

# PREFACE TO NEW BEST PRACTICE PROCUREMENT GUIDELINES

For the local government sector in Victoria  
June/July 2020





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# Local Government Act 2020

On the 13<sup>th</sup> of November 2019 the new Local Government Bill was introduced to Parliament. The Bill was the result of more than 5 years of work on the Local Government Act Review. The review featured extensive engagement with councils, ratepayers, stakeholders and communities to develop the new Bill. In March 2020 and after royal assent the *Local Government Act 2020* was proclaimed.

Whilst Councils will continue to be required to develop their own procurement policies appropriate to serve their communities, the new regime will replace rigid one-size-fits-all tender thresholds and the requirement for councils to seek ministerial exemptions where public tendering was not a viable option. The financial thresholds initially set to allow for indexation, which was rarely invoked, led to disparity in reality: for large metropolitan councils the thresholds were often too low, increasing the demand for public tendering in seemingly low value spend categories and putting pressure on procurement teams already at capacity; yet for small rural councils those thresholds placed a constraint on already tight supplier markets due to locality and not allowing a different and more flexible process to accommodate geographical demand. The compulsory competitive tendering requirements for goods, services and works under the 1989 Act sought to ensure councils followed high standards of probity, through transparent and fair competition, accountability and risk management. They enforced market testing before public funds were spent to ensure entering into a particular agreement achieved best value for money.

The new framework acknowledges that councils are in the best position to determine whether and when they believe a public tender process will produce the best outcome for their communities.

There will be more freedom for councils to innovate and work with other councils, government agencies, community organisations and the private sector. This will improve services by giving councils freedom to find innovative solutions, collaborate and become more sustainable as well as entrepreneurial.

## Implementing the new Local Government Act 2020

Local Government Victoria (LGV) appreciates that the implementation of the Act 2020 and the dynamic environment that coronavirus (COVID-19) presents will have resource implications on councils and this is front of mind in our plans for implementation with the sector. Updates will be provided through Council Bulletins and the Local Government Victoria website.

### Overview

The new Act has a number of requirements across four stages. LGV understands this is a complex, multi layered implementation project that touches on many different areas of council work. The Engage Vic platform will be used as an engagement tool with the local government sector and will be updated continuously with new information.

### Staged Implementation

The project will be delivered in stages, based on proclamation dates, the date that part of the Act comes into operation. This is different to the key dates of delivery, which are the dates in which key documents are required to be adopted and in place in each Council. For more information on the key dates please visit the Local Government Victoria webpage.

We will be consulting on different elements across various stages simultaneously. To see a

list of active consultations please refer to the 'current engagements' section below.

Our key motivation is to support the sector with the opportunity to lead the implementation and determine - through co-design processes – the products and materials that best meet your needs. Our intention is to enable capacity building and transformation across the sector.

LGV, with the support of the Project Control Board, is working with two goals in mind:

- transformation through challenging the sector to work with LGV to co-design support for councils that builds capacity, encourages innovation and that is best practice; and
- fast-tracking the development of a “pathway” of documentation that will support councils to meet these requirements on time.

#### Stage 4 - Requirements

##### Inform

- Carrying out works on land
- Land Information
- Powers in relation to land
- Unpaid money

##### Consult

- Local Laws
- Financial Management
- Complaints Policy
- Beneficial Enterprises

##### Co-design

- CEO employment and remuneration Policy
- Workforce Plan
- Staff Code of Conduct
- Recruitment Policy
- **Procurement Policy**

## The Procurement Best Practice Guidelines

With a new act it is time to establish new procurement guidelines for the Local Government sector to use. The current guidelines were launched in 2013 and ultimately were the result of the Port Phillip Ombudsman Report in August 2009. The Ombudsman recommended that LGV provide support and guidance to councils on the interpretation of section 186 of the Local Government Act 1989 and best practice in procurement. This, in combination with the sector wide procurement strategy<sup>1</sup> led to the establishment of the 2013 Guidelines. Those Guidelines have seen a great application of use, from many different areas within Local Governments to external auditors, the latter often cross-checking council procurement practices against the guidelines at audits.

