



Lifestyle Capital of Victoria

# Procurement Policy 2021 – 2025

(A4492229)

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<b>Responsible directorate:</b>	Chief Financial Officer
<b>Authorised by:</b>	Council Resolution
<b>Date of adoption:</b>	11 October 2021
<b>Review date:</b>	Next review to be completed by November 2025

*(Note that the Local Government Act (Vic) 2020 requires that a Council must review its Procurement Policy at least once during each 4 year term of the Council.)*

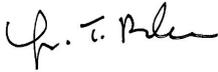
# CONTENTS

CONTENTS.....	2
1. Authorisation .....	4
2. Document history .....	4
3. Definitions.....	4
4. Overview .....	6
5. Purpose.....	6
6. Scope .....	6
7. Policy non-compliance.....	7
8. Principles.....	7
9. Delegations .....	7
10. Probity and ethics .....	7
10.1 Conduct of Councillors and Council Staff.....	7
10.2 Councillors’ roles in procurement activities .....	8
10.3 Conflict of interest .....	8
10.4 Open and fair competition .....	9
10.5 Probity, accountability and transparency.....	9
10.6 Gifts, benefits and hospitality.....	9
10.7 Disclosure of information .....	9
10.8 Charter of Human Rights .....	10
11. Governance.....	10
11.1 Structure .....	10
11.2 Controls.....	10
11.3 Financial accountability .....	10
11.4 Internal compliance reporting .....	11
12. Procurement thresholds.....	11
12.1 Contract value thresholds and procurement requirements.....	11
12.2 Exemptions from competitive procurement processes .....	12
12.3 Procurement during an emergency .....	14
12.4 Purchase order requirements.....	14
12.5.1 <i>Exemptions from raising Purchase Orders</i> .....	14
12.6 Probity planning.....	14
12.7 Cumulative spend thresholds .....	15
12.8 Contract variations .....	15
12.8.1 <i>Approving contract variations</i> .....	15
13. Procurement processes .....	16
13.1 Public notice and communication .....	16
13.2 Market engagement .....	16
13.3 Specifications / project brief.....	17
13.4 Late responses .....	17

13.5	Evaluation criteria for Value for Money .....	17
13.5.1	<i>Minimum criteria weighting</i> .....	17
13.5.2	<i>Mandatory criteria</i> .....	18
13.6	Evaluation of tenders and EOIs.....	18
13.7	Confidentiality .....	18
13.8	Shortlisting and negotiations.....	19
13.9	Award of contract .....	19
13.10	Panel arrangement .....	19
14.	Collaborative Procurement Arrangements.....	20
15.	Community benefit .....	21
15.1	Economic sustainability .....	21
15.2	Environmental sustainability .....	21
15.3	Social procurement.....	22
16.	Risk management .....	23
16.1	Child Safe Standards .....	23
16.2	Occupational Health and Safety .....	23
16.3	Supplier Code of Conduct .....	23
17.	Contract management .....	24
18.	Reporting fraud and complaints .....	24
19.	Administrative matters .....	24
20.	Procurement Policy and Process Enquiries.....	24

## 1. Authorisation

This Policy is managed by the Procurement, Property and Risk Department, and is approved by Frankston City's Mayor and Council's Chief Executive Officer (CEO):




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Mayor, Frankston City Council

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CEO, Frankston City Council

in accordance with Frankston City Council resolution at its Ordinary Council meeting of 11 October 2021.

## 2. Document history

Version	Date adopted by Council
Version 1	6 June 2016
Version 2	11 December 2017
Version 3	23 July 2018
Version 4	22 July 2019
Version 5	31 August 2020
Version 6	11 October 2021

## 3. Definitions

Term	Definition
Aboriginal Business	An Aboriginal Business, as defined by the Victorian Government, means a business that is: <ul style="list-style-type: none"> <li>at least 50% Aboriginal and/or Torres Strait Islander-owned;</li> <li>undertaking commercial activity; and</li> <li>mainly located in Victoria</li> </ul> The Aboriginal Business sector includes for-profit businesses, Traditional Owner corporations, Social Enterprises and community enterprises in metropolitan and regional areas.
Act	<a href="#">Local Government Act 2020</a> (Vic)
Australian Disability Enterprises	Commonwealth-funded and generally not-for-profit organisations operating in a commercial context, specifically to provide supportive employment opportunities to people with moderate to severe disability. Some Australian Disability Enterprises also operate as Social Enterprises. Under the Social Procurement Framework, the Victorian Government encourages engagement with Victorian Australian Disability Enterprises that offer award based pay rates for all staff.
Category	A segment of expenditure which contain similar or related products, enabling focus opportunities for consolidation and efficiency.
Collaborative Procurement Arrangement	A contract or other arrangement established by Council, a government body or a nominated agent, such as Procurement Australasia (PA), Municipal Association of Victoria (MAV), South Eastern Metro Regional Procurement Network (SEMRPEN) or a local government entity, for the benefit of numerous state, federal and/or local government entities that achieves best value by leveraging combined economies of scale.

