

CP 16 Procurement Policy

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Policy Statement

Council recognises that a procurement policy and its associated guidelines will support the achievement of the Council's strategic procurement objectives.

Council is committed to ensuring its purchasing practices are sustainable, efficient and deliver value for money, while encouraging a competitive environment for suppliers and seek to support local enterprise to provide current and long-term benefit to the community.

Purpose

Benalla Rural City Council's Procurement Policy has been written under Section 108 of the *Local Government Act 2020* (the Act). The Act requires Benalla Rural City Council (Council) to:

- develop, approve and comply with a Procurement Policy encompassing the principles, processes and procedures applied to all purchases of goods, services and works by the Council.
- provide guidance to Council to allow consistency and control over procurement activities;
- promote the highest levels of procurement accountability, probity and ethical behaviours in public sector purchasing;
- 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;
- ensure compliance with legislation;
- ensure openness and transparency of the decision-making process;
- nominate a threshold value for Public Tenders and Request for Quotations;
- seek to promote open and fair competition and provide Value for Money; and
- provide for collaboration in procurement with other councils or public bodies.

The Policy covers all procurement activities of the Council and is binding upon Councillors, Council Officers, contractors and consultants while engaged by the Council.

This policy will apply to Councillors, Council Officers and all persons undertaking procurement on Council's behalf and they are accountable for complying, with all relevant procurement legislative and policy requirements.

“Non-compliance” with this 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 Officers act in contravention of any laws, including (without limitation) laws regarding fraud, corruption, bribery or Australian competition and consumer laws.

Principles

This policy represents the principles, processes and procedures that will be applied to the procurement of all goods, services and works by Council. The scope of this policy commences from when Council has identified a need for procurement requirements. It continues through to the delivery of goods or completion of works or services.

Council will apply the following fundamental principles to procurement activities:

- promote open and fair competition;
- provide value for money by minimising the total cost of ownership over the lifetime of the requirement consistent with acceptable quality, reliability and delivery considerations;
- achieve high standards in probity, transparency, accountability and risk management in all procurement activities;
- comply with relevant legislative requirements;
- respond to the climate emergency in proportionate urgency and scale and give preference to the procurement of environmentally sustainable goods, services or works and providers who preference the same;
- ensure Councils procurement decisions and initiatives are based on clear and transparent evidence, informed economic, environmental, and social considerations;
- identify social procurement opportunities with local social enterprises and other relevant parties;
- commit to creating and maintaining a child safe organisation, where protecting children and preventing and responding to child abuse is embedded in the everyday thinking and practice of all Councillors, Council Officers, contractors, and volunteers;
- seek continual operational and process improvement including innovative and technological initiatives with the objective to reduce overall activity costs and achieve best practice;
- commit to the strategic use of local suppliers to encourage economic development while remaining compliant with the Competition and Consumer Act 2010 and other fair-trading legislation;
- identify and support indigenous businesses and enterprises; and
- promote collaborative procurement.

Council is committed to reducing any negative social and environmental impacts by conducting preferential purchasing of products and services that have been produced or manufactured to ethical standards which have minimal negative impacts on the environment and human health.

These procurement principles align with Benalla Rural City Council's organisational values associated with Accountability.

Procurement, Tendering and Contract Management Guidelines

Benalla Rural City Council has developed set of guidelines for Procurement, Tendering and Contract Management Procedures and Guidance that provide guidance to staff on all operational aspects of procurement processes. Staff will have access to the Guidelines via Council's Intranet.

The guidelines also provide for a framework of procurement procedures to:

- promote consistency and control over Benalla Rural City Council's procurement activities;
- demonstrate accountability to all stakeholders;
- provide guidance on ethical behavior in public sector procurement and contract management;
- apply the elements of best practice in procurement; and
- ensure the right outcome is achieved when purchasing goods and services.

The Procurement Unit will maintain and periodically review these guidelines to ensure that best practice principles are updated and communicated to Council Officers.

The Guidelines will conform to this Procurement Policy and will be updated in line with any amendments/additions applied to this Policy and the Best Practice Procurement Guidelines.

GST

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

Procurement Methods, Thresholds and Requirements

Procurement Methods

The acquisition of goods, services or works may be achieved through different methods. These methods are determined by several factors such as overall estimated cost, procurement strategy, the competitive landscape, the term of the contract or period of construction, the scope of the contract and the amount of risk involved in the delivery of the service or works.

Project values are exclusive of GST, provisional sums and all amounts payable under any optional extension periods. The scope of projects must not be split into smaller portions to avoid proper process unless there is significant savings to be realised or there are specialised components required that are not generally a core activity for suppliers/contractors and require separate consideration.

Council's standard methods for procuring goods, services and works shall be by:

- corporate credit or debit card or purchase order for low value simple purchases;
- an email quotation process for purchases;
- a short form contract following a public Request for Quotation (RFQ);
- a short form contract following a public Request for Tender (RFT);

- Contracts and arrangements established by another government entity, local authority or group purchasing scheme. e.g. Municipal Association of Victoria (MAV) or National Procurement network members (e.g. Local Buy), Procurement Australia (PA) etc. This includes contracts covering Federal, State or Local Government Purchasing. Contract extensions granted for the purpose of aligning expiry dates for collaborative engagements; and
- other methods of procurement or exemptions to this Policy due to abnormal circumstances such as emergencies, sole suppliers or interruption to a delivery of key services in accordance with their level of authority.

