



## **Exemption Procedure**

from the Request for Public Tender and Request  
for Quotation Processes

Under the Procurement Policy

Approved on 29 June 2021

Exemption Procedure under the Procurement Policy	effective Date: 1 July 2021
Exemption Procedure under the Procurement Policy Rev .1.3	effective Date: 1 July 2021

## 1. BACKGROUND

The Exemption Procedure from the Request for Public Tender and Request for Quotation Processes ('Exemption Procedure') is established:

- in line with the Procurement Policy which was adopted by Council on 29 June 2021
- to provide guidance to Council employees about the type of goods, services or works which are exempt from the requirements of the public tendering or request for quotation processes.

## 2. PURPOSE

The purpose of the Exemption Procedure is to:

- set a good governance and compliance direction for Council and Council employees in undertaking procurement;
- provide guidance to Council employees about the exemptions from the public tendering and request for quotation processes and how to apply for exemption;
- achieve compliance with relevant legislative requirements;
- ensure that Council resources are used efficiently and effectively in the best interests of the local community;
- achieve high standards of probity, transparency, accountability and risk management.

## 3. APPLICATION OF THE EXEMPTION PROCEDURE

This Exemption Procedure will apply to all Council employees and all persons engaged in procurement on Council's behalf. With the Chief Executive's approval, exemptions can be added or removed at any time.

## 4. COMPLIANCE WITH THE PROCUREMENT PRINCIPLES

Where an exemption applies under clauses 5 and 6, the key procurement principles as set out below will still apply:

- a. value for money;
- b. maintaining transparency and accountability;
- c. maintaining probity;
- d. managing risk;
- e. open and fair competition;
- f. compliance with Council's Officer Code of Conduct requirements;
- g. avoiding and managing conflict of interest, perceived or real, *and*
- h. ensuring compliance with confidentiality principles.

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## 5. NON- APPLICATION OF THE PROCUREMENT PROCESS

**Note: exempt from market engagement and/or the requirement for a Purchase Order**

Procurement process will not apply to the following payments:

### 5.1 Statutory Payments

- Legislative or statutory requirements such as payments to the Australian Taxation Office, fire and EPA Victoria levies and/or fines
- Payments under the Building and Construction Industry Security of Payment Act 2002
- Roads Corporation of Victoria (VicRoads) payment for fleet management

### 5.2 Council Employees and Councillors

- Superannuation
- Payroll Deductions
- WorkCover, Injury Management
- Licences or Membership and Subscription Renewals
- Mayor and Councillor allowances, expenses and reimbursements

### 5.3 Council Owned, Leased or Managed Properties

- Sale or Purchase of Land
- Lease or Licence of Property
- Warranty or Renewals
- Investments/Terms deposits
- Loan contracts and investments
- Contracts for sale of goods
- Grants (from the Federal or State Government) 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.

### 5.4 Others

- Sundry Funds (such as pension rebates, deceased animal refunds)
- Utility Services such as gas, water, sewerage charges, telecommunication whereby the infrastructure is owned and managed by a single or particular party.
- Australia Post charges
- Medical expenses
- Legal Services
- Refundable trust funds- Includes Security Bonds, Contract Retentions and other funds held in trust.
- Venue Hire
- Audit fees
- General advertising
- Recruitment advertising

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## 6. EXEMPTIONS FROM THE GENERAL PUBLICLY ADVERTISED TENDER, QUOTATIONS AND EXPRESSION OF INTEREST REQUIREMENTS:

6.1 **Sole Supplier** There is one or a limited number of available tenderers in the market or suppliers able to submit quotations or the marketplace is restricted by statement of license, Intellectual Property or third-party ownership of an asset (excluding public utility plant)

6.2 **It is in the public interest**

6.3 **Emergency** - where the Chief Executive Officer decides that the contract must be entered into because of an emergency. Council must consider delegation of this power to the CEO.