<b>Term</b>	<b>Definition</b>
Commercial in Confidence Information	Information that, if released, may prejudice the business dealings or commercial interests of Council or another party, e.g. prices, discounts, rebates, profits, methodologies and process information, etc.
Contract Management	The process that ensures all parties to a contract fully meet their respective obligations as efficiently and effectively as possible, in order to deliver the contract objectives and provide Value for Money.
Council	Frankston City Council
Councillors	Council's elected representatives (the Mayor and Councillors) or administrator(s) (as the case may be) appointed to act in this capacity.
Council Staff	Includes all Council officers, temporary employees, contractors, volunteers and consultants while engaged by Council.
EMT	Council's Executive Management Team, consisting of Council's Directors and Council's CEO
Local Supplier	Local suppliers are defined as businesses that are either based in the south-east region of Melbourne, perform the majority of their operations in this region or employ a significant number of local residents in their business.
Material Breach	Any breach of this policy that may also represent a breach of legislation or policy such as tendering thresholds, fraud or corruption, and occupational health and safety.
Probity	Within local or state government, the term "probity" means in a general sense "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 Probity procedures need to consider the legitimate interests of ratepayers and suppliers and ensure that all potential suppliers are treated equitably.
Regulations	Any applicable regulations in force from time to time under the Act.
Social Enterprise	<p>Businesses that trade to intentionally tackle social problems, improve communities, provide people access to employment and training, or help the environment. They derive most of their income from trade (not donations or grants) and use the majority of their profits (at least 50%) to contribute to their social mission.</p> <p>Among other benefits, Social Enterprises play an important role in providing transitional employment for disadvantaged job seekers, including people with disability, as a pathway to employment in mainstream businesses. Social Enterprises can also provide ongoing employment options for disadvantaged job seekers who may not be well placed to sustain mainstream employment over the longer term.</p>
Supplier Code of Conduct	Council's Supplier Code of Conduct sets out the standards of behaviour that a supplier agrees to aspire to when engaged by Council.
Sustainability	An approach whereby activities can meet the needs of the present without compromising the ability of future generations to meet their needs.
Tender Process	The process of inviting parties from either a select list or via public advertisement to submit an offer by tender followed by evaluation of submissions and selection of one or more successful bidders or tenderers in accordance with pre-determined evaluation criteria.
Value for Money	The best mix of cost, quality (i.e. ability to meet user requirements) and Sustainability (environmental, social and economic). The lowest price will not necessarily represent Value for Money.

## 4. Overview

This Procurement Policy is made under section 108 of the Act. The Act requires each council to (amongst other things):

- prepare, adopt and comply with a procurement policy which specifies the principles, processes and procedures applying to all purchases of goods and services and carrying out of works by the council to promote open and fair competition and provide value for money;
- establish the thresholds and processes for public procurements;
- provide for collaboration in procurement with other councils or public bodies; and
- review its procurement policy at least once during each 4-year term of the council.

## 5. Purpose

The purpose of this Procurement Policy is to aim to:

- establish a procurement framework to achieve continual improvement and Value for Money in the timely acquisition of goods, works and services;
- ensure consistency, control and best practice over procurement activities;
- ensure Council resources are used efficiently and effectively to improve the overall quality of life of people in the local community;
- support the achievement of Council's strategies, aims and objectives as stated in the Council Plan prepared and adopted by Council under section 90 of the Act;
- support collaboration and partnership opportunities, including through Collaborative Procurement Arrangements;
- provide guidance and achieve high standards of Probity, transparency, accountability and risk management; and
- enhance Council's ability to obtain the best outcome from purchasing activities referring to a range of considerations, including but not limited to environmental, financial, social Sustainability and support for the local economy.

## 6. Scope

Procurement is the whole process of acquisition of external goods, services or works. It can include planning, design, standards determination, specification writing, preparation of quotation and tender documentation, selection of suppliers, financing, contract administration, disposals, and other related functions. 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.

Procurement also includes the organisational and governance frameworks that underpin the procurement function.

This Procurement Policy represents the principles, processes and procedures that will be applied to all procurement activity undertaken by Council. The application of this Procurement Policy commences when Council has identified a need to procure goods, works or services, and continues through to the delivery of goods or completion of works or services.

This Procurement Policy will apply to Councillors, Council Staff and all persons undertaking procurement on Council's behalf. Council must comply with this Procurement Policy before entering into a contract for the purchase of goods or services, or the carrying out of works.

## 7. Policy non-compliance

Non-compliance with this Procurement Policy may result in a contravention of legislative requirements (including contravention of the Act) and disciplinary action that could include dismissal. In addition, criminal and civil penalties may be imposed if any Councillor or Council Staff act in contravention of any laws, including (without limitation) laws regarding fraud, corruption, bribery or Australian competition and consumer laws. Refer to clause 18 of this Procurement Policy for further details regarding the reporting of fraud or complaints.

## 8. Principles

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

- Value for Money;
- open and fair competition;
- accountability;
- risk management; and
- Probity and transparency.

Council is also committed to reducing its environmental impacts, while generating benefits to the broader community and economy. Council will seek to do this by:

- encouraging the design and use of products and services that have been produced to ethical standards, which have minimal impact on the environment and human health;
- fostering a viable market for sustainable products and services by supporting business and industry groups that demonstrate innovation in Sustainability; and
- supporting suppliers that are socially responsible and adopt ethical practices.

## 9. Delegations

Any procurement spend with a value greater than \$1,000,000 (excl GST) can only be entered into by a resolution of Council.

For procurement spend below \$1,000,000 (excl GST), Council will maintain and apply a scheme of procurement controls and delegations for Council Staff authorised to make such procurement commitments in respect of goods, services or works.

Council procurement processes will require authorisation from Council Staff with sufficient financial delegation before Council enters into any binding contracts for the purchase of goods, services or works.

All purchase orders and invoices must have dual authorisation of expenditure, in accordance with the relevant financial instrument of delegation before any payment is made.

## 10. Probity and ethics

Council's procurement activities are to be performed in an open, transparent and ethical manner with demonstrated integrity, fairness and accountability that meets relevant legal requirements at all times.

### 10.1 Conduct of Councillors and Council Staff

Councillors and Council Staff will at all times act in accordance with the Councillor Code of Conduct or the Staff Code of Conduct respectively. They must perform their duties ethically and with integrity, and must:

- treat potential and existing suppliers with equality and fairness;
- not use their position to seek or receive personal gain in procurement matters;
- maintain confidentiality of Commercial in Confidence Information;

- present the highest standards of professionalism and Probity;
- afford suppliers and prospective suppliers with the same information and an equal opportunity to participate in a competitive procurement process, such as any tender or quote for goods, services or works contracts;
- be able to account for all decisions and demonstrate and provide evidence of the processes followed;
- not perform any work, deliver services or supply goods under any Council contracts that those Council Staff are supervising i.e. Council Staff cannot also work for the relevant supplier;
- query incidents, decisions or directions that appear to contradict or deviate from Council's standards of ethics or Probity or established policies and procedures; and
- ensure that this Procurement Policy is adhered to in relation to any expenditure of Council funds.

## **10.2 Councillors' roles in procurement activities**

The Councillors have a limited role in procurement activity and may be briefed on significant procurements during the procurement process. The role of the Councillors includes providing a level of input during the project initiation phase that will assist the responsible service units to achieve their intended outcomes and overall community benefits. The Councillors may be briefed of the scope and intentions of a procurement via involvement in the major projects advisory committee, Councillor bulletins, Councillor briefings or memoranda to Councillors.

