



PROCUREMENT POLICY

2013

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PART 1 – INTRODUCTION

A Procurement Policy (Policy) is necessary to guide and protect the interests of the Waitomo District Council organisation (WDC) in the procurement of goods and services to facilitate a delivery of service.

A Procurement Policy serves to identify potential risks and opportunities for securing better economies and organisational effectiveness.

The Controller and Auditor-General defines procurement as....

“ all the business processes associated with purchasing, spanning the whole cycle from the identification of needs to the end of a service contract or the end of the useful life and subsequent disposal of an asset”.

This Policy has been prepared to ensure WDC procurement is made in a robust, transparent way and reflects generally recognised, good practice standards for the Local Government sector.

The Policy reflects the capacity and capabilities of WDC, as a local authority serving a rural District with a relatively small usually resident population.

The Policy framework closely follows the Controller and Auditor-General’s June 2008 publication Procurement guidance for public entities.

This Policy applies to all WDC procurement, from minor stationery purchases to major infrastructural projects. The Policy requires full regard to be taken of the guiding principles, appropriate levels of procurement planning and the consideration of options and methods ahead of the making of any procurement to achieve best value for money through the fair and accountable use of ratepayer funds.

1.1 GUIDING PRINCIPLES

This Policy takes into account the following guiding principles:

- **Buy Local** – WDC will support Waitomo District based providers of goods and services so that where the procurement offering of a Waitomo District based provider is equivalent to that of other procurement providers, then the local provider will become the preferred supplier.”
- **Sustainability** – in recognition of Section 3(d) Local Government Act 2002 Amendment Act 2012 WDC will *‘play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.’*
- **Accountability** – WDC is accountable for both its efficiency and for its effectiveness in the use of public funds, including funds passed on to others for particular purposes. Oversight arrangements are necessary and appropriate.
- **Transparency** – WDC recognises the need to balance the need for clarity of actions with commercial considerations such as confidentiality. To that end WDC will seek to promote a better understanding of the needs of the respective roles and obligations between WDC and goods and services providers.
- **Value for money** – in recognition of Section 10(b) Local Government Act 2002 Amendment Act 2012 WDC seeks to *‘meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost effective for households and businesses.’*
- **Lawfulness** – WDC will at all times act within the law, and meet its legal obligations.

- **Fairness** – WDC has a general public law obligation to act fairly and reasonably. WDC will be, and must be seen to be, impartial in its decision-making.
- **Integrity** –All procurement processes will be undertaken with the utmost probity.
- **Fit for purpose** –best practice for tendering and procurement will be applied. This Policy reflects that approach while taking into account the practical reality of capacity limitations faced by small scale, rural local authorities such as WDC.

1.2 1.2 PROCUREMENT CATEGORIES

The OAG guideline identifies 7 categories of potential procurement arrangements

This policy documents guidance focused on the four categories of conventional and relational procurement shown in the shaded area of Fig.1 below, with minor and major conventional purchases making up the largest part of WDC procurement activity.

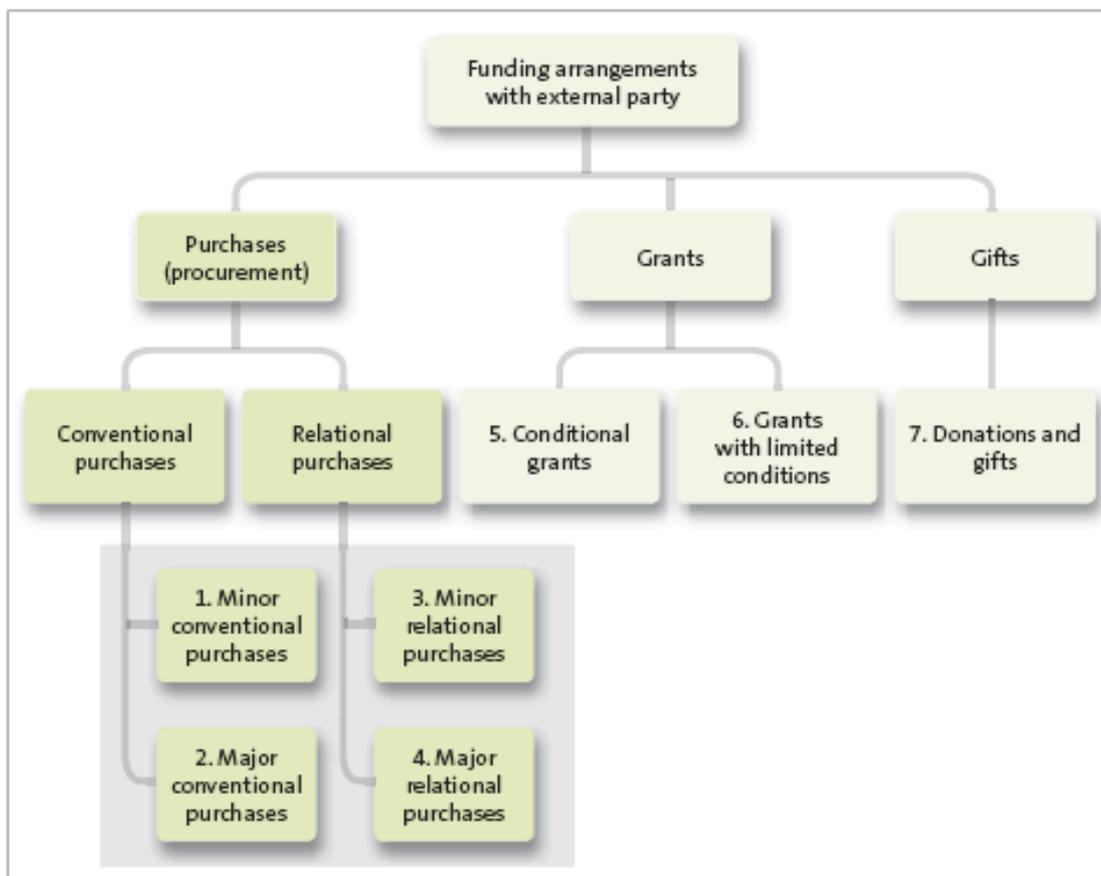


Fig1: Categories of funding arrangements with external parties¹

A brief description of each category is summarised below:

1. Minor Conventional Purchases (MiCP).

These are goods or services that WDC buys regularly, are of relatively low value, and are able to be bought through ordinary procurement systems. There will usually be a reasonable range of suppliers or providers to choose from, so that ordinary market disciplines and competitive

¹ From OAG Publication: *Public sector purchases, grants, and gifts: Managing funding arrangements with external parties, 2008*

processes are likely to be effective as a way of managing the price and value for money. Common examples include office consumables, such as stationery or catering, or once-only and short-term contracts for professional or consulting services. The supplier selection method would typically be by direct appointment.

2. Major Conventional Purchases (MCP).

This category assumes an effectively functioning market place for purchasing such those provided in a major conventional contracting environment. WDC expects that ordinary market-based procurement techniques will operate well and achieve sound value for money outcomes. Major conventional purchases (MCP) are typically high value – possibly worth millions of dollars. Inevitably, they carry higher risk to WDC and require a different level of planning, authorisation, documentation, monitoring, and general management. Examples of MCP include procurement of services to build community or network infrastructure, information technology contracts, and major consultancy contracts.

A staged, or design and build delivery method would typically be used with lowest price conforming or price -value supplier selection methods normally used.

It is noted that there will be some overlap between MCP and that of major relational purchases (MRP), as the market place offers the potential to undertake major contracts through strategic procurement arrangements such as partnering and project alliances.

3. Minor Relational Purchases (MiRP).

For this procurement category, conventional market-based systems may not be appropriate or particularly effective. The market to provide the goods or services does not exist in a practicable sense, the strategic importance of the goods or services is a special consideration, and the quality of the provider relationship is very important. Greater weight is given to the relationship or strategic dimensions of the procurement.

Minor relational purchases include the procurement of legal or policy or other advice from specialist providers, highly specialised professional advice, or the supply of a niche product produced for a particular and unusual requirement.

In this circumstance the supplier selection method will be by direct appointment

4. Major Relational Purchases (MaRP).

This area of procurement takes into account the factors identified under MiRP. This area of procurement must take into account the value or size of the goods or services being purchased. A larger contract will inevitably require additional attention and management throughout its whole life cycle.

MaRP procurement includes major investment purchases, or the purchase of significant professional or consultancy relationships.

The supplier selection method will be by direct appointment/procurement based on a fully detailed scope of services and negotiations on an acceptable target price.

1.3 PROCUREMENT METHODS

The way in which a procurement process is undertaken takes into account the different stages making up a good process. These are summarised as follows:

- planning for the funding arrangement;
- selecting a provider and agreeing the terms;
- managing and monitoring the arrangement; and
- reviewing, evaluating, and starting over (where appropriate).

| Type of funding arrangement | | | |
|---|--|---|--|
| Minor conventional purchase | Major conventional purchase | Minor relational purchase | Major relational purchase |
| General expectations: planning stage | | | |
| Any planning, decisions, and approvals follow Council's policies and procedures. | Formal planning and project systems put in place to manage the contract process. | Any planning, decisions, and approvals follow policies and procedures. | Planning, decisions, and approvals at a level appropriate to the scale of the contract. |
| Suitably skilled staff assigned. | A key person assigned to manage the particular funding arrangement. | Suitably skilled staff assigned. | A key person assigned to manage the particular funding arrangement. |
| | | Early liaison between the assigned staff and any other Council staff involved in managing the relationship with the external party. | Early liaison between the key person and any other Council staff involved in managing the relationship with the external party. |
| | Legal advice on process and contract as needed. | | Legal advice on process and contract as needed. |
| | | | Assessment of risks and relationship context. |
| General expectations: selection stage | | | |
| Selection process will usually involve direct appointment (including quotations, negotiations or closed competition) but will involve periodic reference to the market. | Competitive selection process (preferably open tender). Will usually involve either lowest price conforming tender or price quality selection methods. Formal processes involved with procedural safeguards. | Selection process may be limited if no effective market or if urgent and specialist goods or services needed. Typically involves direct appointment | Selection process more likely to involve direct negotiation than competitive systems. If no effective market, may use other approaches to determine price (for example, open book, benchmarking components, or independent peer review). |
| May be standard form contracts, with little negotiation of terms. | Negotiation of specific and detailed terms and conditions may occur with preferred supplier. | May be no negotiation of terms, or use of standard form contracts. | |
| Documentation of agreement. | Full formal documentation of contract. | Documentation of agreement, possibly through an exchange of letters. | Clear documentation of agreement and what is being funded. |
| General expectations: monitoring stage | | | |
| Possibly periodic payments, dependent on performance. | Systematic oversight. | Payments dependent on performance. | Systematic oversight. |
| Monitoring through normal office systems for processing receipts and invoices. | Comprehensive reporting. | | Reporting requirements tailored to situation. |
| | Payments dependent on performance. | | Periodic payments, dependent on performance. For long-term contracts, periodic review to ensure that the rationale for the arrangements continues to apply. |
| General expectations: review stage | | | |

| Type of funding arrangement | | | |
|--|--|--|--|
| Minor conventional purchase | Major conventional purchase | Minor relational purchase | Major relational purchase |
| Periodic review of satisfaction with suppliers. | Programmed review well before contract expires. | Periodic review of purchasing experience and satisfaction. Periodic discussion with supplier about mutual needs and satisfaction. | Programmed or regular review to check the purpose is still relevant, satisfaction of both parties, price, and any other issues. |
| Sources of guidance (OAG Publications) | | | |
| <i>Procurement guidance for public entities</i> | <i>Procurement guidance for public entities</i> | <i>Procurement guidance for public entities</i> | <i>Procurement guidance for public entities</i> |
| <i>Principles to underpin management by public entities of funding to non-government organisations</i> | <i>Principles to underpin management by public entities of funding to non-government organisations</i> | <i>Principles to underpin management by public entities of funding to non-government organisations</i> | <i>Principles to underpin management by public entities of funding to non-government organisations</i> |
| <i>Mandatory Rules for Procurement by Departments.</i> | <i>Achieving public sector outcomes with private sector partners</i> <i>Mandatory Rules for Procurement by Departments.</i> | <i>Mandatory Rules for Procurement by Departments.</i> | <i>Achieving public sector outcomes with private sector partners</i> <i>Mandatory Rules for Procurement by Departments.</i> |

Table: General expectations and sources of guidance for managing purchasing arrangements²

² From OAG - Public sector purchases, grants, and gifts: Managing funding arrangements with external parties

PART 2 - POLICY

2.1 ADMINISTRATION

2.1.1 Generic expectations:

- Public funds must be for the public purpose or goals fixed by the Council through the Long Term Plan (LTP)
- Individual procurement decisions must fit within the adopted budget
- Individual procurement process can only be undertaken within the delegations of authority as authorised from time to time by the Chief Executive.
- All procurement must comply with WDC policies and procedures unless there is an authorised and documented variation to make a departure from those WDC policies and procedures.
- All WDC staff making procurement decisions must act in keeping with WDC various policy and/or conduct standards or any equivalent external funding stakeholder policy and/or conduct standards as to the expected and required ethical and/or good practice standards.
- All those involved in making decisions or managing procurement must appropriately identify, manage, and record conflicts of interest; and
- Record-keeping systems must be in place to document effective procurement decision-making, ongoing procurement monitoring, and management of delivery, and to enable WDC to demonstrate probity in all procurement processes.

