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OPOTIKI DISTRICT COUNCIL

PROCUREMENT POLICY

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1 POLICY OBJECTIVES

The objectives of the Opotiki District Council Procurement Policy (the Policy) are to provide clear direction in relation to the purchasing of goods and services and to establish a framework that:

- Promotes partnerships with public, private and not-for-profit organisations to ensure best whole-of-life value procurement outcomes;
- Meets the broad principles and expectations of the Office of the Auditor-General's "Procurement Guidance for Public Entities";
- Fulfils the recommendations of any Audit New Zealand reports to Council;
- Meets the requirements of New Zealand Transport Agency's "Procurement Manual" for those contracts funded through the National Land Transport Programme;
- Is in general accordance with the Ministry of Business, Innovation and Employment (MBIE) principles set forth in the "Government Rules of Sourcing" ("the Rules");
- Ensures that the procurement process meets the requirements of good management practice and that it is completed in an open and transparent manner;
- Provides guidance as to the circumstances that should be considered when choosing not to subject a contract to a tender process;
- Appropriately manages risk.

2 PRINCIPLES

- Council has a responsibility to manage its resources in an effective and efficient manner;
- Council may procure goods, works and services for the community as sole-procurer, or it may procure goods, works and services for the community in conjunction with others;
- Council will comply with all relevant legislation when it procures goods, works or services;
- Council will ensure probity requirements are maintained, ensuring transparent procurement activities and record keeping;
- In many cases a competitive procurement process is likely to result in a better procurement outcome for Council than one that is not competitive.

3 DEFINITIONS

The following definitions are based on those contained in the Glossary of the Office of the Auditor-General's (OAG) Procurement Guidance. While not all of the following terms may appear elsewhere in the text of this Procurement Policy statement, it is important nonetheless that they be understood as being common to the procurement process:

Approving authority is the person or persons responsible for approving different types and levels of procurement.

Best value (also known as **Value for money**) means the best possible outcome for the whole of life costs, to meet the community's requirements. Best value does not necessarily mean selecting the lowest price. Rather, it means achieving the right quality, quantity and cost at the right time and place, and for the right reasons.

Cluster refers to a group of public sector entities that collaborate before going to the market and approaching the market collectively (that is, they aggregate their requirements). This arrangement is used in syndicated procurement (definition below).

Commercial in confidence (CIC) is a description applied to confidential information provided for a specific purpose that is not to be used for any other purpose.

Common use provision (CUP) clause is a clause included in procurement and contract documents to enable eligible public entities to join the contract during its term. The clause is used in syndicated procurement arrangements.

Contract value means the sum named in the contract documents as payable for the completion of the contract subject to such adjustments as are provided for in the contract documents.

Council means the Opotiki District Council (ODC).

Expression of interest (EOI) is similar to a registration of interest (ROI) in that it is used to identify suppliers interested in, and capable of, delivering the required goods or services. Potential suppliers are asked to provide information on their capability to do the work. It is usually the first stage of a multi-stage tender process.

Market, in the context of this Policy, means the sellers of a good or service who are potentially available as suppliers to a public entity.

Panel contracts are a contractual arrangement with a group of suppliers to provide goods or services as and when required, under a schedule of rates for each supplier or on a quotation basis.

Partnership is an arrangement or agreement between two or more partners where the risks and rewards related to the project are shared between the partners. A Council organisation is specifically excluded from the definition of partnership as applied in this policy.

Private Sector is the part of the country's economy that consists of privately owned enterprises.

Procurement covers the process of acquisition of goods, works and services from third parties. There are no dollar limits (either minimum or maximum) on the definition of procurement as it applies in this Policy. Procurement does not include the making of grants or investments in community development.

Project is any series of activities, other than routine processes or operational tasks, which possess all of the following characteristics:

- Has a specified objective to be completed within certain specifications, and
- Has defined start and finish dates, and
- Utilises resources (money and/or people and/or equipment).

Public entity and **entity** have the same meaning as in section 5 of the Public Audit Act 2001. This includes schools, State-owned enterprises, government departments, Crown entities, and local authorities, as well as any subsidiary or other controlled entity of the principal entity.

Public sector means, collectively, all public entities in central and local government.

Public/Private Partnership (PPP) for the purpose of this Policy, a PPP is an arrangement between a public sector entity or entities (including Council) and a private sector entity or entities for the purpose of jointly or co-operatively undertaking a project for mutual benefit.

Registration of interest (ROI) is similar to an expression of interest (EOI) in that it is used to identify suppliers interested in, and capable of, delivering the required goods, works or services. Potential suppliers are asked to provide information on their capability to provide the goods, works or services. It is usually the first stage of a multi-stage tender process.

Request for information (RFI) is a formal request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies that may be available.

Request for proposal (RFP) is a formal means of seeking proposals from the market for goods, works or services where the public entity is open to supplier innovation – that is, where the outputs and outcomes are important, rather than the process the supplier follows to deliver them.

Request for quotation (RFQ) is a formal means of seeking quotations from the market for goods or services where price is the main selection criterion, the requirement is for “stock standard” or “off the shelf” goods, works or services, and the procurement is low risk.

Request for tender (RFT) is a formal means of seeking tenders from the market to provide goods, works or services where the public entity’s specification or requirements are clearly defined and there is little room for flexibility or innovation.

Staff means all members, trustees, office holders, managers, and employees of a public entity.

Syndicated procurement involves groups of public entities aggregating their procurement requirements to achieve improved outcomes through greater purchasing power and reduced procurement costs. The two most widely used syndicated procurement models are the ‘common use provision’ (CUP) and ‘cluster’. Syndicated procurement is not limited to other local authorities only.

Sustainability refers to meeting the needs of today, without adversely affecting the needs of tomorrow. In a business sense, the key messages of sustainability tie in with what are considered sound business practices, such as building efficiency, minimising waste, and maximising resources.

Tender Process means an appropriate tender process for the contract being tendered. It commonly includes a Request for Tender (RFT) but does not include an Expression of Interest (EOI) or a Request for Interest (RFI) process. An EOI and an RFI may be used to gather information in the supplier selection process but do not qualify as an appropriate tender process for the purposes of this Policy. A Request for Proposal (RFP) may qualify as a tender process if a price is supplied as part of the RFP. Guidance as to appropriate tender processes is provided in Council’s Procurement Guidelines.

Thresholds for the purposes of this policy are defined as:

- Tender Threshold \$50,000 (excluding GST)
- Written Competitive Prices \$15,000 - \$49,999(excluding GST)
- Written or Verbal (Documented) Quotations \$5,000 - \$14,999 (excluding GST).

Whole of Life Costs of a procurement option may include any or all of the following:

- One-off costs, such as the purchase or contract price
- On-going costs, such as maintenance and administration costs
- Asset ownership costs, such as debt servicing and depreciation
- Opportunity costs; and
- Non-financial costs, such as environmental or social costs.

4 BACKGROUND

4.1 Council Procurement

Each year, Council procures millions of dollars of goods, works and services from third party suppliers on behalf of the community. The way that goods, works and services are procured on behalf of the community has a bearing on the value that the community and various stakeholders receive from Council.

The Local Government Act 2002 requires all councils to provide good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective, efficient,

effective and appropriate for households and businesses. Procurement is one of the many processes by which a local authority delivers on this requirement.

4.2 The Legislative Context

The principal legislative guidance for procurement is based on Section 10 of the Local Government Act 2002 (LGA) amended 2012.

The purpose statement is:

“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;

and “good quality” is defined as:

- (a) Efficient; and
- (b) Effective; and
- (c) Appropriate to present and anticipated future circumstances

Council seeks to achieve ‘best value’ over the lifecycle of goods, services or infrastructure. Council considers that there are four elements to best value which are:

1. Quality and suitability of the service;
2. Long-term implications;
3. Wider outcomes for society;
4. The cost (both short and long term).

