

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

CORPORATE SERVICES

20 JUNE 2016

8.3

PROCUREMENT, TENDERING AND CONTRACT MANAGEMENT POLICY SUITE REVIEW

**Attachment No: 2
Procurement Policy**



Procurement Policy

Policy Owner	Procurement & Contracts Management Coordinator Advisor Finance
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Please check Council's Intranet to ensure this is the latest Revision

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PURPOSE

This document is issued under the authority of the Chief Executive Officer in accordance with Section 186a of the *Local Government Act 1989*. It includes the Authorised Procurement Policy as approved by the Council. The Policy and supporting principles are intended to provide Mitchell Shire Council management and staff with a clear statement of their responsibilities and limitations in regard to procurement activities.

Treatment of GST

All monetary values stated in this policy exclude GST

SCOPE

The procurement policy applies to:

- all procurement of goods, services or works within Mitchell Shire Council in particular where formal contracts are signed
- all sites and Business Units of Mitchell Shire Council

POLICY

AUTHORISED PROCUREMENT POLICY AUTHORITY

The Mitchell Shire Council met on 23 April 2012 and resolved to adopt the Mitchell Shire Council Procurement Policy detailed below.

Procurement is governed by this Procurement Policy, along with the Contracts Management Policy and Tendering Policy, both which are subordinate to the Procurement Policy.

Mitchell Shire Council Procurement Policy

Mitchell Shire Council, as a Local Government Entity (LGE), manages its procurement of goods, services and works to obtain best value for money and maximise operational benefits, whilst maintaining the highest standards of corporate responsibility, particularly in relation to its customers, employees and the environment.

At all times, Mitchell Shire Council will, within the context of a competitive market place, act fairly and ethically to ensure that there is accountability in its relationships with both potential and established suppliers.

All procurement arrangements must be authorised by an employee of Mitchell Shire Council who holds appropriate procurement delegation authority commensurate with the total procurement value.

In most circumstances, a formal written contract will be required and Mitchell Shire Council reserves the right to cancel any informal or irregular procurement arrangements.

Information exchanged between Council and its suppliers/business partners is

frequently given 'in-confidence'.

Council employees and businesses must not allow 'commercial-in-confidence' information to be made known to anyone who has no right to it. Competing companies are **never** to be given another company's information in regard to performance specifications nor any aspects of pricing, quotation, tender, bid, or any other commercial or proprietary information.

POLICY EXCLUSIONS

The Procurement Policy excludes:

- Legal Services – exempt from Section 186 of the Act
- Legislated purchases and commitments
- Employment Agreements
- Real Estate acquisitions, disposals and leases
- Emergency - Council may enter into a contract up to or beyond the threshold limits for the provision of goods, services or works without first that contract to public tender if the Council resolves that the contract must be entered into because of an emergency.
- The Minister for Local Government has approved the arrangements for the purposes of section 186(5)(c) of the Local Government Act 1989, for councils to enter into a contract made available by Procurement Australia & Municipal Association of Victoria Procurement for the provision of goods, services or works.

CORPORATE SOCIAL RESPONSIBILITY (CSR)

Mitchell Shire Council will consider the following:

- Strategies in the whole procurement lifecycle that act to avoid unnecessary consumption and manage demand
- Minimise environmental impacts of all goods, services and works of the entire lifecycle including after contract end and for disposal
- The Suppliers' CSR policies, practices and compliance to all relevant legislative obligations

KEY PRINCIPLES

Lowest Total Cost of an Acceptable Solution

Purchasing decisions should aim to achieve an acceptable solution at the lowest total cost.

Lowest total cost should be determined by considering all significant costs associated with the acquisition. The nominal purchase price is important but other considerations such as timing, delivery, storage, trading terms, warranty, and ease of administration should be considered if relevant. In the case of plant and equipment, whole of life costing should be used.

Whole of life costing means total cost of ownership.

Typical areas of expenditure which are included in calculating the whole-life cost include, planning, design, acquisition, operations, maintenance, renewal and rehabilitation, depreciation and cost of finance and replacement or disposal.

Competition and Local Economic Benefit

Open and effective competition is important to obtaining the best possible outcomes from dealings with suppliers.

Competition implies pursuit of best value for money, the opportunity for potential suppliers to do business with Council, absence of bias or favoritism, accountability for results and transparency of process.