2.1.2 Ethics of procurement³

The following standards of procurement ethics must be adhered to by all WDC staff, contractors, and consultants employed by or acting on behalf of WDC in respect of the management of, involvement in, or advice on procurement processes:

- Avoidance of deceptive or misleading behaviour (as defined under the Fair Trading Act 1986).
- Avoidance of price fixing (as referred to in the Commerce Act 1986)
- Compliance with WDC's policy regarding receipt of gifts and gratuities (refer also to the OAG publication: Managing conflicts of interest - Guidance for public entities, 2007). In particular, the receipt of any gifts or forms of entertainment must not influence or impair, (or be perceived to influence or impair) a procurement decision making process.
- No gifts or gratuities are to be accepted from prospective suppliers who are actively tendering for the provision of goods or services.
- WDC staff must not be under any obligation (or appear to be under obligation) to any person or organisation other than the WDC organisation.
- All personal interests that may affect, or could be perceived to affect, the impartiality of elected members, staff, contractors or consultants when acting on behalf of Council, must be declared. Any mitigating action is to be approved on a "one-up" basis.

2.1.3 Authority to enter into Procurement arrangements

Decisions on the procurement of goods or services must comply with the relevant financial delegations.

WDC must also comply with any legislation that:

- limits its procurement authority; or
- requires specific procurement procedures as a prerequisite of funding approval; or
- governs its internal delegation practices.

A register of the financial delegations authorised by the Chief Executive will be kept up to date at all times. The current register can be found on Council's Intranet. All staff involved in the purchase of goods and/or services are to familiarise themselves with the latest register.

³ Adapted from McHale Group publication: Procurement Policies and Procedures

Authority to enter into procurement arrangements will be set at a level that does not place undue compliance restrictions and therefore an associated administrative burden on the procurement process. In deciding on the levels of financial delegations in a contract, The CEO will take into account:

- the value and complexity of the contract;
- the function that the individual is responsible for performing in the project; and
- the fiscal risk to WDC.

2.1.4 Reviewing and updating policy and procedures

- The Executive Office will be responsible for ensuring that the Procurement Policy and any associated procedures are kept under active review. The review process will involve distribution of the policy and procedures to each budget holder for comment. Final recommendation of all proposed changes will be made by the Chief Executive and formally adopted by Council
- The operative version of Council's Procurement Policy is to be maintained on the intranet for staff access and reference. The Control Sheet is to be completed to verify the most recent version
- All new staff will receive a briefing from the Human Resources Officer on the Procurement Policy as part of their induction to the organisation. Any agent that Council uses to procure on its behalf will be provided with copy of the policies and procedures manual as part of their engagement
- Copy of each version of the Procurement Policy is to be archived so that the version in force at the time of a particular procurement is available for review.

2.1.5 Competency requirements

WDC will ensure that any employee or agent involved in any procurement process has the required skills for the type and level of procurement.

If WDC engages a consultant or an agent to assist in the procurement process, the contract of engagement must require the consultant or agent to observe the same ethical standards, principles, and behaviours that apply to WDC staff.

Where an agent is engaged, WDC will ensure that an experienced employee with the necessary delegated authority is appointed to work with the agent.

2.1.6 Keeping records

WDC will keep and maintain full and accurate records of all procurement decisions in accordance with the Public Records Act 2005.

The value and risk of the procurement will determine the required documentation to address the following:

- show that due process was followed the basic principles for procurement set out above were met;
- establish that it identified and appropriately addressed potential conflict of interest issues;
- responded appropriately to enquiries from unsuccessful suppliers;
- recorded the outcome of meetings conduct as part of the procurement process;
- record any notices issued to suppliers during the request for proposal phase;
- provide evidence for accountability and audit purposes; and

WDC will keep records in a manner that facilitates audit and other normal processes of accountability. This will include ensuring that records of and the reasons for all decisions and supporting documentation are available for audit. A file will be maintained for each contract that includes as appropriate in all the circumstances:

- Business case and/or procurement plan
- Conflict of interest and confidentiality declarations

- The reasons for the chosen delivery model and supplier selection method.
- Request for tenders or proposals notice.
- Enquiries from potential tenderers.
- Notices to tenderers.
- Emails and letter correspondence
- Meeting minutes or notes
- Records of phone conversations with potential suppliers or other interested parties
- Record of tenders received (name and amount), date of opening and names of tender opener and witness.
- Tender report including the methodology and results of the evaluation process
- Tender acceptance authorisation.
- Letter of tender acceptance.
- Letters to unsuccessful tenderers.

2.1.7 Public law considerations

Public law obligations must be taken into account in any procurement process. WDC will always undertake any procurement process in a fair and reasonable way, and in keeping with the law. The particular obligations include:

- general public and administrative law duties to act fairly, reasonably, and in keeping with the law;
- obligations arising from international law and international trade agreements that bind the Government;
- public sector legislation relevant to the management of public funds and the powers of local authorities;
- any other limits or rules in the specific legislation that established Council; and
- specific rules in general legislation that may affect particular funding arrangements, such as the Commerce Act 1986, the Fair Trading Act 1986, or the various contract statutes.

Relevant local government legislation includes:

- the Public Finance Act 1989;
- the Local Government Act 2002;
- the Local Government Official Information and Meetings Act 1987;
- the Commerce Act 1986;
- the Fair Trading Act 1986;
- the Public Records Act 2005;
- the Local Authorities (Members' Interests) Act 1968;
- the Land Transport Management Act 2003.

WDC notes its public law obligations when in receipt of any unsolicited procurement proposals from potential suppliers. In that situation WDC will make it clear that, if WDC proceeds in consideration of any proposal, it may choose a competitive tender or proposal process, depending on the type and value of the procurement and any statutory obligations it may have. WDC will not be bound to a direct or selective procurement process.

2.1.8 Contractual considerations

Procurement involving a competitive tender or proposal process has the potential to introduce legal risks.

For that reason any procurement documentation setting out a defined tendering or proposal process (e.g. conditions of tendering) must be qualified by including a statement excluding or limiting WDC's liability in the event of any breach by WDC during the procurement process. This may include a statement to the effect that WDC reserves the right to accept an alternative tender or proposal and/or to negotiate a contract with the preferred tenderer.

2.1.9 Intellectual property

WDC will own the copyright of new works created by a works and or services supplier unless otherwise provided for in the contract documenting the procurement process arrangement(s).

WDC will:

- identify all intellectual property likely to be developed or created during a procurement;
- seek legal advice on how to secure its continuing right to use intellectual property as required – including if WDC procures the goods or services from a different supplier in future;

For design and information and communication technology supply contracts, the supplier shall own new intellectual property, with licences granted to WDC for ongoing use of the equipment as required.

WDC will take all reasonable steps to satisfy itself that claims of intellectual property by suppliers are valid.

2.1.10 Liability

Exclusions or limitations on the liability of a supplier may include:

- suppliers proposing to exclude their liability for any losses that are not the direct result of their acts or omissions (for example, for indirect loss, consequential loss, loss of profits); and/or
- suppliers proposing to limit their liability to an amount that is a specified multiple of the value of the contract.

In either case, WDC will undertake a risk assessment before deciding whether to accept an exclusion or limitation on liability by a supplier. If WDC accepts an exclusion or limitation, the contract must clearly specify the scope and extent of the exclusion or limitation.

Where there is an exclusion or limitation on a supplier's liability, WDC will take associated costs into account when considering that supplier's goods or services.

Without a limitation in the contract, the supplier's liability will be determined by general law.

Any indemnity included in a tender or proposal involving WDC agreeing to accept the risk of loss or damage that the supplier may suffer, and to meet any costs to the supplier for that loss or damage, will not be considered. However, WDC may choose to limit its own liability or to seek an indemnity.

2.1.11 Conflicts of Interest

WDC procurement process will be conducted with a spirit of probity demonstrating:

- integrity;
- honesty;
- transparency;
- openness;
- independence;
- good faith; and
- service to the public.

A conflict of interest occurs where:

A member's or official's duties or responsibilities to Council could be affected by some other interest or duty that the member or official may have.

The other interest or duty might exist because of:

- holding another public office;
- being an employee, advisor, director, or partner of another business or organisation;
- pursuing a business opportunity;

- being a member of a club, society, or association;
- having a professional or legal obligation to someone else (such as being a trustee);
- owning a beneficial interest in a trust;
- owning or occupying a piece of land;
- owning shares or some other investment or asset;
- having received a gift, hospitality, or other benefit from someone;9
- owing a debt to someone;
- holding or expressing strong political or personal views that may indicate prejudice or predetermination for or against a person or issue ; or
- being a relative or close friend of someone who has one of these interests, or who could otherwise be personally affected by a decision of Council

A relative or close friend includes:

- For matters covered by the Local Authorities (Members' Interests) Act 1968, the interests of a spouse, civil union partner, or de facto partner must be considered.
- Generally, the interests of any relative who lives with the member or official (or where one is otherwise dependent on the other) must be treated as being effectively the same as an interest of the member or official.
- For other relatives, it will depend on the closeness of the relationship, but it will usually be wise not to participate if relatives are seriously affected
- Where Council's decision or activity affects an organisation that a relative or friend works for, it is legitimate to take into account the nature of their position or whether they would be personally affected by the decision.

Examples of potential conflicts of interest include:

- conducting business on behalf of Council with a relative's company;
- owning shares in (or working for) particular types of organisation that have dealings with (or that are in competition with) Council;
- deliberating on a public consultation process where the member or official has made a personal submission (or from making submissions at all, in areas that directly relate to the entity's work);
- accepting gifts in connection with their official role; or
- influencing or participating in a decision to award grants or contracts where the member or official is connected to a person or organisation that submitted an application or tender.

All elected members, WDC staff or advisers involved in a procurement process are required to declare any *other interests or duties* that may affect, or could be perceived to affect, their impartiality. WDC will then decide the steps necessary to manage the conflict, having regard to any relevant statutory requirements. WDC will maintain a register of declarations of conflicts of interest that records any conflicts of interest and how they will be managed.

