# **Government Contracting Part A - Procurement**

## **Introduction - what is procurement?**

Procurement is the process by which goods or services, necessary for an organisation to perform its functions, are acquired.

Government departments and agencies are responsible for delivering a significant range of services to the Victorian community, such as health care, transport, corrections and environmental services.

To assist in the delivery of such services, departments and agencies need to purchase goods and services. The nature of the procurement undertaken varies across Departments and Agencies, and can range from major public-private partnerships to multiple low-cost purchases.

## **Procurement policy**

### State-wide procurement policy

*VGPB*

Procurement policy in Victoria is determined by the Victorian Government Purchasing Board (**VGPB**).

The VGPB is established under the *Financial Management Act 1994* (**FMA**). Its mission is to ensure government:

* develops procurement capability;
* delivers value-for-money and fit-for-purpose outcomes;
* minimises risk; and
* enables access to procurement opportunities for all businesses.

*VGPB policies*

The VGPB has established a procurement policy framework for Victorian government procurement. The framework consist of five policies , and takes a complexity and risk-based approach to procurement rather than a prescriptive, financial threshold based model. Each of the five policies is applicable to Departments, specified entities and mandated agencies unless wholly exempt under s8 of the *Financial management Act* 1994 (Vic)

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| **Policy** | **Features** |
| Governance | Requires each Department/Agency to:   * have a procurement governance framework (including a Chief Procurement Officer) * demonstrate to the VGPB its ability to manage procurement activity * develop a complaints management system |
| Complexity and capability assessment | * Requirement to assess procurement complexity (the level of difficulty involved in procuring a good or service), before a procurement commences * Requirement to assess procurement capability. Departments/Agencies must ensure that the organisation has an appropriate level of procurement expertise, resources, systems and processes that enable procurement activities to be completed successfully |
| Market analysis and review | * Requirement to undertake a market analysis and review, to inform the procurement process * When aggregated purchasing is allowed, such as through the establishment of a State Purchase Contract or a standing-offer arrangement * Requirement to develop a whole of life appraisal and consider the best process for disposal of assets |
| Market approach | * Requirement to develop a market approach for procurement activity, where the potential supply market is informed about the procurement requirements. Some common methods of market approach are quotations, open tendering, multi-stage tendering and limited tendering * A critical incident policy allowing for an alternative procurement process to operate during an emergency, crisis or disaster, including any subsequent relief effort * Processes to be followed in evaluation, negotiation and selection of suppliers |
| Contract management and contract disclosure | * Each Department/Agency must manage its contracts in a manner that is appropriate for the complexity and risk of the procurement activity |

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|  | * Organisations must disclose the key details for contracts (excluding contracts under head agreements), with a total estimated value equal to or exceeding $100,000 (including GST) within 60 days of the award of a contract on the contract publishing system, the Tenders VIC website * Organisations must disclose full contract information for contracts with an estimated value exceeding $10 million (including GST) on the contract publishing system |

These policies are available on the [VGPB website.](http://www.procurement.vic.gov.au/) In meeting the VGPB mandatory requirements, the level of detail in the organisation’s procurement policies and processes will be determined by the Chief Procurement Officer or equivalent, and will be commensurate with the organisation’s procurement profile. Guides, tools and templates to assist in using the policies are also available on the website.

*Who is required to comply with VGPB policies?*

The VGPB’s policies apply to:

* government Departments and specified entities;
* the Victorian Public Sector Commission;
* those offices or bodies specified in section 16(1) of the *Public Administration Act 2004*; and
* Administrative Offices established in relation to a department under s11(a) of the *Public Administration Act 2004*

A full list of entities which must comply with the VGPB policies is available via the [VGPB](http://www.procurement.vic.gov.au/About-the-VGPB/Scope-of-Policies) [website, Scope of Policies.](http://www.procurement.vic.gov.au/About-the-VGPB/Scope-of-Policies)

*Who is not required to comply with VGPB policies?*

Entities who aren't mandated to comply with VGPB policies and local government are not required to comply with VGPB policy. However, they are encouraged to apply best practice procurement policies and processes.