In line with a Councillors' obligations, including under the Act and the Councillor Code of Conduct, Councillors are not permitted to form part of an evaluation panel or take on the responsibilities of a procurement sponsor, project director, contract superintendent/manager or similar. The relevant procuring officer is wholly responsible for the setting of evaluation criteria and criteria weightings. These criteria and weightings require endorsement by the procurement sponsor and project director.

Strict probity requirements set in the planning stage of a procurement must be adhered to during the evaluation and award stages of that procurement. Evaluation panel members must not disclose to any Councillors any element of an evaluation process while submissions are under consideration, other than to provide timeline updates if and when requested by the Councillors.

## **10.3 Conflict of interest**

Councillors and Council Staff must at all times avoid situations which may give rise to an actual or perceived conflict of interest. A conflict of interest may be a 'general' or a 'material' conflict of interest.

A member of Council Staff has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.

A member of Council Staff has a material conflict of interest in a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit or loss may be direct or indirect and pecuniary or non-pecuniary. Affected persons include, among others, the member of Council Staff and their family members.

Any Council Staff or other person engaged to provide advice or services to Council, must disclose any general or material interest before providing advice or reports.

In procurement matters, all Councillors and Council Staff (as the case may be) involved in any stage of the procurement process, including (without limitation) the preparation of specifications, procurement or contract documentation, the evaluation of responses, quotations or tenders, or the awarding of any contracts, must:

- avoid conflicts of interest, whether material or general or actual, potential or perceived, wherever possible (this includes the receipt of any gifts, benefits or hospitality, as further detailed in clause 10.6 of this Procurement Policy);
- complete and lodge a conflict of interest declaration in respect of the procurement;
- observe applicable Council and government legislation and guidelines on how to prevent or manage any conflicts of interest; and

- immediately disclose any conflict of interest in accordance with the relevant legislation and Council guidelines if they become aware of a conflict throughout the duration of the procurement activity.

#### **10.4 Open and fair competition**

All prospective suppliers must be treated fairly, with access to the same information to afford them an equal opportunity to tender, submit a quotation or otherwise participate in a competitive procurement process.

Impartiality must be maintained in selecting suppliers to fulfil Council's needs.

Council will provide open and honest feedback to suppliers who participate in any competitive procurement process for Council's business, subject to confidentiality of Commercial In Confidence information.

Any suspected improper conduct, including (without limitation) suspected fraud, corruption, substantial mismanagement of public resources, risk to public health and safety, risk to the environment or other detrimental action must be managed by members of Council Staff in accordance with Council's internal policies and processes. Refer to clause 18 of this Procurement Policy regarding the reporting of fraud and complaints for further details.

#### **10.5 Probity, accountability and transparency**

Accountability in procurement means being able to justify and provide evidence of the process followed. An independent third party must be able to see clearly that a process has been followed and that the process was fair and reasonable.

Council Staff must be able to account for all procurement decisions and ensure all procurement activities leave an audit trail for monitoring and reporting purposes.

#### **10.6 Gifts, benefits and hospitality**

Under no circumstance should Council Staff or Councillors involved in the procurement of goods, works or services seek or accept any immediate or future reward or benefit from a potential or actual supplier, regardless of value.

Any gift or benefit offered to a Councillor or Council Staff will be managed in accordance with Council's internal policies and processes.

Councillors and Council Staff, particularly contract supervisors must not knowingly:

- visit a current supplier's premises without invitation when acting in their official capacity; and
- engage a Council supplier for private benefit, unless that engagement is on proper commercial terms.

Refer to clause 10.3 of this Procurement Policy for further details on how conflicts of interest are to be managed and addressed.

#### **10.7 Disclosure of information**

To maintain transparency, evaluation reports that are presented to Council may publicly publish a successful respondent's price.

Council may publish a summary of awarded contracts via public reports or on Council's website, including but not limited to:

- the contract number, title and type;
- name of the successful supplier;
- value of the contract; or
- contract duration.

Subject to the *Freedom of Information Act 1982 (Vic)*, the Act and any other relevant legislation, Commercial In Confidence Information received by Council must not be disclosed and is to be stored in a secure manner.

Councillors and Council Staff must avoid references to current or proposed contracts in discussions with acquaintances or outside interests.

Discussions with potential suppliers during any tender, quotation or other competitive procurement process evaluations must not go beyond the extent necessary to resolve doubt on:

- the services, goods or work that Council is seeking to procure; or
- what is being offered by that potential supplier.

At no stage should any discussions be entered into which could:

- improperly influence the procurement process;
- improperly influence the negotiation of a contract; or
- have potential contractual implications,

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

Failure to maintain confidentiality of Commercial in Confidence Information is a breach of the Council Code of Conduct.

### **10.8 Charter of Human Rights**

Council will ensure that all of its procurement operations are consistent with the Victorian *Charter of Human Rights and Responsibilities Act 2006*, including that Act's fundamental rights.

## **11. Governance**

### **11.1 Structure**

Council will operate a centre-led procurement structure, wherein all strategy, policy, procedures, technology, best practice and networking in procurement matters will be led by the Contracts and Procurement unit.

A Procurement Lead from the Contracts & Procurement unit will be allocated to provide assistance, oversight and probity advice to Council Staff for all procurement activities with an estimated contract value greater than \$150,000 ex GST.

Council's Procurement Guidelines and templates are available on Council's Intranet and have been developed to provide assistance to Council Staff when undertaking procurement activities.

### **11.2 Controls**

Council will maintain a framework of internal controls over procurement processes that will ensure:

- more than one person is involved in and responsible for each procurement, end to end;
- transparency in the procurement process;
- a clearly documented audit trail exists for procurement activities;
- appropriate authorisations are obtained, exercised and documented;
- systems are in place for appropriate monitoring and performance measurement; and
- a process is in place for escalation, where appropriate, of procurement matters (including procedural non-compliance) to the relevant Director, EMT, the Audit and Risk Committee or Council itself.

