

Procurement and Contract Management Policy

1 Background

- 1.1 The Authority is an independent Crown Entity under the Crown Entities Act 2004 and needs to be confident that its procurement activity complies with the law and applicable public sector standards. All procurement of goods and services should be done with integrity and in good faith.

2 Purpose

- 2.1 The purpose of this policy is to explain:
- (a) the principles to be applied when undertaking procurement and contract management
 - (b) the financial thresholds and commercial considerations that must be applied when procuring goods and services
 - (c) roles and responsibilities when conducting procurement and contract management activities
 - (d) information about negotiating, the award of contracts and the disclosure of conflicts of interest
 - (e) requirements relating to the application of procurement and contract management processes and procedures
 - (f) details of other policies and documents that should be considered in conjunction with this policy.

3 Scope

- 3.1 This policy applies to all Authority staff, suppliers and contractors working on behalf of the Authority who undertake procurement and contract management activities, and applies equally to all expenditure, including capital, operational and project expenditure.

4 The Authority's approach to procurement and contract management

- 4.1 This policy sets out the Authority's approach to complying with:
- (a) the law;
 - (b) the government procurement framework, including the Government Procurement Principles ("Principles"), Government Procurement Charter ("the Charter"), and Government Procurement Rules ("Rules"); and
 - (c) the Authority's other related policies when engaging in procurement and contract management.
- 4.2 All Authority procurement and by association the management of contracts will:
- (a) be conducted in accordance with the Principles, Charter, Rules (to the extent applicable), this policy and the Authority's supporting procurement and contract management processes, procedures and templates

- (b) use the New Zealand Government's purchasing power, through the established Government procurement channels of the All of Government contracts, Common capability contracts, Syndicated contracts, the Online panel directory and Marketplace
- (c) be properly planned and conducted at a level of detail tailored to suit what is being procured in terms of the product or service value, complexity, and risk
- (d) contribute to achieving the Authority's business strategies and fulfilling business requirements
- (e) encourage and where possible create competition and opportunity for suppliers in line with the Government's trade obligations
- (f) protect suppliers' confidential or commercially sensitive information. This includes information that could compromise fair competition between suppliers
- (g) be based on the best public value, or the best possible outcome over the whole-of-life of the goods, services or works and ensuring resources are used effectively, economically and responsibly
- (h) be able to be justified, if requested, showing the process or activity that underpinned how decisions were made during procurement and/or management of the contract
- (i) avoid organisations which are known to the Authority to engage in unethical or unlawful practices
- (j) involve Authority legal team guidance in accordance with the procurement plan
- (k) seek guidance from the Authority's procurement team when making procurement and contract management decisions as defined in the procurement plan.

5 Mandatory policy content

- 5.1 The Authority acknowledges that rule 1.2 of the Rules requires that this policy incorporates the six Principles, and the Charter. The Principles and Charter are incorporated in this policy in Appendix A, and the Authority agrees to follow them.
- 5.2 The Authority acknowledges that rule 2.2 of the Rules requires the following provisions to be included in this policy. The Authority agrees (and requires its staff involved in procurement) to:
 - (a) safeguard the integrity of its procurement activities and processes
 - (b) ensure the whole procurement process is fair, transparent and reasonable
 - (c) act lawfully and responsibly
 - (d) undertake a thorough and appropriate level of due diligence that has been planned for and applied to all procurements
 - (e) stay impartial when making procurement decisions
 - (f) to the extent possible, avoid purchasing procurement advice from a supplier that has a commercial interest in the contract opportunity

- (g) be able to justify their procurement decisions and always document their rationale
- (h) apply appropriate protections to personal and confidential information
- (i) identify, notify, manage and record conflicts of interest
- (j) understand how to prevent, detect, and respond to corruption threats
- (k) have protections in place for whistle-blowers.

6 Roles and responsibilities

6.1 Anyone involved in Authority procurement and/or contract management must be clear about their accountabilities and responsibilities when procuring goods or services or managing a contract on behalf of the Authority.