Procurement Thresholds

Section 108 of the Act details that each Council will set the public tender threshold above which tenders or expressions of interest for contracts must be publicly invited.

A public tender process must be used for all procurements valued at \$300,000 (ex GST) and above.

For procurements valued under \$300,000 (ex GST), the procurement methodology and thresholds detailed in **Appendix 2** must apply.

Exemptions From Public Tendering

The following circumstances are exempt from the general publicly published tender, quotation and expression of interest requirements.

Exemption Type	Explanation, limitations, responsibilities and approvals
A contract made because of genuine emergency or hardship.	See Procurement During an Emergency of this Procurement Policy for further details regarding Emergencies.
Government entity / approved third party	<p>This general exemption allows engagements:</p> <ul style="list-style-type: none"> ▪ 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; and/or ▪ in reliance on 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).
Extension of contracts while Council is at market.	<ul style="list-style-type: none"> ▪ 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. ▪ 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.
Professional services unsuitable for tendering	<ul style="list-style-type: none"> ▪ Legal Services ▪ Insurance

Contract variations (that are not in effect new contracts)	See Contract Variations for further details regarding the procurement procedure to be observed for contract variations.
Novated Contracts	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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.
Statutory Compulsory Monopoly Insurance Schemes	<ul style="list-style-type: none"> ▪ Motor vehicle compulsory third party ▪ WorkCover
Operating Leases	<ul style="list-style-type: none"> ▪ Where a lessor leases an asset (generally a vehicle or plant and equipment) to Council and assumes the residual value risk of the vehicle.
Other specific Council exemptions	<ul style="list-style-type: none"> ▪ Where the procurement is on Council's procurement exemptions list (refer Appendix 4). ▪ Specific Council exemptions will be reviewed and updated in Appendix 4 from time to time, as per the Policy Review Process

In addition, the CEO may approve ad-hoc exemptions in circumstances where it can be demonstrated that it is in the best interests of the community to do so.

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 compliant with this Procurement Policy, the Act and other relevant legislation.

For the purposes of this clause, 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.

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 Nimblex. 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.

Exemptions from raising purchase orders:

- The 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 and those current are listed in **Appendix 4**.

Contract Variations

Contract variation expenditure may be exempt from the procurement procedure described in **Procurement Thresholds** 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 **Procurement Thresholds**.

Where the cumulative value of all proposed variations is greater than 20 percent of the Original Contract Value (or greater than the approved contingency budget, whichever is the lower) it would be seen as a genuine variation and would not be deemed a new contract. In such cases, written advice of the variance to either the General Manager Corporate, CEO or Council, dependant on the initial approval.

The written advice is for information purposes only. Works do not need to be put on hold. Variances should be entered and approved in eBMS/Nimblex.

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 **Procurement Thresholds**; and
- the subject matter of the proposed variation, and whether it is consistent with the scope of the original contract.

Council Officers 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 Officers should seek guidance from the Procurement Unit when considering contract variations.

Tenders

All public tenders invited by the Council will be published via Council's eTendering Portal and be advertised in the media.

Further assistance in capturing a greater competitive advantage is gained through Council's e-tendering system (TenderSearch). The details of any supplier that registers on this system as a user, are archived within the system. At the time of registering, these suppliers must provide information relating to their core business activities.

When Council releases a tender to the market, the system automatically sends a notification to every registered supplier that has identified its core business as being relative to the tender.

In the circumstance that a strong focus on local supply is required, an advertisement may also be placed in one of the local news media that is distributed throughout the municipality'.

Similarly, there may be a requirement for national distribution. In this case the Procurement Unit will collaborate with the relevant Council Officers to determine the best news media to provide the widest access to the marketplace.

The Procurement Unit will collaborate with the relevant Council Officers to determine the appropriate period for open tender.

Tender Evaluation

A Tender evaluation panel is to be established to evaluate each tender submission against the selection criteria and its composition will be determined by the respective Manager or General Manager. Consideration should be given to diversity in the makeup of the panel.

The Evaluation Panel is required to fulfill the following minimum requirements:

- The panel must have a minimum of three members (minimum two Council staff) and may include external consultants who are specialist in the area;
- The panel would desirably have an independent (non-scoring) member as appointed by the Procurement Unit;
- The evaluation process must be documented, robust, systematic and unbiased;
- Once a preferred tenderer is selected negotiations may be conducted in order to obtain the optimal solution and commercial arrangements, providing they remain within the intent and scope of the tender. Such negotiations must be exhausted with one tenderer before beginning with another tenderer;
- The panel will produce a written report of their evaluation using the prescribed evaluation template; and
- Tender Evaluation must be updated in eBMS/Nimblex Tender & Quotation Management System

Non-Conforming Tenders

Upon receipt all tender submissions will be reviewed by the Procurement Unit to ensure that required schedules have been submitted.

A tender submission will be deemed non-conforming if:

- required schedules have not been included or are incomplete;
- the submission has not met specification requirements; and
- where the tendered price is 30 percent or greater than the allocated budget and all other tendered prices.

