



Te Kaunihera a rohe mai i nga Kuri-a-Whare ki Otamarakau ki te Uru

Western Bay of Plenty District Council

Procurement Manual

V4.0

1 August 2020



*Western Bay of Plenty
District Council*

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1. GLOSSARY OF TERMS

- **Acceptance** – acceptance occurs when the party to whom the offer is made unconditionally agrees to the proposal.
- **Added value premium** - the amount more that the approved organisation is prepared to pay for the output offered by an alternative proposal.
- **Aggregation** - applies to coordination of demand or aggregation of supply. 'Aggregating demand' means a purchaser (or group of purchasers) coordinating their procurement of the same or similar goods and services.
- **Agent** – a representative who acts on behalf of other persons or organisations.
- **Agreement** – an agreement exists when a valid and binding offer by one party has been accepted by the other.
- **Alternative proposal/tender** - an alternative proposal offers an output that is different to that specified in detail within the RFP. However, the output offered is within the scope and meets the requirements of the RFP.
- **Approved organisation** - any approved public organisation within the scope of the Land Transport Management Act 2003.
- **Bond** – a financial guarantee from a recognised institution to ensure satisfactory performance of the contract requirements.
- **Bundling** - the grouping together of different but related goods or services. Bundling, as a concept, is related to aggregation.
- **Commercial in confidence (CIC)** – confidential information provided for a specific purpose that is not to be used for any other purpose.
- **Commercially sensitive** – trade secrets of a person other than the requester concerned:
 - financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or
 - information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.
- **Competitive pricing** – a defensive and competitor related approach to pricing, that is a market-oriented strategy, whereby prices are set on the basis of the prices charged by competitors.
- **Conforming proposal/tender** - a conforming proposal is one that is within the scope of the RFP and meets requirements of the RFP.
- **Consideration** – as defined by law may either consist in some right, interest, profit or benefit accruing to one party for some undertaking to the other party.
- **Contingency** – sum of money provided for within the allocated project budget in addition to the contracted sum that is available for use for unplanned requirements that were not foreseen at the time of contract – usually 5% to 10% of the contracted sum.
- **Consultant** – an individual, firm, company or other legal body providing information, advice or service.
- **Contract** – a written agreement or set of agreements between two or more parties enforceable in law.
- **Council** – Western Bay of Plenty District Council.
- **Delegated authority** – an authority, granted by Council to officers (or by sub-delegation from one officer with delegated authority to another) to do, approve or otherwise commit Council as prescribed by the specific wording of such delegations.
- **Delivery model** - the form of the relationship established between the purchaser and the supplier(s) to purchase the outputs required to deliver an activity.
- **Estimate** – an approximate judgement of amount only.
- **Ethical** – beliefs and principles about what is right and wrong.
- **Expression of interest (EOI)** – the first stage in a two-stage procurement process. Its primary use is to identify and through a first-stage selection process, to reduce the number of interested suppliers as quickly as possible to minimise costs to all parties of providing or evaluating subsequent tender submissions. The second stage of the procurement process is issuing a request for proposals (RFP) or request for tenders (RFT). Requests for expressions of interest are sometimes referred to as an REOI and are similar to requests for registrations of interest (RROI).
- **Financial delegation** – authority, granted by Council or by sub-delegation from one officer with financial delegation to another, to commit Council to a financial commitment with details of the circumstances, goods and services and dollar limit allowable.
- **Hold harmless** – is an agreement to release one party from paying any compensation for loss/damage/liability/costs arising out of the other parties actions for which they would usually be legally or contractually liable for.
- **Indexation** – A method used to adjust contract payments for input price fluctuations.
- **Input** – the resources required to produce the output.
- **Intellectual property** – property that derives from the work of the mind or intellect, specifically an idea, invention, trade secret, process, program, data, formula, patent, copyright, or trademark or application, right, or registration.
- **Liability** – being legally responsible for.
- **LPC** – lowest price conforming tender method of tender evaluation.
- **Market** – in the context of these guidelines, market refers to the sellers of a good or service who are potentially available as a supplier to Council.
- **Monopoly** – the complete control of trade, in particular, goods or the supply of a particular service.

