

HPV Health Purchasing Policy 3.

Market Approach

Ensuring fair, transparent and unbiased practices when engaging with the market

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Health Purchasing Policies are made by the Health Purchasing Victoria (HPV) Board in accordance with s134 of the *Health Services Act 1988 (the Act)*. All Schedule 1 and 5 public hospitals and health services as listed under *the Act* must comply with these policies which are legally binding, effective from date of publication in the Government Gazette.

The Health Purchasing Policy framework is based upon the VGPB supply policies, and must be complied with in conjunction with any relevant provisions of the current Victorian health policy and funding guidelines.

1. Introduction

- 1.1. This policy outlines the requirements for approaching the market and engaging with potential suppliers. The policy is mandated for all Schedule 1 and 5 public hospitals and health services (as listed in the *Health Services Act 1988* (Vic), hereafter referred to as 'mandated health services').
- 1.2. The Market Approach policy is made up of three components:
 - a. Market approach - provides minimum requirements for engaging and sharing information with potential suppliers, in a fair and transparent manner
 - b. Evaluation, negotiation and selection - provides minimum requirements for evaluating, selecting and negotiating agreements with suppliers, fairly and equitably
 - c. Critical incident - establishes a transparent process for urgent procurement needs in the case of a clinical, operational or State health emergency
- 1.3. Figure 1 illustrates the end to end procurement process model and highlights the areas (steps 5 and 6) of the process that this policy applies to.

Figure 1: Procurement Model



2. Market approach

- 2.1. Analysis of the business requirements, the market's ability to respond and the complexity of a procurement activity, will guide the sourcing strategy including the market approach.
- 2.2. In addition to achieving the optimal value for money outcome, the market approach process must ensure all potential suppliers are treated fairly, have access to similar information and that standards of probity, confidentiality and security are applied in the conduct of all actions between the mandated health service and suppliers.
- 2.3. Mandated health services must develop and apply an appropriate market approach that:
 - a. encourages participation from the market segment relevant to the procurement activity
 - b. adopts a market engagement strategy that is cost effective for buyer and supplier
 - c. applies a market approach that engages with potential suppliers in a fair and equitable manner, and eliminates unnecessary barriers to participation by Small to Medium Enterprises (SMEs) and local businesses
 - d. have processes in place to ensure the confidentiality and security of bids from suppliers
 - e. provides sufficient time for potential suppliers to prepare a submission taking into account the complexity of the procurement activity and market factors
 - f. makes any material change to a procurement requirement available to all suppliers selected or registered to participate in the procurement process

Invitation to supply

- 2.4. When requesting the market to provide information or bid for a procurement activity, a mandated health service must detail requirements that:
 - a. clearly identify the conditions for participation
 - b. foster innovative or alternative supply solutions, where appropriate
 - c. structure specifications that have relevance to SMEs and local businesses, where appropriate
 - d. specify applicable broader government policy and Australian standards and/or regulations, where relevant, including any supplier charters or codes of conduct
 - e. develop an evaluation plan for carrying out supplier selection
 - f. specify the criteria and weightings to be used when evaluating submissions
 - g. indicate if the selection process will apply a process for shortlisting
 - h. do not adopt processes, technical specifications, conditions or a market engagement strategy that unfairly precludes relevant suppliers from participating in the potential supply arrangement

- 2.5. A mandated health service must provide the following minimum information:
- a. name and address of your organisation
 - b. headline details of the supply requirement
 - c. process timelines
 - d. address/site/method where documentation can be obtained
 - e. address/site/method where further information will be provided (if relevant)
 - f. address/site/method for receiving submissions
 - g. contact details for person(s) managing the market approach

Management of submissions received

- 2.6. A mandated health service must:
- a. provide a secure, physical submission facility and/or facility to receive electronic submissions and allocate responsibility for managing this to a business unit in the organisation
 - b. implement a process to inform suppliers of successfully receiving their submission:
 - i. immediately in the case of an electronic system; or
 - ii. within five working days of submission close in the case of a physical receipt facility
 - c. apply procedures in relation to late submissions that accord with the following protocols:
 - i. late submissions are not to be accepted unless the supplier can clearly document to the satisfaction of the mandated health service's Chief Procurement Officer (CPO) that an event of exceptional circumstances prevailed
 - ii. the CPO must also be satisfied that accepting a late submission would not compromise the integrity of the market approach
 - iii. ensure the details of late submission and the decision-making process for including or excluding late submission are included in the evaluation recommendation