6.2 The Authority will:

- (a) provide all staff with access to the Authority's procurement and contract management policy
- (b) provide opportunities for staff to discuss procurement and contract management decisions and issues
- (c) ensure decisions are in accordance with this policy and related policies outlined above.

6.3 General Managers or equivalent roles are responsible for ensuring all procurement and contract management conducted within their business unit is in accordance with this policy, including:

- (a) before committing the Authority to any procurement or contractual arrangement, ensuring compliance with all relevant Authority policies, including as listed in section 10 below
- (b) maintaining independence by ensuring that all relationships with suppliers involved in procurement process and throughout contract lifecycle are not conflicting
- (c) advising the Chief Executive and procurement team of any personal or financial interest that may be, or may be perceived to be, a conflict of interest in relation to any procurement or contract management activity past or present
- (d) after commencing procurement or committing to a contract, overseeing their business unit's procurement and contract management activities, ensuring that activities follow the Authority's policies, processes and procedures
- (e) seeking guidance from the procurement team on procurement and day-to-day supplier management arrangements¹
- (f) consulting with the Authority's legal team in accordance with the procurement plan
- (g) ensuring any required exemptions as outlined in the procurement plan meet the criteria of the Government procurement rules and is approved by a person

¹ as defined in the procurement/contract management plans

with the necessary delegated authority (except for procurement undertaken as part of an approved secondary process)

- (h) ensuring their business unit forwards all contract details, including procurement plans, contracts, variations, and approvals to procurement@ea.govt.nz
- (i) ensuring the business unit holds, maintains, securely stores, archives and/or disposes of copies of records related to the procurement method and content, in line with the Authority's Information management policy and the Public Records Act.

6.4 Staff are responsible for:

- (a) complying with all Authority policies before committing the Authority to any procurement or contractual arrangement
- (b) following Authority procurement and contract management processes, procedures and templates, ensuring that these are applied correctly when undertaking procurement or contract management activity
- (c) seeking guidance from the procurement team on procurement activities and supplier management arrangements such as:
 - (i) procurement methods (particularly when there is uncertainty about the whole-of-life cost)
 - (ii) the effective management of service delivery
 - (iii) effective monitoring of supplier performance against agreed measures
 - (iv) management of risks and issues, including the implementation of appropriate mitigations
 - (v) good procurement and contract management governance and administration
 - (vi) achieving public value
 - (vii) reporting on the performance or value of Authority contracts
- (d) consulting with the Authority's:
 - (i) People & Capability team when engaging contractors or consultants,
 - (ii) Chief Information Security Officer when procuring any Information and Communication Technology goods or services
 - (iii) Legal team where required in accordance with the procurement plan
- (e) advising the procurement team of any new or changes to existing contract data including variations to contracts (value, duration or legal terms), and conflicts of interest

6.5 The procurement team is responsible for:

- (a) providing support and advice to Authority staff to achieve the best possible procurement and contract outcomes
- (b) leading, facilitating, coaching or advising on procurement and contract management activity
- (c) monitoring of high-level spending activity

- (d) overseeing procurement and contract management requirements
- (e) overseeing and managing the Authority's procurement and contract management templates²
- (f) supporting process and procedure documentation
- (g) reporting to the Ministry of Business Innovation and Employment (MBIE) as required
- (h) developing the Audit and Finance Committee procurement report
- (i) maintaining and updating the procurement hub and all procurement artefacts, including templates and guidelines required for the full procurement lifecycle.