A tender submission may be identified as non-conforming during the Evaluation process. In this case, the evaluation panel should quarantine the submission and refer to the Procurement Unit for further review/confirmation of non-conformance.

Council may sometimes receive tenders which offer one or more alternatives, which were not sought in the tender documentation. Council should always be open to innovative proposals as they may offer excellent opportunities for improvements and are consistent with Council's ability to achieve continual improvement. Tender documentation where innovative solutions are sought should specifically invite non-conforming tenders to be submitted which Council will consider along with all other tenders.

A Tenderer submitting a non-conforming tender shall fully detail the extent of any variance from the tender documents in tender Schedule headed "Statement of Conformance". If the "Statement of Conformance" is not correctly completed the tender may not be further considered at the discretion of the evaluation panel.

Evaluation Criteria

There are two separate components to be taken into consideration when determining Value for Money, Qualitative (Non-Financial) and Quantitative (Financial).

- The Qualitative component relates to Tenderers responses to selected criteria to determine the capabilities and capacity of each tenderer.
- The Quantitative component relates to the tendered costs for the delivery of the goods, services or works.

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

- Mandatory compliance criteria (e.g. OH&S, Insurance, Financial Viability, Statutory Declaration);
- Tendered price;
- Capability of the Tenderer to provide the goods, or services or works;
- Capacity of the Tenderer to provide the goods, services or works;
- Project Management, Methodology or Provision of Services;
- Customer Service and Innovation;
- Quality, Environmental & Social Sustainability;
- Child safeguarding;
- Industrial Relations; and
- Other specific criteria as required.

Best and Final Offer (BAFO)

To complement the Value for Money solution Council may include relevant clauses to tender conditions associated with Construction and Major Service tenders where a Lump Sum price is requested. These tender conditions will provide Council the option to initiate a BAFO with short listed tenderers that may result from the overall tender process.

Primarily, a BAFO process is conducted as a final stage with shortlisted tenderers when the evaluation panel consider it beneficial. It is described as a means to assist selection of a preferred tender when the offerings provided by two or more tenders are of similar weighting or are difficult to distinguish between, or in the event that all tenderers have submitted prices that exceed the budgeted amount.

The panel may also consider the inclusion of a value management process to review possible alternatives to certain nominated items such as materials, fixtures and fittings, appliances or service.

Expression of Interest (EOI)

An expression of interest is a precursor to a tender. A contract cannot be awarded after an EOI without an invited tender process. An EOI is generally used to narrow the companies invited to tender. The EOI does not consider price but focuses on the quality, qualifications and expertise of submitters. Following an EOI companies meeting the listed requirements may be invited to tender.

An expression of interest should be used in circumstances where:

- there is likely to be many tenderers, tendering will be costly, or the procurement is complex; and
- there is uncertainty as to the interest of suppliers or vendors to offer the potential products or services or to undertake the proposed work.

Sole or Select 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 this 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 marketplace is restricted by statement of license 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.

Quotations

Any procurement which is less than the tender levels outlined in **Procurement Thresholds** may be procured using a quotation.

The situation may arise where insufficient quotations are received to satisfy requirements outlined in **Procurement Thresholds**. This may occasionally occur where there are few suppliers for the goods, services or works being sought or the work is highly specialised. In this case, the details of the suppliers contacted for quote must be recorded in eBMS/Nimblex and an appropriate comment recorded. Any evidence such as emails requesting the quote should also be recorded.

Refer to the Procurement Guidelines outlined in **Procurement, Tendering and Contract Management Guidelines** for further details on quotation process.

Collaborative Procurement

In accordance with section 108 (3) (c) of the Act, the Council will first give consideration to potential collaborative opportunities with other Councils and public bodies or utilise Collaborative Procurement arrangements when procuring goods, services and works in order to take advantage of economies of scale.

Council Officers must consider any opportunities for collaborative procurement in relation to any proposed procurement process being undertaken by Council. Any council report that recommends entering into a procurement agreement must set out information relating to opportunities for Collaborative Procurement, 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.

Opportunities for collaborative procurement are available to Council through government or a nominated agent, such as Procurement Australasia, Municipal Association of Victoria (MAV), Regional Purchasing Excellence Network Hume Region (RPEN Hume) or other local government entities, for the benefit of numerous state, federal and/or local government entities that achieves best value by leveraging combined economies of scale.

Council specific construction / works projects, where the specifications for the works required are unique to an individual Council site and are not applicable to the other Councils will for instance not be considered for collaboration.

Any Federal or State Government grant funded projects may be excluded from collaborative procurement.

Panel Contracts

An Approved Supplier is a contractor/company that has been appointed following an open tender process. Approved Suppliers cannot be appointed in any other manner, no minimum quantity of sales or turnover is guaranteed to an Approved Supplier

The use of established panels should be transparent as suppliers appointed to the panel will have a reasonable expectation that Council will provide panel members with an equal opportunity to quote for goods, services or works. Prior to the establishment of a panel there should be clearly documented methodology on how works/services are to be determined for allocation to companies appointed to the panel for the life of the panel contract.

Consideration should be given to the quantity of approved companies to be appointed to maintain a workable panel.