*VGPB policies do not apply to construction or health-related procurement*

VGPB policies apply to the procurement of goods and services only. They do not apply to building and construction or health related goods, services and equipment.

For further information, see:

* [Construction procurement policies and framework on the Buying for Victoria website](https://buyingfor.vic.gov.au/construction-procurement-policies-and-frameworks)
* [Health Purchasing Victoria](https://www.hpv.org.au/)

*Standing Directions 2018 under the Financial Management Act 1994*

Even if the VGPB policies do not apply to an entity, it is likely that the entity will need to comply with the Standing Directions 2018 under the Financial Management Act 1994, made under s 8 of the FMA (discussed in Chapter 5 and 6). The Standing Directions apply to most public bodies and Departments. Standing Direction 4.2.1 provides that in relation to the acquisition of assets, goods and services, the relevant body:

* must establish, maintain and embed appropriate governance arrangements;
* be efficient, effective and economical;
* have appropriate processes in place covering the acquisition lifecycle;
* have appropriate capability to manage the acquisition throughout the acquisition lifecycle;
* be able to demonstrate that any financial commitment, obligation or expenditure delivers value for money for the body and/or the State; and
* undertake investment planning and evaluation of performance when planning has identified the need to acquire significant services, assets or infrastructure.

A copy of the [Standing Directions](https://www.dtf.vic.gov.au/financial-management-government/standing-directions-minister-finance-2016) is available via the DTF website.

*Social Procurement Framework*

In September 2018, the State introduced a Social Procurement Framework (**SPF**). The SPF applies to procurement of all goods, services and construction undertaken by, or on behalf of, departments and agencies that are subject to the Standing Directions. Other Victorian public bodies are also encouraged to adopt the Framework.

The SPF seeks to streamline and embed social procurement within ordinary government processes and, in doing so, to put social and sustainable outcomes at the centre of the State's procurement activity. The SPF specifically focuses on promoting seven social objectives, being opportunities for Victorian Aboriginal people; opportunities for Victorians with disability; women's equality and safety; opportunities for disadvantaged Victorians; supporting safe and fair workplaces; sustainable Victorian social enterprise and Aboriginal business sectors; and sustainable Victorian regions.

The SPF aims to achieve these objectives by establishing a number of requirements and expectations for government entities. These requirements and expectations differ according to the value of the procurement in question, and can include the setting of targets for achieving the social objectives mentioned above. The SPF also requires entities to develop a Social Procurement Strategy, and to report on their social procurement activities in an annual report document.

Further information on the Social Procurement Framework can be found on the Buying for Victoria website (https://buyingfor.vic.gov.au/social-procurement-framework).

### Procurement at the Department or Agency level

Most Departments and agencies have a Chief Procurement Officer (**CPO**).

The CPO is responsible for developing a procurement strategy and framework for its Department, which accords with the VGPB policies.

The CPO will likely have formulated tools and policies, which must be followed for each procurement the Department engages in it. The CPO also commonly sets procurement value thresholds, with higher value procurements normally requiring a greater level of market sourcing and approval.

The CPO is a valuable source of advice on how to best meet your procurement objectives. Before beginning a procurement, it is recommended that the CPO be consulted.

## **Issues in procurement**

### Probity

*What is probity?*

The concept of probity refers to acting transparently, ethically, fairly and honestly. When conducting procurement activity, probity requires the process to be conducted in a fair and transparent manner, unaffected by conflicts of interest or bias.

*Why is probity important?*

The VGPB Guide to Probity notes that good probity practice is important for:

* confidence in the integrity of government procurement processes;
* encouraging and enabling purchasers and businesses to deal with each other on the basis of mutual trust and respect; and
* improving the defensibility of market engagement processes and procurement outcomes.