7 Whole-of-life costs/public value (total cost of ownership)

- 7.1 The Authority must estimate the total value of all the relevant goods or services required over the whole-of-life of the programme, project or initiative. This estimate is referred to as the total cost of ownership (TCO) of a contract. The TCO of a contract is always exclusive of GST and should be used to assess the costs, benefits and risks associated with the initiative.
- 7.2 To estimate the TCO the business owner must:
- (a) estimate the total cost of the goods, services or works over the whole of their life
 - (b) combine the purchase price and all other expenses and benefits that the Authority will incur including (but not limited to):
 - (i) installation and training
 - (ii) operating and maintenance costs
 - (iii) repairs
 - (iv) decommissioning
 - (v) costs associated with disposal and residual value on disposal
 - (c) all other related services (e.g. management consultancy services)
 - (d) all subcontracted goods, services or works
 - (e) options to purchase additional goods or services throughout the life of the contract
 - (f) options to extend the term of the contract
 - (g) paying any premiums, fees or commissions to the supplier or a broker
 - (h) any related revenue streams a supplier receives
 - (i) any other form of remuneration or payment due to the supplier or to a third party or any interest payable in respect of goods or services purchased throughout the life of the contract.

² in consultation with the Legal Team

- (j) any additional costs through to cost of disposal, especially when procuring outside of all of Government panels including:
 - (i) initial information security specifications
 - (ii) up-front due diligence and
 - (iii) ongoing assurance by independent auditors

8 Disclosing and managing conflicts of interest

- 8.1 All Authority staff who are actively involved in all stages of the procurement lifecycle, or who could influence the process or the outcome of a procurement, must complete and sign a Conflict of interest and confidentiality form³. This forms part of the procurement project as referenced in the procurement plan. This declaration is in addition to the declaration for all staff under the conflict of interests policy.
- 8.2 A conflict of interest that is not properly managed could undermine the procurement's integrity and lead to complaints, challenges, or the Authority's decision being overturned. Conflicts of interest that are identified must be reported to the procurement team. The conflict of interest and the process for managing it must be recorded in writing.
- 8.3 Conflicts of interest can be managed in a variety of ways, including by:
 - (a) restricting or removing the person's involvement in the procurement and contract management activity or project
 - (b) engaging an impartial person to oversee all or part of the process and to provide assurance of its integrity.
- 8.4 If in doubt, contact the procurement team for guidance on managing the conflict of interest.

9 Reporting

- 9.1 The manager of the procurement function is required to report to the Authority's Audit and Finance Committee as follows:
 - (a) A report detailing the number and value of procurements made under each procurement method on a six-monthly basis including (but not limited to):
 - (i) the method of procurement undertaken (including where exemptions have been applied)
 - (ii) key themes noted during the reporting period
 - (iii) exemptions applied and any exceptions to the Procurement and contract management policy.
 - (b) The number and value of contracts by delegated authority, including contracts, variations, and their individual values listed out for contracts signed by the Chief Executive.

³ in accordance with the Government procurement rules. The form can be found in Electricity Authority templates in your Word application (open Word app > More templates > Electricity Authority).

- (c) Aggregate spends for top 10 suppliers in the current financial year, and corresponding spend in the previous two years including for any recruitment firms in the top 10, the equivalent fixed term employee and the services that they provided.

10 Reference to other documents

- 10.1 The following policies are also relevant to procurement and should be considered along with this policy as appropriate⁴:
 - (a) Conflict of interests policy
 - (b) Delegations policy and associated Schedule 1 – Business delegations
 - (c) Fraud and corruption policy
 - (d) Sensitive expenditure policy
 - (e) Gifts and koha guideline
 - (f) Information management policy
- 10.2 Staff leading the procurement should check the delegations to ensure appropriate authorisation is obtained to proceed.
- 10.3 Staff should discuss the procurement approach with the specialist procurement expert/s to ensure compliance with the Rules.

⁴ These policies are updated as needed.

Appendix A

Government Procurement Charter

The Charter sets out government's expectations of how agencies should conduct their procurement activity to achieve public value.

Government agencies spend approximately \$51 billion a year on a wide range of goods and services from third party suppliers. We need to ensure that government procurement delivers public value for all New Zealanders while supporting the delivery of better public services throughout New Zealand.