3. Evaluation, negotiation and selection

- 3.1. Evaluation, negotiation and selection involve identifying the supplier(s) offering the best value for money to satisfy the mandated health service's requirements. A mandated health service may decide not to proceed with engaging a supplier if the evaluation and negotiation process cannot satisfy the requirements of the procurement activity.
- 3.2. Evaluating submissions requires high standards of probity and systematic application of evaluation criteria and weightings. Negotiation is an iterative activity conducted after shortlisting suppliers and undertaken when it will potentially add value to the outcome of the procurement activity. Supplier selection establishes a relationship that can deliver value added improvements beyond the requirements of the contract.

Evaluation of bids from suppliers

- 3.3. In preparing for evaluation of bids/information submissions from suppliers, mandated health services must:
 - a. follow an evaluation plan (including the details of an evaluation panel) which reflects the level of risk, complexity and value of the procurement activity
 - b. conduct the evaluation process with probity, fairness, consistency and impartiality and evaluate against the same specified criteria and weighting where provided
 - c. clearly define the role of the probity auditor/probity advisor and/or advisory groups formed to advise and assess elements of a submission
 - d. note and address any real or potential conflict of interest before starting the evaluation process
 - e. separate the roles of the probity auditor and probity advisor for procurement activity that is critical and/or high risk
 - f. document, and be able to defend, all stages of the decision making process
- 3.4. Mandated health services must also ensure that:
 - a. the evaluation process only considers a bid that meets the mandatory conditions of participation in the procurement process
 - b. when alternative offers are encouraged, they are submitted and evaluated together with other conforming offers
 - c. the capability of the people conducting an evaluation or negotiation process is adequate for the complexity of the procurement activity

Negotiation with shortlisted suppliers

- 3.5. Mandated health services must ensure:
 - a. the negotiation process is transparent, recorded and conducted in a manner that is fair and equitable for all parties shortlisted
 - b. negotiation outcomes are clearly defined and documented
 - c. negotiations seeking further information, improvements to a supplier's bid or a best and final offer are conducted in a consistent manner and that any accepted improvements are within the scope of the market approach

Supplier selection

3.6. Mandated health services must:

- a. inform all suppliers of the status of their submissions
- b. create a formal agreement between parties for the selected supplier(s) which clearly outlines the responsibilities of both parties including any commitments made in the supplier response to the invitation to supply concerning delivery of the requirements and performance measures
- c. debrief unsuccessful suppliers in relation to their submission, if requested

4. Critical incident

- 4.1. Critical incident protocols and processes are invoked when a relevant Minister or a Chief Executive Officer of a mandated health service (CEO) declares a critical incident to exist in relation to the operation of procurement processes by reason of at least one of the following:
- a. an emergency within the meaning of the *Emergency Management Act 1986*
 - b. an incident that causes the mandated health service's business continuity plan to be activated
 - c. an incident that represents a serious and urgent threat to the health, safety or security of a person or property
 - d. a situation that represents a serious or urgent disruption to services, including patient care, provided by the health service
- 4.2. In a critical incident, a mandated health service may adopt streamlined and flexible procurement processes to facilitate an immediate response to an emergency, crisis or disaster. If such a process is adopted, the mandated health service must:
- a. take into account value for money, accountability and probity to the extent that they can be applied given the severity and urgency of the incident
 - b. adopt minimum record keeping processes
- 4.3. Mandated health services must adopt a format for recording the following minimum information with a view to being accountable for decisions in relation to:
- a. the good/service being procured
 - b. the purpose of the procurement activity
 - c. the total value of the procurement (including GST)
 - d. the name and contact details of the supplier
 - e. a short summary of the procurement process followed
 - f. contact details of the party managing the procurement
- 4.4. Mandated health services must maintain a register and report annually to their Board the following information regarding procurement activities during a critical incident:
- a. total value of goods purchased
 - b. total value of services purchased
 - c. the nature of the critical incident to which the procurement values relate
 - d. the date at which procedures under critical incidents cease (as defined by the CEO)

Note 1. During a critical incident, all other Health Purchasing Policies do not apply to the extent that the critical incident makes it impractical to apply them.