*What does probity require?*

Probity necessitates that procurement processes be clear, open, well-understood and applied by all parties to the process. The VGPB Guide to Probity states that to achieve this, the following is required:

* acting with integrity and impartiality;
* ensuring market equality by applying an appropriate level of competition and contestability relevant to the procurement activity;
* consistent and transparent processes;
* secure and confidential market engagement information;
* identifying and managing conflicts of interest;
* allocating appropriate capability to elements of the procurement process; and
* engaging a probity practitioner(s) where the complexity of the procurement warrants independent process oversight.

Further information on what is required to act with probity is available in the [VGPB *Guide to*](http://www.procurement.vic.gov.au/files/e85ce771-a4f3-4618-9be0-a687010e9f3d/Guide-to-probity.docx)[*Probity*](http://www.procurement.vic.gov.au/files/e85ce771-a4f3-4618-9be0-a687010e9f3d/Guide-to-probity.docx)on the VGPB website.

*When to engage a probity advisor*

For complex or strategic procurements, it may be advisable to engage a probity advisor to provide independent oversight over the procurement. A probity advisor can advise members of the team involved in the procurement, assist with the preparation of protocols or procedures (e.g. management of information, conflict of interest), report on the procurement and assist with any complaints from participants in the procurement process.

*When to engage a probity auditor*

A probity auditor provides independent scrutiny of a procurement process, and provides an opinion as to whether probity requirements have been complied with. The role of a probity auditor differs to that of a probity advisor, as a probity advisor does not have a verification role and does not provide an opinion as to whether probity requirements have been satisfied. The probity auditor's role is one of assurance; the probity's advisor's role is purely advisory.

Further information on when to engage a probity advisor or auditor is available in the [VGPB](http://www.procurement.vic.gov.au/files/9eb17f25-00f8-402a-9dbc-a40500b758ea/Guide-to-engaging-a-probity-practitioner.docx) [*Guide to Engaging a Probity Practitioner*](http://www.procurement.vic.gov.au/files/9eb17f25-00f8-402a-9dbc-a40500b758ea/Guide-to-engaging-a-probity-practitioner.docx)on the VGPB website. Departments and Agencies will often have their own policy has to when a probity advisor or auditor should be engaged.

### Process Contracts

When engaging in procurement activity, it is important to keep in mind that through the conduct of a tendering process, a process contract may be formed by which the Department or Agency may be bound.

*What is a process contract?*

A process contract is a preliminary contract between a party calling for tenders (ie the Department or Agency) and tenderers concerning the conduct of the whole or parts of a tendering process. Australian courts have held that tender documentation can constitute a 'process contract' with each tenderer.107

*When will a process contract be found to exist?*

Whether there is a process contract will depend on the facts of each case, and, in particular, the wording in the approach to market documentation package as a whole.

107 *Hughes Aircraft Systems International v Airservices Australia* (1997) 146 ALR 1.

Factors which may influence a Court's finding that a process contract exists includes whether the tender documentation:

* indicates that its object is to produce a fair, defined and auditable tender process;
* indicates that the government intends to bind itself to comply with the evaluation priorities and methodologies prescribed in the request for tender document; and
* sets out clear rules for the conduct of the tender.

*Can a process contract be excluded?*

It has become more common to attempt to exclude a process contract from the tender process, through the use of express exclusion clauses. The legality of such an exclusion clause in tender documentation is uncertain, and the Courts have reached different conclusions. Despite this, the cases indicate that it is likely that a process contract will be found to exist, even where there is an express clause excluding the creation of a process contract, where the tender documentation contains detailed conditions about participation in, and the conduct of, the tender process.