An annual update of the register will be coordinated and maintained by the Executive Office.

Under no circumstances will a procurement process allow as an outcome of that process a circumstance where Council elected members, WDC staff or advisers to receive preferential treatment.

2.1.12 Prejudice and Predetermination

Financial and non-financial conflicts of interest

A financial (pecuniary) conflict of interest is one where the decision or act:

...could reasonably give rise to an expectation of financial gain or loss to the person concerned.

A financial conflict of interest need not involve cash changing hands directly.

Any financial conflict of interest (except one that is trivial) will amount to an automatic disqualification from participation in the decision, regardless of any other appearance of bias.

A non-financial conflict of interest does not have a financial component.

Where interest is a direct result of an official role

A Council member or a WDC staff member may be legitimately involved in the business of a second entity through a deliberate appointment (for example, an elected member is appointed as Council's representative on a community trust, or simply because of their position with Council), and it is consistent with their role on Council or as WDC staff to participate at meetings on some matters that concern the second organisation (especially if that second role gives them specialised knowledge that it would be useful to contribute). This arrangements are legitimate, and established for mutual benefit, where there will be no risk that the member or WDC staff member could advance any private interest, or show partiality, or otherwise act in a way that was not in the WDCs best interests.

However a duty exists to act in a way to avoid any conflicts of interest where the member or WDC staff may be under a legal duty (as, say, a director or trustee) to act in the best interests of the other entity. This includes situations where WDC is making a decision about funding the other entity or about the continued existence or viability of the other entity, or about a formal submission that the other entity has made.

Consequences of breaching a statutory rule

A conflict of interest may result in serious damage to Council's reputation.

Breaching a statutory rule may constitute grounds for removing an elected member from office. In some cases, it might constitute an offence. Sometimes, the law provides that a transaction of the Council might be able to be cancelled. Some matters might adversely affect Council's Annual Report.

Each elected member must take all necessary measures to ensure compliance with Section 3 of the Local Authorities (Members Interests) Act 1968 including the requirement that that the total of all payments made or to be made by or on behalf of the Council in respect of all new contracts made by it in which that elected member is concerned or interested does not exceed \$25,000 in any financial year without prior approval of the Audit Office on the application of Council.

Any breach of the conflict of interest rules involving staff and resulting in serious damage to Council's reputation constitutes serious misconduct. The ensuing disciplinary action may lead to termination of employment.

2.1.13 Confidentiality

To the extent that WDC must comply with its obligations under the Local Government Official Information and Meetings Act 1987 (LGOIMA), confidentiality obligations apply throughout the entire procurement process and also after the contract has terminated or expired

(Note: The LGOIMA means that WDC is not able to give comprehensive assurances about the protection of sensitive information. There are relevant grounds for withholding information under those Acts, such as unreasonable prejudice to the commercial position of a potential supplier, but these can be overridden if there is a greater public interest in disclosing the information)

Use of information

Council elected members and WDC staff will:

- respect the confidentiality of information received in the course of their work;
- not use this information for personal gain; and
- always communicate information accurately, impartially, and in a manner not designed to mislead, to all interested participants.

WDC will respect the sensitivity of information provided by participants during the procurement process. WDC will not use confidential information to influence or advantage other participants.

2.1.14 Sustainability

WDC's procurement procedures must have regard to its responsibilities under the Local Government Act 2002 to take a sustainable development approach by taking into account the social, economic, environmental, and cultural well-being of people and communities, the need to maintain and enhance the quality of the environment, and the needs of future generations. Sustainable procurement measures may include:

- specifying products and services considered to be sustainable;
- verifying suppliers' sustainable management standards;
- including a sustainability clause in contracts;
- rating supplier performance against sustainability criteria;
- insisting on sustainability improvement targets for suppliers;
- assisting suppliers to improve their sustainability performance;
- utilising recycling options for used materials;
- safe and effective containment of hazardous materials on work sites
- active containment of site run-off to minimize external impacts;
- encouraging sustainable innovation in the supply of goods or services;
- reporting on the contribution of the procurement to the achievement of community outcomes

2.2 PROCUREMENT STRATEGY

WDC will select from a range of possible procurement strategies to purchase goods and services so as to ensure an appropriate process.

In considering that, WDC will take into account:

- the value and risk of the goods and services;
- the availability of the goods and services;
- timing constraints impacting on the procurement;
- the importance of the goods and services to WDC;
- the characteristics of the market and any action WDC may want to take to develop or otherwise influence the market;
- the transaction costs associated with the procurement; and
- any documented and confirmed external policy objectives – for example, sustainability.

A following matrix will be used to guide procurement method selection. The matrix plots risk (difficulty of supply, importance to the organisation, or equivalent) on a graph against expenditure for the required goods or services.

(Note: Typically, quadrant 4 (high risk and high value) items, can make up more than half the value of Council's total expenditure on procured goods and services.)

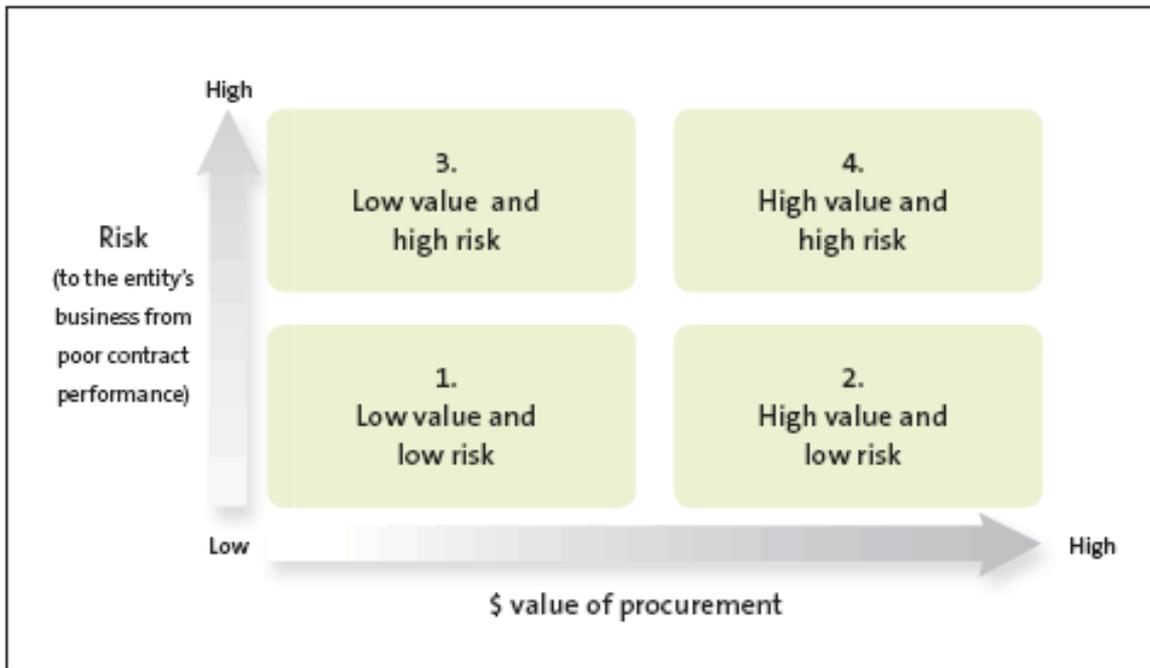


Fig.

Matrix analysis – risk versus value⁴

The following table sets out the considerations WDC will consider when developing procurement procedures for each risk category:

| Characteristics | Basic procurement strategy | Issues to consider when developing procurement procedures |
|--|--|--|
| <p>Low value and low risk (Quadrant 1)</p> <p>Goods or services in this category are usually low value. These goods or services can be routinely procured or procured as required. They are generally goods or services for which demand cannot be aggregated to establish standing offers. The transaction costs associated with procuring them may be of greater cost than the items themselves.</p> <p>Generally, there are competitive local supply markets for goods or services in this category, even at the local level.</p> <p>The skills required for these types of transactions are generally administrative.</p> | <p>Keep procurement in this quadrant relatively simple to minimise procurement and transaction costs.</p> <p>Devolve procurement and associated budgets to the lowest practical geographic level where competitive local markets exist.</p> <p>Establish efficient local procurement arrangements to minimise processing costs.</p> <p>Document the administrative procedures for procuring goods or services in the entity's procurement policies and procedures.</p> | <p>Goods or services procured in this category include:</p> <ul style="list-style-type: none"> • Food and catering • Administrative equipment hire (sound system etc). <p>For the different goods, services, or groups of items in this category, the procurement methods that will minimise processing costs and deliver value for money</p> <p>The number of competitive offers needed to deliver value for money, probity, and accountability.</p> <p>Organisational responsibility for procurement activities in this category</p> <p>The skill levels required to do the various types of procurements.</p> <p>The expenditure and procurement authorities/approvals needed for management control and to ensure probity and accountability</p> |

⁴ From OAG

| Characteristics | Basic procurement strategy | Issues to consider when developing procurement procedures |
|--|---|---|
| High value and low risk (Quadrant 2) | Aim to ensure that total costs, including the costs of processing large numbers of low value transactions, are reduced. | Other procedures, documentation and records needed to manage the procurement function in this category |
| Goods or services in this category are generally widely used by WDC, they have no special quality, safety, reliability, or environmental implications, they are simple to specify, and they have common standards. | Consider using standing offer arrangements with electronic ordering and transaction processes. | Goods or services purchased in this category include: <ul style="list-style-type: none"> • Stationery • Fuel cards • Cleaning contracts • Travel bookings |
| Procurement of these items is often in high volumes but with sometimes low value individual transactions. There are often whole-of- organisation or syndicated arrangements for supply of these goods or services. | Aggregate procurement to increase the attractiveness of buying the goods or services, thus increasing the competitiveness of the pricing. | Location of the competitive markets for these goods or services. |
| Buying is usually an administrative task (for example, booking travel). | Document the administrative procedures for buying in the entity's procurement policies and procedures. | The use of aggregation of procurement at the local level for particular product types to warrant the provision of a full service provider with regional delivery capability. |
| However, high level procurement skills are required to establish and manage these arrangements (for example, setting up travel arrangements). | Consider if there is a need to address environmental issues about disposal, waste management recycling, handling, or storage. | The practicality of establishing standing offer arrangements or other methods of supply. |
| | | The availability of electronic ordering/paying or other processes to reduce processing costs. |
| | | Buying strategies to deliver value for money, probity and accountability. |
| | | The skills needed to establish and buy from standing offer arrangements. |
| | | The skills needed for the other buying methods used in this category. |
| | | The expenditure and procurement authorities/approvals needed for management control and to ensure probity and accountability. |
| | | The systems and supporting procedures, including expenditure and procurement authorities/ approvals, needed for management control and to ensure probity and accountability. |
| Low value and high risk (Quadrant 3) | Reduce exposure to limited sources of supply. This can be done through actively | Goods or services purchased in this category include: <ul style="list-style-type: none"> • Consent compliance |

| Characteristics | Basic procurement strategy | Issues to consider when developing procurement procedures |
|---|---|--|
| There are often very few potential suppliers. There are relatively few transactions in this category. | identifying alternative sources of supply and/ or changing the demand requirements of WDC. | <ul style="list-style-type: none"> equipment Building security systems Corporate branding |
| High-level procurement and technical skills are required to establish and manage these arrangements. | Prepare individual strategies or procurement plans for each procurement project in this category. | An individual procurement strategy/plan will need to be developed for each item in this category. |
| Price may not be the principal factor in the procurement. | | The need to provide an efficient mechanism to do these procurement projects. |
| | | The organisational systems and procedures needed to do procurement and contract management in this category. |
| | | The required procurement, technical and other expertise identified for each project. |
| | | The process for identification of project managers and the responsibilities and authority they will have. |
| | | Integration of the projects into the other business activities of WDC. |
| | | The systems and supporting procedures, including expenditure and procurement authorities/ approvals, needed for management control and to ensure probity and accountability. |
| High value and high risk (Quadrant 4) | | |
| Goods or services in this category are often a complex "bundle" or "package" of services and associated goods that are critical to the service delivery of Council. | (Refer to Appendix A for Council's roading procurement strategy). | Goods or services purchased in this category include: |
| Long-term relationships with suppliers are common. Supplier attitudes towards Council as a customer are often critical to the value Council will derive from the delivery of the goods and/or services. | Focus on ensuring that the successful supplier has the ability, availability, and resources needed to work with WDC. | <ul style="list-style-type: none"> Infrastructural maintenance, and operation contracts Shared services contracts Information technology hardware and software Major construction contracts Investments |
| High-level purchasing and technical skills are required to establish and manage the procurement process. | Manage the relationship with the supplier to obtain value for money. | WDC needs to provide an efficient mechanism for these procurement projects. |
| | Have a detailed understanding of what is required, how the arrangement should be managed, and the market characteristics. | The organisational systems and procedures needed for doing purchasing and contract management in this category. |
| | Develop individual procurement strategies or plans for each procurement project in this category. | The required purchasing, technical, and other expertise required for each project. |

| Characteristics | Basic procurement strategy | Issues to consider when developing procurement procedures |
|-----------------|----------------------------|---|
| | | Identification of the project managers and the responsibilities and authority will they have. |
| | | Integration of the projects into the other business activities of WDC. |
| | | The systems and supporting procedures, including expenditure and procurement authorities, needed for management control and to ensure integrity and accountability. |