The extent to which competition may be available and appropriate will vary from case to case, depending upon such things as the number of potential suppliers and the costs and benefits of promoting competition.

Mitchell Shire Council is committed under this policy to buying from local businesses within the Shire where such purchases are justified on “value for money” grounds.

Where a local supplier is identified, they will be requested to quote. A five per cent weighting is to be allowed for local economic benefit when assessing tenders.

Environmental Sustainable Procurement

Council is committed to achieving responsible environmental management. Council shall consider and evaluate relevant environmental factors in the procurement of goods, services and works.

Environmental considerations will have regard to the environmental sustainability of the project. Different goods, services and works have different levels of environmental impact (risk) and opportunity within them. In identifying environmental procurement priorities, both factors need to be taken into account. In order to ensure comparability between competing suppliers and to ensure Council’s intent is clear, environmental requirements must be established in the order, scope of requirement or specification.

The specification should nominate specific environmental targets. Examples of these would include goods with defined energy consumption ratings, requirements for recycled materials to be included in building and construction works, and specifications for building design and construction.

Implementation and Training

The Procurement ~~and Contracts Management Coordinator~~[Advisor](#) will ensure that the Procurement Policy, Procurement Templates and Reference Guides are readily available to all Council staff via the intranet (Info exchange).

All Council staff and Councilor’s, as part of their duties, must undergo training on the Procurement Policy, with updates as required reflecting changes in legislation,

procedures, and practices. Regular procurement training is required for staff who are required to undertake procurement functions, or who supervise staff who undertake such functions in accordance with the induction training program.

In appointing new Officers, a Manager is to ensure that the Officer has been provided with a copy of this Policy and training.

PROCUREMENT, GOVERNANCE AND AUTHORISATIONS

DELEGATIONS AUTHORITY

Delegations and authorisations define the limitations within which Council staff are permitted to operate. Delegation or authorisation of procurement authority allow specified Council staff to approve certain purchases, quotation, tender and contractual processes without prior referral to the Council. This enables Council to conduct procurement activities in an efficient and timely manner while maintaining transparency and integrity.

Procurement delegations and authorisations ensure accountability and provide confidence to Council and the public that purchasing activities are dealt with at the appropriate level.

Council Staff

The Council shall maintain financial delegations that identify Council staff authorised to make procurement commitments in respect of goods, services and works on behalf of the Council

For procurements where the total contract sum does not exceed \$136,363 (\$150,000 GST incl) (goods and services) or \$181,818 (\$200,000 GST incl) (works)

- Acceptance of tenders
- Acceptance of quotes
- Contract term extensions (within budget)
- Contract amendment (financial and non-financial)
- Procedural exceptions
- Appointment to register of pre-qualified suppliers

Decisions Reserved for the Council

For procurements where the total contract sum equals or exceeds \$136,363 (\$150,000 GST incl) (goods & services) or \$181,818 (\$200,000 GST incl) (works), the following commitments and processes must be approved by Council:

- Award of tenders
- Signing and sealing of contract documents
- Contract term extensions for contracts signed and sealed by Council
- Contracts and tenders requiring additional budget

Financial Approval Delegations effective 1 July 2015 are detailed below.

Council Officer and Authorisation Limit
\$300,000.00 (ex GST) Chief Executive Officer
\$100,000.00 (ex GST) Directors
\$50,000.00 (ex GST) Manager Engineering Services Manager Operations Manager Parks & Assets Manager Active Communities Manager Community Strengthening Manager Business Transformation
\$20,000.00 (ex GST) Manager Finance and Governance Manager Organisational Development People and Performance Manager Strategic Planning Manager Statutory Planning & Compliance
\$10,000.00 (ex GST) Coordinators
\$5,000.00 (ex GST) Executive Assistants
\$2,000.00 (ex GST) Officers (Approved by CEO Sub Delegation)

PREFERRED SUPPLIER AGREEMENTS

Where Preferred Supplier(s) Agreements are in place, Council Officers should:

- Utilise the established Mitchell Shire Preferred Suppliers listing for supplier selection. Refer to the Mitchell Shire Contracts Register.
- Also be aware of the Procurement Australia Supplier contracts available to Council for use as a participant in their contracts. Refer to the Mitchell Shire Contracts Register.
- Also be aware of the MAV Procurement contracts available to Council as a MAV member organisation. Refer to the Mitchell Shire Contracts Register.
- Also be aware of the Victorian State Government Whole of Government [\(WHOG\) State Purchasing](#) -Contracts [\(SPC's\)](#) that are available for Local Government use. Refer to the Mitchell Shire Contracts Register.