### **11.3 Financial accountability**

All Council Staff are to ensure that procurement approvals are in accordance with Council financial policies and delegations, as determined by Council and the CEO under instruments of delegation. Responsibility for financial management must be accepted and adhered to by Council Staff in undertaking any procurement activities. Council funds must be used efficiently and effectively to procure goods, works and services and every attempt must be made to contain the costs of the procurement process without compromising any of the procurement principles as set out in this Procurement Policy.

Council Staff must:

- ensure the availability of funds within an approved budget must be established prior to the commencement of any procurement;
- not authorise the expenditure of funds in excess of the applicable financial delegation for their position (delegated level of authority);
- not authorise or write multiple purchase orders to avoid the authorisation process requirements or circumvent their procurement or financial authority;
- not approve expenditure that relates to them personally – any expenditure of this nature must be referred to the next higher level of authority for approval; and
- consistent with clause 12.4 of this Procurement Policy, 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 raised in the relevant systems (as updated and which at the time of publication of this Procurement Policy, is Technology One) when the goods, services or works are ordered and not when an invoice is received by Council.

#### **11.4 Internal compliance reporting**

Appropriate performance measures and reporting systems must be used and followed to monitor performance and compliance with procurement policies and procedures. This will include but not be limited to regular review of contract variations (as further discussed at clause 12.8 of this Procurement Policy) and compliance with this Procurement Policy.

Material Breaches of this Procurement Policy must be reported as soon as practicable to the relevant Director and CEO, and periodically to the Audit & Risk Committee. See clause 7 of this Procurement Policy regarding non-compliance.

## **12. Procurement thresholds**

For the purposes of assessing procurement thresholds under this Procurement Policy, estimated contract values must be inclusive of reasonable contingency allowances and optional contractual extension periods. Consideration should also be given to the total cost of ownership over the lifetime of the procurement, including but not limited to quality, reliability, risk, sustainability and delivery considerations. Due diligence must be exercised to ensure that realistic assessments are made of all factors which may impact the value of a contract.

Contracts must not be split to avoid proper process or circumvent the requirements of this Procurement Policy.

#### **12.1 Contract value thresholds and procurement requirements**

Section 108 of the Act details that each council will set the contract value above which tenders or expressions of interest for contracts must be invited. The Regulations may also set contract value thresholds above which Council must invite a tender or seek an expression of interest. As at the date of this Procurement Policy, no such thresholds have been set in the Regulations.

Subject to an exemption set out in the table at clause 12.2 of this Procurement Policy, a public Tender Process or expression of interest process, must be used for all procurements valued at \$300,000 (excl GST) and above for goods, services or works.

A competitive procurement process may also be called for the purchase of goods, services or works where the estimated expenditure is below the designated threshold but a particular competitive procurement process would assist in achieving a Value for Money outcome.

Except where Council believes a competitive procurement process should be called for (as contemplated immediately above in this clause 12.1), for procurements under \$300,000 (excl GST), the procurement requirements detailed in the following table will apply according to the applicable estimated Contract Value:

Estimated contract value (excl of GST)	Procurement requirement
<\$2,000	Best price available
<\$10,000	Obtain at least one written quotation.
<\$50,000	Seek at least two written quotation
<\$150,000	Seek at least three written quotations
<\$300,000	Undertake a formal RFQ process (seek at least five written quotes)
>\$300,000	EOI or Tender Process

**Officers seeking quotations should seek at least one quote from a local business, where possible.**

Any exemptions from the above Procurement Requirements must be sought in accordance with Clause 12.2 of this Policy.

## 12.2 Exemptions from competitive procurement processes

Unless the Act or Regulations require otherwise from time to time, the following circumstances are exempt from the requirements of a competitive procurement process (such as a general publicly advertised tender, quotation or expression of interest).

Exemption type	Explanation, limitations, responsibilities and approvals
A contract required because of a genuine emergency or hardship	See clause 12.3 of this Procurement Policy for further details regarding Emergencies.
Government entity / approved third party	This general exemption allows engagements: <ul style="list-style-type: none"> <li>– with another government entity or government owned entity. For example, Federal, State or Local Government or an entity owned by a Federal, State or Local Government; and/or</li> <li>– in reliance on contracts and arrangements established by another government entity, local authority or local government group purchasing scheme, such as Municipal Association of Victoria (MAV) or National Procurement network members (e.g. Local Buy), Procurement Australia (PA).</li> </ul>
Extension of contracts while Council is at market	<ul style="list-style-type: none"> <li>• Allows Council to extend an existing contract where the procurement process to replace the contract has commenced, and where the Tender Process or negotiations will take or are taking longer than expected.</li> <li>• This exemption may be used when the establishment of an interim short-term arrangement with an alternative supplier is considered not to be in the public interest, as it may be cost prohibitive and/or present a risk in the delivery of critical public services to the municipality.</li> </ul>
Professional services unsuitable for tendering	<ul style="list-style-type: none"> <li>• Legal services</li> <li>• Insurance</li> </ul>

Exemption type	Explanation, limitations, responsibilities and approvals
Contract variations (that are not in effect new contracts)	See clause 12.8 for further details regarding the procurement procedure to be observed for contract variations.
Novated contracts	Where the initial contract was entered into in compliance with the Act and Council's procurement policy and due diligence has been undertaken in respect to a new prospective supplier.
Information technology resellers and software developers	Allows Council to renew software licenses and maintenance and support, or upgrade existing systems, where there is only one supplier of the software, who holds the intellectual property rights to the software.
Regional Waste and Resource Recovery Groups	Situations where a Regional Waste and Resource Recovery Group constituted under the <i>Environment Protection Act 1970</i> had already conducted a public Tender Process for and on behalf of its member councils.
Operating leases	Where a lessor leases an asset (generally a vehicle or plant and equipment) to Council and assumes the residual value risk of the vehicle.
Social Enterprise	For goods, works or services less than \$20,000 ex GST, where a Social Enterprise is directly engaged. (Refer to clause 15.3 of this Procurement Policy). Council must still be able to demonstrate Value for Money in the course of the procurement process.
Proven monopoly or specialised market	<ul style="list-style-type: none"> <li>• Statutory compulsory monopoly insurance schemes, ie Workcover, motor vehicle compulsory third party.</li> <li>• Other statutory bodies such as water supply, electricity connections.</li> <li>• Legislatively required services, such as Aboriginal Land Council.</li> <li>• When supply of goods, services or works can only be sought from a monopoly supplier, for example the marketplace is restricted by a statement of licence, technology or third-party ownership of an asset (ie telecommunication pits).</li> <li>• If there are few suppliers for the goods, services or works being sought or where the work is highly specialised.</li> </ul>
Other	<ul style="list-style-type: none"> <li>• Subscriptions</li> <li>• Memberships</li> <li>• Medical</li> <li>• Advertising</li> <li>• Postage and delivery charges</li> <li>• Tolls and cab charges</li> <li>• Loans</li> <li>• Creative endeavours such as stage shows, bands, performers</li> </ul>