The Best Practice Guidelines will be successively re-written and aligned with the transition phase applying to procurement under the 2020 Act, and will address other milestones and goals set by the State Government to contribute to the current circular economy policy environment.

Consequently, NEW Best Practice Procurement Guidelines will be launched on or after the 1st of July 2021. The application and use will depend on when councils turn over to the new procurement provisions.

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<sup>1</sup>LGV Local Government Procurement Strategy 2008  
(prepared by Ernst & Young)

# What changes are coming in procurement?

## Transition Period for Procurement:

### 1 July 2021 – 1 January 2022

The provisions under the 2020 Act pertaining to procurement come into operation on 1 July 2021.

That means Councils have two options during this period:

Council has up to 6 months (1 July 2021 to 31 December 2021) to adopt a procurement policy in accordance with the new framework. Until such time as a new policy is adopted under s108 of the *Local Government Act 2020*, the pre-existing procurement policy as well as the restrictions on the power of a council to enter into a contract (refer to s186 and s186A of the *Local Government Act 1989*) continue to apply.

It is important to note that the Best Value Principle (s3C of the *Local Government Act 1989*) will be repealed on 1 July 2021. Consequently, councils that choose to adopt their new procurement policy after 1 July 2021 will no longer be able to refer to this principle in their decision making, unless they have named, defined and covered it in their pre-existing procurement policy.

What does this mean for the use of the guidelines:

- (1) The NEW guidelines 2020/21 will no longer contain reference to sections in the *Local Government Act 1989* unless explicitly highlighted otherwise;
- (2) The Best Practice Procurement Guidelines 2013 will for the transition time remain applicable as will the publication of any parts or all of the NEW guidelines 2020. Councils deciding to continue under the *Local Government Act 1989* procurement provisions are advised to continue to use the Best

Practice Procurement Guidelines 2013. The NEW Guidelines 2020 will entirely replace the Best Practice Procurement Guidelines 2013 as of 1 January 2022 or as otherwise advised.

## Procurement post 2020 and the Law Makers Intent

That means Councils have two options during this period:

To provide councils with more flexibility to contract with suppliers to enable agility while applying fair and transparent processes for all contracts.

To allow councils to focus on better financial management and engagement with their communities to deliver better services.

To remove any unnecessary ministerial approvals and arbitrary powers to build a new relationship between the State, local government and communities.

## Procurement post 2020 and the Law Makers Expectation

Victorian councils play a pivotal role in providing and maintaining a wide range of services, programs and infrastructure for their communities. With responsibility for the management of community infrastructure worth approximately \$90 billion and delivery of more than \$7 billion in critical public services every year, councils spend between 45 per cent and 60 per cent of their annual budgets on procurement. Considerable power is therefore vested in public officers of councils to source suppliers, manage contracts and authorise payment for goods, services and works – using public money. The Victorian community rightly expects that council employees will perform their

duties with integrity and impartiality, and will act in the public interest rather than their own.<sup>2</sup>

Consequently, the law makers expectations are that councils will:

- prepare and adopt a procurement policy, that must specify the principles, processes and procedures applying in respect of the purchase of goods, services or the carrying out of works.
- utilise their procurement policies to set thresholds for when a public tender must be sought and criteria to be used to evaluate whether the proposed contracts to be entered into provide value for money. Thresholds set by procurement policies must not exceed the value prescribed by the regulations, refer to s 108 (4).
- ensure to test the market when carrying out procurement activities to promote open and fair competition and value for money.
- continue to implement and apply transparent and fair processes which record the basis for any decision.
- task their audit and risk committees with independent, regular assessments and reporting of councils' procurement policies and processes, with established internal structures that provide for independent review of processes, decision making and robust financial management.
- uphold an environment that is conducive to good governance, including establishment of processes with defined and implemented clear roles and responsibilities, that fosters effective decision-making processes and reflects transparency and accountability.
- pursue innovation and continuous improvement.

- establish and maintain an effective approach to the identification, assessment, monitoring and management of risks.
- deal with finances and assets responsibly, to appropriately manage financial risks, and be transparent in their financial dealings.
- promote economic, social and environmental sustainability within their municipalities.
- collaborate with other councils and describe how the collaboration in the procurement for goods or services is being managed.