By achieving best value Council considers that it will meet legislative requirements and will be effective, efficient and appropriate for households and businesses, and will meet the need to be appropriate for current and future generations.

There is further legislative guidance for procurement in section 14 (1) (h) of the LGA 2002 which states that:

“In performing its role, a local authority must act in accordance with the following principles:

- in taking a sustainable development approach, a local authority should take into account—

- (i) The social, economic, and cultural interests of people and communities; and
- (ii) The need to maintain and enhance the quality of the environment; and
- (iii) The reasonably foreseeable needs of future generations”.

4.3 What to Procure

All the options that are available to Council to procure goods, works and services shall be considered at the concept or business case stages. Normally at the business case stage, the range of procurement options will be identified, and the costs and benefits assessed.

A business case shall be prepared for all goods, works or services over \$50,000. Business cases for projects less than \$50,000 should be considered where there is a high risk assigned to the project (e.g. OAG Quadrant 3 - Low value and high risk projects as in Appendix 2).

This Policy assumes that Council (with the involvement of partners where applicable) has already decided what needs to be procured, at least in concept. What to procure is usually decided through Council’s planning tools such as the Annual Plan, the Long Term Plan and Council resolutions. This Policy is intended to describe how to procure.

4.4 Procurement Procedure

This Policy outlines the principles that Council will adhere to in all procurement activity it undertakes. The procedural aspects of procurement are provided in Council's Guidelines.

However, a requirement of this Policy is that a business case be prepared and submitted to the Tenders sub-Committee and approval gained prior to a tender process commencing. The Council's Guidelines will outline when a business case needs to be prepared and give guidance on what the business case should contain. (The OAG Procurement Guidelines, Appendix 2, S.3.19, contain a list of items every business case should, as a minimum, include.)

The primary objective of business cases is to enable better-informed decisions on public investments so they are well-placed to deliver the intended benefits for Council, while managing the risks and costs.

The secondary objectives are to reduce the internal and external costs of developing business cases and improve the efficiency of the business case process, both in production and review, and to conform to recognised good practice.

A further requirement of this Policy is that a procurement plan be prepared for the procurement of higher value and higher risk goods, works or services. The Council's Guidelines will outline when a procurement plan is necessary and give guidance on the expected contents of the plan. (The OAG Procurement Guidelines, Appendix 2, S.3.36, contain a list of items a procurement plan may include.)

4.5 Types of Procurement

There are many different types of procurement including, but not limited to, the following:

- Council is the sole procurer;
- Council works with a public, private or not-for-profit partner or partners to procure (for public/private partnerships refer to Council's Policy on Partnerships with the Private Sector);
- Council has no involvement or only a minor involvement in the procurement.

5 POLICY STATEMENT

Council will only be involved in the procurement of goods, works or services where;

- 1) Budget provision for those goods, works or services has been made, either through the Long Term Plan, Annual Plan, or
- 2) By specific resolution, or
- 3) Under delegated financial authority.

Council procurement decisions will have regard to other Council policies, including but not restricted to those relating to:

- Health and Safety legislation, and internal policy and procedures; and
- Environmental, social, cultural and economic sustainability issues.

Council procurement decisions will have regard to Council's relationships with other parties able to be involved in, or invest in, the procurement decision.

The provisions of this Policy, including the financial thresholds, apply to:

- Individual contracts; and
- A series of individual works which are capable of consolidation into one or more contracts; and
- A variation to an existing contract that significantly changes the scope of the goods/ works/ services procured under the original contract and that affects the contract value.

For all NZTA funded projects, the following actions shall be carried out in accordance with the NZTA Procurement Manual:

- NZTA audit recommendations related to procurement shall be implemented;
- All relevant contract data (per NZTA templates) shall be collected and submitted to NZTA;
- A monitoring and measuring framework shall be established to capture more than the minimum data required by NZTA; and
- Information shall be gathered to meet NZTA's reporting requirements.

For all projects funded by grants or any other external funding sources other than NZTA, the conditions associated with the funding shall be considered and either accepted, or modified by mutual agreement, by Council before acceptance of any funds. All funder conditions shall be met.

The inclusions of these additional conditions will not invalidate this Policy.

5.1 Procurement Options

In selecting a procurement option, Council will:

- Seek to ensure it obtains best value.
- Select the most appropriate procurement techniques to suit the circumstances of the procurement.
In determining the most appropriate technique, Council will consider:
 - The level of risk that the procurement poses; and
 - The value of the proposed procurement; and
 - The involvement of, or investment by, other public, private or not-for-profit organisations in the procurement decision; and
 - Any other aspects relevant to the proposed procurement.

- For roading or transportation contracts attracting NZTA subsidy, meet the requirements of S.5 (supplier selection process), S.6 - S.9 inclusive (procurement procedures), S.10 (the rules) and S.11 (performance measurement and monitoring) of the NZTA Procurement Manual
- Maintain an inhouse professional services unit for routine roading repairs and maintenance. Where additional professional services are required for renewals of major structures, bridge inspections and other significant asset management, including RAMM, these will be procured using this policy due to the economies of scale achieved by local management but with the availability of specialised professional roading advice where required
- Recognise that there are costs associated with undertaking procurement, and will select the procurement method that represents best value.
- Have regard for whole of life costs when considering procurement options
- Ensure that the costs of the procurement process are commensurate with the value of the purchase
- Encourage the use of local suppliers and local labour. Where applicable, and operating within specified probity constraints, Council will seek statements from potential contractors explaining how they intend to use local suppliers and labour. See Appendix One for Opotiki District Council's Local Supplier Guidelines
- Ensure its procurement processes meet all relevant legislative requirements, including the Health and Safety at Work Act 2015.

5.2 Open and Fair Competition

Council will:

- Ensure that procurement specifications are open, generic and not biased in favour of a particular supplier;
- Use procurement strategies and practices that take into account the desire to maintain a competitive market;
- Ensure it does not have, or is not perceived to have, a conflict of interest in any procurement it undertakes by managing procurement in an open, transparent and fully auditable manner;
- Make use of its established strategic and community partnerships, which are recorded in formal agreements. In many cases the procurement decision is already made through the partnership agreement and/or LTCCP/Annual Plan process
- Ensure the specific written approval of the Chief Executive is obtained before any contract is rolled over beyond the terms originally included in the contract. Approval of the Chief Executive for the roll-over of a contract beyond its original terms may only be made if the decision is justified taking into account the matters listed in section 5.5 below.

5.3 Third Party Agents

Council may purchase the services of a third-party agent, (e.g. an external procurement consultant), to advise, arrange or manage a procurement or part of a procurement on its behalf. If Council uses a third-party agent to manage a procurement process, Council, through the agent, shall still comply with this Policy. However, Council should not purchase procurement advice from a supplier that has a commercial interest in the contract opportunity, and to do so would prejudice fair competition (e.g. a supplier is asked to write the contract requirements and then bids for the contract opportunity).

One third-party agent currently used by Council for some services is the Bay of Plenty Local Authority Shared Services Group (BoPLASS).

5.4 Environmentally Sustainable Procurement

Council shall undertake consideration and application of environmental sustainability factors in procurement decisions on a case-by-case basis.

5.5 Decisions Not to Tender

Council shall ordinarily subject all contracts that are likely to exceed the tender threshold to a tender process.

Any decision not to subject a contract with a contract value that is likely to exceed the tender threshold to a tender process shall be recorded in writing. Any decision not to Tender must be justified on the basis of **real and tangible benefit** to the Council and Community or the overall objective/purpose of the project itself (refer to Section 6 'Relevant Delegations' section for the approval process).