- **Notice to tenderers (NTT)** – a notice issued to all tenderers before the close of tenders, which upon issue becomes part of the request for tender documents.
- **Novation** - the substitution of a new contract for one already existing. This can occur under a design and build, a delivery model where the contract between the designer and the purchaser is handed over to the constructor once design has reached a certain stage. The designer then completes the detailed design for the constructor.
- **NZTA** - New Zealand Transport Agency.
- **Offer** – an unequivocal promise to do something provided the other party does something or promises to do something, in return.
- **Officer** – employee of Western Bay of Plenty District Council.
- **Oligopoly** – a market form in which a market or industry is dominated by a small number of sellers.
- **Output** – the desired result.
- **Performance Specification** – this type of specification defines the output or standard required.
- **Physical works** - maintenance, operation, renewal, improvement and construction of new land transport infrastructure.
- **Plant and materials** – equipment and the materials associated with a tender.
- **PPP** – Private Public Partnerships.
- **Probity** - Probity is the evidence of ethical behaviour in a particular process. Probity is defined as complete and confirmed integrity, uprightness and honesty. Procurement – the planning, decision-making and implementation process used to obtain goods and services. It covers the whole cycle from identification of needs through to the end of a services contract or the end of the useful life of an asset.
- **Procurement Manual (NZTA)** – for activities funded through the National Land Transport Programme. This manual, effective from July 2009, supersedes the Competitive Pricing Procedures Manual.
- **Professional services** – in context of Council's infrastructure purchases, professional services include services typically provided by consulting engineers, planners, public transport planners, surveyors and other professionals. Professional services contribute to the delivery of approved activities and include strategy or policy development, planning, investigation and design services, and the supervision of works or services contracts. Refer also to the NZTA's Planning, programming and funding manual, chapter F14.
- **Proper and prudent expenditure** – includes the identification and management of conflicts of interest (or situations with the potential to be perceived as conflicts of interest); being fair, honest, transparent, circumspect, and careful to avoid undesired consequences; and being accountable for complying with organisational controls.
- **Public entity and entity** – have the same meaning as in section 5 of the Public Audit Act 2001. It includes schools, state-owned enterprises, government departments, Crown entities, and local authorities. As provided in that Act, the term includes any subsidiary or other controlled entity of the principal entity.
- **Public sector** – collectively all public entities in central and local government.
- **Quote** – the price stated to complete a given task. Usually results in a contract where the documentation is normally less than that required for a Tender.
- **Registration of Interest (ROI)** – an invitation to the market for companies or individuals to register their interest in providing services or carrying out works which may be either specific or general (see also Expressions of Interest).
- **Request for Information (RFI)** – a formal request to the market for information only. It is not a request for offers from the market and is *not* a supplier selection tool.
- **Request for Proposal (RFP)** – a formal means of seeking offers from the market for goods or services where the public entity is open to supplier innovation; that is, it is the outputs and outcomes that are important, not the process the supplier follows to deliver the outputs or outcomes.
- **Request for Quotations (RFQ)** – a formal means of seeking offers from the market for goods or services where price is the main selection criteria, the requirement is for reasonably “stock standard” or “off the shelf” goods or services, and the procurement is low risk.
- **Request for Tender (RFT)** – identical in structure and process to the RFP, except that it is used where the public entity's specification or requirements are clearly defined and there is little room for flexibility or innovation and hence price can be more accurately determined.
- **Retention** – the amount withheld for a specific period to ensure a contract has been performed to requirement. Usually expressed as a percentage and applies both to progress payments and total contract price.
- **Risk** – An uncertain event or condition that, if it occurs, has a positive or negative effect on the objective.
- **Risk Management** – The culture, processes and structures that are directed towards the effective management of opportunities and adverse effects. Risk management is achieved through the systematic application of policies, procedures, and checking and auditing mechanisms to identify potential risks and lessen their likelihood or impact.
- **Sensitive expenditure** – expenditure by a public entity that provides, has the potential to provide, or has the perceived potential to provide a private benefit to an individual staff member of a public entity that is additional to the business benefit to the entity of the expenditure. It also includes expenditure by a public entity that could be considered unusual relative to the entity's purpose and/or functions.
- **Specification** – the specification defines the manner in which the work is to be carried out to achieve an end result.
- **Staff** – all members, trustees, office holders, managers and employees of a public entity.
- **Supplier selection method** – the process by which proposals from supplier(s) are evaluated and a preferred supplier(s) selected. Also call evaluation method.
- **Supplier quality premium** - the additional amount the approved organisation is prepared to pay for a higher-quality supplier.

- **Sustainability** – involving the integration of holistic thinking and decision making incorporating environmental, social, economic and, where applicable, cultural issues.
- **Syndicates** – a group of people or companies who work together and help each other in order to achieve a particular aim.
- **Tag (Tender Tag)** – a qualification or condition stated or implied by a tenderer or party submitting a tender or proposal, which seeks to make the price or outcome conditional upon certain stated (or implied) assumptions being satisfied. Tags generally create a degree of uncertainty as to ultimate contract price or outcome.
- **TCO** – Total Cost of Ownership. See whole-of-life.
- **Tender** – the complete documentation including, but not limited to the price, received from a tenderer following public advertising or from invitation to selected tenderers.
- **Tender Documents** – the complete set of documents submitted by a tenderer in response to a formal request for tenders, or invitation to tender, including the request for tender documents.
- **Tender Evaluation Team (TET)** – the group of people an entity uses to formally assess tenders against set evaluation criteria following prescribed evaluation procedures.
- **Value for money** – using resources effectively, economically, and without waste, with due regard for the total costs and benefits of an arrangement and its contribution to the outcomes the entity is trying to achieve. In addition, the principle of value for money when procuring goods or services does not necessarily mean selecting the lowest price but rather the best possible outcome for the total cost of ownership (or whole-of-life cost). Value for money is achieved by selecting the most appropriate procurement method for the risk and value of the procurement, and not necessarily by using a competitive tender.
- **WA** – weighted attribute method of tender evaluation.
- **Whole-of-life** – all costs associated with the life of a service or goods from conception, its usage and disposal/termination.