*How should this affect how the procurement process is conducted?*

When conducting a tender procurement process, it is safer to assume that a process contract may be found and to focus on ensuring that the Department or Agency complies with its obligations (both express and implied) under that contract. Careful attention should be given to the wording in tender documentation as to how the procurement (including any evaluation) will be conducted. The Department or Agency should then ensure it undertakes the procurement in the manner set out in the tender documentation.

Particular focus should be given to statements as to how evaluation will be conducted. It should be clear which criteria are mandatory and which are not. Non-compliance by a tenderer with the mandatory criteria would usually require disqualification of that tenderer (unless the Department or Agency chooses to include a provision allowing the Department or Agency to accept a non-conforming application). It is important to ensure that this is the intended consequence.

VGPB policy generally requires that weightings to be applied to evaluation criteria be specified. While this gives greater transparency to the procurement process, it increases the risk to Departments and Agencies if they fail to conduct a procurement process in the manner they said they would. A failure to comply with the stated weightings when conducting evaluation would likely be a breach of the process contract.

In addition to express terms, terms may be implied into a process contract. A term to act fairly and reasonably is likely to be readily implied as a term of a process contract with the State.108

108 Ibid.

## **Undertaking a procurement**

### State Purchase Contracts

Before undertaking a procurement, it is prudent to check whether a State Purchase Contract (**SPC**) exists for the goods or services being supplied. A SPC is where the State has already entered into a contract with a supplier, which various State entities can use (or if mandated, must use) to purchase goods or services from the supplier.

All SPCs may be established as a mandated or non-mandated arrangement. Where an SPC is mandated, all entities required to comply with VGPB supply policies must utilise the arrangement unless otherwise expressly excluded.

[Details of SPCs](http://www.procurement.vic.gov.au/state-purchase-contracts) are available via the VGPB website.

### Selecting the right templates

When undertaking a procurement, a number of template documents exist to enable the procurement to be conducted efficiently and in accordance with Department procurement policy.

In order to determine what templates to use, the CPO should be consulted.

The CPO may recommend that Department-specific templates be used. Alternatively, standard templates from the VGPB are also available.

### Commonly used templates

*Expression of Interest*

In some cases, the Department may wish to gain a more detailed understanding of the supplier market and range of solutions that may be available. In such circumstances, the Department may decide to conduct a multi-stage procurement process.

The expression of interest (**EOI**) is the first stage of a multi-stage procurement process. Through the EOI, the Department is seeking responses from potential suppliers as to how they may supply the necessary goods or services.

An EOI document will normally be structured in 3 parts:

* Part A - The invitation, being a description of the procurement activity, and overview of the goods/services required and evaluation criteria
* Part B - Conditions of participation in the EOI process
* Part C - The Offer, being a template for participant to respond to as to how they will provide the goods/services

*Invitation to Supply*

An invitation to supply (**ITS**) (also known as a Request for Proposal (**RFP**) or Request for Tender (**RFT**)) may follow on from an EOI process, or may be used without an EOI process (if the potential suppliers in the market are known).

Through the invitation to supply, the Department is seeking responses from invited entities as to how they may supply the necessary goods or services.

An ITS document will normally be structured in 4 parts:

* Part A - The invitation, being a description of the procurement activity and how it will be conducted, what is to be acquired including the Specifications of the goods/services being acquired, and evaluation criteria
* Part B - Conditions of participation in the ITS process (ie how the Department will conduct the procurement, and obligations on participants in the process)
* Part C - Proposed contract to be entered into by the successful participant
* Part D - The offer, being a template for the participant to respond to as to how they will provide the goods/services

## **Documenting a procurement**

### Which contract to use?

When engaging in procurement, a contract will be necessary to document what has been agreed between the Department or Agency and the supplier.

The most appropriate contract to use will depend on a range of factors: the complexity of the procurement; the value of the procurement; and the nature of the goods or services being acquired. In general, the higher value, more complex a procurement, the more likely it is that a bespoke contract will be needed. For lower value, low risk procurement, a standard precedent will little or no amendments can often suffice.