Matters to be taken into consideration when establishing real and tangible benefit may include some or all of the following:

- Urgency;
- Specialised nature of the goods or services;
- Availability of support services or spare parts;
- Opportunity to extend existing or recent contracts, or to use such contracts as the basis for a negotiated contract;
- Practicality of tendering for the specific work;
- Consequential or indirect costs detrimentally affecting Council's position including the ability to access privileged or commercially sensitive information held by a particular partner or service provider;
- Sufficiency of capability of the private sector or other potential suppliers or partners;
- Existence of excessive risk in contracting;
- Likelihood that key community partnerships will be significantly adversely affected;
- The possibility that Council's Procurement Policy (or parts thereof) act as a barrier to external Funder/Partner (e.g. Central Government) wider project objectives or procurement preferences.

5.6 Risk Management

Council recognises that early and systematic identification, analysis and assessment of risks and the development of plans for mitigating risk are necessary to achieve best value procurement practices.

Council's procurement practices will seek to allocate the risks of procurement to the party best placed to manage those risks. To this end, a project specific risk register shall be prepared, recording all risks associated with the procurement process for the project and showing the steps needed to eliminate, mitigate or manage the risks.

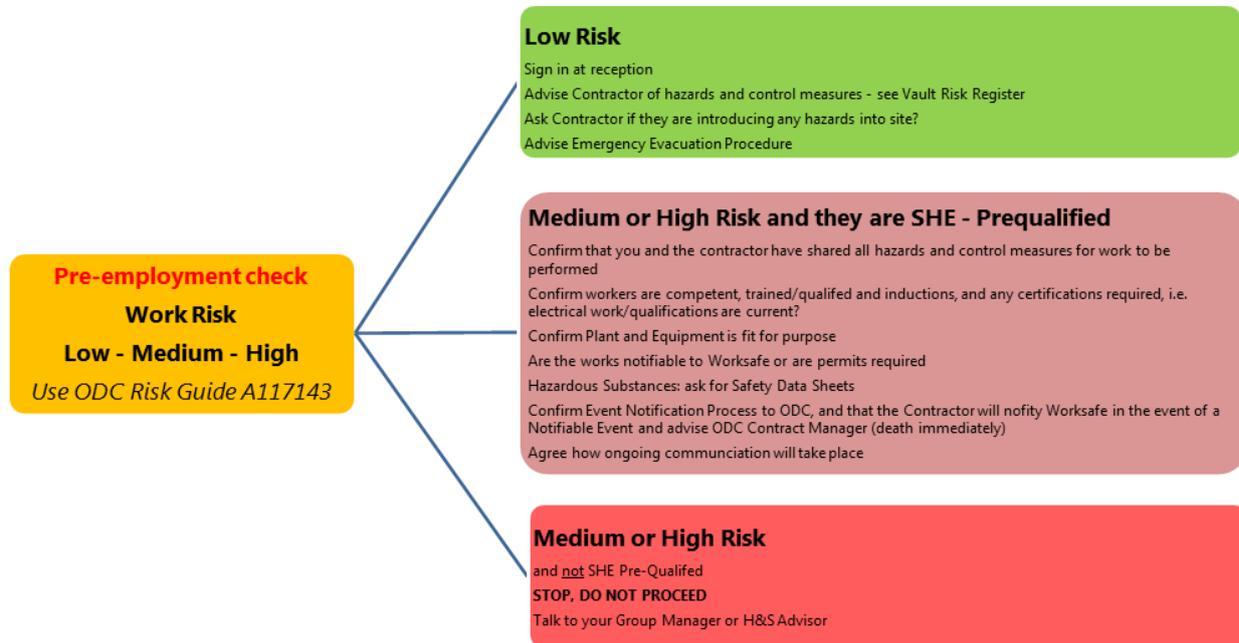
A formal Risk Register is needed for all goods, works or services over \$50,000. For goods, works or services under this value, risk shall be assessed in accordance with Figure 2 of the OAG procurement guidance document included as Appendix 2. Where the project is determined to be an OAG Quadrant 3 (Low value and high risk) project, the risks shall be formally assessed.

5.7 Health and Safety

Council requires that every tenderer will need to be appropriately qualified for Health and Safety. Opotiki District Council use a Local Government prequalification external assessor, SHE. Contractors that undertake medium to high risk work must be approved by SHE prior to any contract being awarded.

Guidance around what work is classified as medium to high risk is attached in appendix three: Contractor Risk Classification Guide.

A simple diagram below outlines the procedures required for each risk classification.



5.8 Open and Transparent Process

For all procurement activity, Council shall follow documented procedures that allow for transparency of decision-making and that allow for subsequent review of the process of decision-making.

5.9 Conflict of Interest

The supplier (participant) in the procurement process shall be asked to declare that no conflict and/or any potential conflict(s) of interest that any person or branch of its organisation may have, exists with any part of Council and that any undeclared conflicts of interest may result in that supplier's immediate exclusion from participating in the procurement process.

5.10 Responding to Queries

Suppliers may ask questions about any Council RFI, RFP, RFQ or RFT. Council shall promptly reply to all questions and reasonable requests for information from suppliers. If Council is unable to promptly reply to a question, it should consider extending the deadline for responses.

When Council responds to a supplier's question, it shall not give information that might give that supplier an unfair advantage over the other suppliers. If Council wishes to disclose advantageous information, it shall make it available to all suppliers at the same time. Also, when Council responds to a supplier's question, it shall not discuss or disclose another supplier's confidential or commercially sensitive information.

5.11 Additional Information

Council may make additional information available to all participating suppliers after a RFI, RFP, RFQ or RFT has been advertised and before the deadline for responses closes. However it shall issue copies of that additional information to all participating suppliers at the same time.

5.12 Attempts to Influence Outcome

Any attempt made by a supplier to influence the outcome of the procurement process by canvassing, lobbying or otherwise seeking support of staff or elected representatives of Council shall be deemed valid grounds for the exclusion of that supplier from the procurement process. Gifts, hospitality or other incentives from suppliers shall be subject to Council's Code of Conduct and comply with the "Standards of Integrity and Conduct", published by the State Services Commission.

5.13 Communication with Council

During the procurement process suppliers shall not contact any elected member, any director, employee or advisor of Council about the procurement, other than the nominated information contact person.

5.14 Reasons to Exclude a Supplier

Council may exclude a supplier from participating in a contract opportunity if there is a good reason for exclusion. Reasons for exclusion include:

- a) bankruptcy, receivership or liquidation;
- b) making a false declaration;
- c) a serious performance issue in a previous contract;
- d) a conviction for a serious crime or offence;
- e) professional misconduct;
- f) an act or omission which adversely reflects on the commercial integrity of the supplier;
- g) failing to pay taxes, duties or other levies;
- h) a threat to local security or the confidentiality of sensitive Council information;
- i) the supplier is a person or organisation designated as terrorists by New Zealand Police.
- j) An unsatisfactory health and safety performance record that may include previous convictions with the prosecutor Worksafe, and its predecessors, MBIE, or Department of Labour

Council shall not exclude a supplier before it has evidence supporting the reason for the exclusion.

5.15 Engagement of Former Employees

Subject to a mandatory 12-month stand-down period, the engagement by Council of any former employee as a contractor shall be subject to referral to and the approval of the Council Chief Executive.

5.16 Ethics

By submission of their tender, proposal, EOI, etc, suppliers acknowledge that they have not and shall not engage in any practices that gives one supplier an improper advantage over another, and/or engage in

any unfair and unethical practices, in particular any collusion, secret commissions or such other improper practices.

5.17 Confidentiality

The information supplied by Council (either itself or through its contractors, agents or advisors) in connection with any tender, proposal, EOI, etc, or any competitive process or contract that arises out of it, is confidential. Suppliers shall not release or disclose any such information to any other person (other than their employees or advisors) without the prior written consent of Council. Any publicity also requires Council's prior written consent.

