Procurement Policy 2021

1. Purpose

The Council purchases over $60 million in goods, services and works each year to support service delivery and the maintenance and development of infrastructure. Council is required under Sections 108 and 109 of the *Local Government Act 2020* (the Act) to:

- Prepare and adopt a procurement policy which sets out the principles, processes and procedures that apply for the purchase of goods, services and works carried out by the Council and
- Review its procurement policy at least once during each four-year term of Council.

2. Applicability

The Policy applies to all contracting and procurement activities conducted by Council and is applicable to Council, Council staff and other persons undertaking procurement on Council's behalf.

This Policy provides direction on the conduct of procurement activities throughout the sourcing, management and disposal phases. It also covers the general procurement framework but does not extend to the related processes for accounts payable.

The 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.

3. Guiding Principles

This Policy is consistent with the requirements of Section 108 (2) of the Act and will:

- Provide Value for Money by supporting Council's Quadruple Bottom Line (QBL) approach to Procurement which in addition to price, considers environmentally sustainable and socially responsible procurement as well as the need to support the local economy;
- Provide clear guidelines to the Council to ensure consistency and an effective control environment for procurement activities;
- Provide guidance on ethical behaviour in public sector procurement;
- Promote open and fair competition;
- Demonstrate accountability to ratepayers and residents;
- Demonstrate the application of best practice in procurement activities;
- Promote collaborative procurement.

4. Council Policy

4.1 Treatment of GST

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

4.2 Procurement Governance Structure

Council maintains a procurement function responsible for:

- Maintaining the Procurement Policy and associated guidelines, processes and procedures;
- Maintaining appropriate purchasing, procurement, and contract management systems and tools;
- Providing procurement-related advice and support to the organisation as required;
- Building organisational procurement and contract management capability (including delivery of training and provision of guidance materials);
- Promoting awareness and monitoring of compliance with this Policy;
- Ensuring legislation is followed, reporting breaches and corrective actions in a timely manner;
- Collaborating with other councils and organisations to identify best practice and achieving better value from procurement.

Councillors, staff, and persons undertaking procurement on Council's behalf are responsible for complying with this Policy.

The Council will maintain internal procurement control documents detailing the processes, procedures and systems related to procurement.

The Council will maintain details of tendered contracts.

4.3 Probity, Accountability and Transparency

All people undertaking procurement activities on Council's behalf are responsible for the actions and decisions they take in relation to Procurement and for the resulting outcomes.

The processes by which all Procurement activities are conducted will be in accordance with Council's procurement policies and procedures as set out in this Policy, relevant Legislation, Australian Standards, Commercial Law and the *Local Government Act 2020*.

Where a third-party agent is engaged to procure goods, services or works on behalf of Council, they must ensure they are compliant with the relevant legislation including *the Act*.

Probity

Council has a responsibility to obtain Value for Money and this must be achieved by acting with probity. Procurement probity is a defensible process, able to withstand internal and external scrutiny, one which achieves accountability, transparency and provides tenderers with fair and equitable treatment. Probity is about ensuring the procedural integrity of the procurement process, guarding against collusion and fraud and anti-competitive conduct, and not receiving personal gain.

Council may choose to engage Probity services depending on the nature, complexity, risk, and value of a procurement activity. Guidance on engagement of Probity services will be provided by the Procurement function.

Risk Management

The principles of risk management are to be appropriately applied at all stages of Procurement activities, which will be properly planned and carried out in a manner that will protect and enhance the Council's capability to prevent, withstand and recover from personal injury, property damage, reputational loss, financial exposure and interruption to the supply of goods, services and works.

