

# PROCUREMENT POLICY

8 June 2021

legislative

## PURPOSE

### **Primary Procurement Principles**

The purpose of this policy is to achieve the principles set out in section 49(a1) of the *Local Government Act 1999 (SA)*, being to develop and maintain procurement policies, practices and procedures that are directed towards:

- obtaining value for money in the expenditure of public money
- providing for ethical and fair treatment of Tenderers
- ensuring probity, accountability and transparency in procurement operations.

*This policy enables the CoA to:*

- *meet legislative requirements and compliance with the Local Government Act 1999 (SA)*
- *deliver best value outcomes*
- *ensure ethical conduct, accountability and transparency*
- *manage risk management factors and ensure continuity of supply*
- *deliver its strategic objectives.*

### **General Procurement Principles**

*The purpose of this policy is also to align to CoA's strategic, corporate and financial objectives.*

### **Scope**

This policy covers all expenditure-related Procurement activities for the provision of goods, works and services to the CoA. This policy applies to anyone who undertakes or is involved in Procurement activities on behalf of the CoA including the CoA's subsidiaries (AEDA, ACMA, and APLA), Council Members and all Suppliers. Compliance with this policy is mandatory unless expressly indicated otherwise.

### **Out of Scope**

This policy does not cover expenditure or revenue related to asset disposals, real property acquisitions and other non-Procurement expenditure including, but not limited to:

- corporate sponsorships
- CoA sponsorships
- grants
- incentive schemes
- funding arrangements
- donations
- employments contracts.

The City of Adelaide acknowledges the Kurna people as the Traditional Owners of the Country where the city of Adelaide is situated, and pays its respect to Elders past, present and emerging.

Please refer to Acquisition & Disposal of Land & Infrastructure Assets Policy and associated Guidelines for more information on asset disposals, real property acquisition and disposals.

**STATEMENT**

The City of Adelaide (CoA) spends significant funds on procuring a wide variety of Goods and Services to assist in meeting the outcomes of its strategic plan, to supplement and broaden the range of its own service delivery to the community and to support all of the functions of the organisation.

It is therefore important that the CoA obtains quality Goods and Services, ensures it is receiving value for money, appropriately manages exposure to any risks, ensures a high level of customer service and maintains transparency and fair dealings with the marketplace.

This policy is supported by three operating guidelines, that are:

- Procure to Pay Guidelines
- Procurement and Contract Management Operating Guideline

Procurement Approval Guidelines.

**PROCUREMENT PRIMARY PRINCIPLES**

**Obtaining value in the expenditure of public money**

The CoA will undertake efficient and effective Procurement and Contract Management activities to ensure that value for money is obtained and public money is wisely spent.

The CoA will have regard to the following measures in obtaining value for money in conjunction with providing for ethical and fair treatment of Tenderers:

Value for Money	<p>The CoA will strive to obtain the best value for money through:</p> <ul style="list-style-type: none"> <li>• consideration of both financial (whole of life costs) and non-financial factors (including risks) associated with the purchase of Goods and Services in a timely and efficient manner, commensurate with the nature of the purchase</li> <li>• monitoring the performance of Suppliers, with the aim of developing open and effective relationships to ensure the delivery of high quality Goods and Services that are fit for purpose and aligned with the CoA’s strategic objectives and values</li> <li>• implementing strategies to avoid unnecessary or repetitive consumption and generation of waste</li> <li>• consideration of alternatives to ownership such as service-based models which may offer long term strategic value.</li> </ul> <p>The lowest cost may not be the only factor in achieving value for money.</p> <p>Value-for-money will include measures of broader benefit to Adelaide city, such as employment, investment and economic development.</p>
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Procurement Methods	<p>The CoA will consider the utilisation of various Procurement methods including, but not limited to:</p> <ul style="list-style-type: none"> <li>• competitive quoting and tendering</li> <li>• negotiating with Tenderers,</li> <li>• CoA managed panels</li> <li>• accessing external panels and Purchasing Cooperatives.</li> </ul> <p>The use of Purchasing Cooperatives will be in accordance with the <i>Competition and Consumer Act 2010</i> (Cth) and with the principle of fair trade and competition.</p>
Risk Management	<p>The CoA will ensure that appropriate practices and procedures of internal control and risk management are in place for its Procurement activities including risk identification, assessment and implementation of controls. Key strategic Procurement risk categories may be considered are:</p> <ul style="list-style-type: none"> <li>• financial risk</li> <li>• operational risk</li> <li>• work, health and safety risk</li> <li>• legal risk</li> <li>• reputational risk</li> <li>• supply chain risk</li> <li>• environmental and climate risk.</li> </ul> <p>Procurement risk assessments will influence the approach to market, with higher risk acquisitions requiring more formal Procurement planning methodologies and higher levels of management oversight.</p> <p>Procurement risk assessments will concentrate on identifying whether the potential Supplier has both capacity and capability to meet the CoA's needs and any other factors that might result in Goods and Services not being provided when required.</p>
Financial risk	<p>To protect the CoA from financial risk, the Procure to Pay Guidelines will be followed by all Council Officers. These controls include the requirement that a purchase may not be split into smaller amounts for the purpose of circumventing the monetary threshold of this policy and the Operating Guidelines. Measures that intentionally seek to avoid thresholds being reached such as invoice splitting, placing multiple orders or seeking multiple quotes with the same Supplier, are in breach of this policy and Operating Guidelines.</p>
Contract Management	<p>It is important that Council Officers responsible for the delivery of Goods and Services by a Supplier manage delivery in reference to the contract. Contract Management will enable the CoA to manage the contract and the Supplier relationship to give value for money and improve performance expectations. The main areas required in Contract Management include:</p> <ul style="list-style-type: none"> <li>• managing delivery (formal governance)</li> <li>• managing the relationship of Suppliers and stakeholders</li> </ul>

	<ul style="list-style-type: none"> <li>• contract administration</li> <li>• procure to pay</li> <li>• continuous improvements</li> <li>• change management.</li> </ul> <p>The CoA will determine the requirement for, and frequency of, these activities by reference to the scale, risks, complexity, duration of the contract and importance of the deliverables.</p>
Supplier relationships	The CoA is committed to developing strategic partnerships with its long term and/or key Suppliers. In the context of Contract Management this involves working collaboratively and sharing information with Suppliers to enable them to deliver innovative solutions and continuously improve their services for the mutual benefit of the Supplier and the CoA.
Work Health & Safety	The CoA is committed to protecting human health, safety and welfare in the workplace. CoA will ensure that its Procurement activities protect the health, safety and welfare of Members, Council Officers, volunteers, customers, Suppliers, third parties and our community.

**Providing for ethical and fair treatment of Tenderers**

The CoA will provide open and fair access to its Procurement activities and maintain ethical treatment of participants through consistent processes.

Ethical and fair treatment	<p>The CoA will provide ethical and fair treatment through:</p> <ul style="list-style-type: none"> <li>• ensuring reasonable access for all suitable and competitive Suppliers</li> <li>• providing adequate, identical and timely information to all participants</li> <li>• undertaking duties in an ethical, impartial and responsible manner whilst exercising sound judgement</li> <li>• buying without favouritism or prejudice.</li> </ul>
Ethical and fair measures	<p>The CoA will have regard to the following measures in providing ethical and fair treatment of Tenderers:</p> <ul style="list-style-type: none"> <li>• ensuring Council Officers disclose any conflict of interest and disregard any personal interest when undertaking a Procurement activity</li> <li>• presenting clear and easy to understand evaluation criteria and methodology</li> <li>• conducting transparent and consistent evaluation processes in line with CoA’s Operating Guidelines</li> <li>• providing feedback to Tenderers on decisions and access to a timely and effective complaints process.</li> </ul>

### Ensuring probity, accountability and transparency in Procurement activities

The CoA will ensure:

- probity is maintained through upholding integrity, honesty, and confidentiality
- accountability and transparency are maintained through appropriate delegations and reporting, and adequate management and provision of information for Procurement activities.