## Procurement Policy

The Council procurement policy must detail the principles, processes and procedures applying in respect of the purchase of goods and services by the Council, including the carrying out of works.

A procurement policy must seek to promote open and fair competition and provide value for money.

A council must review its procurement policy at least once during each 4 year term of council.

A council must comply with its procurement policy before entering into a contract for the purchase of goods or services or the carrying out of works.

The Chief Executive Officer must ensure that any report to the Council that recommends entering into a procurement agreement includes information in relation to any opportunities for collaboration with other councils or public bodies which may be available.

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<sup>2</sup> Special report on corruption risks associated with procurement in local government, IBAC September 2019

## Fundamental procurement principles

The fundamental procurement practice principles that should be applied to every procurement, irrespective of the value and complexity of that procurement, have not changed under the new framework. Those principles are:

- Value For Money
- Open and Fair competition
- Accountability
- Risk Management
- Probity and Transparency
- Sustainable and social procurement objectives

## What has changed?

What has changed is that a council is now autonomous in setting thresholds and defining the processes and procedures to apply to a procurement. The ceiling for thresholds will be managed “prescribed” by the regulations:

- A council may decide not to change its procurement thresholds and processes but to keep up public tendering thresholds and those for quotations; or
- Based on its spend and purchasing (transactional) data, a council may, for example, choose to increase thresholds for public tendering for works from \$200k to \$750k, but decide to lower the threshold for services and goods to \$100k
- And various other scenarios

In any event, and for any decision a council makes in relation to a procurement, it is paramount that procurement activities are governed by the above principles. As principles are more general than policy, processes and procedures, they should govern all three of those components. In all procurement dealings a

council must ensure that it achieves value for money through open and fair competition and, in the context of high standards of probity, transparency, accountability and managed risks. It is important that councils continually test intended procurements against those primary standards.

The means of measuring compliance has now shifted from s186 and its compulsory thresholds to the individual procurement policy and its prescribed processes and procedures governed by the above principles.

The audit and risk committee must now monitor the compliance of council policies and procedures. Consequently, the compliance of the procurement policy and its prescribed processes falls within the function and responsibility of the audit and risk committee.

## Procurement Collaboration in the Sector

Given the continued requirement for procurement collaboration which has now found its way into the Local Government Act 2020, moving towards sharing and collaboration of service provision, assets and other infrastructure created for the benefits of communities, will be a focus for procurement in the sector.

The objectives of each council will vary with the needs of their community. Councils located in higher growth areas of Victoria may be focused on supporting infrastructure and development projects while councils in established regional shires are focused on delivering social outcomes. Service models may be considered whereby a council, or a group of councils could wholly own and operate it as a beneficial enterprise for both gaining additional revenue as well as assisting other councils in the management of their operations. However,



regardless of the specific objectives of the council, all procurement activities should fulfil a common set of objectives.

It is recommended that such procurement objectives are focussed around programmed collaboration and shared services, aligned public tender thresholds (amongst RPN councils as a minimum) and sustainable procurement.

## Emerging Themes

### What has changed?

#### Circular Economy<sup>3</sup> and Circular Procurement

There has been considerable concern in Australia in recent years about recycling efforts, and what happens to our products once they are recycled. This was brought into focus by China's decision to ban the import of foreign waste from January 2018. Australia exports recyclable material to over 100 countries; the three main categories of which are metals, paper and cardboard, and plastics. In 2016–17 Australia exported some 4.23 mega tonnes of recycled materials, a considerable amount of which went to China. Therefore, the decision made by China to ban the import of foreign waste has had a direct impact on recycling and waste management practices in Australia.

One idea put forward in response to the issue of recycling and waste management is of the transition to a circular economy. Essentially, the objective of a circular economy is to maximise value at each point in a product's life<sup>4</sup>. A circular economy seeks to close industrial loops and to

turn outputs from one manufacturer into inputs for another and, in doing so, reduce the consumption of virgin materials and the generation of waste<sup>5</sup>.