### Common precedents

A range of precedent templates are available to Departments and Agencies. The most common ones are set out below.

In many cases, a Department or Agency will have already tailored these precedents to suit the Department or Agency (often available on the Department or Agency intranet). Always seek advice from other legal practitioners or your CPO if you are unsure as to the appropriate contract to use.

### VGPB Precedents

The table on the following page sets out the precedents available on the VGPB website. These are commonly used by Departments or Agencies, and often included in the Invitation to Supply.

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| **Precedent** | **When to use** |
| General conditions for the supply of Goods | For low complexity, low value procurement of goods. This is also the default terms and conditions when a purchase order is issued for goods and there is no existing executed contract in place |
| General conditions for the provision of Services | For low complexity, low value procurement of services. This is also the default terms and conditions when a purchase order is issued for services and there is no existing executed contract in place. |
| Agreement for the supply of goods- one off purchase | For more complex procurement of goods where there is a defined output or number of goods required with a definite end date. |
| Agreement for the provision of services-one off purchase | For more complex procurement of services where there is a defined scope of works with a clear start and end date. |
| Agreement for the supply of goods standing offer (sole entity purchase) | Used for more complex procurement of goods where a price is established for a period of time. This contract can also be used where there is more than one supplier under a procurement arrangement.  Purchasing under this contract requires the issuing of a purchase order |
| Agreement for the provision of services standing offer (sole entity purchase) | Used for more complex procurement of services where a price is established for a period of time. This contract can also be used where there is more than one supplier under a procurement arrangement.  Purchasing under this contract requires the issuing of a purchase order. |

### eServices

The Victorian government maintains an eServices register, which provides suppliers with a way to respond to requests from Departments and Agencies for the provision of specified IT services.

If a supplier is engaged from the eServices register, the standard eServices contract must be used.

The eServices contract comprises a set of standard terms, which can't be amended, and a set of Contract Variables, which are amended to suit the particular procurement.

The eServices contract is available through the VGPB website.

## **Contracting with government - government specific clauses**

The Victorian government has particular policies and requirements that suppliers must comply with. These requirements are reflected in the contracts that suppliers and the Department or Agency enter into.

Set out below are some of the common government-specific clauses"

*Local Jobs First Policy (LJF).* The LJF is made pursuant to section 4 of the *Local Jobs First Act 2003.* The LJF applies to procurements valued at more than $1m in regional areas, or more than $3m for metropolitan or State-wide procurements. The aim of LJF is to ensure that small and medium size enterprises are given a full and fair opportunity to compete for government contracts. Where LJF applies to a contract, the supplier must comply with LJF requirements. Compliance with the LJF requirements requires the suppliers to produce and submit a plan, outlining the supplier’s level of commitment to using local content where possible and viable. LJF also applies to construction contracts with a budget of more than

$20m requiring incorporation of the Major Projects Skills Guarantee. This is designed to ensure at least 10% of worker hours in the project delivery are performed by apprentices, cadets and trainees. It also applies (with enhanced modified reporting obligations) for Major Projects declared by the Minister, normally having a project budget of $50m or more.

*Supplier Code of Conduct.* The Supplier Code of Conduct outlines the minimum ethical standards of behaviour that suppliers must meet when conducting business with, or on behalf of, the State. A summary of the Supplier Code of Conduct and the relevant model clauses for inclusion in contracts are available here: <https://www.buyingfor.vic.gov.au/supplier-code-conduct>

*Fair Jobs Code (FJC).* The FJC enables the Victorian Government to use its purchasing power to promote secure employment and fair labour standards and ensure compliance with employment, workplace and industrial laws. The FJC applies to procurements valued at $1m or more and grants over $500,000 where a key milestone of that grant relates to retaining or increasing employee numbers. Where the FJC applies, supplier and businesses must obtain and hold a pre-assessment certificate that will indicate the supplier or business has a history of complying with laws related to employment, industrial relations and workplace health and safety.