In addition to the listed exemptions, the CEO may grant an exemption from seeking responses via a competitive procurement process, such as tenders or multiple quotations, when it can be demonstrated that:

- it is in the public interest;
- Council is still obtaining Value for Money in the process adopted; and
- the process is defensible and able to withstand internal and external scrutiny – one which achieves both accountability and transparency.

Prior to seeking approval for any exemption, advice must be sought by Council Staff from the Contracts and Procurement unit who will review the total cumulative spend with that prospective supplier, and ensure that the justification requirements for the exemption have been met.

Use of any of the listed exemptions must be endorsed by the appropriate Director and the Contracts and Procurement unit.

### **12.3 Procurement during an Emergency**

Where an Emergency has occurred, Council's CEO may authorise procurements without the need for a competitive procurement process where the CEO is of the opinion that delays in obtaining and analysing quotations or similar would unduly frustrate any response to the Emergency.

Once the effects of the Emergency have passed, all further procurement should be in compliance with this Procurement Policy, the Act and other relevant legislation.

For the purposes of this clause 12.3, an **Emergency** is defined as a sudden or unexpected event or occurrence requiring immediate action and includes:

- the occurrence of a natural disaster, hazard, flooding or fire event at or in relation to Council property or Council's municipality;
- the unforeseen cessation of trading of a business critical service provider; or
- any other situation which is liable to constitute a risk to life, health, well-being or property.

### **12.4 Purchase order requirements**

The purchase of goods, works and services must be acquired under an official purchase order that documents the type of services, items, and/or quantities and agreed price.

The purchase order must be raised before any commitment is made to purchase goods, works or services from a supplier in the relevant systems (as updated and which at the time of publication of this Procurement Policy, is Technology One). In other words, the purchase order must be raised when the goods, services or works are ordered and not when an invoice is received by Council

The purchase order must clearly and explicitly communicate Council's requirements. Once accepted by the supplier, the purchase order is binding on both Council and the supplier and any procurement spend is limited by and must not exceed the purchase order.

#### **12.5.1 Exemptions from raising Purchase Orders**

The Contracts and Procurement unit will maintain a listing of expenditure types that are exempt from the requirement to raise a purchase order. These exemptions may be revised from time to time in consultation with EMT and Council's Audit & Risk Committee.

### **12.6 Probity planning**

A probity plan is required where the value of the procurement is greater than \$5 million (excl GST) or where the procurement is considered sensitive, complex, or high risk (**Probity Plan**).

The Probity Plan is to be reviewed and approved by the relevant Director and relevant Procurement Lead.

The Probity Plan must identify whether a Probity advisor and/or Probity auditor needs to be engaged for the procurement process.

In the event a Probity auditor or advisor is appointed, such appointment should be made before the competitive procurement process specifications and documentation are completed.

**12.7 Cumulative spend thresholds**

Council will monitor and report on 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 public tender or EOI expenditure threshold over a rolling two year period, then Council will review the opportunity to pursue a contract for the aggregated purchase of such goods, services or works through a competitive procurement process.

Expenditure that was procured through a competitive process may be excluded from the cumulative spend analysis.

**12.8 Contract variations**

Contract variation expenditure may be exempt from the procurement procedure described in clause 12.1 if the variation:

- forms part of an existing contract; and
- in itself does not change the contract to such an extent that it could be deemed that a new contract has been established.

If the contract variation:

- is so extensive that the variation would be deemed a new contract, then a competitive procurement process may be required as set out in clause 12.1; and
- is a genuine variation and would not be deemed a new contract, then the procedure described below in clause 12.8.1 can be followed.

All contract variations must be assessed to determine whether they are properly characterised as variations or whether they are in effect a new contract. This will depend on factors like:

- the monetary value of the proposed variation, i.e. the value of the variation in the context of the thresholds fixed by this Procurement Policy at clause 12.1; and
- the subject matter of the proposed variation, and whether it is consistent with the scope of the original contract.

Council Staff should be cautious in readily determining that a contract variation is not a new contract, in order to minimise the risk of investigation into Council’s processes (including by the Local Government Inspectorate), reputational damage to Council or complaint by dissatisfied and unsuccessful suppliers. Council Staff should seek guidance from the Contracts and Procurement unit when considering contract variations.

**12.8.1 Approving contract variations**

<b>Variation Type 1: Significant Contract Variations</b>	
<b>The cumulative value of all proposed variations is greater than 20% of the Original Contract Value (or greater than the approved contingency budget, whichever is the lower)</b>	
<b>Variation detail</b>	<b>Approved by</b>
Contracts approved by Resolution of Council	EMT in accordance with the Capital Works budgeting review process
Cumulative variations greater than \$300K (ex GST)	CEO
Cumulative variations less than \$300K (ex GST)	Director

Variation Type 2: All other Contract Variations that are not Type 1	
Variation detail	Approved by
The variation is within the approved budget(s) for the contract, and cumulative variations do not exceed the original contract sum by more than 20%	The Revised Contract Value must be within the approving Officer's financial delegation.
Onsite and minor variations <ul style="list-style-type: none"> <li>• Low risk variation – the variation approval is required to ensure that there are no unnecessary interruptions or delays to the works or services; and</li> <li>• A written quote has been received</li> </ul>	Contract Superintendent / Superintendent's Representative /Contract Manager with sufficient financial delegation <i>NB - all variations are to be reported to the appropriate financial delegate for the revised Contract Value as soon as practicable.</i>

### 13. Procurement processes

Council's standard methods of procurement include:

- purchase (Credit) cards;
- payment cards (ie Bunnings, Coles, fuel);
- purchase Order / Quotation;
- request for quotation;
- request for tender;
- request for proposal; and
- expressions of interest.