When accessing established panel arrangements quotations should be sought consistent with the guidelines set out in this Policy to ensure that any procurement through panels demonstrates value for money and a competitive process.

An exception is that an Approved Supplier may be appointed directly for works up to \$25,000 where a Schedule of Rates has been provided under the terms of the panel. For procurements greater than \$25,000 the quotation requirement outlined in **Procurement Thresholds** must be followed.

Council Officers responsible for the contract management of panel arrangements should be mindful of day-to-day practicalities and acknowledge that a competitive public process and a value for money assessment has already been undertaken to establish the panel in the first instance. Accordingly, there may be situations where no further benefit is obtained from seeking quotations from the panel. For example:

- small, every-day, low risk, low value works such as those from trade services providers like electricians, plumbers; or
- where the contract with each individual panel supplier includes a comprehensive schedule of rates covering all expected work item types so the costs for packages of work can be accurately determined beforehand by the Council Officer without the need for further quotations.

In the above examples, it may be appropriate for the Council Officer to allocate work across the individual panel suppliers based on their respective skill sets and capacity at the time to meet Council's required timeframes. This allocation methodology should be determined prior to the establishment of the panel.

Panel Arrangements – Approved Suppliers:

Approved Suppliers will be appointed following a formal tender process and will be contracted for the time period as outlined in the tender specification, including any options for extensions.

Approved Suppliers should be monitored periodically to determine if such suppliers should remain on the panel. Approved Suppliers who fail to meet expectations may be removed from the Panel without notification.

Council may choose to run a tender process to add suppliers to a panel during its term, if it determines that the panel may benefit from having additional suppliers incorporated before the end of the initially advertised term.

Sustainability Procurement

Council is committed to enhancing the environment by adopting the principles of environmentally sustainable procurement and will aim to make purchases that have the least impact on the environment and human health, within the context of purchasing on a value for money basis.

Consistent with the principle of Environmental Sustainability, Council's procurement activities will be undertaken having regard to Sustainable Procurement objectives as detailed in **Appendix 5**. The ability to meet or exceed the standards must be considered in the preparation of specifications and the evaluation of RFQs or Tenders for Panel of Supplier Contracts or Contract values \$150,000 or more.

Social Procurement

Consideration of social procurement, as part of the procurement selection criteria provides an opportunity to generate positive social outcomes in addition to the delivery of goods, services and works. Including Social Sustainability criteria aligns with Council's social objectives to help enhance partnerships with community and first nations stakeholders, build stronger communities and helps to address structural and systemic inequality.

When evaluating Social Sustainability and in addition to local sustainability and first nations people, evaluation panels should consider the following:

- Employment and training - creating local employment opportunities through clauses and specifications in Council contracts. Developing practical training to build long-term employment opportunities;
- Gender Equality - promoting gender equality (including adherence to the Gender Equality Act 2020 where applicable) and encouraging women's full and equal participation. Gender equality is proven to increase business performance and deliver diversity of thought leading to more innovative solutions;
- Diversity and Social Inclusion - ensuring all businesses have the same opportunity to tender for Council contracts. Ensuring that the supply markets around essential and key services for Council remains diverse and vibrant. Ensuring that local suppliers such as small to medium-sized enterprises, social enterprises and first nations businesses (refer above) are well positioned to prosper in the local economy; and
- Service innovation - fostering a new social economy, addressing service gaps by piloting joint ventures between councils and external partners.

Legislative and Policy Compliance and Control

Governance

Council shall establish a procurement management responsibility structure and delegations ensuring accountability, traceability and auditability of all procurement decisions made by Council.

Council's procurement structure should:

- ensure flexibility to purchase in a timely and efficient manner the diverse range of material, goods, works and services required by Council;
- ensure that prospective contractors and suppliers are afforded an equal opportunity to tender/quote;
- encourage competition;
- incorporate strategies for managing risks associated with all procurements and be applied consistently; and
- ensure Council undertakes good record keeping allowing for accountability and transparency to the community. that transparency and good record keeping are undertaken.

Legislative Compliance, Standards and Related Policies

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

- Local Government Act 2020;
- Council Policies and Procedures;
- Council Code of Conduct;
- Local Government Procurement Best Practice Guidelines; and
- other relevant legislative requirements such as, but not limited to the Competition and Consumer Act, Goods Act and the Environmental Protection Act.

Probity Requirements

Council's procurement activities shall be performed with integrity and in accordance with all relevant legislation, policies and procedures.

Conflicts of Interest:

Councillors and Council Officers shall, at all times avoid situations in which private interests' conflict, or might reasonably be thought to conflict, or have the potential to conflict, with their Council duties.

Councillors and Council Officers involved in the procurement process, in particular preparing tender documentation, including writing tender specifications, tender opening, and tender evaluation panels, must:

- **Avoid** conflicts, whether actual, potential, or perceived, arising between their official duties and their private interests. Private interests include the financial and other interests of Councillors and Council Staff, plus their relatives and close associates;

- **Declare** that there is no conflict of interest. Where future conflicts, or relevant private interests arise, Council Staff must make their manager and the chairperson of the relevant tender assessment panel or board aware and allow them to decide whether the officer should continue to be involved in the specific procurement activity; and
- **Observe** prevailing Council policy and guidelines on how to prevent or deal with conflict-of-interest situations; and not utilise any procurement related information whether or not for personal gain.