*Victorian Public Sector Commission (VPSC) Code of Conduct.* Where, in the course of providing the Services, the supplier supervises or works with Public Sector Employees or undertakes work of a similar nature to work undertaken by Public Sector Employees at premises or a location generally regarded as a public sector workplace, the supplier must comply with the VPSC Code of Conduct.

*Fair Payment Policy:* Under the State's Fair Payment Policy, invoices must be paid within 30 days upon receipt of a correctly rendered tax invoice (or any other payment period as agreed between the purchaser and the supplier). If the invoice is not paid within 30 days from the date of receipt (or other payment period), and there is no dispute regarding the invoice or the provision of goods and services, the supplier may make a claim for penalty interest on the outstanding debt. This policy is often reflected in a fair payment clause in State contracts. Contracts less than $3 million must include a penalty interest clause, and include 10 Business Days payment terms.

*Contracts Publishing System*. Departments and mandated entities must publish the details of contracts valued at $100,000 or higher on the Contract Publishing System (CPS) within 60 days of the award of contract. Accordingly, suppliers are required to acknowledge this.

Organisations must disclose full contract information for contracts with an estimated value exceeding $10 million (including GST) on the contract publishing system.

*Intellectual Property:* The State has a Whole of Victorian Government Intellectual Property Policy. Intellectual property clauses will need to comply with the policy. See: htt[ps://w](http://www.dtf.vic.gov.au/funds-programs-and-policies/intellectual-property-policy)ww.dt[f.vic.gov.au/funds-programs-and-policies/intellectual-property-policy](http://www.dtf.vic.gov.au/funds-programs-and-policies/intellectual-property-policy)

*Privacy*. The Department or Agency will have obligations in relation to personal information, in accordance with the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (as defined in the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*). Suppliers are required to acknowledge that they may too have such privacy obligations.

*Protective Data Security Standards*. A Department or Agency will be bound by Protective Data Security Standards (made under the *Privacy and Data Protection Act 2014*). Suppliers are required to acknowledge that they will not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to contravention of a Protective Data Security Standard by the Department or Agency.

*Termination for convenience by State.* Changes in government policy may result in the need to terminate a contract. As such, a clause allowing the Department or Agency to terminate a contract without cause may be included. Such clauses usually provide that the Department or Agency will pay the supplier for services performed up to the date of termination, and the unavoidable and substantiated costs incurred by the supplier as a direct result of the termination (excluding loss of profit).

# **Part B - Funding, Grants and Sponsorship**

## **What is a grant or funding?**

Delivering funding through grant programs helps the government achieve its public policy goals and provides Victorians with access to funding that enables them to be more productive, creative and sustainable.

A grant is money given to an organisation/s or individual/s for a specified purpose directed at achieving goals and objectives consistent with government policy.

A grant may be part of a wider grant program initiative with defined funding source(s) or may be an individual one-off funding for a specific purpose. Victoria’s Standing Directions 2018 under the F*inancial Management Act 1994*, categorise grants as 'discretionary financial benefits' (paragraph 4.2.2). The portfolio minister or paying agency has discretion in determining whether an applicant receives funding – and conditions are imposed on the grant.

Grants can take a variety of forms, including ad hoc payments, competitive assessment or against specified criteria.

Discretionary benefits typically have the following characteristics:

* a transfer to a recipient which may be in return for compliance with certain terms and conditions
* a transfer which may not directly give approximately equal value in return to the Government (that is, there is a non-exchange transaction or subsidisation so there may not be exact dollar for dollar value) and
* a recipient may have been selected on merit against a set of program-specific criteria.