Agencies should identify their key priorities and seek to meet as many of these expectations as practical.

The New Zealand government directs agencies to:

1. **Deliver economic benefits to New Zealand.** Work to create opportunities for local businesses and small-to-medium enterprises to participate in your procurement processes. Consider if your procurement offers opportunities for delivering social, environmental and cultural outcomes.
2. **Look for new and innovative solutions.** Make sure you don't overprescribe the technical requirements of a procurement, give businesses the opportunity to demonstrate their expertise.
3. **Engage with businesses with responsible business practices.** Ensure that the businesses you contract with operate with integrity, transparency and accountability, and respect international standards relating to human and labour rights. For businesses operating within New Zealand, ensure that they comply with all New Zealand employment standards and health and safety requirements.
4. **Promote inclusive economic development within New Zealand.** Engage with Māori, Pacific Peoples, and regional businesses and social enterprises in order to actively contribute to our local economy. Openly working to include and support these businesses and enterprises through procurement will promote both skills development and a diverse and inclusive workforce.
5. **Manage risk appropriately.** Responsibility for managing risks should be with the party – either the agency or the supplier – that is best placed to manage the risk. Agencies and suppliers should work together on risk mitigation strategies.
6. **Encourage collaboration for collective impact.** Look to support greater collaboration, both across-agency and across-businesses to give likeminded groups the opportunity to find common solutions within your procurement opportunities.

Government procurement principles

The principles of Government Procurement apply to all government agencies and provide government's overarching values. They apply even if the Rules do not. Agencies should use the principles for guidance and to help make good procurement decisions.

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- ↓ 2. Be proportionate and right-size the procurement
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Take time to read the six principles. You need to understand how they apply to the work that you do.

The six principles are:

1. Plan and manage for great results

- Identify what you need and then plan how to get it.
- Set up a team with the right mix of skills and experience.
- Involve suppliers early – let them know what you want and keep talking.
- Take the time to understand the market and your effect on it. Be open to new ideas and solutions.
- Encourage e-business.

2. Be proportionate and right-size the procurement

- Make it easy to do business with government.
- Design and run an efficient end-to-end process that is proportional to the value, complexity and risk.
- Reduce the time, cost and complexity for suppliers participating in procurement processes.
- Make documentation and communication clear and concise to minimise impacts on resources and only ask for information from suppliers that is essential and relevant.

3. Be fair to all suppliers

- Create competition and encourage capable suppliers to respond.
- Treat all suppliers equally – we don't discriminate (this is part of our international obligations).
- Seek opportunities to involve New Zealand businesses.
- Be open to subcontracting opportunities in big projects.
- Clearly explain how you will assess proposals – so suppliers know what to focus on.
- Talk to unsuccessful suppliers so they can learn and know how to improve next time.

4. Get the right supplier

- Be clear about what you need and fair in how you assess suppliers – don't string suppliers along.
- Choose the right supplier who can deliver what you need, at a fair price and on time.
- Choose suppliers that comply with the Government's Supplier Code of Conduct.
- Build demanding, but fair and productive, relationships with suppliers.
- Make it worthwhile for suppliers – encourage and reward them to deliver great results.
- Identify relevant risks and get the right person to manage them.

5. Get the best deal for everyone

- Get best public value – account for all costs and benefits over the lifetime of the goods or services.
- Make balanced decisions – consider the possible economic benefits to New Zealand.
- Encourage and be receptive to new ideas and ways of doing things – don't be too prescriptive.
- Take calculated risks and reward new ideas.
- Have clear performance measures – monitor and manage to make sure you get great results.
- Work together with suppliers to make ongoing savings and improvements.
- It's more than just agreeing the deal – be accountable for the results.

6. Play by the rules

- Be accountable, transparent and reasonable.
- Make sure everyone involved in the process acts responsibly, lawfully and with integrity.
- Stay impartial – identify and manage conflicts of interest.
- Protect suppliers' commercially sensitive information and intellectual property.