2. REVISION HISTORY

Version	Change	Change by:	Section	Author	Date
1.0	Published version (approved)		All	Marieka Rencher	16 April 2013
1.1	Contract Types (table)	Peter Clark	Part 2 page 4 4.2 Contracts	Marieka Rencher	3 Oct 2013
1.1	General or Public Liability Insurance and addition of wording regarding 'hold harmless' clause	Miriam Taris	Part 4 page 25 3.1.9 Insurances	Marieka Rencher	3 Oct 2013
1.1	Replaced Risk and Assurance Sub Committee with Finance and Risk Committee	Marieka Rencher	Part 2 pages, 4, 8 and 9	Marieka Rencher	15 May 2014
2.0	Amendments to titles to align with organisational structure changes	Marieka Rencher	All	Marieka Rencher	7 October 2015
2.0	The implementation section has been taken out of Part 1 – Procurement strategy section. It is now its own separate document. (A2489539)	Guy Hobson	Implementation section of Part 1 – Procurement Strategy	Marieka Rencher	20 October 2015
2.0	Updates to some objective references	Vanessa Blyth	All	Marieka Rencher	20 October 2015
2.0	TenderLink information deleted as per Contract Administrators request. Council do not use TenderLink	Vanessa Blyth	Part 4 – Conduct and Manage the competitive process, Point 3.1.6 Advertising	Marieka Rencher	20 October 2015
2.0	Request for quotations (RFQ) definition deleted as per Contract Administrators request	Vanessa Blyth	Part 5 – Definitions, Request for quotations (RFQ)	Marieka Rencher	20 October 2015
3.0	Strengthening support from centralised procurement function	Don Shewan	All Part 2.3, 3.1	Don Shewan	1 April 2018
3.1	Inclusion of probity requirements	Don Shewan	Part 3- 10 Part 3 -15.3	Don Shewan	1 April 2018
3.2	Responsibilities regarding Procurement	Don Shewan	All and Part 3 – 15 Appendix 3	Don Shewan	1 April 2018
3.3	Contract type description updated	Don Shewan	Part 4 – 2.8.6	Don Shewan	1 April 2018
3.4	Strengthened details associated with purchase methods	Don Shewan	Part 3 – 14.2	Don Shewan	1 April 2018
3.5	Strengthened debrief structure	Don Shewan	Part 4 – 3.4.2	Don Shewan	1 April 2018
3.6	Strengthened records management	Don Shewan	Part 3 – 18.1	Don Shewan	1 April 2018
3.7	Published version (Approved SMT)		All	Don Shewan	11 June 2018
4.0	Multiple text and formatting changes Removal of miscellaneous and out of date information plus various minor additions and amendments to update information	Don Shewan and Lisa Balneaves	All	Don Shewan	June 2020

<p>Significant changes are identified by a vertical line in the left margin, including;</p> <p>Section 4 Legislative framework - new section</p> <p>Section 6.4 Unsolicited proposals - new section</p> <p>Section 19.7.2 and 19.8 Probity Advisor appointments and thresholds – new section</p> <p>Section 20.3 Local economic impact – clarification</p> <p>Section 20.5 Broader outcomes - new section</p> <p>Section 23.7 Manual Purchase Orders – clarification</p> <p>Section 23.8 Publically Advertised sufficient time – clarification</p> <p>Section 24.2 Responsibilities and Authorisations – clarification</p> <p>Section 26 Contract extensions – clarification</p> <p>Section 31.4.8 Dispensation from open competitive process – new section</p> <p>Section 31.8.2 Basis of payment - clarification</p> <p>Section 31.8.5 Ozone set up purchase order V/s Contract modules – new section</p> <p>Section 32.1.4 Insurances – new section with clarification</p> <p>Section 32.3.4. Tender opening – clarification</p> <p>Section 32.3.15 Evaluation tender tags - clarification</p> <p>Section 32.6.5. Contract variation new work – new section</p> <p>Appendix 1 Supplier selection methods – information moved from body of manual to appendix – clarification</p> <p>Appendix 2 Procurement and Contract process – clarification</p> <p>Appendix 3 Contract templates – information moved from body of manual to appendix – clarification</p>				
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3. FOREWORD

Purpose of the Procurement Manual

This Procurement Manual ("Manual") recognises the overarching procurement strategy of the Western Bay of Plenty District Council ("Council") supported by policy, principles and procedures to be used by Officers when making or planning a financial commitment on behalf of Council.

The Procurement Manual is split into six main sections:

PART 1 Procurement Strategy

PART 2 Procurement Policy

PART 3 Procurement Principles

(The principles outline the consideration and processes that help Council to meet required standards of probity and financial prudence)

PART 4 Procurement Procedures

(Operational and administrative "How to Guide")

PART 5 Definitions

PART 6 Appendices

Sponsors of the Procurement Manual

The Sponsor of the Manual including the policy, principles, procedures and associated documentation is the Group Manager Finance and Technology Services. The Contracts and Procurement Team support procurement practice within Council centrally.

The Contracts and Procurement Team is comprised of the Contracts and Procurement Team Leader, Procurement Specialist and Contracts Administrator.

Maintenance and Review of the Procurement Manual

The maintenance and review of the Manual will occur on an annual basis as part of corporate planning processes provided for in the Corporate Plan and Council's Business Plan.

A review will consider:

- Any legislative changes that affect Western Bay Council
- Council internal audit reports
- Council standards and policies.

The Procurement Strategy is reviewed not less than every three years.

Document Control of the Procurement Manual

The current version of the Procurement Manual and templates will be the version available on the Council intranet site. The Manual and templates are not for downloading or saving, except when they are required for use within a procurement project. A new copy of the template is then to be downloaded for completion each time it is required i.e. templates are not to be reused. Information can be copied from one template to another on confirmation that the information is up-to-date and relevant to the current business case or document.

The Sponsor of the Manual will be responsible for approving any amendments and each new version of the Manual prior to its publication.

Scope of the Procurement Manual

The Procurement Process comprises the following steps, as illustrated in Figure 1:

1. Information Gathering
2. Opportunity Assessment
3. Category / Supplier Strategy and Action Planning
4. Selection and Contract Award
5. Implementation and
6. Supplier Relationship Management.