The provision of goods, services and works by a supplier or contractor potentially exposes Council to risk. Council has the following risk mitigation practices in place to reduce its exposure to procurement related risks:

- Providing sufficient planning and lead-time for Procurement preparation and consideration;
- Using Council contracts that include a suite of standard terms and conditions that have been developed in conjunction with legal practitioners;
- Ensuring that variations to Council's standard terms and conditions are reviewed and negotiated by Procurement, with legal advice obtained as appropriate. Correspondence between Procurement and the preferred contractor/supplier is saved in Council's Record Management System evidencing the review and approval process for non-standard items;
- A requirement for security deposits in the form of bank guarantees or bonds where appropriate;
- Financial reference checks are carried out on new contractors/suppliers and these are updated on a periodic basis for existing contractors/suppliers;
- Referring specifications to relevant experts, as appropriate;
- All contracts need to be executed with a copy being provided to Procurement before expenditure on the goods, works or services is committed;
- Contract managers are required to carry out timely and effective contract management including regular monitoring of performance.

Conflict of Interest

Councillors and Council officers must always 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 Council officer 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 the public duty.

A Council officer 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 the officer's family members.

Council staff and Councillors involved in procurement processes such as tendering and quotations, in particular when preparing documentation, writing specification briefs, reviewing submissions, participating in evaluation panels and or preparing recommendation reports for awarding tenders and quotations must:

- **Avoid** conflicts of interest, whether material or general or actual, potential or perceived;
- **Declare** that they do not have a conflict of interest in respect of the procurement. All officers participating in tender and quotation evaluation panels must complete a Conflict of Interest declaration. Officers must declare any actual or perceived conflicts in line with Council's internal processes for reporting conflicts of interest.
- **Observe** current Council and Government guidelines on how to prevent or deal with conflict of interest situations and not take advantage of any tender related information for personal gain.

Disclosure of Information

Commercial in Confidence information received by the Council must not be disclosed and is to be stored in a secure location.

Councillors and officers must take all reasonable steps to maintain confidentiality of:

- Information disclosed by organisations in tenders, quotations or during tender negotiations; and
- Commercial in confidence information

Councillors and officers are to avoid references to current or proposed contracts in discussions with acquaintances or persons outside the organisation.

Officers and independent subject matter experts on tender evaluation panels need to sign a Deed of Confidentiality agreement before commencing their duties on the panel.

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

At no stage should any discussion be entered into which could improperly influence the procurement process or negotiation of the contract prior to the finalisation of the contract approval process, other than pre contract negotiations.

4.4 Procurement Methods

The standard methods for procurement will be:

- Purchase order;
- A Quotation process, refer Appendix 1, followed by a purchase order;
- A Selective or Public tender process (Appendix 1) followed by Contract and Purchase order;
- Under approved Purchasing Schemes (i.e. Panel contracts);
- Purchasing Card.

The relevant expenditure budget must be identified, and the procurement authorised in accordance with the Council's financial delegations and procurement thresholds before any commitment to purchase is made (Refer Appendices 2 and 3).

Provision has been made for the CEO to approve budget overruns that can be accommodated within the $1 million approval limit provided they do not exceed the lesser of:

- 20 per cent OR
- $100,000

This is aimed at enabling and supporting more timely and efficient procurement and the exercise of additional budget approvals will be reported to Council on a quarterly basis.

More than one person will be involved in, and responsible for, each transaction with appropriate authorisation obtained and documented.

Council may seek Expressions of Interest where:

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

All Expressions of Interest and Public Tenders invited by Council will be advertised via Council's eTendering Portal.

Information regarding Current Tenders and Awarded Tenders will be published on Council's website.

Where accessing Panel Contracts which may include Bass Coast Shire Council Panel contracts, eligible State Government Panel contracts including the Construction Supplier Register, and approved schemes including MAV Procurement and Procurement Australia staff are required too

- Obtain the relevant number of quotes from suitable Panel members, in line with this Policy;
- Raise a purchase order including the relevant information, e.g. must use procurement processes and register rules, or internal panels / pre-approved supplier lists.

Council will identify and actively investigate relevant collaborative procurement opportunities, where the procurement objectives are focused on collaborative benefits, and/or shared services opportunities with other councils and/or public bodies.

