



HSV Purchasing Policy 3

Market approach

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

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OFFICIAL



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Disclaimer

The information presented in this document is general in nature and based on HealthShare Victoria's interpretation of the *Health Services Act 1988 (Vic)* and any ancillary legislation and regulations in effect at the time and should not be relied upon as legal advice. Please consider seeking professional and independent advice from your legal representative as to the applicability and suitability of this information and the legislation to your own business needs or circumstances.

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Part 1: Introduction

1.1 Authority of policies

- 1.1.1 Under section 134(1) of the *Health Services Act 1988 (Vic)*, HealthShare Victoria (HSV)¹ is responsible for the establishment of purchasing policies relating to the supply of goods and services to health services and the management and disposal of goods by health services.
- 1.1.2 Health services listed in Schedule 1 and 5 of the *Health Services Act 1988 (Vic)* are responsible under section 134(3) of the *Health Services Act 1988 (Vic)* for complying with each purchasing policy².

1.2 Obligation

- 1.2.1 This policy outlines the mandatory Principle/s and Requirements for all Schedule 1 and 5 health services listed in the *Health Services Act 1988 (Vic)*.
- 1.2.2 [Part 3](#) is provided to assist with meeting the compliance obligations and the type/s of evidence a health service may provide to an auditor. Part 3 materials are not assessable in the audit.

Part 2: Market approach principle and requirements

2.1 Market approach principle:

Health services systematically, efficiently and fairly manage procurement analysis and planning, when approaching the market, to maximise operational and financial performance and minimise risk.

2.2 Market approach associated requirements:

- a) Health services implement minimum requirements for engaging and sharing information with potential suppliers in a fair, transparent³ manner and supporting probity, security, and confidentiality as set out in [Part 3: 3.1](#).
- b) Health services implement minimum requirements for evaluation, negotiation and selection that supports fairness, transparency, probity, security, confidentiality, and value for money.

¹ HealthShare Victoria is the assumed trading name for Health Purchasing Victoria that remains as an independent public entity incorporated under the *Health Services Act 1988 (Vic)*.

² To the extent that it applies to the health service.

³ Transparency is about the openness of a procurement to scrutiny by interested parties, and relevant oversight bodies, such as the Victorian Auditor General's Office. It involves providing documented reasons for decisions and giving appropriate information to relevant stakeholders and tender participants. (VGPB)

Part 3: Market approach supplementary material

3.1 Processes and procedures that support probity, fairness, consistency, impartiality with identifiable criteria /weighting that supports negotiation and sound decision making

3.1.1 Health services may 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 the buyer and supplier;
- c) applies a market approach that eliminates barriers to participation by small and medium enterprises (SMEs);
- d) engages with potential suppliers in a fair and equitable manner;
- e) has processes in place to protect the confidentiality and security of bids from suppliers;
- f) provides sufficient time for potential suppliers to prepare a submission taking into account the complexity of the procurement activity and market factors; and
- g) makes any material change to a procurement requirement available to all suppliers selected or registered to participate in the procurement process.

3.1.2 Health services detail requirements⁴ that:

- a) identify the conditions for participation;
- b) foster innovative or alternate supply solutions where appropriate;
- c) structure specifications that have relevance to Australia and New Zealand SMEs where appropriate;
- d) specify applicable broader government policy⁵ where relevant, including but not limited to any government supplier charters or codes of conduct;
- e) adopt an evaluation plan for carrying out supplier selection;
- f) specify the criteria and general weightings where appropriate to be used when evaluating submissions;
- g) indicate whether the selection process includes a process for shortlisting; and
- h) do not adopt processes, technical specifications, conditions or a market engagement strategy that preclude relevant suppliers from participating in the potential supply arrangement.

3.1.3 Health services ought to provide the following minimum information:

- a) name and address of organisation;
- b) 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; and
- g) contact details of person(s) managing the market approach.

3.1.4 Fairness and impartiality need to be considered at all stages throughout a procurement process. To be fair, impartial and equitable, health services:

⁴ It may not be appropriate to disclose all requirements to vendors. While disclosure is at the discretion of the health service, processes that support consistency, impartiality and fairness must be applied.

⁵ For example, *Fair Jobs Code* which comes into effect 1 December 2022.

- a) refrain from engaging in any conduct that would defeat the purpose of a fair and transparent selection process.
- b) identify and actively manage actual, potential and perceived conflicts of interest;
- c) provide equal access to information at the same time for all interested tender participants (except information that is commercial in confidence);
- d) provide clarification arising from an individual potential tender participant query to all potential tender participants, where feasible in writing either electronically or in hard copy.
- e) If the closing date is extended, provide an extension notice to all potential tender participants with adequate notice before the originally published closing date and time.