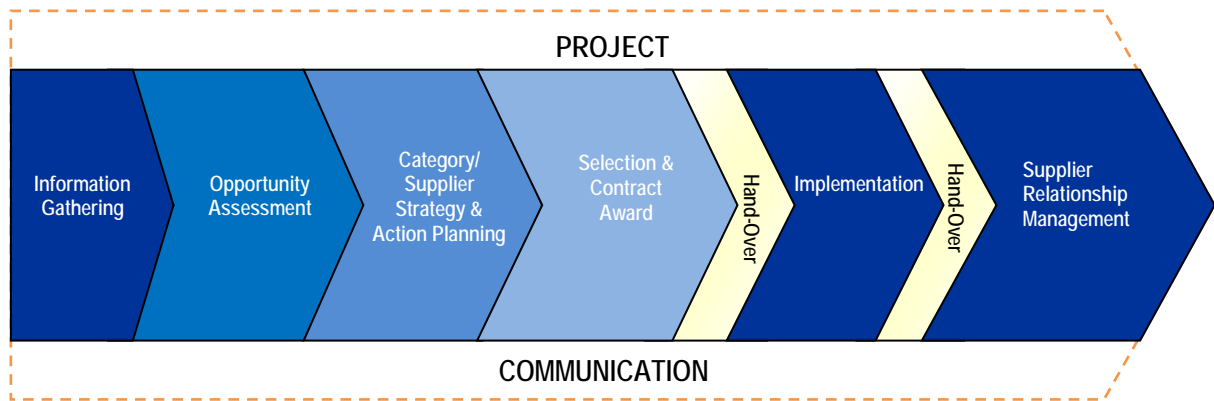


Figure 1 - The Procurement Process

The Overall Picture - Procurement/Purchasing Processes

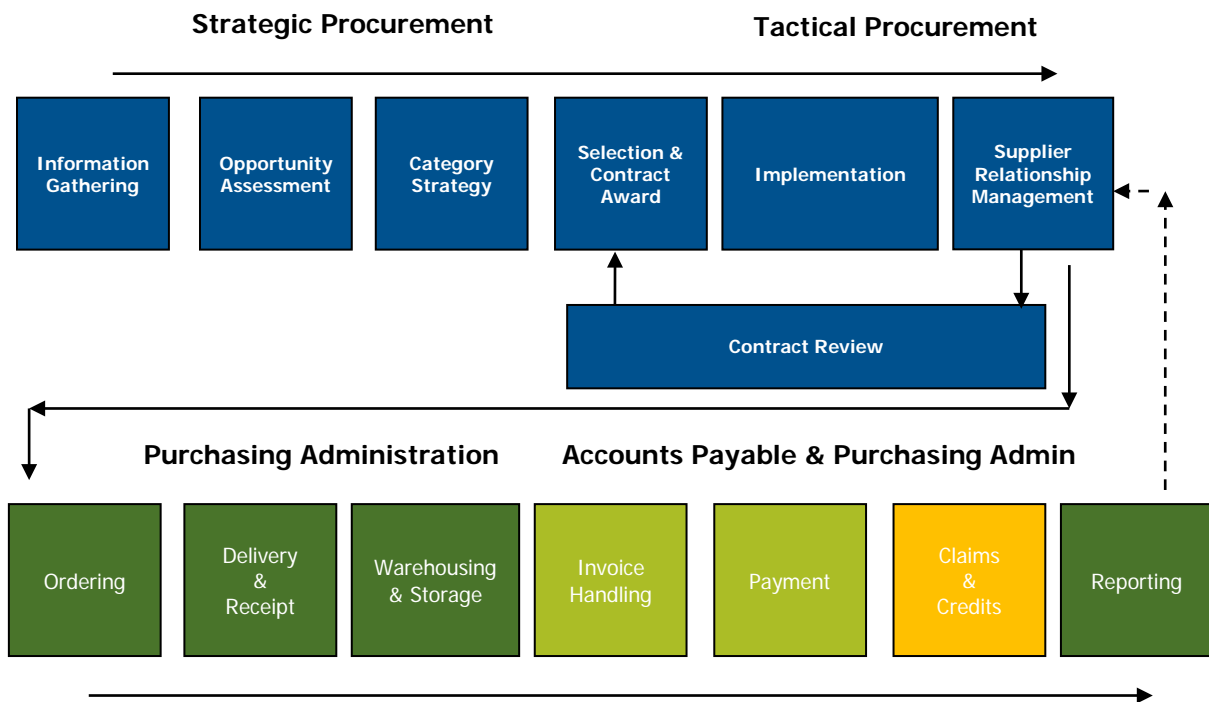


Figure 2 - Illustrates the Procurement to Payment Process (P2P)

This Procurement Manual is a reference and support document for the competitive selection of suppliers. Its purpose is to inform procurement processes to support strategic goals and implement policies.

The procurement process flow charts in Appendix 3 provide a simplified guide to help Officers select the appropriate process.

Additional flowcharts are available on Councils intranet site, ([QMS A to Z by Process, Contract Documentation Administration, Flow Charts – DEM](#)).