Table: Basic procurement strategy and issues for consideration⁵

Note: Roothing projects eligible for NZTA funding assistance must comply with the relevant requirements of a procurement strategy adopted by Council which takes into account the need for the WDC roading programme to legitimately and consistently meet the criteria established to qualify for access to Financial Assistance Rate (FAR) subsidy payment. Details may be found in Appendix A.

2.3 PROCUREMENT PLAN

A procurement plan will establish the following analysis requirements:

- the best way to approach the procurement of goods or services (through information gathering and analysis);
- risks associated with the procurement so that they can be identified and managed as an early step in the planning process; and
- ways of achieving the objectives defined for the procurement, in line with Council's procurement strategy.

Individual Procurement Plans (PP) are mandatory for higher value and higher risk procurement – that is, those goods or services identified by Council as being in Quadrants 3 or 4.

The content of any PP will depend on the value and associated risk of the procurement and the resources available to prepare the plan. The content must include:

- the project scope;
- the delivery model;
- selecting an evaluation model (including the evaluation criteria) and process
- the type of contract and contractual conditions
- the responsibilities of Council staff or advisers and any other stakeholders;
- the risks;
- the need for independent oversight or assurance over the process
- the timelines and key milestones;
- the resources needed (for example, project manager, evaluation team members, and approval authority); and
- the budget, including the budget for conducting the procurement (for example, for external quality assurance, independent assurance, legal advice, and project management).

2.4 SELECTING A PROCUREMENT MODEL

2.4.1 Process

⁵ Adapted from OAG

WDC will identify the appropriate type of delivery model before they enter into individual transactions and arrangements. WDC will:

Determine the goal: WDC will focus on what it is trying to achieve so as to avoid any procurement process dominating at the expense of the outcome.

Decide the relationship context: e.g.:

- Sectoral or strategic context - for example, central and local government have operated a "partnership" relationship for some years and have shared strategic goals that at times have informed the way that central government funds some local government activity.
- Type of organisation supplying the goods or services - relationships with commercial organisations are much more likely to be formal procurement type contracts.
- Length of relationship - longer term relationships are more likely to entail risk sharing such as in partnering or alliance type agreements. Major conventional or relational funding arrangements are relevant in these situations.
- Presence of a market - the presence of a relevant market is more likely to lead to conventional procurement contracts.
- The end users - it may be important to consider the needs of the recipients or end users of a service when thinking about the relationship with an external party. A conventional purchaser/provider contractual relationship may not fit all circumstances

Identify the risks: WDC will identify potential risks and decide how to manage them e.g.:

- Control - In general, the greater the level of control sought or exerted over what is done and the outcome, the more likely it is that the relationship will be a highly specified and contractually enforceable conventional or relational purchasing arrangement.
- Performance and consequences - Where the risk of non delivery or under deliver is assessed as high then action will be taken to ensure the provider can be held legally accountable for delivery; the relationship will be set up as a contractual purchase arrangement where the parties can withhold payment or go to court to seek remedies for non-performance.
- Tolerance - The level of risk that WDC is prepared to accept will impact on the price and style of contract. A high level of tolerance is appropriate in a relational procurement arrangement; low tolerance a highly specified conventional contract.
- Sustainability - The viability of the external party will be taken into account in how WDC approaches the procurement relationship overall and in particular in any procurement arrangement.

Consider the value: The model will be as simple and practical as possible, taking into account the financial size of the procurement, the complexity of delivery, and the assessed level of risk. WDC will where ever possible take compliance costs into account and seek to reduce them where possible

2.4.2 Delivery models:

Staged: A staged contracting model delivers through a series of separate contracts with individual suppliers. The latter deliver separate parts of the activity, e.g. separate engagement of design, supervision, and construction functions, or specific service delivery, where applicable. Generally each part will be substantially complete before a supplier is sought to deliver the next part. Risk will mainly be managed by WDC.

The following delivery models are included in the staged category:

- Construct only.
- Service delivery.
- Sequential staged (full design completed before construction commences).
- Accelerated staged (construction commences with design partially completed).

Examples of procurement areas where the staged model may be used include:

- Asset design, improvement and renewal.
- Asset management and operation.
- Planning and advice services.

In cases where WDC seeks a detailed understanding of the supplier market and the range of technologies that might be available, a formal registration of interest (RoI) followed by a request for proposal (RFP) will be used.

Short listing using a RoI or RFP process will be used to reduce the administrative cost to WDC (and suppliers) of evaluating more tenders than is necessary to achieve a competitive base and in the interests of urgency Short listing will be based on non-price attributes only (excluding methodology) using the target price, price-quality or quality based selection methods.

Design and Build (including performance specified maintenance contracts - PSMC):

A single supplier engaged to complete all detailed design and construction involved with the project.

WDC will prepare a brief plus performance and quality requirement specifications. A contract will be awarded to prepare or complete any concept design, design development or documentation, and construct the works. The intention being to transfer risk to the supplier(s)

Included within the design and build category are the following models:

- Design and construct.
- Design, novate and construct.
- Design, construct and maintain, or design, construct and operate

Examples of procurement areas where the design and build model may be used include:

- Asset design, improvement and renewal.
- Performance specified maintenance contracts (PSMC).

Shared Risk:

Comprises an integrated team of WDC representatives and suppliers to deliver a specific activity where interests are aligned with the desired outcomes. The team will be selected on a 'best for project' basis, and may include designers, constructors, implementers and suppliers, alongside WDC. The participants will be required to commit to working innovatively and in mutual support of one another.

Included within the shared risk category are models of alliances and partnerships. Risk is shared and assigned to those best able to manage and mitigate the risk.

Examples of where the shared risk model may be used include:

- Asset design, improvement and renewal.
- Asset management and operation.

Supplier Panels:

A procurement arrangement with a group of suppliers to provide goods and services as and when required, under a schedule of rates for each supplier or based on a quotation. Panel contracts will be used for goods or services identified as being in quadrant 1 of the procurement strategy matrix above i.e. goods or services where the cost and risk to Council is low.

The preferred procurement arrangement method in this context is the All of Government (AoG) procurement arrangement coordinated through the Ministry of Economic Development.

Panel contracts will be used where:

- fixed prices, fees, or rates can be agreed with each supplier;
- the “demand” or requirement for goods or services cannot be predicted;
- the goods or services do not all need to be provided by the same supplier;
- there are specific requirements, such as specialist skills and knowledge;
- allowing for greater choice of supplier is seen as an advantage or provides a contingency in case an alternative supplier is required because of other commitments or a conflict of interest arises with a preferred supplier;
- goods or services may need to be procured at short notice;
- WDC may need a variety of skills at different stages; and
- it cannot be predicted that one supplier could provide the goods or services at any point in time – for example, the work cannot be handled by one particular supplier alone.

“Panel” contracts will rely on the AoG competitive process for both best price and tender documentation:

WDC will seek to develop a medium to long-term relationship with the group of suppliers who are seen as the main source of the required goods or services. This does not imply a sole or exclusive arrangement between WDC and suppliers.

The supplier panel delivery model uses a two stage process. In the first stage suppliers are selected and appointed to the panel based on a broad scope of the work to be undertaken and in the second stage work is allocated to panel members.

Council will agree at the time of engagement on a mechanism by which the price for the work that a supplier will be asked to deliver will be determined. This may involve a competition between suppliers on the panel to win the right to deliver a particular part of the work.

Risk allocation will be similar to the staged model but will ensure the availability of more than one supplier with the required skills.

Examples of where the supplier panel model may be used include:

- Asset design, improvement and renewal.
- Asset management and operation.
- Planning and advice.
- Regular supply of routine goods and services such as electrical or plumbing work required to service Council’s property assets at short notice and when an immediate response is required on a 24 by 7 basis.

2.4.3 Other delivery models

Procurement cards

Council has selectively assigned procurement cards in the form of fuel cards and credit cards.

The use of credit cards is limited to WDC work related business expenses, including travel costs, food and accommodation. WDC credit cards must not be used for personal expenses.

A fuel card will be assigned to each WDC vehicle specific to the vehicle registration number and will be limited to work related fuel and oil purchases only.

Monthly transactions must be reviewed and verified by the cardholder's manager on a “one-up” basis. In the case of the Chief Executive, the review and verification will be completed by the Mayor. In the case of the Mayor, the review and verification will be completed by the Chief Executive.

Standing Arrangements

From time to time WDC will procure goods or services directly from suppliers for an agreed period of time. WDC may set up these standing arrangements after a competitive process, or to take advantage of competitive processes arranged with other Council’s. Standing arrangements include:

- Syndicated procurement

- Panel contracts (supplier panels) – see above

Syndicated procurement (collaboration):

WDC will from time to time join other local authorities to aggregate their procurement requirements to achieve improved outcomes through greater purchasing power and reduced procurement costs. Other entities cannot subsequently join the contract unless the contract contains a common use provision (CUP) clause to enable eligible entities to join the contract for its remaining term.

Before participating in a syndicated procurement, WDC will seek advice on what it needs to do to comply with the Commerce Act 1986 to avoid anti-competitive conduct and arrangements.

WDC will also carefully consider the effects of a syndicated procurement on the relevant local District market place so as to avoid creating a position of market dominance by a single supplier or to avoid unintentionally excluding a local District goods and or service provider.

The terms of a syndicated procurement contract, will clearly specify:

- responsibilities for managing the contract;
- responsibilities for contract reviews;
- responsibilities for arranging additional terms;
- termination provisions, including options on termination;
- pricing options; and
- protection of supplier pricing and contract information.

A documented arrangement will be established for any a syndicated contract setting out a common understanding for all members of the syndicate, including:

- the role of the syndicate members and the responsibilities of the designated lead entity – for example, to issue the RFP and receive tenders or proposals;
- the procurement requirements and the specifications;
- the method of procurement;
- how the goods or services will be evaluated;
- the form and content of the contract with the supplier;
- the initial contract management strategy, transition arrangements, and performance management measures; and
- termination and re-tender or proposal procedures.