#### 13.1 Public notice and communication

All public tenders or similar competitive procurement processes invited by Council will be published via Council's eTendering Portal and may be advertised in the media.

The eTendering Portal will also be used to provide access to public documentation (during the relevant open period), including without limitation, addenda, contract award information, guidelines for doing business with Council, Council standard terms and conditions and standard drawings and civil specifications (as the case may be).

#### 13.2 Market engagement

Council recognises that in order to aim to achieve sustainable outcomes and Value for Money, a strategic assessment of the appropriate approach to market should be undertaken to determine whether to approach the market directly, participate in regional or sector wide Collaborative Procurement Arrangements, access aggregator or State Government contracts or use other means.

Council will consider supply arrangements that are more likely to deliver the best value outcomes in terms of time, expertise, cost, Value for Money and quality, as such lowest price is not necessarily the sole determinate of selecting a supplier.

Suppliers will be encouraged as reasonably possible to compete for Council work and services. Where appropriate, Council will encourage new suppliers for categories that have low competition.

Council will also carefully plan how it packages its requirements for significant goods, services and works by considering the market landscape (competitiveness, market size and Local Supplier capabilities) so as to maximise competition and optimise the best Value for Money outcome for Council.

Council recognises the importance of effective and open working relationships with its suppliers and is committed to developing and managing supplier relationships by establishing contracts that set reasonable and fair expectations for suppliers.

### 13.3 Specifications / project brief

Specifications used in procurements must aim to inform bid and quotation requests. They should aim to accurately detail the services, works or goods required in order to ensure that submissions received address Council's requirements.

Well drafted specifications greatly assist when evaluating submissions as they allow a clearer comparison between offers received. Specifications will be incorporated into the contracts and therefore should be written in a manner that:

- sets out the performance and functional requirements;
- clearly describes what Council wishes to procure;
- ensure impartiality and objectivity;
- encourage the use of standard products;
- encourage sustainability; and
- eliminate unnecessarily stringent or market restricted requirements.

### 13.4 Late responses

Council will not accept late responses to any competitive procurement process under any circumstances.

### 13.5 Evaluation criteria for Value for Money

Council's procurement activities will be carried out on the basis of obtaining Value for Money, taking into account both financial and qualitative factors, including but not limited to:

- mandatory criteria;
- financial cost to Council;
- capacity of respondents to provide the goods and/or services and/or works;
- capability of respondents to provide the goods and/or services and/or works in accordance with Council's requirements;
- community benefit, including local, social, economic and/or environmental Sustainability;
- quality; and
- previous experience and past performance.

#### 13.5.1 Minimum criteria weighting

All procurements for goods, services or works of value equal to or greater than \$150,000 (excl GST) must include the following evaluation criteria:

Criterion	Minimum Weighting
Financial Cost to Council	30%
Community Benefit	10%

The weighting for these criteria may only be varied or excluded with approval from the relevant Director prior to issuing any competitive procurement documentation, such as quote or tender documentation.

### **13.5.2 Mandatory criteria**

Council Staff should consider inclusion of mandatory (pass/fail) criteria including, but not limited to:

- occupational health and safety;
- insurances;
- licences / qualifications;
- Child Safe Standards;
- applicable legal requirements;
- applicable standards or industry best practice; and
- accreditation with professional bodies or Australian Standards certifications.

### **13.6 Evaluation of tenders and EOIs**

All evaluation processes must be transparent, robust, systematic, well-documented and unbiased.

An evaluation panel will be established to evaluate each submission against the selection criteria. Evaluation panels can include external personnel in order to ensure the best outcome (including in respect of Value for Money) for a procurement activity and must comprise at least 3 persons as well as a chairperson.

A detailed evaluation plan must be developed, approved and strictly adhered to by that evaluation panel. Amongst other things, the evaluation plan involves the establishment of more detailed evaluation criteria (i.e. than those published with the competitive procurement process) and the application of a pre-approved and robust weighted scoring system.

The evaluation plan must be completed and signed-off prior to the relevant competitive procurement process being issued.

### **13.7 Confidentiality**

All information related to a procurement activity should be considered Commercial in Confidence Information. Council Staff must take proper and adequate precautions at all times to preserve the confidentiality of all proprietary, financial and Commercial in Confidence Information.

Evaluation panel members are required to sign a Council conflict of interest declaration and confidentiality deed acknowledging their understanding of their requirements to protect Commercial in Confidence Information from unauthorised access or use.

Submissions for any competitive procurement process will be maintained by the Contracts and Procurement unit, registered in Council's records management system and access only provided to members of the relevant evaluation panel after completion of Council's conflict of interest declaration and confidentiality deed.

With the exception of senior officers of Council and requests in accordance with the *Freedom of Information Act 1982* (Vic), only persons on the relevant evaluation panel have a need to view any applicable documentation received from respondents to a competitive procurement process.

Security procedures for Commercial in Confidence Information must include the following:

- only those individuals with a direct need are to be granted access to procurement related information;
- document security must be observed, both physical (eg locked cabinets) and electronic (eg password protected);
- only limited copies of submissions should be produced;
- all documents and correspondence that are unnecessary for project files should be disposed of securely (eg shredded or security bins); and
- a 'clean desk' policy must be adhered to and all files that are not securely disposed of must be locked away when not in use.

### 13.8 Shortlisting and negotiations

Council may conduct a shortlisting process during a competitive procurement process, such as an EOI, tender or quotation processes. Shortlisting can be based on any criteria but only in pursuit of the most advantageous outcome for Council. Council may shortlist one or more respondents.

Shortlisted respondents may be invited by Council to submit further information which includes submitting a best and final offer in relation to all or certain aspects of their respective submissions.

Once one or more preferred respondents are selected, negotiations can be conducted in order to obtain the optimal solution and commercial arrangements, within the original scope and intent of the competitive procurement process. Probity requirements apply to all negotiations.

### 13.9 Award of contract

The value of the procurement activity will determine the relevant financial delegate to consider and approve (or otherwise) the relevant evaluation report.