Tender Processes:

All tender processes shall be conducted in accordance with the requirements of this policy and any associated procedures, relevant legislation, relevant Australian Standards and the Act. All tender panel members will be required to familiarise themselves with the Code of Conduct For Tender Evaluation Panel Members

Open and Fair Competition:

All prospective contractors and suppliers must be afforded an equal opportunity to tender or quote. Impartiality must be maintained throughout the procurement process so it can withstand public scrutiny.

Confidentiality of information provided by existing and prospective suppliers must be maintained at all times, particularly commercially sensitive material such as, but not limited to prices, discounts, rebates, profit, manufacturing and product information.

Accountability and Transparency:

Accountability in procurement means being able to explain and provide evidence on the process followed.

The test of accountability is that an independent third party must be able to see clearly that a process has been followed and that the process is fair and reasonable.

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

Additionally, all council staff must be accountable for all procurement decisions made over the lifecycle of all goods, services and works purchased by the Council and record and document all performance and other relevant matters to ensure a transparent audit trail for monitoring and reporting purposes.

Gifts and Hospitality:

A Councillor or member of council staff must not, for themselves or others, seek, request or solicit gifts. All gift offers, whether accepted or not, must be declared. Bribes and inducements must be reported to the Independent Board-based Anti-corruption Commission.

Disclosure of Information:

Commercial in-confidence information received by the Council must not be disclosed and is to be stored in a Council's information management secure business system.

Councillors and Council staff are obliged to protect information, by refusing to release or discuss the following:

- information disclosed by organisations in tenders, quotation or during tender negotiations;
- all information that is Commercial in Confidence information; and
- pre-contract information including but not limited to information provided in quotes and tenders or subsequently provided in pre-contract negotiations.

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

Complaints Handling:

Members of the public and suppliers, are encouraged to report known or suspected incidences of improper conduct to the CEO. Councillors and Council Officers will report and manage complaints in accordance with Council's internal policies and processes.

Probity Plan Audits:

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

- Where a proposed contract is considered by Council or the CEO that a potential supplier is likely to be tendering and there may be a perceived conflict of interest issue
- 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.

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.

Management of Procurement Risk:

The provision of goods, services and works by a supplier or contractor potentially exposes Council to risk. The Council could minimise its risk exposure through measures including:

- providing sufficient planning and lead-time for Procurement preparation and consideration.
- using appropriate Council standard-form contracts provided by Council's Procurement Unit or Australian Standard contracts which include current, relevant clauses to mitigate risk to Council;
- requiring security deposits where appropriate;

- ongoing and timely Contract management;
- effectively managing the contract including monitoring and enforcing performance.
- referring specifications to relevant experts for review where considered appropriate;
- requiring contractual agreements before allowing the commencement of work; and
- systemically reviewing all relevant policies and procedures;

Responsible Financial Management:

The principle of responsible financial management shall be applied to all procurement activities. Responsibility for financial management must be accepted and adhered to by Council Officers 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 Officers will:

- ensure the availability of funds within an approved budget must be established prior to the commencement of any procurement;
- 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
- 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 eBMS/Nimblex) when the goods, services or works are ordered and not when an invoice is received by Council.
- ensure that procurement approvals are in accordance with Council financial policies and delegations, as determined by Council and the CEO under instruments of delegation.
- monitor cumulative spend with suppliers at least annually. If expenditure with a supplier or a number of suppliers providing similar goods, services and works is ongoing in nature and the cumulative spend is likely to exceed the tendering threshold over a two-year period, then Council will review the opportunity to pursue a contract for such goods, services and works through a competitive process; and
- ensure that suppliers, contractors and Council staff not request, encourage or facilitate the prohibited act of ‘order splitting’ (splitting one order into a succession of orders) for the purpose of obtaining the goods or services under a financial delegation level or procurement delegation level for any goods, services or works.

Dispute Resolution:

Any dispute arising from the application of this policy will be referred to the Chief Executive Officer for investigation and resolution.

Occupational Health and Safety Management Systems (OHSMS):

Benalla Rural City Council requires all contractors and service providers to comply with all legislative and regulatory requirements, particularly in relation to Occupational Health and Safety.

It will be mandatory for all relevant contractors engaged by Council to provide services or works, to have a documented OHSMS that conforms to the requirements of the OHS Act 2004 and that the system is implemented during the conduct of those services or works.

This is a mandatory requirement and non-compliance may result in disqualification of current and prospective suppliers and contractors.

Insurance and Indemnity Requirements:

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

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

Type of Contract	Type of Insurance	Minimum Level Required
Goods and Services	Public Liability	\$20M
	Professional Indemnity	\$5M
	Products Liability	\$10M
	WorkCover / Motor Vehicle	As required
Panel / Annual Supply / Works	Professional Indemnity	\$10M (if applicable)
	Products Liability	\$20M
	WorkCover / Motor Vehicle	As required
Consultants	Public Liability	\$20M
	Professional Indemnity	\$5M
	WorkCover / Motor Vehicle	As required

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

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

Evidence of cover in the form of a Certificate of Currency will be required. Council will also ensure any other appropriate insurance, i.e., Product Liability, Motor Vehicle or Fiduciary or Work Cover details are obtained prior to the commencement of the Contract.