4.5 Collaborative Procurement

In accordance with Section 108 (3) (c) of *the Act*, the Council will seek to collaborate with other councils, especially those in the Gippsland Region and public bodies for the procurement of goods, services and works in order to take advantage of potential economies of scale.

Collaboration will be sought where it can be demonstrated that the value for money proposition will be improved by the scaling up of the opportunity with the inclusion of other Councils and Public Bodies. Council staff must consider any opportunities for collaborative procurement when conducting a major procurement process on Council's behalf. Reports recommending contract awards (procurement in excess of $300,000) should contain information relating to opportunities for collaborative procurement, 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 the procurement process.

Furthermore, Council may collaborate with other Councils to procure goods or services, or utilise MAV Procurement, State Government, and Procurement Australia contracts for the procurement of goods, services or works established through a public tender process where it provides a Best Value for Money outcome for the Council.

Procurement for services or works that is wholly funded by a State or Commonwealth grant may be exempt from the above collaborative procurement requirements.

4.6 Procurement Processes, Thresholds and Competition

Section 108 of *the Act* details that each Council will set the public tender threshold levels that require tenders for contracts to be publically advertised.

Guidelines will be determined from time to time for minimum spend thresholds associated with Council's procurement activities. These will be decided by analysing the historical size and complexity of the procurement activity and of proposed procurement activities.

Council will invite tenders, proposals, quotes and expressions of interest from the supply market for goods, services, building and construction works in accordance with the thresholds listed in Appendix 1 of this Policy to ensure compliance with *the Act*. These thresholds will only be varied with Council approval. The thresholds must represent the estimated value of the whole of term of the contract i.e. the initial term plus any options to extend the initial contract term and are inclusive of GST.

The options for a procurement process compliant with the public tendering requirements contained in *the Act* include:

- Council running its own publicly advertised tender process, a variety of advertising mediums may be chosen from, including national newspapers, local newspapers, and web based forums;
- Council participating in collaborative tender processes for similar services in conjunction with other councils and public bodies;
- Council appointing an external agent to run a tender process on its behalf. Organisations such as Procurement Australia and MAV Procurement are active in this area;
- Council accessing Victorian State Government contracts (e.g. State Purchase Contracts, Whole-of-Government contracts) that have been made available to Local Government and which Local Government can access without the need to comply with the requirements of Division 2 Section 108 (1) of *the Act*; or

- Council accessing contracts for panels of suppliers where those panels have been put in place through a compliant tender process. For example, these panel contracts may have been put in place through a Council-run tender process, a tender process run for Council by an external agent or be a Victorian State Government panel made available to Local Government; or
- Seek an exemption as outlined in section 108 3 (d) of *the Act* (refer to section 4.9 of this Policy).

4.7 Tender Evaluation and Negotiation

Late tenders will not be accepted.

The tender selection criteria and weighting for each criterion will be documented prior to the tender being advertised.

An appropriately qualified and briefed Evaluation Panel will be established to evaluate each tender submission against the tender selection criteria.

External representatives may be part of, or an advisor to, the panel to ensure appropriate skills, experience and/or probity.

The evaluation process must be robust, transparent, and unbiased. Each Panel Member will be required to formally declare any Conflicts of Interest, prior to receiving any tender documentation and commencing their evaluations.

A probity advisor should be appointed and a formal probity plan developed in the following circumstances:

- Where the proposed Total Contract Sum exceeds $10 million over the life of the contract or for a lesser value set by Council from time to time; or
- Where a proposed contract is considered by Council or the CEO to be particularly complex, of a high risk or controversial nature, and requiring a high level of public confidence.

A probity advisor may be appointed to any tender evaluation panel and may be appointed to oversee the evaluation process.

Contract negotiations can be conducted to obtain the best outcome for Council, providing negotiations remain within the intent and scope of the tender.

Council may conduct a shortlisting process. Shortlisted tenderers may be invited by the Council to submit a Best and Final Offer.