In Australia, the use of resources generally exists in what can be called a linear economy, where resources are taken to be made into products that are then used and disposed of. In fact, our current level of global wealth is paired with a massive use of raw materials; as we progress and our population grows, this wealth will become unsustainable. If we do not drastically change the production and consumption patterns will ultimately make life unsustainable on our planet. <sup>6</sup>

The circular economy is an alternative to the traditional linear model, where the goal is to 'keep resources in use for as long as possible, extract the maximum value from them whilst in use, then recover and regenerate products and materials at the end of each service life'.<sup>7</sup> In other words, a circular economy seeks to eliminate waste and to keep resources in a continually flowing loop. Circularity is about minimising waste of resources and maximising value retention of resources and materials. If humans continue to use the Earth's resources at the current rate, it will deplete the planetary resources that are available. In order to facilitate circularity and future reuse potential a look at the materials used, the design of products, manufacturing processes as well as assembly methods is required in addition to a fundamental restructuring of consumption patterns and the economy is needed.

Procurement is invaluable as a means to achieving circular economy. Traditionally,

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<sup>3</sup> The circular economy, An Explainer, Research notes, Department of Parliamentary Services, Parliament of Victoria 22 Oct 2018

<sup>4</sup> W. R. Stahel (2016) 'The circular economy', Nature, 531(7595), p. 435.

<sup>5</sup> J. A. Mathews & H. Tan (2016) 'Circular economy: Lessons from China', Nature, 531(7595), p. 441.

<sup>6</sup> Cecile van Oppen, Godard Croon & Dirk Bijl de Vroe 'Circular Procurement in 8 Steps', p.11-12

<sup>7</sup> Waste and Resources Action Programme (WRAP) (2018) 'WRAP and the circular economy', WRAP website

procurement is focussed on maximising value for money. What happens when purchasing power is used in order to change the world? Then the demand can help influence pricing, availability of raw materials and can create opportunities to spur technical innovation and sustainability. In this sense, procurement is an immensely powerful tool in our pursuit of a better world. In this context procurement is neither limited to the moment of purchase (the transaction) nor to the moment at which demand is specified. Procurement starts when the initial need is formulated and ends when the product in question is reused as a product or when its components or materials are given a new application.<sup>8</sup>

### Sustainable Procurement

Sustainable procurement represents an opportunity to provide more value to an organisation by improving productivity, assessing value and performance, enabling communication between buyers, suppliers and stakeholders, and by encouraging innovation. It is procurement that has the most positive environmental, social and economic impacts possible across the entire life cycle of goods, services and works.<sup>9</sup>

Sustainable procurement aims to reduce the adverse impacts of purchased goods and services throughout their life. This includes considerations such as waste disposal and the cost of operations and maintenance over the life of goods and services. It looks beyond up-front costs to make procurement decisions based on the entire life cycle of goods, services and works, taking into account associated costs, environmental and social risks and benefits, and broader social and environmental implications.

### Social Procurement

Victoria's commitment to social procurement reflects a growing national and international focus on the strategic use of procurement to drive social, economic, and environmental outcomes, including recent activity such as:

- the new 2017 ISO: 20400 Sustainable Procurement Standard, which has created a global framework to stimulate the integration of social, economic, and environmental objectives into strategic procurement practice;
- the planned update to the Infrastructure Sustainability Council of Australia Rating Scheme, which will now include social and local economic objectives, influencing future construction development practice; and
- rapidly growing leadership and support from the private sector through the establishment of targets for purchasing goods and services from social enterprises and Aboriginal businesses, investment in skills development and employment for disadvantaged community members in major projects, and inclusion of practices that support environmental sustainability beyond compliance requirements.

Value for money is the key driver underpinning all Local Government procurement decisions. The legal framework for social procurement is considered in detail in 'Beyond Value for Money: Social Procurement for Victorian Local Government 2017' which can be found on the Local Government Victoria website and aims to ensure value-for-money considerations are not solely focused on price but encompass opportunities to deliver social and sustainable outcomes that benefit the Victorian community.

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<sup>8</sup> Cecile van Oppen, Godard Croon & Dirk Bijl de Vroe 'Circular Procurement in 8 Steps', p.19

<sup>9</sup> International Standard ISO 20400 2017, Sustainable Procurement - Guidance

Social procurement no longer forms 'just' an adjunct to sustainable procurement.