If the syndicate appoints a private sector agent to conduct the procurement process on its behalf, the procurement plan shall identify:

- the form and content of the contract with the agent;
- potential changes to the risk profile of the procurement that arise from involving a third party; and
- the need for the agent to comply with important principles and practices

WDC will ensure that:

- Any lead agency in will be responsible for any contract benchmarking, review negotiation, and price changes for participating council's during the term of the contract.
- a contract management plan is in place to ensure that benefits anticipated from the contract are achieved.
- a contract manager is appointed to manage its relationship with the supplier;
- there is a process for resolving disputes and settling grievances between the cluster members and the supplier; and
- there is provision for identifying problem areas at an early stage and for initiating remedial action.
- the contract sets out how a syndicate member exit the contract.
- the conditions of contract provide for terminating the contract during the period of the contract.

- the lead entity is required to consult with syndicate members when completing or renewing the contract.
- any extension of the contract is in keeping with the contract extension clause in the contract.
- the contract clearly identifies whether the syndicate or the supplier owns any intellectual property developed as a result of the procurement and secures the syndicates right to use any background intellectual property

2.5 SUPPLIER SELECTION METHODS (tender evaluation)

WDC supplier selection will ensure that any supplier has the capability to deliver the goods or services and provide the best value for money over all.

An evaluation model will be selected and documented at the procurement planning stage. The procurement of goods or services requiring a competitive tendering or proposal process will require an evaluation model.

The method of evaluating the tender or proposal must be set out in the procurement documents. The evaluation criteria must be detailed so as to allow WDC to effectively assess the relative strengths and weaknesses of each tender or proposal.

Tenders or proposals may be invited on either a "open" (all possible suppliers are invited to respond) or "closed" (only some of the possible suppliers are invited to respond) basis. As a general guide, open tender or proposal processes must be used for middle to high risk and/or value procurements where there are a number of potential suppliers in the market. Open tendering processes may be subject to short listing.

The following selection methods are available:

- Direct appointment
- Closed contest
- Lowest-price conforming attributes;
- Price quality (weighted-attributes);
- Target-price (purchaser nominated price);
- Brooks Law (quality based)

Subject to any mandatory requirements for procurement, e.g. the NZ Transport Agency's procurement procedures, Council may decide the method it will use to interact with the potential suppliers of goods or services (the "procurement method").

The procurement method selected should ensure:

- the benefits outweigh the costs of procurement; and
- wherever possible, promotion of open and effective competition throughout the procurement process; and
- the associated value and risks of the method have been considered.

2.5.1 Direct appointment of a supplier of goods or services

WDC may use a direct appointment method where a preferred supplier is selected and the contract terms including price negotiated and agreed. It must only be used for low value and low risk contracts. Where a direct appointment process is used, WDC will document the reason(s) for using this method and the outcome that it intends from the procurement.

Each decision to use a direct appointment or closed contest must be:

- taken systematically by staff who have the necessary knowledge and experience of the procurement environment – assisted, as required, by external expert advice; and
- supported by a properly developed business case and market research to reveal those suppliers that have the appropriate level of skill to provide the goods or services.

WDC may consider purchasing directly from a supplier where:

- the goods or services require specialised skills or are very complex and there is a limited number of qualified suppliers;
- the required goods or services are available from only one source;
- only one supplier has the capacity to deliver in the time required, and this can be adequately attested;
- the supplier has recently won a competitive pricing process for the procurement of goods or services of a similar nature and has successfully delivered the specified goods or services to the required standards, on time and within the contract sum, and the cost of repeating the pricing process outweighs the benefits;
- standardisation or compatibility with existing equipment or services is necessary, and can be achieved through only one supplier.
- the value of the goods or services is low compared to the overall budget for the sub-activity;
- the purchase of the goods or services is on an as-required basis;
- it is not practical to aggregate separate orders for the goods or services; or
- the cost of seeking quotes or tenders would be out of proportion to the value of the benefits likely to be obtained or impractical in the circumstances.

Direct appointment of a single willing and able supplier is permitted where:

the contract cost estimate is less than or equal to the relevant amount specified in the table below, or

the contract is a low dollar value contract and the supplier selection process commences as a closed contest, but only one potential supplier is identified, or

the supplier selection process commences as an open competition, but only one potential supplier is identified, or

a monopoly supplier situation exists as defined in the NZTA Procurement Manual, or

the requirements for direct appointment where competition reduces value for money are met (refer to NZTA Procurement Manual Direct appointments where competition reduces value for money).

The terms of the contract, including price, must be negotiated as follows:

Step 1 – Undertake market research to determine possible suppliers

Step 2 – Select the preferred supplier on the basis of the supplier's experience with activities of the same or similar nature and complete reference checks.

Step 3 – Negotiate contract terms with the preferred supplier

For direct procurement of goods or services (excluding roading works) having an estimated value less than \$5,000, purchases will be based on a written quotation and confirmed with a WDC purchase order on which details of the date, description of goods, cost and name of purchaser will be recorded. Proof of receipt of goods or services will be in the form of a signed copy of the purchase order attached to the supplier's GST invoice.

The required goods or services must not be split into components or a succession of orders so as to enable orders to be placed without seeking competitive prices

Regular reviews must be carried out on goods or services routinely procured by direct appointment to ensure the rates are reasonable and consistent with current market rates for items of a similar nature. This may include randomly inviting quotations at appropriate time intervals.

Before deciding to make a direct appointment, Council officers must take adequate steps to ensure the supplier's suitability, and to document what information it obtained in this check. Steps might include obtaining references (with the supplier's consent) that attest to the standards of the supplier's past performance. Alternatively, a registration of interest process could be used to gather

this information, by invitation if potential suppliers are known or public notice if potential suppliers are not known.

Council will satisfy itself from time to time that repeat selective procurement from the same supplier is justified. This might include advertising to seek expressions of interest from other suppliers.

WDC staff must also ensure compliance at all times with WDC's policy on sensitive expenditure.

All goods and services procured using the direct appointment method and having a value greater than **\$1,000** must be approved in writing on a "one-up" basis prior to purchase. The reasons for using this method must be documented in support of the requisitioning officer's report and recommendations.

2.5.2 Closed contest

For higher risk and higher value procurement, WDC will use a competitive process (for example, a quote or tender). Competitive processes may be open to all potential suppliers, or restricted to selected suppliers who are invited to submit a proposal within a competitive process (closed contest).

A closed contest or proposal involves inviting a minimum of three suppliers to submit a tender or proposal. The invited tenderers may be selected from a prior RoI process or identified from a prequalification register, previous experience, or other reliable sources of information including local government networks. The method of identifying potential suppliers for a closed competition must be documented.

A closed contest process may be used provided tenders are invited and received from three or more willing and able suppliers and where the contract cost estimate is less than or equal to the relevant maximum amount shown in the table below.. Where experience over the previous 13 months indicates that 3 or more tenders for a closed competition process cannot be obtained, tenders may be obtained from contractors able to do the work that have been identified in the last 13 months. Supplier selection will be based on one of the approved methods identified in this policy. If only one supplier is able to be identified then Council may choose to negotiate the terms, including price, of a contract with that supplier.

The procedures for direct appointment also apply to emergency works within set criteria.

2.5.3 Value limits for direct appointment and closed contest procurement processes

The following table summarises examples of the types of goods or services and expenditure limits for direct or closed contest procurement. Values exceeding the closed contest amount must be open tendered:

| Goods or service | Maximum value of direct purchase (\$) | Maximum value of closed contest (\$) | Supplier selection method for closed contest |
|---------------------------|---------------------------------------|--------------------------------------|--|
| Audit fees | 100,000 | 100,000 | LPCT |
| Bank & merchant fees | 25,000 | 100,000 | LPCT |
| Catering and refreshments | 500 | 15,000 | LPCT |
| Computer/software support | 20,000 | 200,000 | Price quality |
| Consent compliance | N/A | N/A | N/A |
| Education and publicity | 1,000 | 5,000 | LPCT |
| Elected members costs | N/A | N/A | N/A |
| Employee costs | N/A | N/A | N/A |
| Energy supply | N/A | N/A | Syndicated procurement? |
| Facilities maintenance | 50,000 | 100,000 | Price quality |
| Grants & donations | N/A | N/A | N/A |
| Insurance | 50,000 | 150,000 | LPCT |

| Goods or service | Maximum value of direct purchase (\$) | Maximum value of closed contest (\$) | Supplier selection method for closed contest |
|--|--|---|---|
| Legal fees | 10,000 | 30,000 | LPCT |
| Material supplies | 5,000 | 100,000 | Price quality |
| Planning & research | 20,000 | 100,000 | Price quality |
| Postage and delivery costs | N/A | N/A | N/A |
| Printing & stationery | 1,000 | 50,000 | LPCT |
| Publications & subscriptions | N/A | N/A | N/A |
| Rates | N/A | N/A | N/A |
| Rates roll and collection | N/A | N/A | N/A |
| Road maintenance | 100,000 | 200,000 | LPCT |
| Road renewals and improvements | 100,000 | 200,000 | LPCT |
| Salaries | N/A | N/A | N/A |
| Solid waste mgt | 50,000 | 150,000 | LPCT |
| Telephone & communication | 5,000 | 100,000 | Price quality |
| Training | N/A | N/A | N/A |
| Vehicle costs | 20,000 | 100,000 | Price quality |
| Wastewater maintenance | 25,000 | 100,000 | LPCT |
| Wastewater renewals and improvements | 25,000 | 100,000 | LPCT |
| Water supply maintenance | 25,000 | 100,000 | LPCT |
| Water supply renewals and improvements | 25,000 | 100,000 | LPCT |

* Please Note: These maximum values are indicative only.

2.5.4 Lowest price conforming attributes method

The lowest-priced tender or proposal is selected once a prerequisite level of quality is met.

The method is appropriate where additional quality over and above a minimum service provision threshold does not offer greater value for money. It places greatest emphasis on price and is most suited for the more easily defined, construction projects. Tenders are evaluated in order of ascending price with the non-price attributes evaluated on a pass/fail basis. In effect, all conforming attributes of competing suppliers are treated as having the same value (unlike the weighted attributes method). A fail on any attribute automatically eliminates that tender from further consideration. The first tender to pass all non-price attributes becomes the successful tender.

2.5.5 Price quality method (weighted attributes)

Seeks to balance the trade-off between price and quality.

This method can be used for goods or services. WDC will use this method where it is considered that a higher risk exists or term service procurement needs are established (e.g. maintenance contracts) where the relative degree of goods or service support and management systems (quality attributes) require a greater outcome emphasis higher value in the evaluation than can be achieved through just a lowest price approach. Under this model, the criteria are weighted to reflect their relative importance. Each criterion in the tender or proposal is scored, and each is multiplied by the relevant weighting to give a weighted score. The weighted scores for each tender or proposal are added up to find the highest scoring tender or proposal. Some weighted-attribute models weight all the evaluation criteria, including price, while others only weight the non-price criteria. If weighting price, it is important to carry out some level of sensitivity analysis as part of the weighting process to ensure that the price weighting is appropriate. For example, if the price weighting is too high, the evaluation effectively becomes a lowest-price conforming model. The NZ Transport Agency procurement manual defines a weighting range for the price attribute of 10 – 70%.

At higher price attribute weighting (i.e. 70% or greater) consider using the target price or lowest price conforming methods. At lower price weighting (i.e. less than 25%), consider using the quality method.

2.5.6 Target price method (Purchaser nominated price)

The target-price method will be used where it is difficult to define the scope of the work in the tender documentation or in situations where the budget that is available is the main constraint. In such instances, WDC could reasonably expect to receive a range of tenders or proposals and prices that are not easily compared, and that may exceed the available budget.