References

- Local Government Act 2002
- Government Procurement Rules 4th edition (MBIE October 2019).
- Principles of Government Procurement (MBIE – 2015)
- Procurement guidance for public entities (Controller and Auditor General 2008)
- Managing Conflicts of Interest: Guidance for Public Entities (Office of the Auditor-General, 2007)
- Sustainable Procurement in Government –Sustainable Business Council - 2009
- New Zealand Transport Agency Procurement Manual – October 2019
- Contract and Commercial Law Act 2017

PART 1 – PROCUREMENT STRATEGY

4. LEGISLATIVE FRAMEWORK

4.1 Local Government Act 2002

The Local Government Act 2002 (Section 14) details the principles relating to local authorities. The principles most relevant to Council's procurement activity are:

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

- (a) a local authority should—
 - i. conduct its business in an open, transparent, and democratically accountable manner and;
 - ii. give effect to its identified priorities and desired outcomes in an efficient and effective manner
- (f) a local authority should undertake any commercial transactions in accordance with sound business practices; and
- (g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets; and
- (h) 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.

This policy reflects these principles as they relate to Council's procurement activity.

4.2 Wider Government policy and procurement rules

Government's procurement policy framework, consisting of Principles, a Charter, Rules and good practice guidance sets the Government's expectations for how government agencies should approach procurement activities. This broad framework supports accountability for spending, sound business practice and better results.

The Principles of Government procurement and the Government Procurement Charter

The principles of Government procurement and the Government Procurement Charter should be considered in all procurement activities, even when the Government Procurement Rules do not apply.

The Principles are the general principles' which all public sector entities should follow, such as compliance with legislation and meeting public, law and ethical considerations and are:

1. Planned and manage for great result
2. Fair to all suppliers
3. Get the right supplier
4. Get the best deal for everyone
5. Play by the rules

The Government Procurement Rules establishes a Government Procurement Charter which formally directs agencies to approach procurement in certain ways, including, seeking new and innovative solutions, avoiding the transfer of all risk to suppliers and supporting greater collaboration across agencies and businesses.

The directives are to:

- Seek opportunities to include New Zealand businesses
- Undertake initiatives to contribute to a low emissions economy and promote greater environmental responsibility
- Look for new and innovative solutions
- Engage with businesses with good employment practices
- Promote inclusive economic, development within New Zealand
- Manage risk appropriately
- Encourage collaboration for collective impact.

4.3 Broader Outcomes

Broader Outcomes (Government Procurement Rule 16) are the secondary benefits that are generated from the procurement activity. These outcomes can be social, environmental, cultural or economic benefits, and will deliver long-term public value for New Zealand. Broader outcomes require consideration not only of the whole-of-life cost of the procurement, but also the costs and benefits to society, the environment and the economy.

4.4 Office of the Auditor General

The Office of the Auditor-General (OAG) provides guidance on procurement through its publication Procurement guidance for public entities 2008. It is designed for use by any public entity, as defined in the Public Audit Act 2001. The guidance refers to the OAG's 'overarching' guide Public sector purchasers, grants and gifts: Managing funding arrangements with external parties.

The OAG has additional reference material available at <https://oag.parliament.nz/reports/procurement-resources>

4.5 Construction Sector Accord

The Government, in partnership with the construction industry, signed an accord in April 2019, with the purpose of strengthening the partnership between Government and industry and providing a catalyst to transform the construction sector for the benefit of New Zealand.

The Accord establishes shared goals between Government and industry, in pursuit of which the Government has made several commitments. Local Government has specific responsibilities within the Accord and is jointly accountable for delivering on the government's commitments.

Whilst currently not compulsory for Local Government agencies, we are cognisant of the intention of the commitments under the Accord which include:

- Better risk management and fairer risk allocation
- Better procurement practices and improved pipeline management
- Upholding a set of guiding principles and pledges enshrined in the Accord
- Streamline contractor health and safety prequalification processes
- Refresh our infrastructure procurement strategy and publish a list of industry engagement activities to ensure all businesses have the opportunity to engage with the work programme.

5. EXECUTIVE SUMMARY

5.1 Summary statements

Procurement is defined as the process of acquiring goods, works and services. The process spans the whole cycle from identification of needs through to the end of a service contract or the end of the useful life of an asset. This strategy outlines the approach to be taken by buyers within the Council in order to obtain maximum value for money from everything we buy and all the services we provide to the community.

The procurement strategy purpose is to ensure that:

- details the requirements for all Council procurement activity
- procurement reflects the Council's core values and corporate objectives
- the Council obtains 'best value' through competition, benchmarking, and quality procurement processes, and is not focused on just the lowest price
- the Council has planned and skilful management of procurement
- elected member and employee commitment to effective procurement is secured throughout the Council
- the Council identifies and promotes the benefits of strategic procurement and its role in delivering best value services
- procurement supports Council's sustainability goals
- all procurement will be legal, ethical and transparent
- risks will be actively assessed and managed
- processes and decisions are subject to excellent standards of probity and financial prudence
- all personnel employed in the procurement process will have the knowledge and skills to be effective
- expenditure of funds provided by others is consistent with their rules or conditions
- procurement performance is measured against key performance indicators and targets set for continuous improvement.

5.2 Procurement strategy benefits

In taking this strategy forward, the Council can expect to realise the following benefits:

- integration with the Council's overall aims and priorities
- value for money
- efficient procurement procedures
- continued and improved relationships with suppliers
- benefits for the local community and economy
- effective collaboration to be developed with other organisations
- better risk management
- better project planning

6. STRATEGIC OBJECTIVES

6.1 Long-term planning and Council's financial strategy

In our Long-Term Plan, our Financial Strategy describes how we plan to finance our services and activities in a way that is sustainable over the long term.

