



Exemption Procedure

from the Request for Public Tender
and Request for Quotation Processes

**Under the Procurement Policy
Approved on 28 March 2023**

CONTENTS

PURPOSE	3
SCOPE	3
PROCEDURE	3
RESPONSIBILITIES.....	7
RELATED LEGISLATION AND DOCUMENTS	7
HUMAN RIGHTS STATEMENT OF COMPATABILITY.....	8
PROCEDURE OWNER.....	8
FEEDBACK	8
DOCUMENT INFORMATION.....	9

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.

SCOPE

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 28 March 2023.
- 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.

PROCEDURE

1. Application of the Exemption Procedure

- 1.1. 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.

2. Compliance with the Procurement Principles

- 2.1. Where an exemption applies under clauses 3 and 4, 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.

3. 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:

3.1. Statutory Payments

- Legislative or statutory requirements such as payments to the Australian Taxation Office, fire, and EPA Victoria levies and/or fines.

3.2. Payments under the Building and Construction Industry Security of Payment Act 2002.

3.3. Roads Corporation of Victoria (VicRoads) payment for fleet management.

3.4. Council Employees and Councillors

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

3.5. 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.

3.6. 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 and Probity Services
- Refundable trust funds- Includes Security Bonds, Contract Retentions and

other funds held in trust.

- Venue Hire
- Audit fees
- General advertising
- Recruitment advertising
- Landfill costs

4. Exemptions from the General Publicly Advertised Tender, Quotations and Expression of Interest Requirements:

4.1. **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).

4.2. **It is in the public interest.**

4.3. **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.

4.4. **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.

4.5. **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.

- 4.6. Council employees who are requesting exemption from the Request for Quotation process under this clause 4 must submit a 'Request for Exemption Form' to seek the Chief Executive Officer or a Director approval. **See Attachment A - Request for Exemption Form.**
- 4.7. 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.
- 4.8. **Emergency.** Where Council has resolved that the contract must be entered into because of an emergency. See definition of emergency under clause 4.3 of this Procedure. Council must consider delegation of this power to the CEO.
- 4.9. **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.
- 4.10. **Collaborative Arrangement.** Council may procure goods, services, or works with a council acting as the agent for a group of councils.
- 4.11. **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.
- 4.12. **Legal Services/costs.** A contract for legal services or legal costs.
- 4.13. **Professional workshop and conference registration fees and associated costs.**
- 4.14. **VEC.** Payments to the Victorian Electoral Commission (VEC).
- 4.15. **Collaborative / Alternate Arrangements:**

Council may procure goods, services, or works without undertaking public tender process through collaborative/alternate arrangements, government or nominated agents such as:

 - Municipal Association of Victoria Procurement (MAV Procurement).
 - Procurement Australia (PA).
 - State Purchase Contracts (SPCs) Whole of Victorian Government Contracts (WoVGs), Construction Supplier Register (CSR) and e-Services Register.
 - Public Bodies, Authorities or Agencies such as Barwon Water, Waste and Resource Recovery Groups (WRRGs) or any successor in law.
- 4.16. Council employees must ensure that they follow the rules, where applicable, required

by the above agents specified under clause 4.15.

4.17. Novated Contract. Novated contracts are exempt from public tendering providing:

- The initial contract was entered into in compliance with the Local Government Act 1989 and 2020.
- The Council has undertaken due diligence in respect of the new party to the contract.

4.18. Council employees are not required to submit any Request for Exemption Form for procurement under this clause except for 4.1 and 4.4.

RESPONSIBILITIES

Compliance, monitoring, and review

The procedure owner is responsible for ensuring the procedure:

- aligns with relevant legislation, government procedure and Council's requirements/strategies/values.
- is implemented and monitored (i.e., the procedure is followed, reflects the changing procedure environment, and emerging issues are identified); and
- is reviewed to evaluate its continuing effectiveness (e.g., achieving its purpose, remains relevant/current).

Reporting

No additional reporting is required.

Records Management

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.

Council must maintain all records relevant to administering this procedure in accordance with the Public Records Act 1973.

RELATED LEGISLATION AND DOCUMENTS

Strategic Documents, Policies or Procedures

- Procurement Policy
- Complaints Handling Procedure
- Council's Officer Code of Conduct
- Councillor Code of Conduct
- Risk Management Policy

- Occupational Health and Safety Policy
- Other relevant Policies

Legislation

Council must comply with all the relevant provisions of the Acts and Regulations in all procurement matters, including but not limited to:

- Charter of Human Rights and Responsibilities Act 2006 (Vic)
- Competition and Consumer Act 2010 (Cth)
- Local Government Act 2020 (Vic)
- Local Government (General) Regulations 2015 (Vic)
- Modern Slavery Act 2018
- Occupational Health and Safety Act 2004 (Vic)
- Occupational Health and Safety Regulations 2017 (Vic)
- Privacy and Data Protection Act 2014 (Vic)
- Public Records Act 1973 (Vic)
- Other relevant legislative instruments.

HUMAN RIGHTS STATEMENT OF COMPATABILITY

It is considered that this procedure does not impact negatively on any rights identified in the Charter of Human Rights and Responsibilities Act 2006 (Vic). Council is committed to consultation and cooperation between management and employees. Council will formally involve elected employee Health and Safety Representatives in any workplace change that may affect the health and safety of any of its employees.

PROCEDURE OWNER

- The Director Corporate Services in the procedure owner.
- The procedure owner is the individual who is given the responsibility to review, edit and maintain this procedure and associated procedure. They are also the point of contact for any questions regarding this procedure.

FEEDBACK

You may provide feedback about this document by emailing to Council's procurement team at procurement@gplains.vic.gov.au

DOCUMENT INFORMATION

DOCUMENT TYPE:	Procedure
DOCUMENT STATUS:	Approved
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NOTES:	<p>Procedure documents are amended from time to time, therefore you should not rely on a printed copy being the current version. Please consult Council's Procedure page on the Golden Plains Shire Council website to ensure that the version you are using is up to date. Available at:</p> <p>https://intranet.goldenplains.vic.gov.au/the-hub</p>