<p>Probity, accountability and transparency</p>	<p>The CoA will ensure probity, accountability and transparency through:</p> <ul style="list-style-type: none"> <li>• conduct in line with Council Members and CoA Code of Conduct for Employees provisions created pursuant to the <i>City of Adelaide Act 1998 (SA)</i> and the <i>Local Government Act 1999 (SA)</i></li> <li>• conduct in line with CoA's Gifts and Benefits Operating Guideline i.e. Council Officers will decline gifts, favours, gratuities or any other benefits from Tenderers or Suppliers which may, or could be deemed to influence equity or impartiality</li> <li>• awareness of the requirements contained within the <i>Freedom of Information Act 1991 (SA)</i> and the <i>Independent Commissioner Against Corruption Act 2012 (SA)</i></li> <li>• ensuring that roles, responsibilities and delegations are clearly established and that there is adequate training and knowledge sharing for Council Members and Council Officers.</li> </ul>
<p>Reporting &amp; Delegations</p>	<p>The CoA will have regard to the following measures in ensuring probity, accountability and transparency:</p> <ul style="list-style-type: none"> <li>• <b>Reporting</b> Council Members will be provided with a quarterly forward procurement plan for consideration, detailing tenders and subsequent contracts that have an estimated value of over \$4,000,000 (ex GST) or that are of high risk and will require Council Member approval.</li> <li>• <b>Approval to Award Contract by Council Members</b> Council Members will be requested to approve the award of all contracts that exceed \$4,000,000 (ex GST). In accordance with sections 90 and 91 of the <i>Local Government Act 1999 (SA)</i>, all tender and contract award reports will be submitted to Council Members in confidence because they contain commercially sensitive information and to allow for effective negotiation up to contract execution. Generally, a contract award report will be submitted once contractual negotiations with the preferred Tenderer have taken place. However, there may be occasions of expediency that require a contract award report to be submitted to Council Members prior to completion of negotiations. In that instance, approval</li> </ul>

	<p>of the preferred Tenderer may be delegated to the Chief Executive Officer (CEO) or their delegate</p> <ul style="list-style-type: none"> <li>• A forward procurement plan for procurement activity over \$150,000 (ex GST) will be published on the CoA website.</li> </ul> <p><b><u>Delegations &amp; Approvals</u></b></p> <ul style="list-style-type: none"> <li>• The Council Members may delegate the approval for the expenditure of money for Goods and Services as per section 44 of the <i>Local Government Act 1999</i> (SA)</li> <li>• The CEO has delegated authority to award contracts and approve expenditure within a Council Member’s approved budget up to and including \$4,000,000 (ex GST). A summary of the Procurement delegations can be found in the Procurement Approval Guidelines</li> <li>• Council Officers will not incur expenditure unless the funds are allocated within a budget approved by Council Members and/or it is reasonably assumed that the expenditure amount will be included in a future budget</li> <li>• The CEO has delegated authority to award contracts that exceed \$4,000,000 (ex GST) pursuant to Purchasing Cooperative arrangement, provided that the contract is within the Council Member’s approved budget.</li> </ul>
Confidentiality	The CoA undertakes to take all reasonable steps to preserve the confidentiality of the information it obtains from a Tenderer or Supplier.