Additionally, Section 10(b) of the Local Government Act 2002 states that the purpose of local government is "to meet the current and future needs of communities for good quality local infrastructure, local public services and the performance of regulatory functions in a way that is most cost-effective for households and businesses".

Therefore, efficient and appropriate procurement and contract management is an essential as well as a significant component to this long-term planning and that is why it is important that we have the right strategies, policies and procedures in place to ensure the provision of infrastructure and services in the most efficient manner.

6.2 Strategic objectives

This procurement strategy is designed to achieve the following strategic objectives:

1. Achieve the Council's strategic aspirations – we will ensure procurement principles and process are aligned to the Council's vision, Community Outcomes and Strategic Priorities and promote efficient and effective delivery of Long-Term Plan and Annual Plan work programmes and levels of service.

2. Our procurement will also reflect Councils aspirations to, where possible, influence the benefits of broader outcomes; social, economic, environmental and cultural.
3. Ensure value for money - provide the best value for money for the citizens of the Western Bay of Plenty region, considering whole of life costs and benefits, and sustainable outcomes.
4. Improve ease of doing business - provide a framework for Council procurement that promotes consistent, transparent and efficient procurement practices to high professional standards.
5. Encourage sustainability - environmental costs and benefits will be considered as part of any procurement decision-making process with the Council looking to promote environmentally sustainability through procurement.

The Local Government Act 2002 requires local authorities to take a sustainable approach when procuring goods, services and works. Sustainable Procurement has the most positive environmental, community and economic impacts on a whole of life basis and creates value and legacy. Sustainable procurement includes:

- value-for-money over the whole of life, rather than just the initial cost
- minimising environmental impacts over the whole of life of the goods/services/works
- strategies to avoid unnecessary consumption and that manage demand and minimise waste
- our supplier's social responsibility practices, including compliance with legislative obligations to its employees
- our obligations under the Treaty of Waitangi and our relationships with local iwi
- where appropriate we will work with local and community organisations to facilitate these outcomes.

Consider partnering and collaboration: To identify opportunities and work with others, both public and private sector, in order to widen the scope for maximising purchasing power, identifying innovation and delivering value for money.

Maintain effective control: To ensure that current and future procurement activities are planned, monitored and reviewed effectively and to ensure high levels of purchasing compliance.

The production of this Procurement Manual with its associated policy, principles, procedures, forms and templates, backed up with the appropriate staff training, is intended to establish a more effectively controlled procurement structure at the Council.

An effective delegated authority framework governs the various levels of contract approval. We will utilise Audit and Probity services to ensure our best practice goals are monitored and reported.

Build and maintain a reputation for ethical behaviour and fair dealing: the Council's procurement processes will apply sound ethical considerations and provide equitable and fair opportunities for procurement.

Customer focus: We will treat all our customers equally in a respectful, courteous, and professional manner.

Delivering Council's work programme: Our work programme reflects our Long-Term Plan (LTP), Annual Plan, planned repairs and maintenance and emergency work.

6.3 Procurement approaches and options

Procurement approaches to the market based on financial limits are summarised in Appendix 2.

Council commitment to suppliers is by way of written agreement. We address simple procurement to long-term relationships by the following:

- Simple low value, low-risk procurement:

Our agreement may be in a simple transaction using petty cash, reimbursement, corporate credit card purchase or purchase order. In these cases, our transaction is embraced by normal commercial structures e.g. Consumer Guarantees Act, Fair Trading Act; where a Council purchase order is used our Council Terms and Conditions of purchase and acceptance of the quotation precede.

- Medium to high value with similar risk profile:

Are supported commercially with our standard terms and conditions of purchase via the issue of a purchase order and as applicable by mutual agreement by written contract.

Contracts refer to legislative background, procurement process, offer and supplier's commitment associated with goods and services, and warranties.

- The term of contract reflects:

- Asset/construction/utilities/maintenance being procured.
- Reasonable assessment of time required to complete the program of work e.g. construction of a works pipeline.
- Council utilise government/industry standard contracts as the basis of our agreement.
- Term for the provision of services. In general, Council will look to secure a term of 3 years with rights of renewal for a further 1 or 2 years. A moderate term (3 years) provides certainty for Council and Supplier and avails Council of leverage of price.
- Contract terms are conditional on satisfactory performance based on service level agreements.

Strategically important high-value contracts may be struck in excess of 5 years, but this is the exception.

6.4 Unsolicited Proposals

Unsolicited proposals are unique or innovative proposals initiated by suppliers and which may not be suitable to progress through this Policy. Council wants to encourage innovation and will treat all unsolicited proposals in a way that respects the intellectual property rights of the proponent, and is fair to everyone.

For an unsolicited proposal to be considered by the Council it must:

- provide a solution to a need that is not otherwise available in the market
- be truly innovative and unique
- demonstrate that the Council will receive the best possible value
- align with the Council's vision, strategic priorities and community outcomes
- align with the Council's Long-Term Plan and Annual Plan

6.5 Category Management

Category Management Matrix [Fig 3] shows how we will categorise goods and services. Most things we buy and services we deliver fit into one of the following four categories in the risk/ expenditure matrix:

Strategic: Items that are high cost and/or high risk if something goes wrong e.g., the outsourcing of a service, transportation activities and other large capital projects.

Bottleneck: Items that are of a low value, such as chemicals for weed spraying or production of the Annual Report, but could have significant implications if they were not available.