Any exemption to minimum requirements must be authorised by the Chief Executive Officer or General Manager Corporate.

Fraud and Complaints:

Council takes allegations of fraudulent activity and complaints about procurement seriously and is committed to handling such disclosures sensitively and confidentially. Members of the public, suppliers and council staff are strongly encouraged to report fraudulent allegations or complaints about procurement processes and/or staff taking part in procurement activities to the Chief Executive Officer or Council's General Manager Corporate.

Public Interest Disclosure:

The Public Interest Disclosure Act is an instrument which provides a mechanism for the disclosure of improper conduct by public officers and public bodies and to investigate alleged corruption and misuse of power. The Act also provides protection to those that make any disclosures or may suffer reprisals in relation to those disclosures.

Councillors and Council Officers must protect and not disclose information received by Council that is declared Commercial in Confidence by the CEO.

Endorsement:

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

Internal Control

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

- more than one person is involved in and responsible for a transaction end-to-end;
- transparency in the procurement process;
- a clearly documented audit trail exists for procurement activities;
- appropriate authorisations are obtained and documented;
- systems are in place for appropriate monitoring and performance measurement; and
- compliance with the procedure and ongoing contract management will be subject to internal reviews and audits.

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 and compliance with this Procurement Policy.

Material Breaches of this Procurement Policy must be reported as soon as practicable to the relevant Manager, General Manager Corporate and CEO, and periodically to the Audit & Risk Committee. See section on non-compliance of this Procurement Policy.

Delegations of Authority

Council has delegated a range of powers, duties and functions to the CEO in relation to procurement. These delegations aim to ensure that the Council's procurement structure operates according to processes that:

- Are flexible enough to procure in a timely manner the diverse range of goods, works and services required by Council;
- Guarantee that prospective contractors and suppliers are afforded an equal opportunity to tender or submit a quotation; and
- Encourage competition and collaboration, even where the CEO runs a procurement process under delegation.

Such delegations define the limitations within which Council Officers are permitted to commit Council to the procurement of goods, services or works and the associated costs. The Instrument of Delegation allows specified Council Officers to undertake certain purchases, quotation, tender and contractual processes without prior referral to Council. This enables Council to conduct procurement activities in an efficient and timely manner whilst maintaining transparency and integrity.

Council has delegated responsibilities relating to the expenditure of funds for the purchase of goods, services and works, the acceptance of quotations and tenders and for contract management activities to the CEO. The CEO has further delegated some of those responsibilities to other members of Council Officers, subject to specified conditions and limitations. Delegations for procurement authority can be found in **Appendix 3**.

Contract Management

Procurement Guidelines as set out in **Procurement, Tendering and Contract Management Guidelines** have been developed by the to assist any Council Officer that has contract management within their portfolio. The guidelines are located in the Procurement Intranet site.

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

- establishing a system monitoring and achieving the responsibilities and obligations of both parties under the contract;
- providing a means for the early recognition of issues and performance problems and the identification of solutions; and
- adhering to Council's Risk Management Framework and adhering to relevant Occupational Health and Safety Contractor Compliance Procedures.

All Council contracts are to include contract management requirements. Furthermore, contracts are to be proactively managed by the member of Council Officers responsible for the delivery of the contracted goods, services or works to ensure the Council receives Value for Money.

Charter Of Human Rights And Responsibilities Act 2006 And The Equal Opportunity Act 2010

Council acknowledges the legal responsibility to comply with the *Charter of Human Rights and Responsibilities Act 2006* and the *Equal Opportunity Act 2010*. The *Charter of Human Rights and Responsibilities Act 2006* is designed to protect the fundamental rights and freedom of citizens. The Charter gives legal protection to twenty fundamental human rights under its four key values that include freedom, respect, equality and dignity.

Review

The Policy must be reviewed at least once during each four-year term of Council as per section 108 (5) of the *Local Government Act 2020*.

This Policy may be reviewed at any time by the Council to accommodate changes in legislation, regulations, policy gaps, new technology or systems, as well as remain consistent with industry best practice.

“The Act” means the Victorian Local Government Act 2020.

“Collaborative Procurement Arrangement” is contractual arrangement established by the Council, government or a nominated agent, such as Procurement Australasia, Municipal Association of Victoria (MAV), Regional Purchasing Excellence Network Hume Region (RPEN Hume) or 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.

“Commercial in Confidence” means information that, if released publicly or to a third party, may prejudice the business dealings of a party, including but not limited to prices, discounts, rebates, profits, methodologies and process information.

“Contract Management” means the process of ensuring both parties to a contract meet their respective obligations as efficiently and effectively as possible, in order to deliver the business and operational objectives required from the contract and in particular, to provide value for money.

“Council” means Benalla Rural City Council.

“Councillors” are Council’s elected representatives (the Mayor and Councillors) or Administrator(s) appointed to act in this capacity.

“Council Officer” means all full-time, part-time and temporary City employees and contractors and consultants while engaged by the City from time to time.

“IBAC” are the Independent Broad-based Anti-corruption Commission.

“eBMS/Nimblex” Council’s Tender and Contract Management system.