In that situation WDC will make potential suppliers aware of the available budget (the "target price") as a guide for defining the scope of the services desired, and invite potential suppliers to specify what they can do for that price. The focus of the evaluation is then on the quality and quantity of the services to be provided rather than price. Best value for money is then obtained by selecting the supplier that provides the best proposal for the price as set out in the RFP/RFT.

2.5.7 Brooks' Law method (Quality based method)

The Brooks' Law method assesses proposals on the basis of quality based attributes. It is typically used in evaluating proposals for professional services for building and roading contracts. It places greatest emphasis on quality and would normally be considered for only high value and/or high risk procurement activities. The highest ranked supplier is invited to discuss the proposal, contract, terms, and fees. The terms of reference and the contractual and legal requirements are reviewed to ensure a mutual understanding. When agreement on fees is reached, the supplier is appointed. If no agreement on fees is reached, the second ranked potential supplier is invited to negotiate. The process continues until a satisfactory agreement is negotiated. A supplier, once rejected, should not be recalled for further negotiations. The method relies on WDC having a good understanding of the relevant market rates for the required service, and an effective negotiating capability.

2.6 PROFESSIONAL SERVICES

Professional services contracts are required to follow the same tendering process as for physical works. Contracts valued at less than \$200,000 may follow a closed contest process involving at least three available and capable providers. Direct appointment by negotiation may be followed for professional services contracts having a value less than \$100,000.

2.7 FORM OF CONTRACT

The form of the contract will depend on the value and complexity of the purchase as well as the nature of the goods or services being procured, the uncertainties that may be involved in contract performance and the extent to which Council or the supplier is to assume the risk of the cost of performance of the contract. Contracts differ in the degree of responsibility assumed by the supplier.

2.7.1 Low to medium risk procurement

For low value, low risk purchases, the contract will be established using a purchase order on which the date, required materials, agreed price and name of the purchasing officer is recorded. Confirmation that the required goods or services at the agreed price have been received will be recorded by the purchasing officer and attached to the supplier invoice before payment is made

For medium value, low risk purchases, a short form contract will be required.

For higher value and higher risk purchases, a more detailed contract will be required that reflects the risk and nature of the goods and services being procured.

2.7.2 High risk procurement

The following applies to higher value and higher risk purchases.

The terms and conditions of contract shall be appropriate to:

- the nature of the goods or services;
- any anticipated uncertainties in the supplier's ability to perform its contractual obligations; and
- the extent of any risk that the supplier will be required to assume.

The contract must:

- be comprehensive enough to meet the objectives of the procurement;
- describe the full specification of the goods or services being purchased;
- define the term (if any) under which the contract is in force;
- define the price setting mechanism (e.g. schedules of rates, lump sum payments and use of incentives, if any)
- describe the insurance and security (e.g. bond) requirements;
- define the health and safety requirements;
- define the process for dealing with variations and applications for time extensions;
- set out processes to remedy disputes and defect corrections (including time period available for defect corrections after the contract has been completed);
- include contract default conditions and termination processes.
- be consistent with the terms and conditions specified for the procurement process and contain the successful tender documentation;
- contain the terms and general conditions of contract and any special conditions that delete, modify or amend the general conditions of contract;
- define and protect the rights and obligations of all parties;
- be consistent with Council's statutory functions, duties, and powers;
- be fair to both parties and pass the "sense test", particularly where clauses cover limitations or exclusions of liability, indemnities, warranties, and intellectual property;
- include a contract agreement that confirms that the tenderer has accepted the proposed contract terms (or agreed alternative terms);
- include the letter of tender acceptance from Council;
- comply with relevant local government constraints – for example, the contract may not be able to contain indemnities, and cannot contract out of the Local Government Official Information and Meetings Act 1987; and
- any other issues that may be specific to the individual procurement

The factors that should be taken into account when selecting the type of contract shall include:

- the nature of the goods or services;
- the type and complexity of the procurement;
- the likely administrative costs for both parties;
- any likely difficulty in clearly defining the contract requirements;
- how much technical or operational co-ordination Council will need to provide;
- the intended duration of the contract;
- the likely volatility of cost inputs; and
- the extent of risk that either party will have to assume.

Legal advice or assistance in preparing the contract may be required for high risk, complex, or strategic procurement processes. Legal advice or assistance should be obtained early in the planning stage to help develop specific documentation, which may include a draft contract, to accompany the procurement documents.

Legal assistance may include advice on matters such as limitations or exclusions of liability, indemnities, warranties and intellectual property, and the resulting risks.

The contract must reflect the relationship that Council wishes to establish with the supplier. This may comprise a traditional "arm's length" contract, partnering or an alliance.

The contract must specify the types of issues that the contract should cover – for example, who owns intellectual property created under the contract, and defining and ensuring Council's right to use background intellectual property.

The contract must specify the types of standard conditions that the contract might include – for example:

- general conditions of contract relating to termination, default, and insurance liabilities (e.g. NZS 3910); and
- special conditions of contract specific to the procurement – for example, the site where the goods or services are to be delivered, the term of contract, bond requirements, payment conditions, financial and performance guarantees, liquidated damages, copyright, confidentiality, defects maintenance requirements and dispute resolution.

The Council officer managing the procurement, and other personnel either directly or indirectly involved as part of a larger procurement team, will be fully accountable for the procurement process and must ensure that it is in line with Council policy and accepted standards. The appointment of an independent adviser to assist with the process will not negate this primary accountability.

The terms of engagement for an independent adviser must include:

- who the independent adviser will report to (this should normally be to the person or body responsible for the procurement);
- the scope of the engagement;
- the timing of the independent adviser's reports (usually at important stages of the procurement process and at the end of the process);
- requirements for attendance at meetings; and
- remuneration or the method for determining it.

2.8 COMPETITIVE PROCESSES

Depending on the value and risk of the procurement, competitive processes may involve:

- written quotations, or;
- formal written tenders or proposals.

Verbal quotations will not be used.

The method of requesting quotations, tenders or proposals shall be appropriate to the market for the particular goods or services, and the circumstances of the procurement, in order to achieve the best procurement outcome

In normal circumstances, the preferred method for higher value and/or higher risk procurement (quadrants 2, 3, and 4 of the above matrix) will entail advertising an open request for tender or proposal.

Open tendering may not be used where the market or other circumstances render this method impracticable or is not cost-effective.

Irrespective of the process, the overriding objective is to achieve value for money (that is, a combination of quality, reliability, timeliness, service, and whole-of-life cost).

2.8.1 Written quotations

Written quotations may be used to procure low value (i.e. less than \$5,000), low risk goods or services.

In each case the process to be used in obtaining a written quotation shall include the following steps:

- define the need and specification;
- establish the potential sources of supply;
- get the appropriate approval for the procurement;

- seek written quotations;
- evaluate responses and select a supplier;
- get approval for the decision;
- advise the decision – when the evaluation process is completed, both the successful and unsuccessful participants should be advised of the decision; and
- monitor performance of the service provider.

The value and risk of the procurement and the availability of potential suppliers should determine the number of quotations Council will seek. As a general guide, a minimum of three quotations should be obtained.

The evaluation process will be managed to provide a fair comparison between the quotations received. The evaluation shall be conducted by staff with the relevant skills and knowledge appropriate to the value and importance of the procurement. The same evaluation method shall be applied to each response. The selected quotation shall provide the best value for money when evaluated against the evaluation criteria. A short report is required outlining the reason(s) for using written quotations and the findings of the evaluation process, the recommendation, and reasons for the recommendation. The recommendation to accept a quotation shall be approved by an officer with the appropriate delegation. The officer shall ensure that the best offer, as measured against the evaluation criteria, is being accepted.

Acceptance of written quotes shall be in writing.

2.8.2 Competitive tenders or proposals

The process of inviting tenders or proposals from the market may include:

- A registration of interest (ROI) or expression of interest (EOI) may be used to identify high level and specific information from potential suppliers before seeking tenders or proposals.
- A request for proposal (RFP) may be used for goods or services where Council is open to innovation on the part of a supplier – that is, where the outputs and outcomes are important, not the process the supplier follows to deliver them. The RFP therefore normally invites suppliers to make a proposal based on specifications, with scope for variety and innovation. This method has value in helping to define a non-traditional method of service delivery or to seek a solution to a problem or process.
- A request for tender (RFT) is a formal means of seeking tenders to provide goods or services. It may be used where Council's specification or requirements are clearly defined and there is little room for flexibility or innovation. An RFT is often based on technical, tightly prescribed specifications. This method will normally be used for Council's construction projects, with or without a first stage ROI process.

In complex procurement activities where there is little knowledge of the goods or services or the market, Council may use a multi-stage procurement process comprising:

- Stage 1: An ROI or EOI is issued to find out more about the goods or services available, and the capability of suppliers to satisfy the procurement need.
- Stage 2: An RFP or RFT is issued requesting suppliers to submit an offer for goods or services or propose a solution.
- Stage 3: Council evaluates the tenders or proposals received at stage 2 and awards a contract to the preferred supplier.

Council may include another stage between stages 2 and 3 – the best and final bid, where Council invites the most promising of the suppliers from stage 2 to submit their final bid. Council may use the information received from stage 2 to define the required outputs and outcomes for pricing as part of this process.

Multi-stage processes are time consuming and can be expensive for all parties. Council will use a multi stage open tender or proposal process only where:

- it is unsure about the size of the market and the likely number of interested suppliers; or
- it is seeking an innovative solution; or
- the goods or services are categorized as high value or high risk

In other situations, Council will carefully consider whether a single-stage open tender or proposal process is more appropriate, taking account of:

- the value and risk associated with the procurement;
- the degree to which the entity is able to specify the requirement; and
- the cost and resources required of both Council and the potential suppliers.

2.9 EMERGENCY PROCUREMENT

In an emergency, it may not be possible to satisfy the principle of open and effective competition throughout the procurement process. Council may therefore dispense with parts of the procurement process if it needs to react quickly to unforeseen events.

Emergency procurement may only be used in genuinely unforeseen, urgent circumstances. Relevant criteria for emergency procurement includes:

- life, property, or equipment is immediately at risk; or
- standards of public health, welfare, or safety need to be re-established without delay, such as disaster relief.

Poor planning or organisation of a procurement does not justify using an emergency process.

Emergency goods or services shall be limited to those necessary to secure and protect the life, property, or equipment immediately at risk, or as defined in the NZTA's *Planning programme and funding manual* for emergency roading works. Goods or services associated with longer term protection measures or improvements beyond what is required to cope with the emergency are not eligible for emergency procurement processes, and must comply with an approved procurement procedure

Decisions regarding the use of emergency procurement procedures will be exercised by the Chief Executive or his nominee.

All expenditure associated with an emergency procurement process will be reported by the relevant Group Manager to the Chief Executive post event for review against procedures. Issues to be addressed in this review include:

- application and relevance of procurement procedures
- earlier measures that could have been taken to avoid the emergency
- staff training requirements

2.10 REGISTERED OR QUALIFIED SUPPLIER LISTS

Subject to compliance with the competitive pricing procedures of funding agencies (e.g. New Zealand Transport Agency), Council may establish registered or qualified supplier lists for routine, low risk types of work. The objective is to reduce the cost of the tendering process to all parties by avoiding repetitive documentation of non-price attributes.

Council will assess suppliers of particular goods and/or services against the predetermined criteria and then invite only those suppliers who satisfy the pre-qualification criteria to submit a tender or proposal.

Pre-qualified suppliers will not be given any guarantee of work. Similarly, pre-qualification will not be used to get price information from suppliers.

Prequalification will not be used when procuring off-the-shelf goods or services where there are several sources of supply and the value is low.