Routine: Items that are bought on a day-to-day basis in small quantities and are readily available from a range of sources e.g. stationery. Low-risk requirements can best be addressed by maximizing purchasing power to deliver better value for money. This can be achieved through aggregation of Council expenditures and collaboration with other authorities. The transaction costs account for a significant part of the overall cost in the acquisition of low-value items.

Leverage: Items that have a low value and low risk but through economies of scale they can be bought in large quantities at discounted prices e.g. IT equipment, fuel and electricity.

Category Management Matrix (Figure 3)

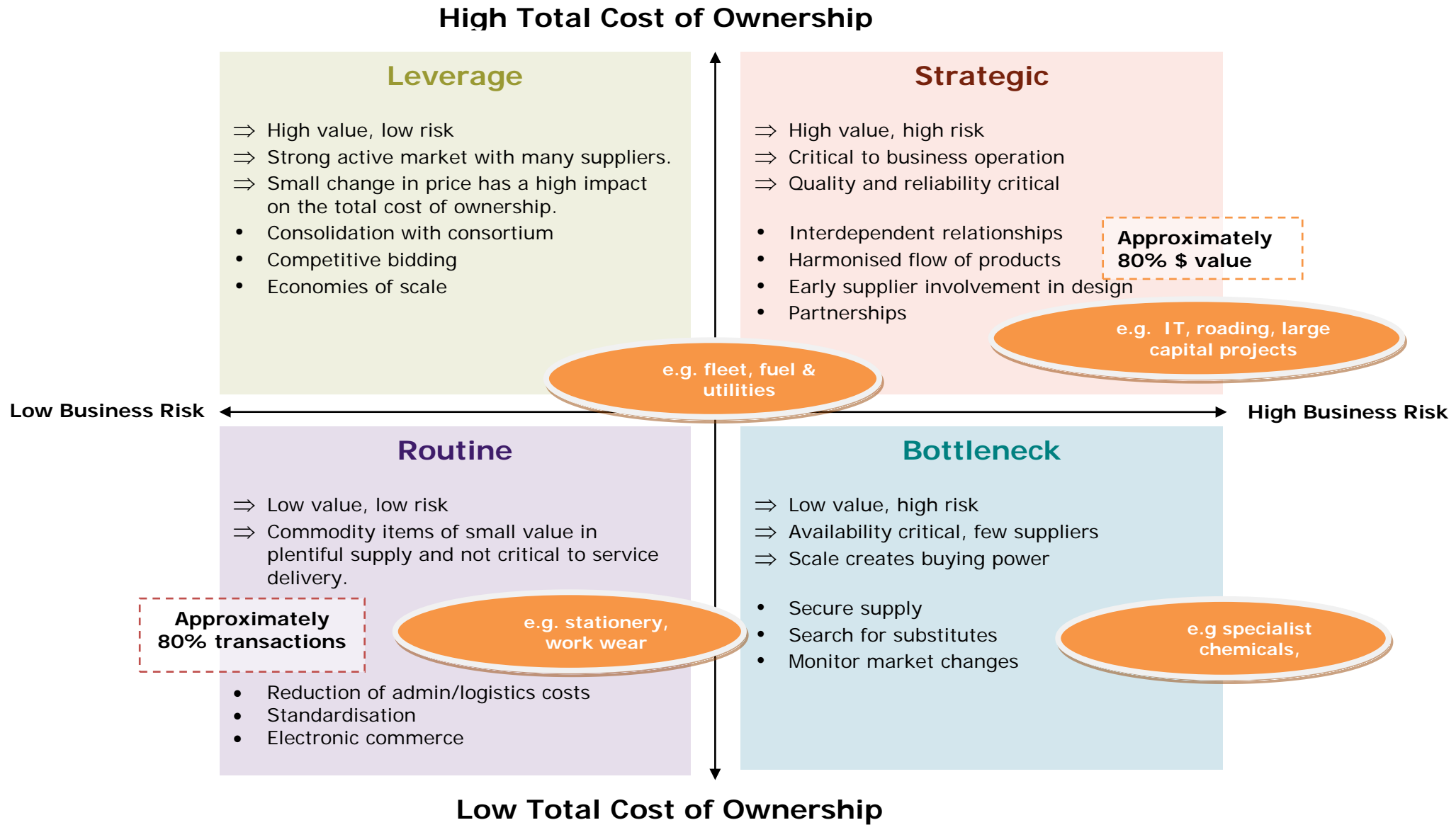


Figure 3 - Category Management Matrix



PART 2 – PROCUREMENT POLICY

7. SCOPE

This policy covers activities associated with the purchasing of all goods and services by or on behalf of the Western Bay of Plenty District Council. It applies equally to the Council, Council controlled agreements, community boards, the management team, all departments and staff – permanent, temporary or contract, with the exception of:

- Acquisition of art and similar unique items of interest
- Employment
- Grants and sponsorship
- Land acquisition
- Leasing of Council-owned property and the leasing of property to the Council
- Payments to government and regulatory bodies
- Tax
- Treasury and financial instruments
- Unsolicited proposals.

8. POLICY OBJECTIVES

The objectives of Western Bay of Plenty District Council's procurement policy are to provide clear direction to management and staff in relation to the purchasing and contracting function. It establishes a framework that:

- ensures purchases are made in an open and transparent manner with full and fair opportunity for all eligible suppliers
- delivers the best value for money over the whole life of the goods, service or asset
- minimises procurement costs, ongoing operational costs and consequential costs
- contributes to Council's sustainability objectives and requires sustainably produced goods or services whenever possible, having regard to economic, environmental, and social impacts over their life cycle
- addresses risk appropriately
- promotes good practice purchasing and continuous improvement
- ensures adequate probity – integrity, equity and fairness
- ensures Council's purchasing activities are managed in accordance with its statutory and legal responsibilities, and
- reinforces positive customer/supplier relationships.