“Indigenous Business” As per Supply Nation’s definition, an Indigenous Business is one that is at least 50% owned by an Aboriginal or Torres Strait Islands person(s).

“Fraud” means deception resulting in financial or personal gain.

“GST” means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Guidelines” mean the Victorian Local Government Best Practice Procurement Guidelines 2013 and Preface to the New Best Practice Procurement Guidelines 2021. If this policy is inconsistent with the guidelines, this policy supersedes the guidelines.

“Local Content” means a contractor or supplier having their registered office within a 100km radius of the Benalla Rural City Council Customer Service Centre at 1 Bridge Street East, Benalla.

“Probity” means qualities demonstrating strong moral principles and good process, achieved through clear processes consistent with the City’s policies and legislation, which consider the legitimate interests and ensure the equitable treatment of all suppliers.

“Procurement” means the process of acquiring external goods, services or works from initial concept through to disposal of an asset at the end of its useful life or completion of the contract.

“Quotation” means a formal statement of promise, submitted usually in response to a request for quotation, by a potential supplier to supply the goods, services or works required by a buyer at specified prices and within a specified period.

“Risk” means anything that could prevent Council from achieving its objectives. Risk may arise from an event, an action, or from a lack of action. It is measured in terms of consequences and likelihood.

“Schedule of Rates Contract” is a standing offer arrangement based on a Schedule of Rates contract that sets out rates for goods and services which are available for the term of the agreement but without a commitment to purchase a specified value or quantity of goods or services.

“Social Procurement” means a strategic approach to meeting social and economic objectives throughout procurement using procurement processes and purchasing power to generate positive social and economic outcomes in addition to the delivery of efficient goods, services and works.

“Sustainability” means meeting the needs of the present generation without compromising the ability of future generations to meet their needs, including social procurement, local content and environmental considerations.

“Request for Quotation (RFQ)” is a process of inviting parties from either a select list or via public advertisement and to submit an offer by RFQ followed by evaluation of submissions and selection of a successful bidder or tenderer in accordance with pre-determined evaluation criteria. A RFQ is for a lower amount than a full Tender process, and documentation and opening time is shorter.

“Request for Tender (RFT)” is a 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 a successful bidder or tenderer in accordance with predetermined evaluation criteria.

“Thresholds” the value above which procurement, unless exempt, is subject to the mandatory procurement procedures.

“Value for Money” means the optimum combination of quantitative and qualitative components of a tender offer.

Requirement for tenders, proposals, and quotations

Public Tender Threshold

- **Goods, services and carrying out of works with an estimated value greater than \$300,000 (ex. GST)** will be procured through public tender unless an exception is granted by the Chief Executive Officer in consultation with the Council.
- **Goods, services and carrying out of works with an estimated value of equal to or less than \$300,000 (ex. GST)** may be procured via public tender, if this is considered the best approach to market, but will in most instances, be procured in accordance with the procedures i.e. Request for Quotation, Expression of Interest, a Council panel arrangement or a collaborative procurement arrangement.
- To achieve best value for money, a contract below \$300,000 (ex. GST) which is assessed as complex, strategic or high risk can also be procured via public tender or a public expression of interest. These market approaches are to be approved by the Chief Executive Officer and reported to the Audit and Risk Committee.

Council will invite tenders and quotations from the supply market for goods, services, and works in accordance with the thresholds listed in the below table. Procurement engagements should not be split to circumvent these thresholds. If a procurement engagement is likely to reach the upper limit of a threshold, then it is recommended to pre-emptively follow the requirements of the next incremental threshold.

For procurements valued under \$330,000 (include GST), the procurement methodology and thresholds detailed below must apply.

Financial Thresholds <i>(AUS\$ incl. GST)</i>	Procurement Requirement			
	Process Managed by	Market Engagement	Engagement Type	Documentation
< \$10,000 <i>(incl. GST)</i>	Business Unit	1 Verbal Quote (Minimum). To be sourced from a local supplier if possible.	Purchase Order or Purchase Card to Financial Delegation.	Quote details must be diarised** and documented on the Purchase Order.
\$10,001 to \$25,000 <i>(incl. GST)</i>		3 Written Quotes* (Minimum).	Can be open to the public or sent to a minimum of 3 suppliers.	Quotes must be registered in <i>Nimblex</i> .
\$25,001 to \$50,000 <i>(incl. GST)</i>		At least 1 quotation from a local supplier.		A file number must be obtained, and a Procurement Initiation Form (PIF) raised for approval on <i>Nimblex</i> .
\$50,001 to \$330,000 <i>(incl. GST)</i>				A file number must be obtained, and a Procurement Initiation Form raised for approval on <i>Nimblex</i> . Quotes to be released via the E-Tender Portal
> \$330,000 <i>(incl. GST)</i>	Procurement Unit	Public Tender	Contract	Public Tender to be advertised in the Newspaper and released publicly via the E-Tender Portal. A file number must be obtained, and a Procurement Initiation Form (PIF) raised for approval on <i>Nimblex</i> .
A PIF must be completed above \$25,000 <i>(incl. GST)</i>	Business Unit	The use of MAV Procurement, Procurement Australia or WOGV SPC contracts are to be considered.		The Contracts and Procurement Coordinator must be consulted for guidance within thresholds above \$25,000 incl. GST.