2.10.1 Information required from potential qualified suppliers

The following non-price attributes will be required from all potential suppliers as a minimum:

- Relevant experience
- Relevant skill
- Methodology
- Contact details

Council may use additional non-price attributes including but not limited to:

- Track record
- Technical skills
- Resources
- Management skills

Details of the information required in support of each attribute, specific to the required good or services, will be provided to each supplier at the time of invitation or initial registration.

The process and the results of the process will be documented and stored in records for future probity and audit processes.

All suppliers will be notified of the result of their evaluation on a pass/fail basis. The names of the full list of suppliers will not be disclosed.

Suppliers may be removed from the prequalification list at any time in the event of poor performance or insolvency. Council will notify registered or qualified suppliers of the termination of, or of their removal from the list, and state the reason for this action.

2.11 RELATIONAL PURCHASES

Relational purchases may be more relevant in situations where:

- there is not an effective or meaningful market to provide the goods or services; or
- the strategic importance of the goods or services, or of the relationship with the provider, is such that the objectives of the procurement may not be achieved through the market; or
- the services involve a long-run, partnering style working relationship with Council requiring internal access to Council staff, systems and resources and the supplier's track record in this area is of demonstrable, good repute

In such situations, conventional market-based systems for managing a contract may not be appropriate or particularly effective. Council may give greater weight to the relationship or strategic dimensions of the contract and to develop other systems to manage the dimensions usually managed by competitive market mechanisms.

Common examples of minor relational purchases include contracts to purchase planning, policy or other advice from specialist advocacy or special interest groups, specialised professional advice from providers with first-hand knowledge of the required outputs, small and specialised research work, or the supply of compatible services or a niche product for a particular or unusual project.

Major relational purchases include community development services where the funding arrangement may need to provide stability for end users over many years, major and long-term research contracts, strategic investments, or significant professional or consultancy relationships.

Relational contracts depend on the characteristics of the market and the desired relationship with the supplier. If either of these change, more conventional contracts may be more appropriate.

2.11.1 Partnering and project alliances

Partnering refers to mutually beneficial commercial procurement relationships between Council and private sector parties that involve a collaborative approach to achieving public sector outcomes. The two main variables in a partnering arrangement are:

- the type of the relationship between the public and private sector parties; and

- the nature of the outcome and how it is to be achieved.

In a project alliance, Council will work with the private sector parties as an integrated team to deliver a specific project where their commercial interests are aligned with actual project outcomes. The team will be selected on a “best-for-project” basis and will be provided with incentives to achieve high performance. All members will be required to commit to working through collaboration, innovation, and mutual support. This arrangement will require:

- performance obligations to be stated as collective rather than individual obligations, with an equitable sharing of risk and reward, and adoption of a “no blame, no dispute” culture;
- governance of the project by a project alliance committee (or equivalent), including representatives from all parties, with agreement that all decisions must be unanimous;
- day-to-day management of the project by a project team that operates as a separate entity from each of the Council and private sector parties involved in the alliance agreement; and
- a transparent and “open-book” approach towards all financial matters, including cost and profit.

The process for selecting alliance participants will be based on quality criteria alone.

2.11.2 Contracting for services with non-government organisations

Council may enter into both conventional and relational purchases with non-government organisations. Before deciding to fund relational arrangements with non-government organisations, Council shall refer to the Treasury’s *Guidelines for Contracting with Non-Government Organisations for Services Sought by the Crown* and the Controller and Auditor General’s good practice guide *Principles to underpin management by public entities of funding to non-government organisations*.

PART 3 – GENERAL PROCEDURES

3.1 THE EVALUATION PROCESS

The method of evaluation, including the evaluation criteria, will be detailed in the tender or proposal documents. WDC will ensure that:

- each tender or proposal is carefully considered, on an equal basis, against the evaluation criteria; and
- it is sufficiently assured that the preferred tenderer has the capacity and capability to meet the requirements of the proposed contract; and
- the preferred tender or proposal represents the best value for the money being spent.

The tender or proposal documents shall include a requirement for tenderers to provide the name(s) and contact details of independent referees for WDC to use for verification of the tenderer’s capacity and capability to meet the requirements of the proposed contract.

A record will be kept of the evaluation process, including a summary of the scores awarded to each participant, and the reasons for the scores.

The evaluation process will comply with the requirements of the relevant, external, funding agency (e.g. NZ Transport Agency).

If a two-envelope method is being used (that is, the price has been requested in a separately sealed envelope), the price envelopes will remain unopened and securely stored until the assessment and scoring of the non-price attributes has been completed. An overall score and ranking will then be determined.

If an evaluation team is used, each member will complete an individual assessment of each tender or proposal prior to the team meeting to discuss and agree final scores and ranking.

Where it is necessary to make changes to tenders or proposals to allow each tender or proposal to be evaluated on a like-for-like basis, such changes will be made for the purpose of the evaluation only. Evaluation adjustments may be needed for:

- firm and variable pricing;
- inclusion or exclusion of extras (for example, maintenance and training);
- settlement discounts; or
- differing warranty periods.

Any tender or proposal that is priced very low compared to others must be analysed to determine:

- the technical merits of the tender or proposal, and whether it involves particularly high risks or levels of uncertainty
- whether the participant has included all costs associated with providing the goods or services
- whether the tender or proposal price is sustainable
- whether the participant has proposed a new or innovative way of meeting the requirement that would enable a reduction in cost

If concerned about the price, Council officers must ask the tenderer to confirm the tender price. The participant must not be allowed to adjust the price but may withdraw its tender or proposal.

3.1.1 Tenders Committee

A Tenders Committee (TC) is established under the delegated Authority of the Chief Executive.

The skill, technical and experience requirements of the TC will be met by the appointment of a TC comprising the CE and three members of the Executive Management Team.

Where appropriate the membership of the TC will be temporarily extended to include:

- An external adviser to be responsible for independent probity to give confidence that the evaluation process is administered in a fair, robust, and defensible manner, understands the rules of the evaluation and is appointed with responsibility to monitor for and provide guidance for considerations of probity;
- an external adviser with appropriate technical expertise; and
- a legal adviser, as necessary.

(Note: In the case of NZTA subsidised works when the estimated contract value exceeds \$200,000, at least one member of the tenders committee must hold the qualification, National Certificate in Civil Engineering – Asset Management (Competitive Pricing Procedures) or hold another relevant qualification approved by the NZTA, or is approved by the NZTA as a proposal evaluator.).

In other cases, the evaluation will be carried out by the relevant contract manager and recorded in a written internal report to the relevant group manager for review and approval of the recommendations.

Consideration and determination of all Procurement decisions that fall outside of the authorities fixed by the Delegation Register will be undertaken by the TC. The TC is authorised to make all procurement decisions that meet the requirements of this Policy and where there is sufficient authorised budget capacity to fund the procurement.

Any Tender or proposal arrangement that does not comply with the requirements of this Policy or where insufficient authorised budget capacity exists will be referred to Council for decision.

3.1.2 Participant presentations

Where provided for in the tender or proposal documentation, WDC will, as part of the evaluation process, invite some or all participants to make a presentation to expand on and clarify their

tenders or proposals. Provision for presentations will normally be confined to the design stage of projects having high public profile, or involving procurement of goods (e.g. new computer software) where a demonstration of capability is desirable.

Participants will be required to involve those personnel who:

- have contributed to the preparation of the tender or proposal; and
- will be involved in providing the goods or services if the tender or proposal is successful.

All participants will be provided the same period of notice to prepare for the presentation and the same length of time for presentation. Presentations will be made individually by each tenderer and will be closed to the public.

Presentations will not be used to compare tenders or proposals openly.

Presentations will be assessed on some or all of the following:

- clarity of presentation
- the understandings and underlying assumptions that have influenced a participant in preparing the costs
- logic
- approach
- handling of questions (accuracy, decisiveness, honesty, conciseness)
- commitment to project
- understanding of project complexity
- appreciation of local political factors
- definition and assessment of risks
- persona
- other factors

After the presentations, the evaluation team will review the participants' scores and agree a final ranking.

3.1.3 Awarding the contract

The relevant WDC Manager will prepare a written report on the tender or proposal evaluation, including:

- a summary of the reasons for the procurement, budget approval and any relevant Council resolution relating to the business case
- an overview of the tender or proposal process including advertising and closure dates (original and extended), briefings and notices to tenderers
- a summary of all tenders or proposals received including name of participant, price and any tags
- identification of any conflicts of interest and the measures taken
- identification of any late tenders received and the action taken
- a summary of confirmed tender prices adjusted for any tags for comparison purposes
- description of any tenders or proposals confirmed or withdrawn due to pricing concerns
- Details of any alternative tenders or proposal received
- The method of tender evaluation and the results of applying the evaluation
- A recommendation on the preferred tender or proposal, if any, based on the results of the evaluation method, including any alternative tender or proposal

The report and recommendation will be considered by the Tenders Committee holding the required level of delegated authority to decide on such matters. In all cases, the results of the tender or proposal approval process will be reported to Council as part of a routine monitoring report.

The successful participant will be notified in writing of the decision and the contract signed. The letter of contract acceptance will detail the contract price, the contract start date and any other start-up processes required to be met in accordance with the conditions of contract.

If the recommendation is rejected, Council or the delegated authority will:

- clearly document the reason for not accepting the recommendation; and
- ensure that the reason is legitimate (this would usually be the result of an unforeseen event that was not identifiable earlier in the process or incomplete application of the evaluation process).

PART 4 – REFERENCES AND ACKNOWLEDGEMENTS

Material from the following documents has been used in the preparation of this policy:

- OAG publication - Procurement guidance for public entities, June 2008.
- OAG publication - Public sector purchases, grants, and gifts: Managing funding arrangements with external parties, 2008.
- Society of Local Government Managers - Legal Compliance Module: Tendering and procurement (updated January 2009).
- McHale Group Limited – Procurement policy and procedures.

PART 5 – APPENDICES

| Appendix | Description | Document Reference⁶ |
|-----------------|---|---------------------------------------|
| A | Land Transport Procurement Strategy | |
| B | Contents of a Request for Tender or Proposal | |
| C | OAG Publications relating to Procurement | |
| D | Form of Conflict of Interest and Confidentiality Declaration Register | |
| E | Business Case Template | |
| F | Tender Report Template | |

⁶ The document reference link provides policy users with direct electronic access to the latest version of all forms and templates.

APPENDIX A: Land Transport Procurement Strategy

Existing Land Transport Procurement Strategy to be inserted here.