Grant recipients can include:

* industry / business
* universities and research institutions
* not-for-profit and social enterprise organisations
* individuals
* Local Government (in some circumstances)

## **What isn’t a Grant**

The following are not defined as discretionary grants

* donations
* prizes/awards (including retrospective recognition of activities/achievements)
* sponsorships aimed at public promotion of the government, its agencies or programs – or sponsorships associated solely with the purchase of advertising or brand promotion (the State has a separate Sponsorships Policy)
* funding of an organisation, where the recipient is a single entity, funding is recurrent, essential to the organisation’s core operations and not contested (there is no application and assessment process and there are no program guidelines)
* purchase of goods and services on commercial terms, which is also a procurement
* non-contested transfer of funds to a government entity for the delivery of services or a project. These transfers can be facilitated by a memorandum of understanding or funding agreement between departments or other government entities

## **Grant Delivery Approaches**

There are three common approaches traditionally employed to disperse grants:

* competitive grants (open competition): applications are invited through a public request for applications. Selection is based on merit, with applications subject to an assessment process against pre-established assessment criteria.
* negotiated grants (invited): applications are invited from select entities. Selective grants may be subject to contestability requirements. Selection is made where the applicant can demonstrate his/her ability to adequately satisfy the pre-established requirements of the program.
* direct allocated grants (targeted): grants made direct to specific entities where the amount granted is often determined according to an agreed formula.

## **Financial Management Act 1994 Standing Directions 2018**

The Standing Directions are issued by the Minister for Finance (the Assistant Treasurer) under section 8 of the *FMA*. They specify public sector agency responsibilities to achieve a high standard of public financial management and accountability.

Under these Standing Directions when giving out funding you must:

*Ensure that value for money outcomes are maximised*

This means making a balanced judgement of a range of financial and non-financial factors, taking into account the mix of quality, cost and resources; fitness for purpose; total cost of ownership; and risk.

*Establish effective and efficient administrative controls*

This means establishing a set of requirements that delivery appropriate level of financial management accountability, governance and compliance, having regard to the nature of the entities in question, including size, risk profile, and the financial risk that they pose to the State.

*Apply the Government’s Investment principles for discretionary grants*

The Investment principles for discretionary grants as endorsed by the Victorian government guide the development of grant programs.

## **Government Policies and Legislative requirements**

Whole of Victorian Government Policies and other legislative and department specific policies and processes may apply to discretionary Grants.

Current Policies for consideration include:

* [Local Jobs First Policy](https://localjobsfirst.vic.gov.au/) - grant recipients are subject to Local Jobs First where the value of the grant meets the Local Jobs First thresholds.
* [Social Procurement Framework](https://www.buyingfor.vic.gov.au/social-procurement-victorian-government-approach) – consideration of the application of the Social Procurement Framework is required where the grant can deliver a social value outcome.
* [Fair Jobs Code](https://www.buyingfor.vic.gov.au/fair-jobs-code-grants-guidelines-departments-and-agencies) - Grants over certain thresholds require the application of the Fair Jobs Code.
* [Funding Services to children](https://www.justice.vic.gov.au/policy-institutional-participation-national-redress#4-the-victorian-governments-policy-position-on-institutions-joining-the-scheme)- specific rules apply where money will be used for programs impacting children

**Victorian Government Central website**

‘Grants Victoria’ is a one-stop shop for grants information and government support programs on the [Victoria Online website](http://www.vic.gov.au/). All publicly available grants should to be advertised centrally on the [Grants Victoria website.](https://www.vic.gov.au/grants)

Details to list on the website include:

* grant title and description of the grant
* the name of the department/agency
* status of the grant (open/closing soon or closed for applications)
* a link to the grant owner's site with contact details for more information, and details on how to apply.

## **Documenting funding**

As grant schemes involve the use of public money both the government body providing funding and grant recipients must be accountable for demonstrating the objectives of the funding have been reached and value provided .

As part of the grant agreement there will usually be reporting and acquittal requirements. Generally grant payments will only be made when satisfactory progress reports are received and the agreed outcomes (milestones) specified in the agreement have been achieved.