## Shared Services and Collaboration amongst Councils

Victoria's 79 local councils deliver a wide range of services to their communities including child and family day care services, Meals on Wheels, waste collection, planning, and recreational services. Councils also build and maintain community assets and infrastructure—including roads, footpaths and drains—and enforce various laws.

As councils share many common statutory responsibilities and carry out similar functions and activities, there are opportunities to work together to jointly deliver services and share costs and resources. Shared services are one way that councils can potentially achieve greater efficiency in the delivery of services to the community. In this context, shared services are defined as where two or more local councils jointly provide:

- external services—services that councils provide to the local community, such
- as Meals on Wheels, waste collection and community and library services
- back office functions—functions that support external services, such as information technology, finance, legal, payroll, and human resources
- procurement—purchase of goods and services.

Shared services may also include one or more councils partnering with other organisations outside of local government for the delivery of specific services.

Most Victorian councils undertake some form of shared services, although their use is evolving and relatively immature. Existing initiatives relate

primarily to procurement or external services, such as library services, waste management and aged care. While there is limited growth expected in external initiatives, there is likely to be continued growth in shared procurement and in new shared services for back office functions, such as information and communications technology, payroll and human resources. This provides a significant opportunity for the sector to realise cost savings and other benefits.

Collaborative arrangements can take a variety of forms, from a simple exchange of letters between two neighbouring councils to more formal and complex structures such as incorporated associations or companies involving multi-purpose agreements between several participating councils. Similarly, the activities involved can range from simple arrangements to share equipment to more complex projects such as regional planning, providing infrastructure or shared service delivery.<sup>10</sup>

## Post-disaster/ emergency procurement management

Across Australia local government plays an important role building resilient and sustainable communities, particularly when it comes to dealing with natural hazards and other threats.

While managing and responding to emergencies is largely the responsibility of state and territory governments, local governments are increasingly playing crucial roles in preparing communities through various mitigation interventions, assisting in response and playing a key leadership role in rebuilding and recovery efforts.

Local governments require assistance in improving their capability and capacity to meet the requirements of the new Disaster Recovery Funding Arrangements (DRFA) arrangements.

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<sup>10</sup> Victorian Auditor General's Report – Shared Services in Local Government

Natural Disaster Financial Assistance for local councils is provided to assist in the recovery process and to alleviate some of the financial burden that may be experienced following a natural disaster, in accordance with Commonwealth-State Natural Disaster Relief and Recovery Arrangements (NDRRA). Due to changes in how to recover costs after a disaster better cost forecasting, procurement planning and collaboration amongst councils and other agencies (e.g. water authorities) is required to achieve best outcomes for councils.

### Entrepreneurial Powers of Councils

Councils provide a broad array of services to their communities which can have a commercial orientation for example: gymnasiums, pools, parking facilities, childcare facilities, libraries, sport complexes, caravan parks, regional airports, waste facilities etc.

While these activities provide services to the community, they also add to the complexity of a council's business structure, record keeping as well as financial and risk management etc. In some cases, these services are large enough to be carried on as an individual business in their own right. Operation of a commercial activity may provide a council with an alternative source of revenue, allowing rates and charges to potentially be reduced.

There is increasing interest in the role that innovation and entrepreneurship can play in delivering high quality public services and how to inject entrepreneurial spirit and innovation into the traditional structures and processes of government. Councils do pursue innovative changes to service delivery; they can and do take considered risks and invest in entrepreneurial activities. Innovation does indeed flow between local government and the private, voluntary and community sectors. To meet the ever-rising public challenges or making the most of private innovation, public entrepreneurship is growing and is supported

with new legislation. Indeed, the future public servant will increasingly need to think and act like an entrepreneur - building new relationships, leveraging resources, working across sector lines and acting, and sometimes failing, fast. Within organisations, this means stimulating innovation through a problem-solving spirit and a natural bent for working more closely with citizens. Across systems, it means building coalitions and cross-sector collaborations that can improve outcomes, control cost and sustain access in ways that span the traditional siloes of government.