**PROCUREMENT GENERAL PRINCIPLES**

Planning for Procurements is to include consideration of how the Goods and Services can contribute to the outcomes outlined in the CoA’s strategic plan through the following means, where practical:

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Use of local goods and services	<p>Procurements are to be undertaken with a view to supporting local businesses. In the order of consideration, these are those based or with significant operations in:</p> <ul style="list-style-type: none"> <li>• the Adelaide city (physical address of operation, located in postcode 5000 and 5006)</li> <li>• South Australia</li> <li>• Australia.</li> </ul> <p>The support to be provided, which will endeavour to comply with the principles of the State Government’s South Australian Industry Participation Policy, is to include:</p> <ul style="list-style-type: none"> <li>• ensuring local Suppliers have the opportunity to provide tenders in each Procurement</li> <li>• maximising the total hours of work allocated to locally based workers</li> </ul>
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	<ul style="list-style-type: none"> <li>• maximising the value of materials sourced from and/or manufactured by local businesses</li> <li>• creating new employment and work training opportunities in the local area</li> <li>• encouraging new capital investment in the local area.</li> </ul>
Social Enterprise Engagement	<p>Using the power of the marketplace to solve the most pressing societal problems, social enterprises are commercially viable businesses existing to benefit the public and the community, rather than shareholders and owners.</p> <p>An organisation is considered to be a social enterprise where:</p> <ul style="list-style-type: none"> <li>• the enterprise has a defined primary social purpose, environmental or other public benefit</li> <li>• the enterprise derives a substantial portion of its income from trade</li> <li>• the enterprise reinvests 50% or more of annual profits towards achieving the social purpose.</li> </ul> <p>In essence, social procurement is where the organisation procures the product or service with the potential added value created through jobs and opportunities for people who may have struggled to find work, reinvigoration of depressed or marginalised communities as well as driving better business outcomes through improved staff engagement and positive brand messaging. Procurements are to be undertaken with a view to supporting social enterprises to meet the needs of the community.</p>
Environmental	<p>Maintain a commitment to long-term ecological environmental sustainability through procurement and contracting activities (for Tier 1 and Tier 2 and or higher risk procurement activities) that:</p> <ul style="list-style-type: none"> <li>• reduce the use of natural resources water and energy,</li> <li>• minimise generation of waste in manufacturing and distribution, use and disposal</li> <li>• minimise environmental impacts to air, land, water.</li> <li>• minimise environmental greenhouse gas emissions.</li> </ul> <p>The following actions will be implemented (where practical) to achieve the above outcomes:</p> <ul style="list-style-type: none"> <li>• prioritising products that support a circular economy (i.e. reuse, sharing, repair, refurbishment, remanufacturing, service based, and extended producer responsibility) and can be composted or recycled</li> <li>• considering climate change impacts to assets and services when making decisions on longer term contracts</li> </ul>

	<ul style="list-style-type: none"> <li>requesting sufficient information from Suppliers such as certification and labelling to enable evaluation of issues relative to environmental impacts, particularly waste, greenhouse gas emissions and climate change impacts.</li> </ul>
Cultural	<p>Cultural procurement means providing opportunities for artists, makers and creatives in the arts and creative industries.</p> <p>For purposes of this Policy, where a supply involves a creative aspect, CoA will utilise the procurement, where practical, to engage with South Australian makers and creatives in the arts, and creative industries who will deliver programs and activities in the CoA local government area. These programs and activities will be for the City community and contribute to the cultural life and vitality of the City. Examples of makers and creatives include artists, illustrators, photographers, designers, authors, musicians, performers, jewellers and production teams.</p> <p>By doing so CoA will showcase and support artists, makers and creatives to build their enterprises, and support the “Cultural Lens” goals in the CoA Cultural Strategy.</p>
Aboriginal and Torres Strait Islander Support	<p>The CoA is committed to supporting Aboriginal and Torres Strait Islander businesses and promoting the employment of Aboriginal and Torres Strait Islander peoples. To support this commitment, the CoA, where deemed appropriate, will include a weighted evaluation criterion that assesses the Tenderers’ credentials in engaging Aboriginal and Torres Strait Islander people.</p> <p>The ‘City of Adelaide Stretch Reconciliation Action Plan 2021-2024’ outlines the CoA’s commitment.</p>

To ensure that the procurement of the Goods and Services contribute to the outcomes outlined in the CoA’s Strategic Plan 2020-2024 through the means outlined above, specific targets and action plans will be set for each of the five means. Targets will reflect what can realistically be achieved and will be based on the size of the supply market available to Council for each means in the 5000 and 5006 postcode areas and South Australia more broadly.