* A minimum of one of the quotes **must be** obtained from a local supplier/provider wherever possible.

** Purchases made by Council Purchase Card shall be considered as diarised. If a Purchase Order (PO) is used, then a notation should be made when the PO is being created.

Delegation of Procurement Authority

Delegations Reserved for the Council

Commitments and processes which exceed the CEO's delegation, and which must be approved by Council are:

- Signing of contract documents
- Tender recommendations and Contract approval for all expenditure as delegated by Council.

Only the Council can award contracts that are greater than: - \$300,000 (ex GST) for goods, services or works.

Delegation of Authority to the Chief Executive Officer

Awarding contracts for the acquisition of goods, works and services up to the value of \$300,000 excluding GST in respect of any one contract, unless the contract, purchase or payment has been previously approved by resolution of Council or a Delegated committee.

Approving expenditure for statutory charges or other matters such as superannuation, taxation, the Fire Services Property Levy, EPA Levy, WorkSafe, telecommunications, investments, street lighting, court and tribunal expenses, insurance charges generally consistent with the approved or revised budget. A summary of expenditure approvals for this expenditure will be reported in the quarterly financial report.

Delegation of Authority to Council Officers

Council procurement activities are undertaken using a Delegation of Procurement Authority allowing authorised and trained, Council Officers to approve certain purchases, quotation, tender and contractual processes without prior referral to the Council. Council Officer procurement delegations will be documented and reviewed annually.

Council staff can procure goods and services up to their Financial Delegation for the following:

- Acceptance of Quotes.
- Contract term extensions (within authorised budget).
- Flexi Card purchases.

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Specific Council exemptions will be reviewed and updated this Policy from time to time, as per the Policy Review Process.

Exemptions for obtaining Quotes:

A copy of completed (signed) Procurement Exemption to be forwarded to Procurement Unit for further reporting to Risk and Audit Committee.

All areas of expenditure identified in clause 4.3 and below are exempt from the requirements of this policy. However, transactions must still comply with the tendering threshold.

- **Shop Supplies** – Business Units of the Council that operate a retail outlet and are required to purchase stock for resale to the public. Goods purchased for the purpose of resale are exempt from obtaining quotes. This is due to the nature of the goods that are offered for resale, which may be of a unique nature;
- **Performers/Events** – Where Performers and ticketed events are sourced for resale and these performances/events will return an income to the Council quotations are not required;
- **Artworks and transportation of Artworks** - The Council is in a unique position of operating an Art Gallery. It is not practical to obtain quotes for the purchase of artworks as each piece of work is unique. These Items are to be purchased within annual budget restraints. If an artwork is commissioned to be created, then this exemption does not apply, and quotations/tender must be sought;
- **Sole Supplier (Core Service)** - The Council deals with several core service sole suppliers where there is no market to test and obtain multiple quotations. Examples of core service sole suppliers are:
 - Professional membership payments and subscriptions (must relate to position held at the Council);
 - Where the supplier is the sole source of specific intellectual property;
 - Ongoing computer software licences; and
 - Advertising (newspapers, magazines, TV, radio and Social Media (e.g., Facebook and similar));
- **Plant and Equipment Servicing and Spare Parts** - plant and equipment purchased by the Council require servicing at regular intervals. To maintain a valid warranty, works need to be carried out by recognised suppliers using genuine parts;
- **Direct purchasing of goods and services** from Social Procurement businesses where the estimated value of the procurement is up to \$25,000 includes GST. The identified business must be certified with Social Traders or are businesses that trade to intentionally tackle social problems, improve communities, provide people with access to employment and training, or help the environment. Must be not for profit and Value for Money must be the final consideration;

- **Payroll expenses** - Superannuation and PAYG;
- **Goods and Services** - Tax payable;
- **Postage** - Australia Post;
- **Vehicle registrations** - VicRoads vehicle registrations;
- **Councillor expenses** - Allowances and Reimbursements;
- **Levies** - EPA Victoria Levy, Fire Services Property Levy;
- **Acquisition of Land and Buildings;**
- **Medical expenses;**
- **Venue hire;**
- **External audit fees** – Victorian Auditor General’s Office;
- Professional workshop and conference registration fees and associated costs.

Transactions exempt from requiring a Purchase Order:

- Payment request forms;
- Utilities –Gas, Electricity and Water only;
- Civic Hall Acquittal’s;
- Levies – WorkCover, EPA, FSPL, Medical Expenses
- Workcover/medical Expenses;
- Police Checks;
- Legal expenses;
- Auditors;
- Advertising
- Transfer of Long Service leave;
- Telstra;
- Tourism North East annual membership and buy in
- Physio, Health Care Groups;
- Memberships;
- Subscriptions;
- Donations (Staff Fundraising);
- Pathway Refunds;
- Debt Collection;
- Rent; and
- Community Grants/Strategic Partnerships.

Sustainability is a key feature of Council's long-term vision. 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.

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.

“Economic sustainability” where 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.
- fostering innovation and emerging sectors.

“Environmental sustainability” where 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.
- working in collaboration with major suppliers to reduce emissions associated with the services they provide to Council.