The results of the Tender Evaluation and demonstration of the robustness of the process must be documented in a Tender Evaluation Report approved by the relevant delegate.

The Tender Evaluation process should take into consideration the contract's Whole of Life Cost.

4.8 Value for Money (Quadruple Bottom Line)

The Procurement Policy seeks to ensure that Council and the Bass Coast community receive the best Value for Money outcome from the significant expenditure outlay on the purchase of goods, services and public works. Value for Money represents the best mix of cost, quality (ability to meet user requirements), and other Quadruple Bottom Line factors (environmental, social and benefit to local economy).

The Council may include the following evaluation criteria categories to determine whether a proposed contract provides Value for Money:

- Mandatory Compliance criteria (e.g. ABN registration, Fair Work Act).
- Tendered price.
- Capacity of the Tenderer to provide the Goods and/or Services and/or Works.
- Capability of the Tenderer to provide the Goods and/or Services and/or Works.
- Demonstration of Sustainable Procurement Impact.
- Any other criteria relevant to the Goods and/or Services and/or Works being procured.

Value for Money is best achieved by:

- developing, implementing, and managing procurement strategies that support the co-ordination and streamlining of activities throughout the procurement lifecycle;
- aggregating purchasing whenever possible; and
- undertaking competitive procurement processes.

Value for Money purchasing decisions made by Council are based on whole-of-life cost and non-price factors including the contribution to Council's sustainability objectives.

Council will monitor and report on Council procurement activities and programs that have a positive impact on the achievement of its quadruple bottom line objectives (environmental sustainability, social justice and local economy). Council may at its discretion accelerate the achievement of these objectives by:

- spending more for products that provide environmentally sustainable benefits
- applying a preference of up to 10% in the evaluation of proposals that:
    - are from Indigenous Suppliers or include Indigenous Suppliers in their supply chain and/or
    - Are from Social Enterprises or include Social Enterprises in their supply chain.

Council will support environmental sustainability through its purchasing activity and prioritise purchases that contribute to waste minimisation, energy efficiency, potable water conservation and reductions in greenhouse gas emissions. Council prefers to purchase sustainable, recycled and environmentally preferred products when they provide the same functionality and Value for Money outcomes.

Council will seek to advance its social responsibility objectives to benefit the community directly by purchasing from social enterprises, and indirectly by including clauses supporting social benefits in its contracts with private sector providers (e.g. requirements to use apprentices, local sub-contractors) and screening supply chains for ethical considerations (e.g. ensuring compliance with Modern Slavery Act).

Council will also give regard to the following elements when making procurement decisions:

Economic Sustainability

Council supports local businesses and economic diversity by encouraging purchases that:

- Are from local suppliers and Small to Medium Enterprises;
- Generate local employment; and
- Consider the cost vs life cycle/durability of purchases.

Whenever practicable, Council must give effective and substantial preference to contracts for the purchase of goods, machinery or material manufactured or produced in the Bass Coast Shire, the Gippsland Region, Casey or the Cardinia local government areas. This is reinforced by a new requirement for officers to obtain at least one quotation (where possible) from a local Gippsland, Casey or Cardinia supplier for all procurement in excess of $15,000.

Environmental Sustainability/Circular Economy

Council seeks to make procurement decisions that reduce natural resource and biodiversity depletion by promoting:

- Green purchasing (i.e. making purchases that use materials made of recycled content, are energy efficient and greenhouse friendly, or are second hand/refurbished);
- Reduced or zero greenhouse gas emissions;
- Reduced waste to landfill and the increase in the amount of waste recycled;
- Reduced potable water consumption and the improvement of water management;
- Improved environmental management in Council's supply chain;
- the selection of products/services that have a minimal effect on the depletion of natural resources and biodiversity; and
- Improved adaptability to climate change.

