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| Ministerial approval application form |
| Application for Ministerial approval under section 186(5)(c) of the *Local Government Act 1989* |

The purpose of section 186 of the *Local Government Act 1989* is to ensure that when tendering for goods, services or works councils are achieving value for money for the benefit of the council and the community, through open and fair competition.

## Applying for Ministerial approval

Section 186(1) of the Act requires councils to carry out a public tender or expression of interest process prior to entering into a contract with a value equal to or more than the relevant threshold.

The Minister for Local Government has the discretionary power to grant an exemption from public tendering under section 186(5)(c) of the Act. However, before exercising that power, the Minister must be satisfied that there are sound reasons to do so. It is not appropriate for the Minister to restrict competition by exercising this power and Ministerial approval should only be sought in exceptional circumstances, where it is clearly warranted.

There is no guarantee approval will be granted by the Minister. Nor can, or will, the Minister grant such an approval retrospectively after a contract has been entered into contrary to section 186(1) of the Act.

Further, a council cannot expect that a decision in relation to an application will be made immediately. Councils need to factor a reasonable timeframe for consideration by the Minister into their planning.

It is important that councils provide sufficient information in the attached application form. If it is necessary for Local Government Victoria (LGV) to request additional information from the council, this may further delay the matter or result in the application being rejected. It is therefore in councils’ interests to manage their contracts and provide as much information as possible at the time of the application.

## Application Form

In accordance with the Best Practice Procurement Guidelines 2013, LGV has developed this application form to assist councils in seeking Ministerial approval under section 186(5)(c) of the Act.

The application form is designed to assist in the timely assessment of an application by ensuring that all key information is provided from the outset.

## Submitting an application

All application forms should be accompanied by a covering letter addressed to the Minister for Local Government, with a copy emailed to Michael Concas, Senior Manager Governance, Legislation & Integrity, Local Government Victoria on local.government@delwp.vic.gov.au

Draft applications can be emailed to LGV for feedback.

## Disclaimer

Approval by the Minister for Local Government does not and cannot represent a guarantee or acceptance of responsibility by the State Government in relation to liabilities incurred or in relation to any aspects of the contract.

Council details

It is important that councils provide the contact details of the council officer leading the procurement in case follow up information is required. It is also necessary that the form be signed off by the council’s chief executive officer or a delegate authorised to enter into the proposed contract.

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| Council |
| Council name |  |
| Council contact officer |
| Name |  |
| Position  |  |
| Telephone  |  |
| Email  |  |
| Approval of chief executive officer (or delegated officer)  |
| Name  |  |
| Signature  |  |
| Date  |  |

Contract details

The requirements for a mandatory public tender or expression of interest process apply to proposed contracts equal to or more than $150,000 for the purchase of goods and services or equal to or more than $200,000 for the carrying out of works.

Councils must provide sufficient information on the proposed contract to enable the application to be processed.

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| Contract parties  |
| Company name of contractor  |  |
| Other contract parties (if applicable) *All participating councils must submit a separate application.*  |  |
| Contact description |
| Is the contract for goods, services or works?  |  |
| Description of the goods, services or works to be provided under the proposed contract  |  |
| Contract value  |
| Estimated total cost of the full term of the proposed contract (including all options to extend) *This must include:** *the applicable goods and services tax (GST)*
* *any other reasonably foreseeable costs.*
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| Funding arrangements *If the project to which the goods, services or works relate is subject to a government grant give details or a copy of the funding agreement and identify the relevant funding department or agency.*  |  |
| Contract commencement  |
| Date on which the council intends to enter into the proposed contract *Approval cannot be granted retrospectively and if the matter is urgent, reasons for the urgency must be provided.* |  |
| Contract end date *This must include any options to extend.* |  |

Current arrangements

Councils must detail the current arrangements in place for the goods, services or works the council is seeking to obtain. This includes whether the council is seeking to extend an existing arrangement.

If the proposed contract is a one-off arrangement for goods, services or works the council has not received to date, the council can state below that they are seeking the enter into a new contractual arrangement.

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| Current contract  |
| Current contract arrangements for the goods, services or works sought *This includes whether the council is currently engaging the proposed contractor for the provision of the goods, services or works and whether the current contract was subject to a competitive tender process.*  |  |
| Assessment of current contract arrangements *This includes any reports, plans, business cases and service reviews on the contractual arrangements for the goods, services or works.*  |  |

Competitive market for the proposed goods, services or works

Councils must demonstrate if and why a public tender or expression of interest process as required under section 186(1) of the Act is not necessary. This can be demonstrated if there is no competitive market and the contract is not contestable, or that there is no alternative for the council other than to contract with a specified contractor in the particular circumstances.

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| Contestability of proposed contract  |
| Is there a market for the proposed goods, services or works? *State whether there is more than one provider within the market that can provide the goods, services or works in accordance with council’s specifications.*  |  |
| Restrictions on contracting with another provider*Detail any restrictions on contracting with another provider, including where government funding is granted on condition that the council engages a particular provider or where a certain body only has the authority to undertake the works on the particular asset or land.* |  |

Best value for money

Councils must demonstrate that the proposed contract will provide council with best value for money by providing information on:

* the benefits to the council and the community of engaging the proposed contractor;
* independent advice or reports obtained by council that are relevant, or support the application;
* whether engaging the provider will result in economies of scale, and be a cost saving to the council compared with any other provider;
* whether the provider is operating on a cost-neutral basis, resulting in a cost saving to the council compared with any other provider

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| Value for money achieved though proposed contract  |
| Explanation as to why and how engaging the proposed contractor will provide the council value for money*Obtaining value for money does not necessarily mean obtaining the lowest price, but rather the best quality and value for the price.* |  |
| Results of market testing or benchmarking *Detail any quotes obtained from other providers.* *Describe any benchmarking of the quality and estimated costs of the goods, services or works that the council has relied upon, including comparisons against similar projects undertaken by the council or other councils.*  |  |