The approving financial delegate cannot change the recommendation of the evaluation panel as to the preferred respondent. That is, if the approving financial delegate does not agree with the findings of the evaluation panel, they cannot make a substitute decision as to which respondent will be awarded the contract. Awarding a contract without the application of the applicable evaluation criteria may amount to engaging in misleading and deceptive conduct, breach of a 'process contract' or misuse of a delegation and could give rise to (amongst other adverse consequences) legal action being brought by dissatisfied respondents.

The approving financial delegate can reject a recommendation, on the basis that the delegate is not satisfied that the process undertaken was compliant with this Procurement Policy. Additional information can be sought by the approving financial delegate from the evaluation panel to clarify the analysis that was undertaken.

If the approving financial delegate determines that the evaluation was flawed, the evaluation panel may be asked to undertake a more thorough assessment against the published criteria and report back to Council. An approving financial delegate may reject a recommendation and stop the competitive procurement process. This may only be done with due consideration of the operational and reputational cost of taking this action and only when halting the competitive procurement process is in the best interests of Council.

In order to limit the occurrences of halting a competitive procurement processes at the award stage, Councillors are to provide input on the initial planning stage, as contemplated in clause 10.2 of this Procurement Policy, to ensure that the resources committed to the competitive procurement process are best used and that the scope of a project is adequately determined prior to going to market.

*Council's Delegations and Authorisations Policy applies to the **awarding** of contracts (i.e. the decision). The actual writing and signing of subsequent acceptance letters and the signing of contracts is simply an administrative task.*

### 13.10 Panel arrangement

Council may appoint a panel of suppliers as the result of a competitive procurement process, in an annual supply or panel arrangement.

Once a panel arrangement is established, this is a continuing offer by one or more suppliers to provide specified goods, works or services for a predetermined length of time, usually at a predetermined unit rate, and in accordance with pre-agreed terms and conditions.

When obtaining goods or services from suppliers on these panels, Council is not obligated to seek public tenders, quotations or similar, however quotations from one or more of the panellists may be obtained on a job-by-job basis (subject to the terms of the contract) to promote competition, retain competitive tension and obtain Value for Money.

## 14. Collaborative Procurement Arrangements

In accordance with section 108(3) of the Act, Council will first give consideration to utilising a Collaborative Procurement Arrangements with other councils or public bodies when procuring goods, services or works, including for the reason of taking advantage of economies of scale.

Council Staff must consider any opportunities for Collaborative Procurement Arrangements in relation to a procurement process undertaken by Council. Any Council report that recommends awarding a contract as the result of a procurement process must set out information relating to opportunities for a Collaborative Procurement Arrangement, if available, including:

- the nature of those opportunities, if any, and the councils or public bodies with which they are available; and
- why Council did, or did not, pursue the identified opportunities for collaboration in relation to that procurement process.

When proposing to engage in a Collaborative Procurement Arrangement, Council will do so in accordance with the following process:

- a heads of agreement, agency appointment or other similar arrangement (including on a non-binding basis) will be established, which amongst other things, will aim to set out a lead participant to act as each participant's agent in the Collaborative Procurement Arrangement (unless alternative arrangements are set out in the heads of agreement/agency appointment); and
- each of the participants will be able to participate in the Collaborative Procurement Arrangement through a contracting model as agreed under the heads of agreement or agency appointment document, which may include a model whereby participants enter into a contract using "jump in/opt-in" contract provisions during the contract term.

Each participant of the Collaborative Procurement Arrangement must be involved in:

- the initial decision to undertake the Collaborative Procurement Arrangement;
- preparation of, and agreement to, the specifications;
- ensuring Probity for the Collaborative Procurement Arrangement; and
- the acceptance of the competitive procurement process response(s) and awarding of contract(s).

Council may also collaborate with other Government agencies or other bodies such as MAV Procurement or Procurement Australasia to procure goods, services or works, or utilise existing Collaborative Procurement Arrangements for the procurement of goods, services or works established through a competitive procurement process where that arrangement provides an advantageous, Value for Money outcome for Council.

Any Federal or State Government grant funded project may be excluded from a Collaborative Procurement Arrangement.

## 15. Community benefit

Council is committed to implementing procurement practices that provide social value to the community by including economic, social and environmental Sustainability considerations into Value for Money evaluations. This allows Council to promote outcomes beyond financial benefits and contribute to building strong communities.

The United Nations Environment Programme defines sustainable procurement as a “process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole of life basis in terms of generating benefits not only for the organisation, but also to society and the economy whilst minimising damage to the environment.”

Requirements to deliver community benefit outcomes should be functional and performance-based. They should define ‘what’ outcome is required, rather than ‘how’ the outcome is to be delivered. This approach will provide suppliers with the opportunity to innovate.

Sustainable outcomes will be determined on a case-by-case basis, to ensure that the outcomes sought are proportionate to the individual procurement activity (including scale, value, complexity and level of opportunity and risk), as unduly onerous requirements may be unachievable or unnecessarily deter potential suppliers.

### 15.1 Economic sustainability

Council supports Local Suppliers and economic development by:

- encouraging purchases that are from Local Suppliers and from local inputs;
- supporting small to medium enterprises (SMEs);
- generating opportunities for local employment and supply chains;
- designing competitive procurement processes that attract local businesses;
- undertaking early local market engagement; and
- fostering innovation and emerging sectors.

Council will give preference to goods manufactured in Australia and New Zealand whenever practicable.

### 15.2 Environmental sustainability

Council seeks to make procurement decisions that have minimal effect on the depletion of natural resource and biodiversity by promoting:

- green purchasing;
- reduced greenhouse gas emissions;
- reduced waste to landfill and the increase of the amount of waste recycled;
- reduced water consumption and the improvement of water management;
- improved environmental management in Council’s supply chain;
- improved resilience and adaptability to climate change;
- support for the circular economy;
- improved environmental management of Council’s supply chain;
- consideration of suppliers’ environmental systems and practices;
- the collection, storage and analysis of emissions data from major suppliers; and
- working in collaboration with major suppliers to reduce emissions associated with the services they provide to Council.