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**CONDUCT OF PROCUREMENTS**

The CoA will undertake an open competitive market approach for all Procurements valued over \$150,000 (ex GST) other than:

- when undertaking a secondary procurement based on an existing agreement (for example when buying off a panel contract)
- when procuring from a Purchasing Cooperative

- where a Non-Tendered Approach or a select market approach may be the most appropriate method of purchasing. In the circumstances of a Non-Tendered Approach the CoA will record the reasons for this approach.

Procurements that have an open market approach will be advertised on the SA Tenders and Contracts website: <https://www.tenders.sa.gov.au>. A link to the SA Tenders and Contracts website is also provided on the CoA's website.

Where the CoA accesses a Purchasing Cooperative (such as a Local or State Government panel or contract) established in accordance with transparent competitive tendering processes, it is deemed that these are contracts resulting from a tender process and as such will not be recorded as a Non-Tendered Approach.

Where requests for tender or proposals have been invited for a contract for the provision of Goods and Services, the CoA may negotiate with one or more of the Tenderers. Further, if the CoA determines it appropriate, the CoA may negotiate with any other person who is not a Tenderer and enter into a contract on such terms as CoA deems fit whilst ensuring probity is maintained for any negotiation undertaken.

The CoA may close a tender if there are no suitable tender submissions received and proceed to negotiate with any one or more of the Tenderers or any other entity.

### **EMERGENCY PROCUREMENT**

When responding to an emergency in accordance with the provisions of the South Australian Government's State Emergency Management Plan or formal arrangements outlined in other state or Commonwealth emergency service-related legislation – Procurement activities should be undertaken in the most expedient manner possible.

Procurement activities undertaken in response to an emergency situation should, to the maximum extent possible, comply with CoA's normal policies and guidelines.

Requirements relating to Procurement planning will be waived for any procurement that is required as a result of an emergency that falls under the purview of the State Emergency Management Plan.

### **ENGAGEMENT OF SUPPLIERS AND EXECUTION OF AGREEMENTS**

The final decision to execute a contract with a Supplier (including the issue of purchase orders and the extension of existing contracts) is subject to the approval to expend funds pursuant to sections 36, 37, 44(3)(e), 133 and 137 of the *Local Government Act 1999* (SA).

The execution of the contract is to be undertaken in accordance with the Procurement Approvals Guideline.

### **MONITORING & IMPLEMENTATION**

This policy becomes effective upon approval by the Council Members of the CoA. Implementation and maintenance of the policy is the responsibility of the Chief Operating Officer and Finance and Procurement. In addition, the Chief Operating Officer and Finance and Procurement, are responsible for monitoring and reporting policy adherence.

### **BREACH OF POLICY OR PROCEDURES**

Non-compliance with this policy may result in a breach of CoA's legislative requirements and disciplinary actions, including dismissal. In addition, criminal and civil penalties may be imposed if Council Members, Council Officers, Tenderers or Suppliers breach fraud, corruption, bribery or Australian Consumer Laws.

All serious breaches or non-adherence to this policy or guideline will be reported to the CoA's CEO as soon as practicable after the breach has been discovered. The CEO may refer the matter to its external audit committee. A serious breach is one that leaves the CoA open to a risk rating of high in terms of likelihood or consequence as defined by the CoA's Risk Management Operating Guidelines.

### **OTHER USEFUL DOCUMENTS**

#### **Relevant Legislation**

*The Local Government Act 1999* (SA) in particular section 49, is relevant to the tendering process, however various other acts and regulations apply to the CoA's diverse range of Procurement activities. This policy is intended to supplement these instructions. Any inconsistency that may arise between this policy and a relevant act or regulation shall be resolved in favour of the act or regulation.