Options for small and rural health services

- Health services located in the same region may work together to develop and apply an appropriate market approach.

3.2 Market approach processes encourages participation, with confidentiality and security for 'bidders' paramount, the ITS and management of any submissions as well as processes for lodgement, acceptance and information including decision making protocols

Lodgement

3.2.1 Health services in supporting confidentiality and security:

- a) provide a secure, physical submission facility and/or the facility to receive electronic submissions;
- b) allocate responsibility for managing either system to a business unit in the organisation;
- c) implement a process to inform suppliers of successful receipt of their submission;
 - i. immediately in the case of an electronic system; or
 - ii. within five working days of a submission closing date in the case of a physical receipt facility.
- d) 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 Chief Procurement Officer that it was due to an event of exceptional circumstances; and
 - ii. the Chief Procurement Officer ought to be satisfied that accepting a late submission would not compromise the integrity of the market approach.

Evaluation

3.2.2 Evaluating submissions requires high standards of probity and a consistent evaluation of criteria for each tender.

3.2.3 Health services ought to:

- a) evaluate risks to the organisation in a consistent manner with the ability to report on the risks;
- b) develop an evaluation plan⁶ as appropriate, which reflects the level of complexity and risk of the procurement activity;

⁶ Depending on the procurement activities, complexity, and risk an evaluation plan may not be required.

- c) conduct the evaluation process with probity, fairness, consistency and impartiality, and evaluate each submission equally against specified criteria and weighting where provided;
- d) note and address any real or potential conflict of interest before starting the evaluation process;
- e) clearly define the role of the probity auditor/probity advisor and/or advisory groups formed to advise and assess elements of a submission;
- f) separate the roles of the probity auditor and probity advisor where appropriate for procurement activity that is critical and/or high risk; and
- g) document and provide evidence for all stages of the decision-making process.

3.2.4 Health services may articulate in support of probity that:

- a) the evaluation process will only consider a bid that meets the mandatory requirements of participation in the procurement process;
- b) where alternative offers are encouraged, they are submitted and evaluated together with other conforming offers; and
- c) the capability of the people conducting an evaluation or negotiation process is adequate for the complexity of the procurement activity.

Negotiation

3.2.5 Negotiation is an iterative activity conducted after shortlisting suppliers and carried out when the evaluation panel decides that it will add value to the outcome of the procurement activity.

3.2.6 Health services need to make sure:

- a) the negotiation process is transparent, recorded and conducted in a manner that is fair and equitable for all parties shortlisted; and
- b) negotiations that seek 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

3.2.7 Supplier selection establishes a relationship that can deliver value-added improvements beyond the requirements of the contract.

3.2.8 To support and evidence their process health services ought to:

- a) develop a formal agreement between parties for the selected supplier(s);
- b) debrief unsuccessful suppliers in relation to their submission if requested; and
- c) inform all suppliers of the status of their submissions throughout the process.

Options for small and rural health services

- Health services located in the same region may work together to create a market approach process.

Part 4: Definitions

Terminology	Definition
Accountable Officer (AO)	Means Chief Executive Officer (by whatever name called) of a health service.
Actual conflict of interest	There is a real conflict between an employee's public duties and private interests. (<i>Victorian Public Sector Commission</i>)
Asset	An item or thing that has potential value to an organisation, and for which the organisation has a responsibility. Asset does not include financial assets. Please refer to the Department of Treasury and Finance's Asset Management Accountability Framework regarding asset management.
Categories	Categories are groupings of similar goods or services with common supply and demand drivers and suppliers. For example, a blood collection tube would be in the pathology consumables procurement category. A category can be defined at any level above a single procurement. Categories will vary according to the size and type of organisation and the supply market.
Chief Procurement Officer (CPO)	The CPO provides strategic expert advice and oversight of the procurement function to drive and ensure value-for-money outcomes in the health service. The CPO is responsible for developing and monitoring strategic procurement activities.
Collective Purchasing	Collective Purchasing, also referred to as a Collective Agreement or Collective Purchasing Arrangement, is a contract for the purchase of goods or services for the benefit of two or more entities. A Collective Agreement may be established by HSV on behalf of health services.
Conflict of interest	Conflicts may be actual, potential or perceived. (<i>Victorian Public Sector Commission</i>)
Complaint	A complaint is an issue or concern expressed by a supplier in relation to the process and probity applied by a health service when conducting a procurement activity.
Contract management	The process of ensuring the contractual obligations of successful suppliers is met during the life of the contract. Elements of contract management include supplier performance management, monitoring contract activity including acquittal against budgets, invoicing against contract prices/rates, review of key performance indicators (KPIs) and contract activity and may involve regular meetings with stakeholders and/or suppliers. Proactive management will also seek to work with the supplier to identify opportunities for additional benefits from the contract.
Contract Management Strategy (CMS)	Identifies how individual contracts in a procurement category could be managed. It positions contract management issues at the beginning of the procurement planning cycle and allows for the effective allocation of resources.