Council may, if it considers it appropriate, require any supplier to sign a confidentiality deed before releasing any confidential or commercially sensitive information to the supplier. The supplier shall agree to sign the confidentiality deed, if required to do so.

Council is subject to the Local Government Official Information and Meetings Act 1987. Information provided by suppliers may be required to be disclosed under that Act.

5.18 Due Diligence

As part of the tender process, Council, together with its professional advisors and/or consultants, may carry out due diligence investigations of any or all of the parties that submit a tender or proposal.

By submitting a tender or proposal, a supplier consents to Council (and its professional advisors and consultants) carrying out all due diligence investigations of the supplier as may be required by Council, acting reasonably, and shall promptly provide all information and answer all questions as may be required by Council, acting reasonably, in carrying out such investigations, subject only to confidentiality obligations and applicable Stock Exchange rules.

By submitting a tender or proposal, each supplier expressly acknowledges and agrees that the Council shall not have any obligation to enter into any agreement or arrangement with any supplier if Council is not satisfied, in its sole and exclusive discretion, with the outcome of its due diligence investigations regarding that supplier.

5.19 Probity

An independent probity auditor shall be appointed to overview the tendering process for major contracts and verify that the procedures set out in the tender documents are complied with. The probity auditor shall not be a member of the TET. A supplier concerned about any procedural issue has the right to contact the probity auditor and request his/her review. The outcome shall be documented with copies to both the supplier who raised the issue and to the Council.

5.20 Short Listed Suppliers

If a supplier is included on any short list of potential suppliers or tenderers then such short-listing shall not constitute an acceptance by Council of the supplier's submission, or imply or create any obligations on Council to proceed to a competitive process or enter into any commitment to purchase any particular goods/ services from the supplier.

Council may at any time without being liable to a short-listed supplier, cease discussions or negotiations with any short-listed supplier and not proceed to a competitive process or any commitment to purchase particular goods/ services from that party.

5.21 Handling of Late Tenders

Tenders (including RFP Proposals, EOIs, etc.) shall be delivered to the place for closing before the closing time. If the tender arrives after the latest date and time required for submission, it may be considered as invalid. However, Council shall reserve the right to extend the period allowed for the submission of the tender, at its sole discretion. Any late tender in respect of which Council chooses not to exercise its discretion shall be returned to the supplier unopened.

5.22 Tender Evaluation

The detail for the evaluation of tenders shall be set out in Conditions of Tendering documents supplied by Council. This evaluation detail shall be based on NZTA's Procurement Manual, using the appropriate supplier selection method chosen, such as Lowest Price Conforming (LPC), Price Quality Method (PQM), etc.

Suppliers shall provide information on the requested attributes, based on the definitions of those attributes as set out in the tender or proposal documents. The attribute and any additional sub-attribute weightings for scoring of the supplier's submission shall be listed in the tender or proposal documents.

Evaluation of submissions shall be carried out by a Tender Evaluation Team (TET), whose members shall be nominated by Council For NZTA tenders that exceed \$200,000 at least one member of the Tender Evaluation Team is to be a Qualified Proposal Evaluator (QPE). This is consistent with Section 10.19 of the NZTA Procurement Manual.

5.23 Contract Negotiation

Negotiation shall be carried out on Council's behalf with the preferred tenderer by any or all from among the chairperson of the TET, the Council Contract Manager and his/her nominated support team. Its purpose shall be to reach agreement with the tenderer on the essential terms of the contract and the deliverables required under the contract. Once negotiation is complete, the agreement reached shall be accurately documented by the TET Chairperson

5.24 Contract Award

The TET Chairperson or their nominated assistant evaluator shall prepare a tender evaluation report which shall be presented to the Council's Tenders Sub-Committee along with:

- A summary background of the project, including budget, dependency on any related projects, any legislative , resource consent, council policy issues;
- A copy of the business case report if prepared (requirement outlined in Council Procurement Guidelines);
- A completed Tender Procurement Form.

The tender report shall include recommendations regarding the preferred tender and tenderer, and any applicable terms or conditions relating to the tender acceptance.

5.25 De-briefing Suppliers

Suppliers shall have the opportunity to be debriefed following a procurement. Council shall offer each unsuccessful supplier a de-briefing.

When a supplier asks Council for a de-briefing, Council shall de-brief that supplier within 30 business days of the date the contract was signed by all parties, or 30 business days of the date of the request, whichever is later.

At the de-briefing, Council shall not disclose another supplier's confidential or commercially sensitive information. Council should provide information at the de-briefing that helps the supplier to improve future tenders or responses. At a minimum, the de-briefing shall:

- a) Include the reason/s the proposal was not successful;
- b) Explain how the supplier's proposal performed against the criteria or any pre-conditions and its relative strengths and weaknesses;
- c) Explain the relative advantage/s of the successful proposal;
- d) Address the supplier's concerns and questions.

5.26 Monitoring and Reporting Procurement Decisions

Procurement decisions shall be subjected to monitoring and reporting systems that ensure resources are used to achieve the outcomes sought. The extent of monitoring and reporting shall be directly related to the significance of the procurement decision, but may include the following methods:

- Variance reporting to the management team and Council;
- Reporting of all Tendered and Written Competitive Prices via the Quarterly Report;
- The issue of Notices to Tenderer (NTT) or Notices to Participant (NTP) during the procurement process.

5.27 Supplier Complaints

Any participating supplier may complain to Council if it believes Council has not followed this Policy. Council shall consider and respond promptly and impartially to a complaint and Council shall try to resolve any complaints in good faith.

The way Council deals with the complaint shall not prejudice the supplier's ongoing or future participation in contract opportunities or affect any right the supplier may have to a judicial review or other remedy. Council shall keep good records of its procurement process and decisions. These records shall be made available to any authority competent to hear or review a supplier's complaint (e.g. the Office of the Auditor-General, the Ombudsman, the Commerce Commission or a court of law).

Without limiting its legal rights, Council shall fully cooperate in any review or hearing of a supplier's complaint by a competent authority.

6 RELEVANT DELEGATIONS

The Council's Chief Executive is delegated authority to implement this Policy and to sub-delegate any aspect of it except his/her authority to decide not to subject a contract to a tender process.

6.1 Closed Tender Process

The Chief Executive is delegated authority to make a decision not to subject a contract to a tender process if the estimated contract value does not exceed \$100,000. If the estimated contract value exceeds the tender threshold, the criteria of paragraph 5.5 of this Policy shall be taken into consideration before making the decision. The Chief Executive is not permitted to sub-delegate this delegation.

When a decision is made under delegated authority not to subject to a tender process a contract with an estimated contract value that is above the tender threshold (i.e., the contract value is between \$50,000 and \$100,000), at least three written quotes shall be obtained unless it is not reasonably practicable to do so. Since as a rule, the Council favours competition for supply, the default position in this Procurement Policy is for open, competitive tendering.

7 REFERENCES AND RELEVANT LEGISLATION

1. Financial Delegations
2. Local Government Act 2002
3. Partnerships with the Private Sector policy
4. Significance Policy
5. The Controller and Auditor-General's Procurement Guidance for Public Entities
6. The New Zealand Transport Agency's Procurement Manual.
7. The Government Rules of Sourcing (MBIE – October 2013)

The Government Rules of Sourcing ('The Rules') represent the government's standards of good practice for the sourcing stages of the procurement lifecycle. 'The Rules' provide the foundations; by applying them, openness, transparency and accountability are demonstrated – even though they are mandatory for the State Sector but applied as a guide only for other public entities (e.g., TLAs). 'The Rules' allow robust processes to be designed, and they build confidence in the procurement practices themselves. They are also expected to build greater public trust that spending is well-planned and well-executed.

'The Rules' emphasise that agencies involved in procurement must also be aware of, and comply with the common law of contract, public law and, where appropriate, commercial law obligations.