In accordance with the *Freedom of Information (Miscellaneous) Amendment Act 2004* (SA), any contracts to which the CoA is a party, which require any part of the contract to be considered confidential, must include the approved confidentiality clause. Any contracts using the confidentiality clause must be reported to the Freedom of Information Officer by the Procurement and Contract Management team, who reports via the Freedom of Information reporting system.

Council Officers (and Suppliers) are subject to the *Independent Commissioner Against Corruption Act 2012* (SA) which has been established to identify corruption in administration, and prevent or minimise corruption, misconduct and maladministration.

In addition, Council Officers must act in accordance with the CoA's Code of Conduct for Employees and always display behaviours that align with the concepts of honesty, integrity, probity, diligence, fairness, trust and respect in their undertakings with a procurement and contract management activity.

#### **Related documents**

- City of Adelaide Code of Conduct for Employees
  - Employee Conflict of Interest Operating Guideline
  - Gifts and Benefits Operating Guideline
- Acquisition & Disposal of Land & Infrastructure Assets Policy
  - Acquisition & Disposal of Land and Infrastructure Assets Operating Guideline.

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### **GLOSSARY**

Throughout this document, the below terms have been used and are defined as:

**Adelaide Central Market Authority (ACMA):** means the authority which supports the Adelaide Central Market (ABN 54 824 264 891) a subsidiary of the CoA.

**Adelaide Economic Development Agency (AEDA):** means the agency which supports economic development of the City of Adelaide as a subsidiary of the CoA.

**Adelaide Park Lands Authority (APLA):** means the subsidiary of the CoA established under the *Local Government Act 1999 (SA)* and the *Adelaide Park Lands Act 2005 (SA)* which provides advice to the CoA and State Government on the management of the Adelaide Park Lands.

**CoA:** means The Corporation of the City of Adelaide (ABN 20 903 762 572) trading as City of Adelaide.

**Contract Management:** means the management of Supplier's performance against the contract including the key performance indicators/deliverables stipulated in the contract.

**Council Members:** means the elected members of the CoA.

**Council Officers:** means any employee, contractor, consultant, temporary member of staff working for, or on behalf of, the CoA.

**Goods and Services:** mean goods, services and works procured externally by the CoA.

**GST:** means the goods and services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Non-tendered:** A Procurement activity in which goods, works or services are directly sourced from a single Supplier.

**Operating Guidelines:** means the operating guidelines that support this policy.

**Procurement:** means the whole process of acquisition of goods, works or services whether by tender, quote, expression of interest or any other similar process. The procurement continuum spans the whole life cycle from initial concept, contracting and Contract Management through to the end of a services contract, cessation of the supply of goods and the whole of life considerations of an asset.

**Purchasing Co-operative** means any cooperative purchasing group, including but not limited to the Local Government Association.

**Supplier:** means any external person or entity providing, or offering to provide, Goods and Services to the CoA.

**Tenderer:** means any person or entity that has made an offer to the CoA in response to a Procurement activity.

## ADMINISTRATIVE

As part of Council's commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or, when there is no such provision, a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every three years unless legislative or operational change occurs beforehand. The next review is required in July 2024. The Manager, Finance & Procurement has overall responsibility for the maintenance, review, approval and support of documents relating to Procurement activities.

When procurement occurs within a program, it remains the responsibility of the individual Associate Director *and their Director (or equivalent) to ensure compliance to this policy.*

**Review history:**

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2021/94021	Council	8 June 2021	<i>General Improvements. Increased focus on the use of local goods and services, and Aboriginal, social, environmental and cultural outcomes. Less prescriptive in application of the formula of the State Government's Industry Participation Policy. The Policy will allow for the weighting to be varied for each procurement. Change in open market approach threshold from \$100,000 to \$150,000. (Minor formatting changes made by administration).</i>
ACC2016/179390	Council	6 December 2016	
ACC2013/103644	Council	16 July 2013	
ACC2011/29292	Council	8 March 2011	

**Contact:**

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