Terminology	Definition
Emergency procurement	An emergency in Victoria is defined by the <i>Emergency Management Act 2013 (Vic)</i> (the Act). In summary, an emergency is the actual or imminent occurrence of an event that in any way: • endangers or threatens to endanger the safety or health of any person; • destroys or damages, or threatens to destroy or damage, any property; or • endangers or threatens to endanger the environment. The definition in the Act includes a disruption to essential services (for example transport, fuel, power, water, sewerage). The Emergency Procurement Policy may also be applied to an event that significantly disrupts or threatens provision of an organisation's key services.
Eligible health services	As outlined in Part 6 in the <i>Health Services Act 1988 (Vic)</i> .
Health service	Public hospitals and health services outlined in Schedule 1 and 5 in the <i>Health Services Act 1988 (Vic)</i> .
On-selling	On-selling occurs if a mandated health service purchases goods or services under a HSV collective agreement and then re-supplies the products to another entity. This includes the provision or sale of products or services to a separate entity (for example, another health or related service or non-health entity) through the provision of warehousing and logistics services or otherwise, including where products or services are provided at no cost. This could be under the terms of another agreement, for example, provision of clinical or non-clinical services, tenancy or public private partnership (PPP). For clarity, where a public hospital supplies products or services purchased under HSV Collective Agreements to their wholly owned entities, this is not considered to be on-selling for the purpose of the HSV Purchasing Policies.
Participating health service	Health services listed in Schedule 1 and 5 in the <i>Health Services Act 1988 (Vic)</i> and approved eligible health services accessing HSV collective agreements.
Perceived conflict of interest	The public or a third party could form the view that an employee's private interests could improperly influence their decisions or actions, now or in the future. (Victorian Public Sector Commission)
Potential conflict of interest	An employee has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk. (Victorian Public Sector Commission)
Procurement Activity Plan (PAP)	A procurement activity plan is a list of all procurement activities that the health service anticipates taking to market over a period (ideally 12-18 months). What constitutes a procurement activity will depend on each health service and their internal process for determining those sourcing activities that require a market approach. This will usually be based on value depending on the organisation's spend profile.
Procurement Strategy	A Procurement Strategy contains the following elements:

Terminology	Definition
	- Procurement Activity Plan: a detailed list of procurement activities anticipated to be taken to market in the next 12-18 months. - Capability Development Plan: steps to improve the capability to undertake procurement needs. - Contract Management Plan: a framework based on the health service spend profile which assists in how procurement categories and individual procurement will be managed at the contractual stage. - Supplier Engagement Plan: processes, systems, and communication strategies to maintain good relationships with suppliers (existing and prospective). Note: The Procurement Strategy may consist of the above elements but may or may not be called the Procurement Strategy.
Secondary procurement	Secondary procurement refers to any activity which would result in one or more health services obtaining further or additional value in connection with goods or services purchased under a HSV Collective Agreement. Value includes any advantage, benefit or incentive, including but not limited to: - reductions in HSV-contracted pricing (including by way of discounts, credits, rebates, additional stock); - additional equipment whether provided on loan or transferred in ownership — contingent on the purchase of an agreed volume of goods or services under a HSV Collective Agreement; and - training or education, including conference travel and hospitality.
SEPC	Sole Entity Purchase Contracts
SPC	State Purchase Contracts
Supply chain	Supply chain management encompasses the planning and management of all activities involved in the sourcing and procurement, conversion and all logistics management activities. Importantly, it also includes coordination and collaboration with channel partners, which can be suppliers, intermediaries, third-party service providers and customers. In essence, supply chain management integrates supply and demand management within and across entities.
Value for money	Involves a balanced judgment of financial and non-financial factors. Typical factors include fitness for purpose, quality, whole-of-life costs, risk, environmental and sustainability issues and price.
VGPB	Victorian Government Procurement Board