Public entrepreneurs are improving our lives, inventing entirely new ways to serve the public - They are using sensors to detect potholes and they are coding in civic hackathons...

The 2020 Act will, from 1 July 2021, give local governments the power to conduct beneficial enterprises (Sections 110-111). Beneficial enterprises are enterprises that benefit the local government area. The term 'enterprise' itself is not defined in the legislation. This means that the dictionary definition can be used and contextualised to local government. 'A company, business, organisation, or other purposeful endeavour in the context of and tempered by the local government principles.'

Unnecessary constraints on beneficial enterprises such as ministerial approvals are removed. The reformed requirements might lead to greater agility in the formation of beneficial enterprises as well as supporting collaboration amongst (neighbouring) councils.

A beneficial enterprise can be formed to carry out any purpose which the council could perform individually. This includes commercial activity, investment of money or the provision of community services. With fewer restrictions and the elimination of the ministerial approval process councils might be more inclined to increase entrepreneurial activities.

An enterprise amongst councils is typically

created as a way for councils to streamline and standardise a particular service potentially over multiple municipalities (for example waste management and recycling facilities or library services). This allows the councils to pool their resources and take advantage of economies of scale.

Encouraging local governments to work more closely together with neighbouring councils yet with a lesser elaborate approval framework to deliver services to the community or carry out functions (for example such as payroll or records management) will create a higher level of services, economies of scale and cost savings.

Simplifying processes and removing the need for ministerial approval where simple co-operative arrangements between councils are supported by business cases, risk and performance management and reporting, will serve as an enabler to sensible reform.

Within a competitive marketplace, the previous onerous requirements on local governments placed them at a commercial disadvantage when compared to the private sector. Lost opportunities represent a cost which may be ultimately borne by the ratepayers.

As with everything else in the Act, the decision to conduct an enterprise must be in line with the local government principles. The local government must apply sound financial principles, as well as complying with the Local Government Act. This means ensuring that the requirements of applicable legislation such as the Corporations Act are met.

## Grants Funding and Procurement

The intersection and similarity between grants and procurement is the aim of achieving value for money, making clear, accountable decisions and using resources efficiently, effectively,

ethically and economically.

Where council expenditure is funded from State or Federal Government grant monies the requirement to comply with section 186 of the Act remains unless there are grant conditions which provide alternative arrangements. This may arise where council's role in the funding arrangement is that of 'fund manager' and passes on funds from another level of government or other body.

Under the new provisions and in the absence of s186, a council's procurement policy will be predominantly guiding how a council to facilitate grant monies in accordance with best practice procurement principles and legislation.

## Supplier Code of Conduct

The Victorian Government's commitment to ethical, sustainable and socially responsible procurement is reflected in its Supplier Code of Conduct, designed to ensure that its suppliers maintain the same values.

The Code outlines the minimum ethical standards in behaviour expected of suppliers when conducting business with or on behalf of the State, in the areas of:

- a. integrity, ethics, and conduct;
- b. conflict of interest, gifts, benefits, and hospitality;
- c. corporate governance;
- d. labour and human rights;
- e. health and safety; and
- f. environmental management.

Some common issues when councils are dealing with suppliers were highlighted by IBAC<sup>11</sup> and include:

- ensuring suppliers are sourced in a way that complies with competition requirements

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<sup>11</sup> IBAC special report on corruption risks associated with procurement in local government, September 2019

- the need for robust information management processes
- the importance of segregation of key elements of the procurement process
- the need to conduct audit and risk assessments
- appropriate training for employees.

In the absence of their own supplier code of conduct councils are strongly encouraged to apply the supplier code of conduct developed for the sector by LGV and taken from the Victorian Government Purchasing Board to help local government suppliers understand minimum standards of conduct when conducting business with councils.

The Supplier Code of Conduct and the Guidelines document are complementary policies. The Supplier Code of Conduct sets minimum standards aimed at reducing harm, whereas this Best Practice Procurement Guidelines encourage inclusive practices aimed at value creation.

The Supplier Code of Conduct will be made available as an appendix to the Best Practice Procurement Guidelines.