The effect and intent of 'The Rules' have been incorporated where relevant into this Procurement Policy. Simplified Procurement Guidelines for ODC are attached as Appendix 1 while, in its entirety, Part 3: Strategic Procurement Planning, of the Controller and Auditor-General's "Procurement Guidance for Public Entities", is attached as Appendix 2.

Appendix 2 may assist ODC in situations where more in-depth guidance or information is needed, such as in the preparation of a significant business case.

8 APPENDICES

8.1 Appendix One – ODC Procurement Guidelines

APPENDIX ONE: ODC PROCUREMENT GUIDELINES

1. THESE GUIDELINES COVER

- 1.1 All ODC contracts for the procurement of goods, works and services with the exception of employment contracts.

2. PLANNING FOR PROCUREMENT

- 2.1 Regardless of the size of the function, ODC should know:
- What goods and services it procures;
 - How much it spends by category type and also on individual procurements;
 - Its main suppliers and the volume and value of the procurements; and
 - The main markets it procures in.
- 2.2 To implement its procurement policy, ODC should determine:
- Who will have overall responsibility for procurement planning;
 - Who will be involved in the planning process and when they will be involved; and
 - How the procurement policy will be linked with ODC's broader strategic planning processes.
- 2.3 If the procurement function is large, ODC may need to have systems in place to gather and analyse information on its procurement activities. It also needs to decide:
- How it will gather this information; and
 - How the information will be analysed and used for decision-making.
- 2.4 The procurement methods ODC uses to approach markets can range from simple credit card purchases with local suppliers (see Section 4, below) to complex multi-stage offers. When deciding which method to use, ODC should take into account:
- The value and risk of the goods and services;
 - The availability of the goods and services;
 - The importance of the goods and services to ODC and the local community;
 - The characteristics of the market and any action ODC may want to take to develop or otherwise influence the market;
 - The transaction costs associated with the procurement; and
 - Government policy objectives – for example, sustainability.
- 2.5 The risk and value of the procurement provides a useful categorisation of goods and services as a means for identifying and developing different procurement responses for each category. ODC may use this approach to help choose an appropriate procurement strategy to address the risk and value of the goods or services being procured. (Note that it is not uncommon for local authority high risk and high value items to make up more than half the value of the TLA's total expenditure on procured goods and services.)

The four risk and value categories that could be considered in this way are:

- Low value and low risk;
- High value and low risk;
- Low value and high risk; and
- High value and high risk.

3. PREPARING A BUSINESS CASE

3.1 ODC should:

- Prepare a business case to support the procurement of both higher value and higher risk items; and
- Require the business case to be submitted to and approved by the Tenders sub-Committee as part of the overall project approval process.

3.2 In some instances, ODC may use a preliminary business case or equivalent document in the early stages of a particularly large or complex procurement. It will then refine this case into a full business case.

3.3 In all cases, the scale and complexity of the business case should be proportionate to the risk and value of the procurement.

3.4 When a business case is developed for procurement, it must:

- Identify the outputs and outcomes to which the procurement process contributes;
- Identify the specific objectives of the proposed procurement;
- Assess the costs, benefits, and risks involved;
- Examine whether the initiative is feasible;
- Identify the preferred strategy and method for the procurement;
- Identify and assess options;
- Provide for consultation with affected persons;
- Show that the preferred option will meet the procurement objective; and
- Justify any departure from a procurement method that ODC is required to follow.

3.5 ODC should carry out an appropriate level of market research to ensure that it prepares a good business case and that it makes an informed decision on the procurement method.

3.6 Market research should be carried out for procurement where there is high value and/ or risk involved or for the situation where ODC does not have comprehensive knowledge of the market. For high risk projects, the object of the research should be to reduce ODC's exposure to limited sources of supply. This can be done through actively identifying alternative sources of supply and/ or changing the ODC's demand requirements. Also, for high value procurement, there should be a focus on ensuring that the successful supplier has the ability, availability, and resources needed to work with ODC.

3.7 In some cases, ODC will be looking for a more detailed understanding of the supplier market and the range of technologies that might be available. In these cases, a formal request for information (RFI) may be appropriate and should be sought.

3.8 ODC must take account of the decision-making requirements in the Local Government Act 2002 and, as appropriate for high risk and/ or high value procurement, assess the costs and benefits of options and consider community views at various stages of the decision-making process. In some cases, a business case may need to provide for consultation or engagement with affected persons.

4. GUIDANCE FOR USE OF SMALL AND LOCAL SUPPLIERS

- 4.1 The ODC will be a fair but demanding buyer, who will purchase from competitive local suppliers where they offer best value. These guidelines do not give preference or weighting to local content in itself. Similarly, there should be no discrimination on the basis of ownership of a supplier or preference for local equity. Having given local suppliers full and fair opportunity and assessed any commercial and practical value for money advantages associated with local supply, ODC will buy from the best source available, according to its own judgement of all costs and benefits.
- 4.2 Due consideration will be given to potential commercial and practical advantages in purchasing locally supplied goods and services. Practical or commercial advantages may include:
- Better price and total or whole-of-life ownership cost;
 - Better through-life support (e.g. better availability of spare parts and after-sales service);
 - Shorter supply lines and/or delivery lead times;
 - Reduced inventory costs;
 - Reduction or elimination of exchange rate risks;
 - Easier and cheaper communications/transport;
 - Simpler and cheaper contract administration and dispute resolution;
 - Greater scope for cooperative and innovative product development and influence over the supply base;
 - A collaborative approach being considered when a community group has the resources to undertake the work which may result in other intangible benefits such as providing training or work experience;
 - Continuity of supply and more direct control over orders;
 - Goods/ works/ services better adapted to local conditions; and
 - Better knowledge of the producer's reputation and reliability.
- 4.3 In general, it will often make good business sense, in terms of value for money and a reliable supply base, that goods, works and services should be sourced from local suppliers where the necessary standards of competitiveness, quality and availability are met. However, it is also necessary to ensure that due consideration has been given to all of these Procurement Guidelines and appropriate action taken, as necessary.

APPENDIX TWO: OAG PROCUREMENT GUIDANCE FOR PUBLIC ENTITIES

OFFICE OF THE AUDITOR-GENERAL

Good Practice Guide

PART 3: STRATEGIC PROCUREMENT PLANNING

Developing a procurement strategy

- 3.1 In Part 3 of our overarching guide *Public sector purchases, grants, and gifts: Managing funding arrangements with external parties*, we discuss the need for a public entity to take a strategic approach to managing public funds. Although it may not always be separately identified as a specific discussion, this high level thinking will often involve considering the different types of funding arrangement a public entity could use. In these processes, a public entity will often make fundamental decisions on the types of funding arrangements it will use to achieve its goals, and on how important a particular type of funding arrangement is for its work.
- 3.2 If these issues have been well considered, it should be relatively simple to understand the importance of procurement to the public entity achieving its overall goals and business strategy. This Part provides guidance on developing a procurement strategy when procurement has been identified as integral to the business strategy.

Strategic procurement planning and analysis

Expectations

- 3.3 We expect that each public entity will have a thorough understanding of the:
- Type of procurement that it does;
 - Value and risk associated with the procurement; and
 - Importance of procurement to achieving its overall goals and business strategy.
- 3.4 A public entity should develop a procurement strategy if procurement is integral to achieving the overall business strategy.
- 3.5 Where procurement is not integral, a public entity should still be able to demonstrate:
- A knowledge of the type, value, and risk associated with the goods or services it procures; and
 - That policies and procedures are in place for those involved in procurement activity to ensure that good procurement principles and practices are adopted.