Where existing contracts or supply agreements are available through these existing facilities, Council Officers do not need to obtain a quotation providing they use the services and rate structures contained within these contracts or agreements.

PROCURING GOODS, SERVICES AND WORKS – REQUEST FOR QUOTATION & TENDER THRESHOLDS

Rules that apply:

Council has set a value limit of the following in order to ensure compliance with the Local Government Act. The price range indicated excludes GST.

Level of Purchase	Minimum Selection Method	Special Note
Up to \$4,545 (\$5,000 GST incl)	One Verbal or Written Quote	Ensure best value for money. Council supports the development of the local economy and the enhancement of local supplier capability. Council will actively seek offers from Local Suppliers. Where all other factors are equal, the Council will give preference to Local Suppliers.
\$4,546 (\$5,000 GST incl) - \$22,727 (\$25,000 GST incl)	One Written Quote	On supplier letterhead and quote attached to EPO. A recommendation explaining why a particular Supplier was selected needs to be signed by the Officer and their manager, to be saved in TRIM.
\$22,728 (\$25,000 GST incl) - \$136,363 (\$150,000 GST incl) (Goods & services) \$22,728 (\$25,000 GST incl) - \$181,818 (\$200,000 GST incl)(Works)	Three Written Quotes	Must get a TRIM record and reference number from Procurement. Recommendation explaining why a particular supplier was selected needs to be signed by the Officer and their Manager, to be saved in TRIM
+ \$136,364 (\$150,000 GST incl) Goods &	Tender	Procurement to issue

Level of Purchase	Minimum Selection Method	Special Note
services		
+ \$ 181,819 (\$200,000 GST incl) Works	Tender	Procurement to issue

NOTE:

Quotations must be kept in accordance with audit requirements for up to seven years. Advertising of quotations may be carried out at the Manager's discretion despite these thresholds. Where sufficient quotations cannot be obtained, the reasons should be documented and presented to the Director for approval and a copy held on file. All expenditures must be within budget and authorised with regard to Council's Instrument of Delegation.

On the rare occasion that insufficient quotations are received to satisfy Clause 4.6 of the Procurement Policy, approval must be sought by completing the exemption form. If endorsed by the Director, the exemption form is forwarded to the Procurement ~~and Contracts Management Coordinator~~ [Advisor](#) for endorsement and then to the Director Corporate Services for approval.

Only the Chief Executive Officer is permitted to exempt a particular contract from the need for a quotation process, provided that the CEO then reports the reasons for the exemption to the Council.

AUTHORISATION OF PROCUREMENT ARRANGEMENTS ACCORDING TO VALUE OF SUPPLY, LEVEL OF RISK AND COMPLEXITY OF REQUIREMENTS

Value up to \$136,363 (\$150,000 GST incl) for purchase of goods or services and \$181,818 (\$200,000 GST incl) for the carrying out of works– Low Risk and Clear Requirements

(In determining the risks of a project, please utilise the Risk Register stored on the Intranet).

For procurement arrangements up to the thresholds where there is low risk and Mitchell Shire Council's requirements can be clearly understood, a formal written and signed contract is not required. These arrangements may be undertaken using the procurement by quotation method as described above.

A Delegate has the authority to approve purchase orders (up to the value of their delegation limit) directly with the Supplier and Mitchell Shire Council's standard contract terms and conditions of purchase will apply to these purchase orders. These standard terms and conditions are normally sufficient to protect Mitchell Shire Council's interests in situations of low risk. However if there is any doubt, the matter should be referred to the Procurement ~~and Contracts Management Coordinator~~ [Advisor](#).

Value up to \$ 136,363 (\$150,000 GST incl) for purchase of goods or services and \$181,818 (\$200,000 GST incl) for the carrying out of works- **Risk or Complex Requirements**
(In determining the risks of a project please utilise the Risk Register stored on the Intranet).