Departments and angencies may develop their own individual grant agreements or may use the Victorian Common Funding Agreement depending on the particulars of the contract.

***Common Funding Agreement***

The Victorian Common Funding Agreement is used by all Victorian Government departments that fund not-for-profit community organisations to deliver services and projects.

Where a Department or Agency is providing funding to community organisations, the Common Funding Agreement must be used. Funding is not the same as procurement; the purpose of funding is generally to provide one-off support to organisations for a specific purpose over a limited period of time; procurement involves engaging a supplier to provide goods or services on the Department or Agency's behalf. In some instances, in can be difficult to determine if an activity should be properly characterised as a procurement or funding.

There are 3 forms of the Common Funding Agreement:

* A short form - used for lower risk grant funding
* A standard form (also known as the 'long form') - comprising a schedule and core terms and conditions. Used for a wide range of projects and services
* A service agreement form - comprising of standard terms and conditions, used with a set of schedules. Used for community, health and early childhood services funded through the Department of Health and Human Services (DHHS) and the Department of Education & Training (DET).

Further information about the [Common Funding Agreement](https://providers.dhhs.vic.gov.au/victorian-common-funding-agreement) is available via the DHHS website.

***Sponsorships***

Sponsorship is the purchase of rights or benefits, including naming rights, delivered through association with the sponsored organisation’s name, products, services or activities.

Sponsorship includes partnership arrangements, except where the arrangement is governed by the Partnerships Victoria Requirements or otherwise involves the development or management of infrastructure.

Sponsorship does not include grants, bequests, advertising space, editorial or advertorial content.

A whole of Victorian Government policy applies to [Sponsorship Arrangements](https://www.vic.gov.au/sponsorship-policy-guidelines) and provides guidance for terms and conditions sponsorship agreement should contain, in particular with respect to use of the State's [Brand Victoria Guidelines](https://www.vic.gov.au/brand-victoria-guidelines).

# **Part C - Intergovernmental arrangements**

## **MOUs**

A memorandum of understanding (**MOU**) is a document that records the common intent of two or more parties where the parties do not wish to assume legally binding obligations.

It is most commonly used between two government entities and rarely used with private parties. A MOU is usually less complex and less detailed than a contract, but provides a framework and set of principles to guide the parties in undertaking a project or working arrangement. A MOU in the government context differs from that in the private commercial sphere; whereas a MOU between private parties is often used as a preliminary agreement before the parties enter into a binding contract, in the government context a MOU is rarely used for this purpose.

*When to use*

MOUs can assist Departments and Agencies clarify role and responsibilities and manage expectations associated with projects and endeavours that are to be undertaken with other government parties or non-government parties. Non-binding MOUs may be terminated without legal consequence in some circumstances. This flexibility is considered to be a significant advantage for government.

MOUs are helpful when two or more government parties wish to collaborate on a particular project or working arrangement. In the vast majority of cases, the parties will be unable to, or legally prohibited from, entering into a legally binding contractual arrangement with each other, because two different arms of the same legal entity are unable to contract.

In some instances, a MOU may be required between two parties pursuant to legislation. If that is the case, it is important to ensure the MOU complies with the requirements of the relevant legislation.

*Are they legally-binding?*

Where the parties are government entities, it is usual practice for MOUs to be non-binding (particularly where, as discussed above, the entities are part of the same legal entity and therefore unable to contract with each other). As a consequence, the legal remedies that

apply in the event of non-performance or a breach by a party to a non-binding MOU will be non-existent or very limited.

Where the parties are separate legal entities, at the time that an MOU is being prepared it is critical for the parties to agree on whether or not they intend the document to impose legally binding obligations. For example, indemnities and intellectual property ownership, licensing provisions and potentially confidentiality provisions should be legally binding.

If there are provisions that are intended to be legally binding, a contract might be preferable. Otherwise, the MOU should state explicitly which clauses are intended to be binding.