Guidance

- 3.6 A public entity's relevant policies and procedures should include a strategic component that assesses whether procurement is sufficiently integral to the business strategy that it warrants a separate procurement strategy. To do this, a public entity will need to understand what it is procuring and how integral this is to its overall business goals.
- 3.7 Regardless of the size of the function, a public entity should know:
- The goods and services it procures;
 - How much it spends by category type and also on individual procurements;

- Its main suppliers and the volume and value of the procurements; and
 - The main markets it procures in.
- 3.8 The public entity should include guidance in its policies and procedures on how it will develop and implement its procurement strategy. The guidance should cover:
- Who will have overall responsibility for procurement planning;
 - Who will be involved in the planning process and when they will be involved; and
 - How the procurement strategy will be linked with the public entity's broader strategic planning processes.
- 3.9 If the procurement function is large, a public entity may need to have systems in place to gather and analyse information on its procurement activities. It will also need to decide:
- How it will gather this information; and
 - The information will be analysed and used for decision-making.
- 3.10 The strategies a public entity uses to approach markets can range from simple credit card purchases with local suppliers to complex multi-stage offers. When deciding which strategy to use, a public entity should take into account:
- The value and risk of the goods and services;
 - The availability of the goods and services;
 - The importance of the goods and services to the public entity;
 - The characteristics of the market and any action the public entity may want to take to develop or otherwise influence the market;
 - The transaction costs associated with the procurement; and
 - Government policy objectives – for example, sustainability.
- 3.11 There are a variety of tools and techniques public entities can use to help them with their strategic procurement analysis. One tool that is widely used in strategic analysis is matrix analysis (sometimes referred to as quadrant or portfolio analysis). Typically, some aspect of risk, difficulty of supply, importance to the organisation, or equivalent is plotted on a graph against expenditure on various goods or services. Combinations of these factors and the goods or services are then categorised into four quadrants on the graph.
- 3.12 Figure 2 (below) shows how the risk and value of the procurement provides a useful categorisation of goods and services as a means for identifying and developing different strategic responses for each category. This approach can help a public entity to choose an appropriate procurement strategy to address the risk and value of the goods or services being procured. A public entity may also find it useful to establish what proportion of its total expenditure on procured items is in each quadrant. Typically, quadrant 4, high risk and high value items, can make up more than half the value of the public entity's total expenditure on procured goods and services.

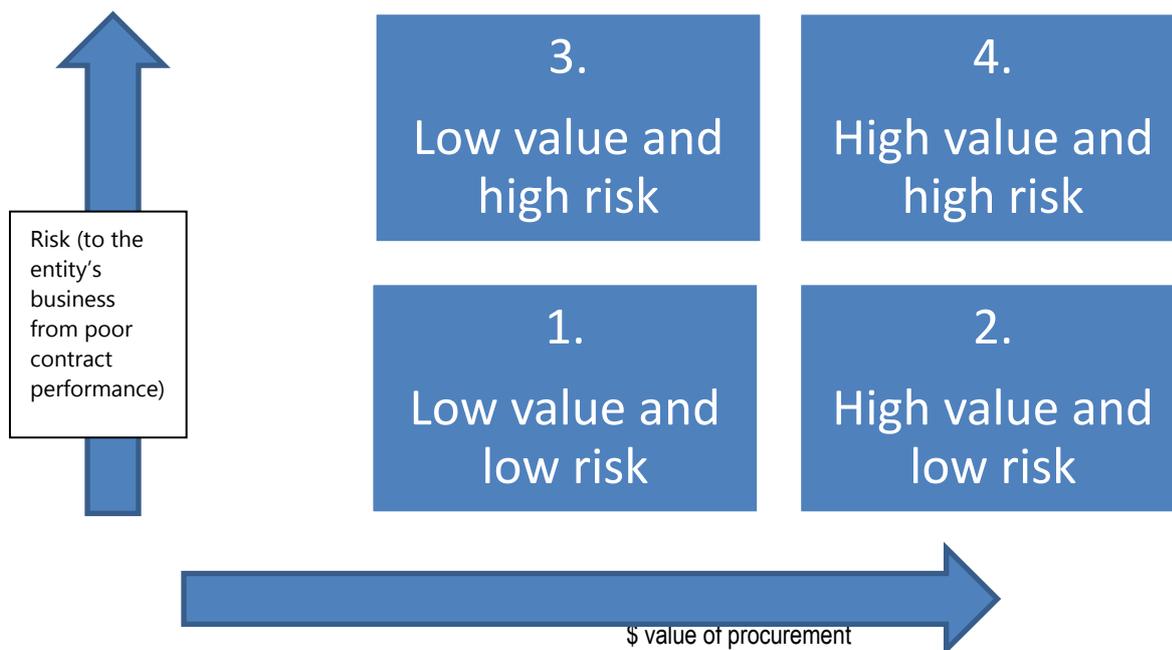


Figure 2 - Analysing type of procurement to identify procurement method

3.13 Figure 3 (below) is derived from the Queensland Government Department of Public Works' Better Purchasing Guide *Developing "Agency Purchasing Procedures"* (which can be found on its website at www.qgm.qld.gov.au). Figure 3 shows how four-quadrant analysis can be developed into a basic procurement strategy. It also sets out the issues a public entity should consider when developing procurement procedures for each category.

Options for approaching markets

Figure 3

Characteristics	Basic procurement strategy	Issues to consider when developing procurement procedures
Low value and low risk – Quadrant 1		
<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.</p> <p>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>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</p>	<p>What are the goods or services procured in this category?</p> <p>For the different goods, services, or groups of items in this category, what procurement methods will minimise processing costs and deliver value for money?</p> <p>How will the number of competitive offers needed to deliver value for money, probity, and accountability be determined?</p> <p>Who will be doing procurement activities in this category?</p> <p>What skill levels are required to do the various types of procurements?</p> <p>What expenditure and procurement authorities/approvals are needed for</p>

<p>The skills required for these types of transactions are generally administrative.</p>	<p>procurement policies and procedures.</p>	<p>management control and to ensure probity and accountability?</p> <p>What other procedures, documentation and records are needed to manage the procurement function in this category?</p>
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Characteristics	Basic procurement strategy	Issues to consider when developing procurement procedures
<p>High value and low risk – Quadrant 2</p>		
<p>Goods or services in this category are generally widely used by public entities, they have no special quality, safety, reliability, or environmental implications, they are simple to specify, and they have common standards.</p> <p>Procurement of these items is often in high volumes but with sometimes low value individual transactions. There are often whole-of-entity or syndicated arrangements for supply of these goods or services.</p> <p>Buying is usually an administrative task (for example, booking travel).</p> <p>However, high level procurement skills are required to establish and manage these arrangements (for example, setting up travel arrangements).</p>	<p>Aim to ensure that total costs, including the costs of processing large numbers of low value transactions, are reduced.</p> <p>Consider using standing offer arrangements with electronic ordering and transaction processes.</p> <p>Aggregate procurement to increase the attractiveness of buying the goods or services, thus increasing the competitiveness of the pricing.</p> <p>Document the administrative procedures for buying in the entity's procurement policies and procedures.</p> <p>if there is a need to address environmental issues about disposal, waste management recycling, handling, or storage.</p>	<p>What are the goods or services purchased in this category?</p> <p>Where are the competitive markets for these goods or services?</p> <p>Does the aggregation of procurement at the local level for particular product types warrant a full service provider with regional delivery capability?</p> <p>Where is it practical to establish standing offer arrangements or other methods of supply?</p> <p>Are processes such as electronic ordering/paying or other processes available to reduce processing costs?</p> <p>How will the buying strategies to deliver value for money, probity and accountability be determined?</p> <p>What skills are needed to establish and buy from standing offer arrangements?</p> <p>What skills are needed for the other buying methods used in this category?</p> <p>What expenditure and procurement authorities/approvals are needed for management control and to ensure probity and accountability?</p> <p>What systems and supporting procedures, including expenditure and procurement authorities/approvals, are needed for management control and to ensure probity and accountability?</p>