A formal written, signed contract must be established for any procurement arrangement up to the thresholds where there is:

- Potential for significant risk, and/or
- Mitchell Shire Council's requirements for the goods, services or works are more complex

The contract should incorporate Mitchell Shire Council's standard contract terms and conditions of purchase together with specific provisions to identify the risks as well as Mitchell Shire Council's requirements in order to provide adequate protection for the Council. Establishment of a written contract should be referred to the Procurement ~~and Contracts Management Coordinator~~[Advisor](#) who can assist in determining supplier and contract arrangements.

Value in excess of \$ 136,363 (\$150,000 GST incl) for the purchase of goods and services & \$181,818 (\$200,000 GST incl) for carrying out of works
(In determining the risks of a project please utilise the Risk Register stored on the Intranet)

It is a mandatory requirement that any procurement arrangement with a total value in excess of the thresholds go through a public tender process and is authorised by the Procurement ~~and Contracts Management Coordinator~~[Advisor](#) and supported by a formal written and signed contract with the Supplier. The contract must be approved by a Delegate who holds sufficient delegation authority to cover the contract value.

As a matter of policy and principle, the use of the emergency provision, should be limited to situations where a real emergency has arisen. Situations where this might occur include:

- 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
- The occurrence of an event such as flooding or fire at an LGE property which may require the immediate procurement of goods, services or works to ensure business continuity
- The unforeseen cessation of trading of a service provider due to bankruptcy and a need to appoint a replacement service provider on the grounds of public safety
- Unforeseen delays to the finalisation of a tender process arising from circumstances outside the control of the LGE, for example legal action taken by one of the tenderers

By the very nature of the provisions, contracts entered into under the emergency

provisions must be limited in scope to that which is necessary to only deal with the emergency. The period for any contract should only be sufficient to enable the LGE to call for tenders for a new contract or replacement service provider.

It is essential to document (TRIM) all such occurrence for future audit.

CUMULATIVE SPEND

Council will monitor cumulative spend with suppliers at least annually. If expenditure with a supplier or a number of suppliers providing similar goods or services is ongoing in nature and the cumulative spend is likely to exceed the legislated threshold over a three year period, then Council shall review the opportunity to pursue a contract for such goods or services through a competitive process.

The Finance Department will be responsible for providing a regular report to the Executive Leadership Team, which will list any suppliers and their category that are approaching the cumulative spend thresholds.

CONTROL OF PURCHASING BY USE OF PURCHASE ORDERS

A fundamental requirement for effective governance of purchasing is that Mitchell Shire Council always issues a purchase order or work order at the time of entering into a transaction with a supplier. The interests of both Mitchell Shire Council and the Supplier are protected as the purchase order provides details of the goods, services or works, their pricing and a reference to Mitchell Shire Council's terms and conditions of purchase. Ordering goods, services or works without issuing a purchase order will expose Mitchell Shire Council to risk when problems arise, such as:

- The goods, services or works delivered are not to specification, are faulty or of a poor standard
- The pricing is not clearly understood or is disputed
- The purchase may have been improperly authorised i.e. not approved by a Financial Delegate.

Raising a purchase order after the goods, services or works have been received or invoiced is to be avoided as the protection provided by the purchase order is severely compromised.

Where one purchase order is used on multiple occasions by the addition of new line items, it must not be used over multiple financial years.

The exceptions to the requirement to issue purchase orders prior to entering into a transaction with a supplier is Credit Card purchases or purchases which are listed on the purchase order exemption list.

PROBITY

Probity or procedural integrity is an essential and mandatory requirement for all Mitchell Shire Council representatives (and agents or contractors acting on behalf) of

Mitchell Shire Council when undertaking any procurement related activity. This includes quotations, tenders and any evaluations and recommendations associated with subsequent contracts or purchases.

Mitchell Shire Council representatives (and agents or contractors acting on Mitchell Shire Council's behalf) are accountable for ensuring that procurement decisions are supported by ethical, impartial and objective processes and appropriate documentation.

As an LGE with a high public profile and community obligations, Mitchell Shire Council must uphold and demonstrate the highest standards of probity in all procurement related activities that it undertakes with external parties. More information on Probity can be found in the Procurement Intranet site. This must be read and understood if you take part in any procurement activities.