### Emergency means:

- the occurrence of a natural disaster such as flooding, bushfire or epidemic which may require the immediate procurement of goods, services or works to provide relief;
  - a state disaster declared under the *Emergency Management Act 1986*;
  - the occurrence of an event such as flooding, fire or other significant damage to a Council property which may require the immediate procurement of goods, services or works to ensure business continuity;
  - any sudden or unexpected destruction to Council property or Council business such as IT breakdown or failure;
  - the unforeseen cessation of trading of a core service provider due to bankruptcy and a need to appoint a replacement service provider on the grounds of public safety;
  - any other situation which might present a risk to public health, safety and/or security;
  - any other situation which might present a risk to Council employees' health, safety and/or security;
  - any other situation which is liable to constitute a risk to Council's property
- 6.4 **Supplier with highly specialised skills or expertise** - this applies where Council needs highly specialised or expertise advice. The transparent way of engaging the supplier would be demonstrating that multiple suppliers do not exist to provide the goods or service and Council will receive value for money by using the supplier's goods or service.
- 6.5 **Operating Lease** - Operating Lease such as leasing a vehicle or plant and equipment for a fixed monthly amount, and also a lessor (not Council) assumes the residual value risk of the asset. The asset under the operating lease does not vest in the Council.
- 6.6 Council employees who are requesting exemption from the Request for Quotation process under this clause 6 must submit a 'Request for Exemption

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Form' to seek the Chief Executive Officer or a Director approval. **See Attachment A - Request for Exemption Form.**

- 6.7 Approval will be subject to the financial delegation of either the Chief Executive Officer or a Director except clauses 6.2 and 6.3 which will be approved by the Chief Executive Officer.
- 6.8 **Emergency** - where Council has resolved that the contract must be entered into because of an emergency. See definition of emergency under clause 6.3 of this Procedure. Council must consider delegation of this power to the CEO.
- 6.9 **Insurance;**
- The public liability and professional liability insurances taken out by Council, which is a member of, or participates in, MAV Insurance scheme which is approved by the Minister.
  - WorkCover insurance;
  - Motor Vehicle compulsory third party insurance.
- 6.10 **Collaborative Arrangement** - Council may procure goods, services or works with a council acting as the agent for a group of councils.
- 6.11 **Information technology resellers and software developers-** 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.
- 6.12 **Legal Services/costs** - a contract for legal services or legal costs.
- 6.13 Professional workshop and conference registration fees and associated costs.
- 6.14 **VEC** - payments to the Victorian Electoral Commission (VEC).
- 6.15 **Collaborative / Approved Arrangements:**  
Council may procure goods, services or works without undertaking public tender process through:
- Situations where a regional waste management group is established and had already conducted a public tender on behalf of its member councils.
  - Municipal Association of Victoria Procurement (MAV Procurement).
  - Construction Supplier Register (CSR) which is a pre-qualification scheme for building and construction industry contractors and consultants.
  - Procurement Australia (PA).
  - State Purchase Contracts (SPCs) and Whole of Victorian Government Contracts (WoVGs).
  - E-Services register – whole of Victorian government pre-qualification register for multiple suppliers for IT services, equipment, and maintenance.
- 6.16 Council employees must ensure that they follow the rules, where applicable, required by the above agents specified under clause 6.15

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6.17 **Novated Contract** - Novated contracts are exempt from public tendering providing:

- the initial contract was entered into in compliance with the *Local Government Act 2020*
- the Council has undertaken due diligence in respect of the new party to the contract.

6.18 Council employees are not required to submit any Request for Exemption Form for procurement under this clause 6.

## 7. RECORD MANAGEMENT

7.1 Upon approval of any Request for Exemption Form, record it together with any supporting document/s against the relevant project name and/or number, or together with a Purchase Order in the Enterprise Content Management (ECM) and the relevant file.

## 8. FEEDBACK ABOUT THE EXEMPTION PROCEDURE

8.1 You may provide feedback about this document by emailing to Council's Procurement Team at [procurement@gplains.vic.gov.au](mailto:procurement@gplains.vic.gov.au)

## 9. DOCUMENT INFORMATION

<b>DOCUMENT TYPE:</b>	Procurement Policy document
<b>DOCUMENT STATUS:</b>	Director Corporate Services
<b>DOCUMENT OWNER POSITION:</b>	
<b>APPROVED BY THE CHIEF EXECUTIVE OFFICER ON: VERSION NUMBER:</b>	2
<b>REVIEW DATE:</b>	TBC or as and when required by Senior Management Team
<b>EVIDENCE OF APPROVAL:</b>	 Signed by Chief Executive Officer
<b>NOTES:</b>	This Exemption Procedure is amended from time to time; therefore, you should not rely on a printed copy being the current version. Please consult Council's Procurement Team or send an email to:  <a href="mailto:procurement@gplains.vic.gov.au">procurement@gplains.vic.gov.au</a>

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