Characteristics	Basic procurement strategy	Issues to consider when developing procurement procedures
Low value and high risk – Quadrant 3		
<p>Goods or services in this category are usually highly specialised (for example, high-tech medical equipment).</p> <p>There are often very few potential suppliers. There are relatively few transactions in this category.</p> <p>High-level procurement and technical skills are required to establish and manage these arrangements.</p> <p>Price may not be the principal factor in the procurement.</p>	<p>Reduce exposure to limited sources of supply. This can be done through actively identifying alternative sources of supply and/ or changing the demand requirements of the public entity.</p> <p>Prepare individual strategies or procurement plans for each procurement project in this category.</p>	<p>An individual procurement strategy/plan will need to be developed for each item in this category. The public entity's procurement policies and procedures need to provide an efficient mechanism to do these procurement projects.</p> <p>What organisational systems and procedures need to be in place to do procurement and contract management in this category?</p> <p>How will the required procurement, technical and other expertise be identified for each project?</p> <p>How will project managers be identified and what responsibilities and authority will they have?</p> <p>How will projects be integrated into the public entity's other business activities?</p> <p>What systems and supporting procedures, including expenditure and procurement authorities/ approvals, are needed for management control and to ensure probity and accountability?</p>

Characteristics	Basic procurement strategy	Issues to consider when developing procurement procedures
High value and high risk – Quadrant 4		
<p>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 the public entity.</p> <p>Long-term relationships with suppliers are common. Supplier attitudes to the public entity as a customer are often critical to the value the entity will derive from the delivery of the goods and/or services.</p>	<p>Focus on ensuring that the successful supplier has the ability, availability, and resources needed to work with the public entity.</p> <p>Manage the relationship with the supplier to obtain value for money.</p> <p>Have a detailed understanding of what is required, how the arrangement should be managed, and the market characteristics.</p>	<p>Buying strategies will have been developed for each item in this category. The public entity's policies and procedures need to provide an efficient mechanism to do these procurement projects.</p> <p>What organisational systems and procedures need to be in place for doing purchasing and contract management in this category?</p> <p>How will the required purchasing, technical, and other expertise be identified for each project?</p> <p>How will project managers be identified and what responsibilities and authority will they have?</p>

<p>High-level purchasing and technical skills are required to establish and manage the procurement process.</p>	<p>Develop individual procurement strategies or plans for each procurement project in this category.</p>	<p>How will the projects be integrated into the public entity's other business activities?</p> <p>What systems and supporting procedures, including expenditure and procurement authorities, are needed for management control and to ensure integrity and accountability?</p>
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Planning for the procurement

Preparing a business case

Expectations

- 3.14 We expect a public entity to:
- Prepare a business case to support the procurement of higher value and higher risk items; and
 - Require the business case to be part of the project approval process.
- 3.15 In some instances, a public entity may use a preliminary business case or equivalent document in the early stages of a particularly large or complex procurement. It will then refine this case into a full business case.
- 3.16 A public entity should carry out an appropriate level of market research to ensure that it prepares a good business case and that it makes an informed decision on the procurement method.
- 3.17 In all cases, the scale and complexity of the business case should be proportionate to the risk and value of the procurement.

Guidance

- 3.18 Public entity should include guidance on preparing a business case in its relevant policies and procedures. This guidance should outline:
- When a business case needs to be prepared; and
 - What the business case should contain.
- 3.19 As a minimum, the guidance should require every business case to:
- Identify the outputs and outcomes to which the procurement process contributes;
 - Identify the specific objectives of the proposed procurement;
 - Assess the costs, benefits, and risks involved;
 - Examine whether the initiative is feasible;
 - Identify the preferred strategy and method for the procurement;
 - Identify and assess options;
 - Provide for consultation with affected persons;
 - Show that the preferred option will meet the procurement objective; and
 - Justify any departure from a procurement method that the public entity is required to follow.
- 3.20 The guidance should also cover the type of situation where market research should be considered and examples of the types of market research that may be done.
- 3.21 The extent of the research required will depend on the value and risk of the procurement. Doing market research is particularly important when the public entity does not have comprehensive knowledge of the market.

- 3.22 In some cases, the public entity will be looking for a more detailed understanding of the supplier market and the range of technologies that might be available. In these cases, a formal request for information (RFI) may be appropriate.
- 3.23 Local authorities will need to take account of the decision-making requirements in the Local Government Act 2002, including requirements to assess the costs and benefits of options and to consider community views at various stages of the decision-making process. In some cases, a business case may need to provide for consultation or engagement with affected persons.
- 3.24 Local authorities may also wish to refer to relevant guidelines produced by the New Zealand Society of Local Government Managers. Reference to the guidelines is included on its website (www.solgm.co.nz).

Specifying the goods or services

Expectations

- 3.25 We expect a public entity to clearly specify goods or services before procuring them. If a public entity is using a competitive proposal process and the public entity is open to innovation, the specification may focus on the outputs and outcomes rather than the process to be followed to deliver the outputs or outcomes.
- 3.26 The specification should contain a clear, concise, logical, and accurate description of the goods or services being procured. This will help potential suppliers and those who will be involved in making the procurement decision.
- 3.27 Government departments' specification of goods or services must adhere to the applicable government policies and the *Mandatory Rules for Procurement by Departments*.

Guidance

- 3.28 A public entity should include guidance on specifying goods or services in its relevant policies and procedures. This could include the different types of specification of goods or services (such as the examples in paragraph 3.29), and when each should be used.
- 3.29 Examples of different types of specifications are:
- A functional specification, which focuses on what is to be achieved from the procurement – that is, the desired outcome, rather than how it will be reached;
 - A performance-oriented specification, which defines the performance parameters required of the goods or services but not the methods to be used to achieve them;
 - A technical specification, which usually sets out the physical characteristics of goods (for example, their size or capacity, the type of materials they contain, or their tolerance) in a highly prescriptive way; or
 - A combination of the above.
- 3.30 Other potential contents of a specification include:
- Requirements and non-mandatory preferences for the goods or services;
 - Requirements relating to timetable, delivery date, and so on; and
 - Performance standards, including key performance indicators and targets that cover inputs (the total resources), outputs (what will be produced), and outcomes (the effects of the service).

Procurement plan

- 3.31 Individual procurement plans should usually be considered for higher value and higher risk procurement – that is, those goods or services identified by public entities as being in quadrants 2, 3, and 4 of Figure 2 – and occasionally for those in quadrant 1.
- 3.32 Procurement planning is necessary to identify:
- The best way to approach the procurement of goods or services (through information gathering and analysis);
 - Risks associated with the procurement of goods or services early so that they can be managed; and
 - Ways of achieving the objectives defined for the procurement, in line with the public entity's procurement strategy.

Expectations

- 3.33 We expect a public entity to prepare a procurement plan that brings together the previous analysis and requirements in the planning process.
- 3.34 The content and size of the procurement plan will vary depending on the value and risk of the procurement, and the size and resources of the public entity.

Guidance

- 3.35 A public entity should include guidance on developing a procurement plan in its relevant policies and procedures. This guidance should cover when a procurement plan needs to be prepared and the expected contents of a plan.
- 3.36 The amount of detail in the plan will depend on the value and associated risk of the procurement. The content may include:
- The project scope;
 - The procurement method;
 - Selecting an evaluation model (including the evaluation criteria) and process (see paragraphs 7.21-7.30);
 - The type of contract and contractual conditions (see paragraphs 3.37-3.46);
 - The responsibilities of the public entity's staff and any other stakeholders;
 - The risks;
 - The need for independent oversight or assurance over the process (see paragraphs 3.47-3.52);
 - The timelines and key milestones;
 - The resources needed (for example, project manager, evaluation team members, tender or proposal manager, and approving authority); and
 - The budget, including the budget for conducting the procurement (for example, for external quality assurance, independent assurance, legal advice, and project management).

