2 Achieving Value for Money

4.2.1 Requirement

Maribyrnong City Council's procurement activities will be carried out on the basis of obtaining Value for Money.

This means minimising the total cost of ownership over the lifetime of the requirement consistent with acceptable quality, reliability and delivery considerations.

Lowest price is not the sole determinant of value for money. Value for money in Council procurement is about selecting the supply of goods, services and works taking into account both cost and non cost factors including:

- Contribution to the advancement of Councils priorities and objectives;
- Non cost factors such as fitness for purpose, quality, and environmental impacts, service and support; and
- 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.

4.2.2 Approach

The Value for Money approach will be facilitated by:

- Developing, implementing and managing procurement strategies that support the coordination and streamlining of activities throughout the lifecycle;
- Effective use of competition;
- Using aggregated contracts;
- Identifying and rectifying inefficiencies in procurement processes;
- Developing cost efficient tender processes including appropriate use of e solutions;
- Council employees responsible for providing procurement services or assistance within Council providing competent advice in terms of available agreements; and
- Working with suppliers to create relationships that are professional and productive, and are appropriate to the value and importance of the goods, services and works being acquired.

4.3 Role of Specifications

Specifications used in quotations, tenders and contracts are to support and contribute to the Councils Value for Money objectives through being written in a manner that:

- Ensures impartiality and objectivity;
- Ensures detailed definition of the goods, services and works required;
- Encourages the use of standard products;
- Encourages sustainability;
- Eliminates unnecessary stringent requirements and
- Addresses all areas of potential risk for Council.

4.4 Performance Measurement and Continuous Improvement

Appropriate performance measures will be established and reporting systems will be used to monitor performance and compliance with procurement policies, procedures and controls.

4.5 Social Procurement

Council supports social procurement because of the positive social impacts this provides to both Council and the community.

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

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

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

Where it has been determined that social benefits are being pursued as a component of the procurement activity, Tender documents or Requests for Quotation should contain:

- Suitable social clauses and weightings to achieve the desired social benefits;
- Appropriately designed response statements to allow suppliers to clearly articulate how they will deliver social impacts; and
- Social clauses that are framed as measurable deliverables rather than aspirations.

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

4.6 Sustainable Procurement

Council is committed to achieving sustainability and ensuring Council activities and programs have a positive impact or contribution to the environment.

Wherever possible, Council will use the following principles when purchasing goods, services or materials:

- Minimise waste
- Minimise Greenhouse gas Emissions
- Maximise Water Efficiency; and
- Maximise Energy Efficiency

4.7 Support of Local Business

Council is committed to buying from local business where such purchases may be justified on Value for Money grounds.

5 Apply a Consistent and Standards Approach

Council will provide effective and efficient commercial arrangements for the acquisition of goods and services or the undertaking of works.

5.1 Standard Processes

Council will provide effective commercial arrangements covering standard products and provision of standard services across the Council to enable employees to source requirements in an efficient manner.

This will be achieved through a combination of the following:

- Establishing Preferred Supplier Contracts
- Pricing where relevant
- Processes, procedures and techniques
- Tools and business systems
- Reporting requirements
- Application of standard contract terms and conditions

5.2 Management Information

Council will improve its performance by capturing and analysing procurement management information in a variety of areas.

6 Strategic Procurement and Supplier Management

Council recognises that in order to achieve sustainable value, a strategic assessment of the appropriate “channel to market” should be undertaken – whether to go to market on its own, participate in regional or sector aggregated projects or panels, access State Government panel agreements or other means. Council will consider supply arrangements that deliver the best value outcomes in terms of time, expertise, cost, value and outcome.

6.1 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 programmes and performance measurements to ensure that benefits are delivered;
- Maintaining approved supplier lists; and
- Developing new suppliers and improving the capability of existing suppliers where appropriate.

6.2 Supply Market Development

A wide range of suppliers shall be encouraged to compete for Council work. The focus for new works 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
- Social enterprises
- Indigenous business suppliers
- Ethnic and minority businesses; and
- Voluntary and community organisations

6.3 Relationship Management

Council is committed to developing constructive long term relationships with suppliers. It is important that Council identifies its key suppliers so that its efforts are focused to best effect. Such areas may include:

- Size of spend across council
- Criticality of goods/services to the delivery of the Council's services
- Availability of substitutes; and
- Market share and strategic share of suppliers

6.4 Preference

Council will where practicable, give effective and substantial preference to goods, machines or models manufactured or produced in Australia or New Zealand in accordance with Section 186 (6) of the Act.

7 Administration of this Policy

The Governance and Commercial Services Department is responsible for the administration of this policy and has no authority to waive the policy without the expressed authority of the CEO or Council as appropriate.

The Governance and Commercial Services Department will maintain procurement guidelines, procedures and instructions to support this Procurement Policy and provide support to the organisation through training and presentations as required.