DEFINITIONS

Procurement and Purchasing

Procurement may be defined as all of the processes associated with establishing and managing formal contractual arrangements and placing orders with suppliers whereas purchasing usually applies to the placing of orders with a supplier.

Act

Local Government Act 1989.

Bank Guarantee

A legal document issued by an insurance company or bank that places an obligation on them to pay the guarantee amount in the event of specified terms of default by the supplier. Mitchell Shire Council's standard requirement for requesting bank guarantees for construction projects is: two (2) bank guarantees, one (1) for 5% of total cost of project which is released once Certificate of Practical Completion is received, and one (1) for 2.5% of total cost of project which is released at expiry of warranty period.

Best 'value for money'

Is a governing principle and an essential test against which Mitchell Shire Council must justify any procurement related decision. Mitchell Shire Council representatives with delegated authority in respect of procurement related decisions, must be satisfied that the best possible outcome for the Council has been achieved, taking into account all relevant costs and benefits throughout the duration of the procurement cycle. Accepting the lowest price offered by a supplier is not necessarily an indicator of achieving best "value for money".

Conflict of Interest

Councilor's and Council staff shall at all times avoid situations in which private interests' conflict, or might reasonably be thought to conflict, or have the potential to conflict with their Council duties.

Contract

Any purchase or agreement to purchase goods, services or works imposes contract obligations upon the purchaser and provider under common law. All Council staff need to be aware of the potential for committing Council in any way. Delegations and authorisations have been established to determine who may commit Council to a contract.

Contractor

A person engaged by Mitchell Shire Council to perform a particular task or service, for a predetermined period of time.

Contract Owner

The Officer with ultimate responsibility for the project. The contract owner normally has budget accountability and shall oversee the contract process in conjunction with the allocated Contract Manager.

Contract Manager

The Officer appointed to control the tender and subsequent contract process.

Contract Recommendation

The formal request for approval to enter into a procurement contract with a selected supplier. The request must clearly articulate the reasons supporting the recommendation.

Contract Register

A spreadsheet kept on the Procurement Intranet page. All Contracts are to be recorded and updated accordingly.

Commercial in Confidence

Information that, if released, may prejudice the business dealings of a party e.g. prices, discounts, rebates, profits, methodologies and process information, etc.

Contract Value

- The value of all contracts for the purposes of compliance with section 186 of the Act includes: Costs for the full term of the contract, including any options for either party to extend the contract
- Applicable goods and services tax (GST)
- Anticipated contingency allowances or variations
- All other known, anticipated and reasonably foreseeable costs

Delegations

Govern the conduct of business operations and the administrative functions of the Council.

Financial Delegate

A Mitchell Shire Council employee who has been specifically granted certain authorities, powers and/or discretions on behalf of the Council.

Probity

In the context of procurement, probity refers to procedural integrity and involves attributes such as honesty, incorruptibility, trustworthiness, truthfulness, impartiality, fairness and transparency.

Procurement Contract

A written contract for the supply of goods, services or works which specifies, amongst other matters, the terms and conditions of supply, the contract term, the nature of the goods, services or works, pricing, purchasing procedures, payment terms and any special conditions of supply.

The contract document (hard copy) is to be signed by the supplier and the appropriate Financial Delegate from Mitchell Shire Council.

Procurement Event File Checklist

Checklist form to be filled out by Council Officers at each stage of Tender Process from Awarding of Tender to end of Contract retention payment.

Term of Contract

A procurement contract which applies for a specified period of time, the "term", is the period from the contract commencement date to the contract expiry date. Where a contract has options for the term to be extended (at Mitchell Shire Council's discretion) and such an option is exercised, the term then becomes the period from the commencement of the option through to the end of the timeframe covered by that option.

TRIM

Mitchell Shire Council's Records Management System.

It is an enterprise records management solution that captures and securely manages the lifecycle of business records. All procurement related documentation needs to be stored in TRIM.

Preferred Supplier

All preferred suppliers that are engaged through a procurement activity must be recorded on the Mitchell Shire Contracts Register on the Intranet.

Public Tendering

Refers to use of paid advertisements seeking tenders from the open market.

Purchase Order

The means of procurement of goods, services or works by an official commitment generated in Council's electronic purchasing system. A purchase order is a legally binding document and Council's terms and conditions apply to all purchase orders placed.