APPENDIX B: Office of Auditor General publications relating to procurement

2008

- Public sector purchases, grants, and gifts: Managing funding arrangements with external parties

2007

- Controlling sensitive expenditure: Guidelines for public entities
- Managing conflicts of interest: Guidance for public entities
- Guidance for members of local authorities about the law on conflicts of interest

2006

- Principles to underpin management by public entities of funding to non-government organisations
- Achieving public sector outcomes with private sector partners
- Inquiry into certain allegations about Housing New Zealand Corporation

2005

- Electricity Commission: Contracting with service providers
- Inquiry into the Ministry of Health's contracting with Allen and Clarke Policy and Regulatory Specialists Limited
- Inquiry into certain aspects of Te Wānanga o Aotearoa

2004

- Christchurch Polytechnic Institute of Technology's management of conflicts of interest regarding the Computing Offered On-line (COOL) programme
- Ministry of Defence and New Zealand Defence Force: Further report on the acquisition and introduction into service of Light Armoured Vehicles

2003

- Inquiry into Public Funding of Organisations Associated with Donna Awatere Huata MP

2002

- Purchasing Primary Health Care Provided in General Practice
- Certain Matters Arising from Allegations of Impropriety at Transend Worldwide Limited

2001

- Ministry of Defence: Acquisition of Light Armoured Vehicles and Light Operational Vehicles
- Providing and Caring for School Property
- Good Practice for Involvement in a Major Project – Lessons from the Opuha Dam Project

2000

- Governance and Oversight of Large Information Technology Projects

APPENDIX C: DEFINITIONS

- **Acceptance** - acceptance occurs when the party to whom the offer is made unconditionally agrees to the proposal.
- **Added value premium** - the amount more that the approved organisation is prepared to pay for the output offered by an alternative proposal.
- **Aggregation** - applies to coordination of demand or aggregation of supply. 'Aggregating demand' means a purchaser (or group of purchasers) coordinating their procurement of the same or similar goods and services.
- **Agent** - a representative who acts on behalf of other persons or organizations.
- **Agreement** - an agreement exists when a valid and binding offer by one party has been accepted by the other.
- **Alternative proposal/tender** - an alternative proposal offers an output that is different to that specified in detail within the RFP. However, the output offered is within the scope and meets the requirements of the RFP.
- **Approved organisation** - any approved public organisation within the scope of the Land Transport Management Act 2003
- **Approving authority** - the person or persons responsible for approving different types and levels of procurement (see also Delegated authority).
- **Bond** - a financial guarantee from a recognised institution to ensure satisfactory performance of the contract requirements.
- **Bundling** - the grouping together of different but related goods or services. Bundling, as a concept, is related to aggregation.
- **Commercial in confidence (CIC)** - confidential information provided for a specific purpose that is not to be used for any other purpose.
- **Commercially sensitive** - trade secrets of a person other than the requester concerned,
 - financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or
 - information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.
- **Competitive pricing** - a defensive and competitor related approach to pricing, that is market oriented strategy whereby prices are set on the basis of the prices charged by competitors.
- **Competitive Pricing Procedures Manual** - superseded by the NZTA Procurement Manual effective from October 2009.
- **Conforming proposal/tender** - a conforming proposal is one that is within the scope of the RFP and meets requirements of the RFP.
- **Consideration** - as defined by law may consist either in some right, interest, profit or benefit accruing to one party for some undertaking to the other party.
- **Contingency** - sum of money provided for within the allocated project budget in addition to the contracted sum that is available for use for unplanned requirements that were not foreseen at the time of contract- usually 5% to 10% of the contracted sum.
- **Consultant** - an individual, firm, company or other legal body providing information, advice or service.

- **Contract** - an agreement or set of agreements between two or more parties enforceable in law.
- **Council** - Elected members.
- **Cost effectiveness** – where one alternative is preferred to another if it provides greater benefit at the same or lower cost, or lower cost for the same or greater benefit.

(N.B. This definition leaves open the question of which of two alternatives is more 'efficient' if one provides greater benefit than the other but at lower cost. The measure of cost effectiveness should therefore not be taken in isolation in implementing this policy –i.e. all guiding principles should be considered).

- **CPP** - competitive pricing procedure.
- **Delegated authority** - an authority, granted by Council to Staff (or by sub-delegation from one officer with delegated authority to another) to do, approve, or otherwise commit Council as prescribed by the specific wording of such delegations. These are published from time to time in Council's delegations register. See also Financial Delegation.
- **Delivery model** - the form of the relationship established between the purchaser and the supplier(s) to purchase the outputs required to deliver an activity.
- **Estimate** - an approximate judgement of amount only.
- **Ethical** - beliefs and principles about what is right and wrong.
- **Expression of interest (EOI)** - the first stage in a two-stage procurement process. Its primary use is as a tool to identify and through a first-stage selection process, to reduce the number of interested suppliers as quickly as possible to minimise costs to all parties of providing or evaluating subsequent tender submissions. The second stage of the procurement process is issuing a request for proposals (RFP) or request for tenders (AFT). Requests for expressions of interest are sometimes referred to as an REOI and are similar to requests for registrations of interest (RROI).
- **Financial delegation** - authority, granted by Council or by sub-delegation from one officer with financial delegation to another, to commit Council to a financial commitment, with details of the circumstances, goods & services and dollar limit allowable. These are published from time to time in Council's delegation register.
- **Good-quality** – in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are-
 - (a) efficient; and
 - (b) effective; and
 - (c) appropriate to present and anticipated future circumstances.

(Section 10(2) Local Government Act 2002 Amendment Act 2012)

- **Hold harmless** - is an agreement to release one party from paying any compensation for loss/damage/liability/costs arising out of the other parties actions for which they would usually be legally or contractually liable for.
- **Indexation** - A method used to adjust contract payments for input price fluctuations.
- **Input** - the resources required to produce the output.
- **Intellectual property** - property that derives from the work of the mind or intellect, specifically, an idea, invention, trade secret, process, program, data, formula, patent, copyright, or trademark or application, right, or registration.
- **Liability** - being legally responsible for.
- **LPCTM** - lowest price conforming tender method of tender evaluation.
- **Market** - in the context of these guidelines, market refers to the sellers of a good or service who are potentially available as a supplier to Council.
- **Monopoly** - the complete control of trade in particular goods or the supply of a particular service.

- **Notice to tenderers (NTT)** - a notice issued to all tenderers before the close of tenders which, upon issue, becomes part of the request for tender documents.
- **Novation** - the substitution of a new contract for one already existing. This can occur under a design and build delivery model where the contract between the designer and the purchaser is handed over to the constructor once design has reached a certain stage. The designer then completes the detailed design for the constructor.
- **NZTA** - New Zealand Transport Agency.
- **Offer** - an unequivocal promise to do something provided the other party does something, or promises to do something, in return.
- **Oligopoly** - a market form in which a market or industry is dominated by a small number of sellers.
- **Output** - the desired result.
- **Performance Specification** - this type of specification defines the output or standard required. The method of achieving the output is left to the contractor or consultant to determine.
- **Physical works** - maintenance, operation, renewal, improvement and construction of new land transport infrastructure.
- **Plant and materials** - equipment and the materials associated with a tender.
- **PIP** - Public Iwi Partnerships
- **PPP** - Private Public Partnerships
- **Probity** - *Probity is the evidence of ethical behaviour in a particular process.* Probity is defined as complete and confirmed integrity, uprightness and honesty. It contributes to sound procurement processes that accord equal opportunities for all participants. A good outcome is achieved when probity is applied with common sense. Probity should be integrated into all procurement planning, and should not be a separate consideration.

Procurement must be conducted with probity in mind to enable purchasers and suppliers to deal with each other on the basis of mutual trust and respect. Adopting an ethical, transparent approach enables business to be conducted fairly, reasonably and with integrity. Ethical behaviour also enables procurement to be conducted in a manner that allows all participating suppliers to compete as equally as possible. The procurement process rules must be clear, open, well understood and applied equally to all parties to the process.

- **Procurement** - the planning, decision-making, and implementation process used to obtain goods and services. It covers the whole cycle from identification of needs, through to the end of a services contract or the end of the useful life of an asset.
- **Procurement Manual (NZTA)** - for activities funded through the National Land Transport Programme. This manual, effective from July 2009, supersedes the Competitive Pricing Procedures Manual.
- **Professional services** - professional services include services typically provided by consulting engineers, planners, public transport planners, surveyors and other professionals. Professional services contribute to the delivery of approved activities and include strategy or policy development, planning, investigation and design services, and the supervision of works or services contracts. Refer also to the NZTA's Planning, programming and funding manual, chapter F14.
- **Proper and prudent expenditure** - includes the identification and management of conflicts of interest (or situations with the potential to be perceived as conflicts of interest); being fair, honest, transparent, circumspect, and careful to avoid undesired consequences; and being accountable for complying with organisational controls.
- **Public entity and entity** - have the same meaning as in section 5 of the Public Audit Act 2001. It includes schools, state-owned enterprises, government departments, Crown entities, and local authorities. As provided in that Act, the term includes any subsidiary or other controlled entity of the principal entity.

- **Public sector** - collectively all public entities in central and local government.
- **Public services** – 'a service provided for the community, especially under the direction of local or central government or other official agency.'
- **Quote** - the price stated to complete a given task. Usually results in a contract where the documentation is normally less than that required for a Tender.
- **WDC** - Waitomo District Council.
- **Registration of interest (ROI)** - an invitation to the market for companies or individuals to register their interest in providing services or carrying out works which may be either specific or general (see also Expressions of Interest).
- **Request for information (RFI)** - a formal request to the market for information only. It is not a request for offers from the market. It is also not a supplier selection tool.
- **Request for proposal (RFP)** - a formal means of seeking offers from the market for goods or services where the public entity is open to supplier innovation; that is, it is the outputs and outcomes that are important, not the process the supplier follows to deliver the outputs or outcomes.
- **Request for quotations (RFQ)** - a formal means of seeking offers from the market for goods or services where price is the main selection criteria, the requirement is for reasonably "stock standard" or "off the shelf" goods or services, and the procurement is low risk.
- **Request for tender (RFT)** - identical in structure and process to the RFP, except that it is used where the public entity's specification or requirements are clearly defined and there is little room for flexibility or innovation and hence price can be more accurately determined.
- **Retention** - the amount withheld for a specific period to ensure a contract has been performed to requirement. Usually expressed as a percentage and applies both to progress payments and total contract price.
- **Risk** - An uncertain event or condition that, if it occurs, has a positive or negative effect on the objective.
- **Risk Management** - The culture, processes and structures that are directed towards the effective management of opportunities and adverse effects. Risk management is achieved through the systematic application of policies, procedures, and checking and auditing mechanisms to identify potential risks and lessen their likelihood or impact.
- **Statement of interest and ability (SIA)** - a process used to invite prospective tenderers interested in being short-listed for a specific project, to submit information on their interest and ability relevant to that project. This information is then used to develop a short list of prospective tenderers. Short-listed applicants are then requested to provide further information and tenders.
- **Sensitive expenditure** - expenditure by a public entity that provides, has the potential to provide, or has the perceived potential to provide a private benefit to an individual staff member of a public entity that is additional to the business benefit to the entity of the expenditure. It also includes expenditure by a public entity that could be considered unusual relative to the entity's purpose and/or functions.
- **Specification** - the specification defines the manner in which the work is to be carried out to achieve an end result.
- **Staff**- all members, trustees, office holders, managers, and employees of a public entity.
- **Supplier selection method** - the process by which proposals from supplier(s) are evaluated and a preferred supplier(s) selected.
- **Supplier quality premium** - the amount more that the approved organisation is prepared to pay for a higher-quality supplier.
- **Sustainability** - involving the integration of holistic thinking and decision making incorporating environmental, social, economic and, where applicable, cultural issues.

- **Syndicates** - a group of people or companies who work together and help each other in order to achieve a particular aim.
- **Tag (Tender Tag)** - a qualification or condition stated or implied by a tenderer or party submitting a quote, which seeks to make the price or outcome conditional upon certain stated (or implied) assumptions being satisfied. Tags generally create a degree of uncertainty as to ultimate contract price or outcome.
- **TCO** - Total Cost of Ownership.
- **Tender**- the complete documentation including, but not limited to the price, received from a tenderer following public advertising or from invitation to selected tenderers.
- **Tender Documents** – the complete set of documents submitted by a tenderer in response to a formal request for tenders or invitation to tender including the request for tender documents.
- **Tenders Committee (TC)** – a subcommittee of the WDC Executive Management Team which formally assesses tenders against set evaluation criteria following prescribed evaluation procedures and makes decisions based on the outcomes of that assessment and evaluation process.
- **Term service contract** – a contract for the provision of goods or services for a defined period of time.
- **Value for money** – the best combination of whole-of-life cost and quality of outcome that meets the objectives.
- **WAM** – weighted attribute method of tender evaluation.
- **WDC** – Waitomo District Council organisation operating as a legal and operational entity
- **Whole-of-life** – all costs associated with the life of a service or goods from conception, its usage and disposal/termination.

APPENDIX D: DELEGATIONS REGISTER

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