Social Sustainability

Council seeks to address disadvantage by encouraging diversity, acceptance, fairness, compassion, inclusiveness, and access for people of all abilities in its purchasing by seeking to:

- Create new jobs and opportunities for people who may be struggling to find work including long term unemployed people;
- Target cohorts that may be experiencing economic exclusion;
- Reinvigorate depressed or marginalised communities; and
- Improve equity of access to opportunities.

4.9 Exemptions and Breaches

The following circumstances are exempt from the general tender, proposal, quotation, and expression of interest requirements. Use of any exemption must be endorsed in accordance with the delegated procurement authority thresholds.

Exemption Name	Explanation, Limitations, Responsibilities and Approvals
A contract made because of genuine emergency or hardship	Where the Council or CEO has resolved that the contract must be entered into because of an Emergency Event (e.g. to provide immediate response to a natural disaster).
A contract made with, or a purchase from, a contract made by another government entity, government-owned entity or other approved third-party	This general exemption allows engagements with another government entity or government owned entity. For example, Federal, State or Local Government or an entity owned by the Federal, State or Local Government. Contracts and arrangements established by another government entity, local authority or local government group purchasing scheme, Municipal Association of Victoria (MAV) or National Procurement network members (e.g. Local Buy), Procurement Australasia (PA).
Lack of competition	Where it can be sufficiently demonstrated there is an absence of competition (eg. Memberships) or where the required number of quotes was sought but no response was received within the required timeframes. This includes low response through public advertising.
Extension of contracts while Council is conducting a market tender	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 have taken longer than expected. This exemption may be used when the establishment of an interim short-term arrangement 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.
Professional services unsuitable for tendering	Including, but not limited to Legal Services, Insurance.
Novated Contracts	Where the initial contract was entered into in compliance with *the Act* and due diligence has been undertaken in respect to the new party.
Information technology resellers and software developers	Allows Council to renew and extend software licenses, maintenance and support to use or upgrade existing systems, where there is only one incumbent supplier of the software who holds the intellectual property rights to the software and/or it is not practical or cost effective to change or upgrade.
Utility Companies	When utility authorities are required to undertake work on their assets.
Regional Waste Management Groups	Situations where a Regional Waste Management Group constituted under *Section 50F* of the *Environment Protection Act 2017* had already conducted a public tender for and on behalf of its member councils.
Contracts for Regional and Public Libraries	This exemption allows Council to enter into agreements with, including the provision of funding to or procuring services from, regional libraries established under *Section 196* of the *Local Government Act 1989* and any entity or entities established to replace them to deliver public library services (as required under the *Local Government Act 2020*.)
Operating Leases	Where a lessor leases an asset (generally a vehicle or plant and equipment) to the Council and assumes the residual value risk of the asset.

Statutory Compulsory Monopoly Insurance Schemes	Compulsory Third Party Motor Vehicle Insurance Work Cover

Spend non-compliance and breaches will be reported to the Executive Leadership Team (ELT) on a quarterly basis. Council's Audit Committee will also receive an annual report on Council's Procurement Policy Compliance.

Emergency Events and post emergency procurement should meet all requirements of the Disaster Recovery Funding Arrangements. In addition, the Value for Money principles will still apply.

Where Council expenditure is funded from State or Federal Government grant monies the requirement to comply with Division 2 Section 108 of *the Act* remains unless there are grant conditions which provide alternative arrangements.

Should the nature of the requirement and the characteristics of the market be such that it is considered a public tender process is not possible, an exemption as outlined in Section 108 3 (d) may be sought from Council.

If a state of emergency/disaster/pandemic Event is in place within Victoria, this exemption can be approved by the Chief Executive Officer.

Contract Variations

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 thresholds set by the Procurement policy, and;
- The subject matter of the proposed variation, and whether it is consistent with the scope of the original contract.