Before making any purchasing decisions, Council Staff should first consider:

- Can it be borrowed?
- Can we re-use, refurbish or recondition an existing product?
- Can we purchase second hand, or used?
- Is there a more environmentally friendly alternative?

### 15.3 Social procurement

Council seeks to address disadvantage by encouraging diversity, acceptance, fairness, compassion, inclusiveness and access for all people of all abilities. Council will incorporate the following social procurement objectives, outcomes and actions into procurement planning and give preference to suppliers who enhance social outcomes for the community where appropriate.

Social procurement objectives	Outcomes sought	Suggested actions
Opportunities for Aboriginal people	Employment of Aboriginal people by suppliers to Council	<ul style="list-style-type: none"> <li>• Seek opportunities to directly procure from Social Enterprises, Australian Disability Enterprises and/or Aboriginal Businesses.</li> <li>• Include performance standards and contract requirements that pursue social and sustainable procurement objectives.</li> </ul>
Opportunities for people with a disability	Employment of people with a disability by suppliers Council	<ul style="list-style-type: none"> <li>• Use evaluation criteria to favour businesses whose practices support social and sustainable procurement objectives.</li> <li>• Encourage suppliers to create new jobs, apprenticeships and opportunities for people who may be disadvantaged, Aboriginal or have a disability.</li> <li>• Require suppliers to include relevant Social Enterprises, Aboriginal Businesses and/or Australian Disability Enterprises within their supply chain.</li> </ul>
Opportunities for disadvantaged persons	Job readiness and employment for: <ul style="list-style-type: none"> <li>• long-term unemployed</li> <li>• disengaged youth</li> <li>• single parents</li> <li>• migrants and refugees</li> <li>• workers in transition</li> </ul>	<ul style="list-style-type: none"> <li>• Require suppliers to commit to targets for employment and/or training outcomes for disadvantaged, Aboriginal and/or disabled persons.</li> <li>• Require suppliers to explain how they will identify disadvantaged Victorians and support them to achieve and maintain employment and training outcomes.</li> </ul>
Women's equality and safety	Gender equality within Council suppliers	<ul style="list-style-type: none"> <li>• Request evidence of gender equality in leadership positions.</li> <li>• Collect data from suppliers on ratio of employment of men and women.</li> <li>• Ask suppliers to demonstrate gender equitable employment practices, policies and commitments.</li> </ul>
Supporting safe and fair workplaces	Purchasing from suppliers that comply with industrial relations laws, relevant modern slavery legislation and promote secure employment	<ul style="list-style-type: none"> <li>• Seek commitment from suppliers to screen supply chains for ethical considerations.</li> <li>• Require suppliers to complete a safe and fair workplaces self-assessment checklist and corresponding declaration of compliance.</li> <li>• Where appropriate, request documentary evidence to substantiate their responses to the self-assessment checklist and declaration</li> </ul>

## 16. Risk management

Procurement decisions should include an assessment of risks and include requirements for compliance with relevant laws, including without limitation, occupational health and safety and Child Safe legislation. Appropriate risk avoidance and mitigation strategies will be employed whenever practicable and appropriate.

Aspects to be considered may include, but not be limited to, a risk review of:

- project specifications, competitive procurement process and contract terms and conditions;
- insurance requirements (including public liability, products liability, professional indemnity and workers compensation);
- supply continuity and disaster recovery requirements;
- use of standard-form contracts where appropriate;
- ensuring contracts are updated where appropriate to include current, relevant clauses;
- use of or reference to relevant Australian Standards (or equivalent), where appropriate;
- requiring security deposits, where appropriate;
- requiring contractual agreement before allowing the commencement of work;
- effective contract management, including monitoring, assessing and enforcing proper performance; and
- ensure supplier occupational health and safety documentation is verified and assessed against Council's policies and other legislative requirements.

For general risk assessment and control, refer to Council's Risk Management and Policy framework.

### 16.1 Child Safe Standards

Council is committed to promoting child safety and ensuring compliance with the Victorian Child Safe Standards. As a key priority, Council is actively promoting child safety and reducing the factors that lead to children being harmed.

Council must review all suppliers who undertake work on behalf of Council who may have direct or incidental contact with children.

### 16.2 Occupational Health and Safety

Council is committed to protecting the health and safety of Council Staff, Councillors, suppliers and the community.

All suppliers undertaking work on behalf of Council are required to comply with the *Occupational Health and Safety Act 2004* (Vic) (the **OHS Act**), applicable regulations under the OHS Act, the *Workplace Injury Rehabilitation and Compensation Act 2013* (and if applicable to claims before 1 July 2014, the *Accident Compensation Act 1985* (Vic)) and Council's Health & Safety Policy.

### 16.3 Supplier Code of Conduct

Council is committed to ethical, sustainable and socially responsible procurement, and expect the same high standards from our suppliers.

Suppliers undertaking work on behalf of Council are required to comply with the requirements of Council's Supplier Code of Conduct.

## 17. Contract management

Council will ensure that it receives goods, services or works provided to the required standards of quality, quantity and price as intended by the contract by:

- establishing a system for 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 adopted risk management strategy (see clause 16 **Error! Reference source not found.** of this Procurement Policy regarding Risk Management) and adhering to relevant occupational health and safety contractor compliance procedures (in addition to compliance with other applicable laws or standards).

Council's contract management templates and guidelines are available on Council's Intranet. These templates and guidelines provide assistance to Council Staff in the administration and management of contracts and aim to ensure a consistent approach across Council to these activities.

## 18. 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.

Please refer to Council's Fraud Control Policy for further information on reporting suspected fraud or corruption.

## 19. Administrative matters

Council's CEO is authorised to make any reasonable administrative amendments to this Procurement Policy from time to time where the amendment is limited to an administrative nature and does not affect the substance of this Procurement Policy. For instance, Council's CEO may authorise administrative amendments to:

- address or amend any clerical errors, mistakes or omissions; or
- insert a correction.

Any other matters in this Procurement Policy must only be amended by Council resolution.

## 20. Procurement Policy and Process Enquiries

For further information or to clarify any matters regarding this Procurement Policy, please contact the Contracts and Procurement unit by email to [contractsandprocurement@frankston.vic.gov.au](mailto:contractsandprocurement@frankston.vic.gov.au)