Specification

Clear, complete and accurate statement of the description and technical requirements of a material, an item or a service. It may include the procedure to be followed to determine if the requirements are met. Specification may be classified as prescriptive, functional, solution based and outcome based. During this phase, Risk should be requested to perform a risk assessment.

Tender Evaluation Panel

Panel comprising of the Contract Manager, Contract Services Unit representation and optional independent specialist representation at the discretion of the Contract Manager who come together to evaluate public tenders to ensure that the evaluation is undertaken in a fair and reasonable manner. The minimum requirement is three panel members.

Tender Evaluation Criteria

The Tender Evaluation Panel will apply desirable criteria and sub-criteria to evaluate Tender Proposals that meet the mandatory criteria. Tender Proposals that do not satisfy all of the applicable mandatory criteria will be rejected.

The Selection Criteria must be selected before advertising for a tender and must be specified in the tender documentation.

The Selection Criteria must reflect the outcome that you desire, i.e. **Highly Qualified** and/or **Experienced**, providing **Value for Money**, and the **Timely** delivery of the service.

Tenders Proposals that do meet all of the mandatory proposal will then be evaluated and weighted in accordance with the following:

- Price
- Project Delivery
- Occupational Health & Safety Risk Management
- Experience
- Capability
- Resources allocated to Project
- Economic contribution to the Mitchell region
- Any other criteria deemed relevant

Once the tender evaluation is completed, but before the contract is commenced:

- Finance will be requested to undertake a credit evaluation of the preferred supplier
- ~~Risk will be requested to undertake a risk assessment of the contract~~
- ~~The Contract Manager, the Procurement and Contracts Coordinator, Finance Manager and Risk Coordinator will each be requested to sign off on the Contract Commencement form~~

RESPONSIBILITIES

REVIEW

This policy may be varied by the Procurement ~~and Contracts Management Coordinator Advisor~~ at any time with necessary inclusions/deletions. However, any amendments with reference to the *Local Government Act 1989* need to be approved through Council.

The Policy will be reviewed annually.

RELATED DOCUMENTS REFERENCES

SUPPORTING POLICIES AND PROCEDURES

- Mitchell Shire Council Procurement ~~Procedures and Toolkit~~[Guidelines](#)
- Mitchell Shire Contracts Register
- Delegations of Authority
- The Local Government Act and Regulations
- Local Government Act 1989 - Act No. 11/1989
- Clause 186 - Restriction on Power to Enter Into Contracts
- Clause 186A - Procurement Policy
- Clause 208 - Best Value Principles
- Local Government (Finance and Reporting) Regulations 2004
- Purchasing Card Policy
- Code of Conduct
- Municipal Emergency Management Plan
- Tendering Policy
- Contract Management Policy

TEMPLATES AND REFERENCE GUIDES

Templates and Reference Guides are available to all Council on the Intranet (Info exchange) under the link entitled '**Procurement**'.

POLICY ~~AND PROCEDURES~~ BREACHES

Any breaches of this Policy ~~or Mitchell Shire Council Procedures~~ ~~will~~may lead to disciplinary action and may result in termination of employment in accordance with Mitchell Shire Council's Disciplinary Policy.

Attachment A - LOCAL GOVERNMENT ACT 1989 - SECT 186A

A Procurement policy

- (1) A Council must prepare and approve a procurement policy.
- (2) A Council must within 12 months after the commencement of section 67 of the Local Government Amendment (Councilor Conduct and Other Matters) Act 2008 prepare and approve a procurement policy.
- (3) A procurement policy must include any matters, practices or procedures which are prescribed for the purposes of this section.
- (4) A Council must have regard to guidelines made under subsection (5) in preparing a procurement policy.
- (5) The Minister may make guidelines with respect to the form or content of a procurement policy.
- (6) Guidelines made under subsection (5) must be published in the Government Gazette.
- (7) At least once in each financial year, a Council must review the current procurement policy and may, in accordance with this section, amend the procurement policy.
- (8) A copy of the current procurement policy must be available for inspection by the public—
 - (a) at the Council office; and
 - (b) on the Council's Internet website.
- (9) A Council must comply with its procurement policy.
- (10) In this section "procurement policy "means the principles, processes and procedures that will apply to all purchases of goods, services and works by the Council.