Sole Sourcing Supply of goods, services or works can be sought from one supplier (sole sourcing) or a restricted group of suppliers (select sourcing) where it is consistent with the Procurement Policy and:

- It is in the public interest
- There is one or a limited number of available tenderers in the market or suppliers able to submit quotations;
- The market is restricted by licensing or third party ownership of an asset (excluding public utility plant); or
- Council is party to a joint arrangement where Council jointly owns the Intellectual property with a third party provider.

5. Relevant Legislation, Policy and Other Documents

The Council's procurement activities shall be carried out to the professional standards in accordance with best practice and in compliance with *the Act* and applicable policies and procedures including Codes of Conduct for Councillors, Council staff and Others.

Compliance will be monitored by the Council's Procurement Team and minor issues will be appropriately addressed by Council staff in leadership positions. Where required, serious compliance issues will be reported to the Executive Leadership Team, Audit and Risk Committee and Council.

All Council policies comply with the Victorian Charter of Human Rights and Responsibilities.

This policy has clear linkages to a range of codes, charters, legislation, and Council documents including:

- *Local Government Act 2020*
- The relevant provisions of the *Competition and Consumer Act 2010* (Cth)
- Procurement procedures and guidelines
- Purchasing and accounts payable manuals
- Codes of Conduct and associated policies (including Supplier Code of Conduct)
- Contract management guidelines
- *Working with Children Act 2005* and *Working with Children Regulation 2016*
- *Occupational Health and Safety Act 2004*
- Other relevant Australian Standards

6. Monitoring Review and Audit

The Procurement Team will monitor procurement activity on an ongoing basis with respect to annual procurement activity and compliance with key internal controls. Council is committed to continuous improvement and will review the Policy in accordance with the requirements of *the Act* to ensure that it continues to meet its wider strategic objectives.

This Policy is subject to amendment at any time if required and is to be reviewed at least once in every four-year Council term as required by *the Act*.

Responsible officer: Manager Financial Services

Department: Financial Services

Procurement Policy Enquiries and Contact Details

For further information on the policy, please contact Council's Coordinator Procurement and Fleet at basscoast@basscoast.vic.gov.au .

The Policy document must be signed off by the Chief Executive Officer (operational policy) or Mayor (Council policy). As well, version number and adoption dates must be included in the footer of the policy as follows.

Adopted by Council at its meeting held on Date   Signed by the Mayor, Cr Michael Whelan

APPENDIX 1 – BASS COAST SHIRE COUNCIL PROCUREMENT THRESHOLDS

Procurement Threshold (incl. GST)	Procurement Methodology
Up to $3,000	No formal quotations required, good practice would be for a verbal quote to be provided.
$3,001 to $15,000	One written quote
$15,001 to $50,000 *	Two written quotes
$50,001 to $300,000 *	Three Formal Quotations / Selective Tender or Quotation Process
$300,000 Plus	Formal Public Tender Process

*** Requires at least one Quote from a Local Supplier**

APPENDIX 2 – BASS COAST SHIRE COUNCIL DELEGATED PROCUREMENT AUTHORITY

Level	Authority Limit
Coordinator#	Up to $30,000 within budget
Manager	Up to $150,000 within budget
General Manager	Up to $300,000 within budget
CEO	Up to $1 Million and within the lesser of 20% or $100,000 of the budget allocation
Council	Unlimited

#Excludes exemptions and breaches.

APPENDIX 3 – BASS COAST SHIRE COUNCIL – DELEGATED AUTHORITY FOR CONTRACT VARIATIONS AND EXTENSIONS

	Contract Extension	**Contract Variation**
Coordinator	No authority	No authority
Manager	No authority	Authority restricted to: • Within budget • Up to 10% of contract value • Maximum of $25,000 variation
General Manager	Authority restricted to • Within budget • Up to $1 million spend	Authority restricted to: • Within budget • Up to 10% of contract value
CEO	Authority restricted to • Within budget by the lesser of 20% or $100,000	Authority restricted to: • Within $100,000 of budget allocation
Council	Unlimited Authority	Unlimited Authority