Selecting the type of contract

- 3.37 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 the public entity 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.
- 3.38 For low value, low risk purchases, the contract will be as simple as completing a purchase order or requesting goods and services with a procurement card (see paragraphs 4.8-4.9). For medium value, low risk purchases, a short form contract may 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. The following expectations and guidance relates to higher value and higher risk purchases.

Expectations

- 3.39 We expect the contract terms used to 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.
- 3.40 A public entity's procurement contract should:
- Be comprehensive enough to meet the objectives of the procurement;
 - Reflect the full specification of the goods or services;
 - Be consistent with the conditions specified for the procurement process;
 - Define and protect the rights and obligations of all parties;
 - Be consistent with the entity'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;
 - Be included in the procurement documents, and respondents should be required to confirm whether they would accept the proposed contract terms (or propose alternative terms); and
 - Comply with relevant public sector constraints – for example, the contract may not be able to contain indemnities, and cannot contract out of the Official Information Act 1982.

Guidance

- 3.41 A public entity should include guidance in its relevant policies and procedures on the factors that should be taken into account when selecting the type of contract – for example:
- 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 the public entity 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.
- 3.42 The guidance should also set out the circumstances when the public entity should seek legal advice or assistance in preparing the contract. Legal advice will often be required in a procurement process, particularly for high risk, complex, or strategic procurements. The public entity should consider this advice early in the planning stage, since it may need to develop specific documentation, including a draft contract, to accompany the procurement documents.
- 3.43 An incomplete understanding of limitations or exclusions of liability, indemnities, warranties, and intellectual property and the resulting risks can lead to unnecessarily conservative contractual positions, which reduce the opportunities that may evolve from a contract.
- 3.44 The guidance should specify that the contract needs to reflect the relationship that the public entity wishes to establish with the supplier. For example, as well as the more traditional "arm's length" contracts, partnering or alliances are increasingly being used (see paragraphs 6.9-6.13 for further details on these two methods).

- 3.45 The guidance should set out the types of issues that the contract should cover – for example, who owns intellectual property created under the contract, and defining and ensuring the public entity’s right to use background intellectual property.
- 3.46 The guidance should also set out the types of standard conditions that the contract might include – for example:
- Conditions relating to termination, default, and insurance liabilities; and
 - Special conditions specific to the procurement – for example, delivery and payment conditions, financial and performance guarantees, liquidated damages, copyright, confidentiality, and dispute resolution.

Independent oversight or assurance over the process

- 3.47 The public entity team managing the procurement and other personnel either directly or indirectly involved must be fully accountable for the procurement process and ensure that it is in line with accepted standards. To help them fulfil this role, a public entity may appoint an independent adviser for high value, high risk procurement to oversee the process.

Expectations

- 3.48 We expect that appointing an independent adviser should not be seen as a way of avoiding having sound processes. It does not reduce the accountability of the public entity for running a good process. The public entity must retain primary responsibility for ensuring that appropriate professional standards are met. The public entity is accountable for the decisions that it makes.
- 3.49 The appointment of an independent adviser cannot be used to transfer risk from the public entity to someone else.
- 3.50 An independent adviser should be engaged early in the procurement process. The public entity should prepare terms of engagement that clearly set out the role and scope of the engagement.

Guidance

- 3.51 A public entity should include guidance in its relevant policies and procedures on the situations where a public entity should consider engaging an independent adviser. An independent adviser may be engaged for particularly large, complex, or sensitive transactions. However, complexity alone is not enough to justify using an independent adviser, because a public entity should be able to monitor compliance with its own procurement standards and not have to rely on “contracting in” such expertise.
- 3.52 The terms of engagement should 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);
 - Attendance at meetings; and
 - Remuneration or the method for determining it.

APPENDIX THREE: CONTRACTOR RISK CLASSIFICATION GUIDE

SAFETY RISK GUIDE

1. Safety Risk Category

A Contractor's generic safety risk level will fall into one of three categories:

1. High risk
2. Medium risk
3. Low Risk

The value of the potential contract is not a consideration when evaluating safety risk as we are interested in the risk of harm, regardless of contract value.

If the contract falls into the medium or high safety risk category, then Council H&S Pre-qualification is required before a contractor is approved. Pre-qualification is required for all work that is safety risk assessed as medium or high, which can be in any of the procurement types (refer procurement type matrix).

As general guidance:

- Suppliers are usually low risk
- Physical work is usually medium or high risk, depending on the nature of the work
- Environmental work using hand tools only is usually medium risk
- Environmental work using powered tools/plant is usually high risk.

2. Contractor Safety Risk Classifications

The table below provides guidance by way of indicative examples to assist you in determining the safety risk.

Safety Risk Rating	Examples	Requirements
Low	<p>Contractors who undertake;</p> <ul style="list-style-type: none"> • Supply of goods or services who will not come onto council property (includes trainers) • Supply of goods or services who may come onto council property to deliver or pick up vehicles or goods or items or documents, where there is minimal manual handling, • Power supply companies who only come onto site to read meters • Caterers who deliver food into council premises, under supervision of a council person • Courier drivers who deliver goods • Trainers, who will be undertaking low risk training on company premises in meeting/training rooms and will be treated as a visitor • Consultants or project managers working on Council property or managing Council projects, who do not attend physical works sites of moderate or higher risk • Consultants working from their own premises • IT consultants involved in minor physical work only (e.g. computer use, rack equipment changes) • Photocopier repair service personnel • People who supply water to water coolers and service • Office plant care • Personal hygiene suppliers in office based facilities • Painting where no at height work will take place and only acrylic paint is used 	Visitor procedures Supervision

Safety Risk Rating	Examples	Requirements
Medium	<p>Contractors who undertake;</p> <ul style="list-style-type: none"> • General maintenance work • Environmental work involving hand tools but no powered tools or machinery (diggers, chainsaws, trimmers etc.) • Work using volunteers involving hand tools but no powered tools or equipment (diggers, chainsaws, trimmers etc.) • Commercial cleaners • Work on roofs and ceiling e.g. air-conditioning repairs/service but <u>not working</u> over 1 metre. • Other forms of painting not classified as low risk • Electrical work (up to 240 VAC) • Plumbing • Brazing and soldering • Gardening/ Landscaping/Lawn Mowing • Excavations that are not notifiable to Worksafe NZ • Medium construction/engineering work such as external building work or infrastructure • Working at height <u>below one metre</u> • Trainers, who will be undertaking moderate risk or above training on company premises • IT consultants involved in medium physical work (e.g. manual handling) • Consultants or project managers working on Council property or managing Council projects, who attend physical works sites of moderate or higher risk. 	<p>Pre-qualification Supervision On site Inductions SWMS Monitoring Reporting</p>

Safety Risk Rating	Examples	Requirements
High	<p>Contractors who undertake;</p> <ul style="list-style-type: none"> • Building projects involving structural work • IT consultants involved in significant work (e.g. work around mains voltage electricity, installing building cabling) • Environmental work involving power tools or machinery (diggers, chainsaws, trimmers etc.) • Work using volunteers involving powered tools or machinery (diggers, chainsaws, trimmers etc.) • Working at height over one metre • Demolition/ relocation • Work involving a harness • Work on or around a roof • Geothermal work • Work on or around water • Lone work/Working in isolation • Pest Control • Work where permits to work, or TMPs are required • Handling hazardous (and toxic) chemicals • Work involving mobile plant • Confined space entry work • Work with, or removal of, asbestos material • Diving Work (breathing compressed air) • Tree felling • Tree pruning that requires notification to Worksafe NZ • Use of explosives • Hot work – welding, gas cutting, grinding, etc. • Any hazardous work that requires notification to Worksafe NZ. 	<p>Pre-qualification Supervision On site Inductions SWMS Monitoring Auditing Reporting</p>