9. POLICY STATEMENTS

- To achieve Council's procurement objectives and to enhance professional integrity, accountability and probity, all purchasing activity within Council shall be undertaken in accordance with the policy, principles and procedures set out in the Council's Procurement Manual.
- A Procurement Team comprising the Group Manager Finance and Technology, the Contracts and Procurement Team Leader, in consultation with the senior management team, shall oversee procurement practice within the Council.
- The Council will achieve the best value by adopting the procurement policies and procedures contained in this Procurement Manual.
- Procurement practice within the Council is based on the Local Government Act and the Government Procurement Rules and associated rules and legislation (see section 1).
- Council will ensure that appropriate practices and procedures of internal control and risk management are in place for its purchasing activities.
- Council has a commitment to sustainability and environmental protection.

- Council is committed to consider Broader Economic and Social (Government Procurement rule 16) outcomes on a project by project basis.
- The Group Manager Finance and Technology, in his management of this policy, will appoint Probity Advisors, Probity Auditors and Auditors as required.
- The Council officers will act within their delegation in undertaking procurement and contracting activities.
- The Council will use in preference electronic procurement systems.
- External and Internal audit processes shall be undertaken to ensure that the terms and conditions of the Council's Procurement policy and manual are being followed.
- Operational procedures and principles are published in the Council Procurement Manual. To ensure the policy and procedures remain current, from time to time amendments may be necessary. Such amendments shall be approved by the Group Manager Finance and Technology.

PART 3 – PROCUREMENT PRINCIPLES

10. INTRODUCTION

10.1 What is procurement?

Procurement is the planning, decision-making, business rules and processes/procedures used by an organisation to buy goods and/or services.

The procurement process spans the whole cycle from identification of needs through to the end of a services contract or the end of the useful life of an asset (sometimes referred to as Total Cost of Ownership or TCO).

Given that public money is involved, Council's procurement decisions must be:

- subject to the standards of probity and financial prudence that are expected of a public entity and;
- able to withstand public scrutiny.

These principles outline the considerations and processes that help Council to meet those standards of probity and financial prudence.

10.2 Application of Procurement Principles

These principles are written to assist Council in its responsibilities, as covered by Local Government Act 2002, section 5 of the **Public Audit Act 2001**, and are based on an update of the 2001 statement **Procurement guidance for public entities 2008**, issued by the Office of the Auditor General in 2008 and the Government Procurement Rules October 2019 together with Principles of Government Procurement (MBIE – 2015).

The Procurement Principles set out the standards to follow when procuring goods and/or services on behalf of Western Bay of Plenty District Council. They include specific provisions relating to procurement contracts and apply to all departments of Council.

The objectives of the principles are to provide outcomes consistent with the Council's broader objectives, to deliver the best value for money through optimised whole-of-life costing, and being fit for purpose while being fair and reasonable and legally robust.

This guidance is intentionally principle-based. The following principles should guide Council's procurement policies and procedures.

10.3 Council's broader objectives

In accordance with this Manual Council accepts and supports the implementation of any process that chooses the best supplier with regard to Council's broader objectives. Therefore procurement must:

- be **strategic** to achieve the best value for money, sustainability and broader social procurement public value outcomes over the long term
- meet a justifiable and approved **business purpose**
- be **effective and efficient** – this may involve assessing whether productivity, innovation, greater choice, and lower prices outweigh the benefits of maintaining stability, trust, and effective working relationships with existing providers
- be made **transparently** so the same information is available to all potential suppliers (subject to obligations of confidentiality to any party or parties – including Council)
- be **fair** so that all potential suppliers are treated the same and none is unfairly disadvantaged or advantaged by the procurement process itself
- be **risk-based** with Council's approach and investment of resources reflecting the level of risk associated with such matters as the performance of the supplier, products or services, availability of insurance etc.

11. GENERAL OBLIGATIONS

11.1 Adherence to applicable government policies

Within the Government Procurement Rules Council is recommended to adopt government policies relating to procurement as good practice.

Council is bound to the extent that its enabling legislation requires it to comply with or take account of such policies.

Auditor's review and report Council's performance against those rules and policies.

11.2 Financial delegations and other authorities

Officers will comply with any applicable financial delegations when procuring goods or services.

Officers must also comply with legislation which limits their procurement authority or governs their internal delegation practices. This means that officers need to be aware of their own individual delegated authorities, as well as the levels of financial delegation granted to key management personnel and/or standing committees – as applicable to their particular field of responsibility.

Council policies and delegations limit the authority of staff to commit to particular types of expenditure. Accordingly, officers must be aware of their financial delegation and any restrictions on its use.

Financial delegations are defined as being the total amount that will be paid to a particular supplier in relation to a specific assignment (or in the case of general supply agreements – type of work) under any one contract including variations or purchase orders, and are defined in the Delegated Financial Authorities.

With the exception of contract progress payments and declared emergencies, no officer or contractor may engage a supplier to supply goods or undertake work for Council unless a valid purchase order has been raised and authorised prior to the engagement.

Multiple purchase orders must not be raised for the same requirement from the same supplier in an attempt to reduce the level of delegated authority required. When known, annual requirements for the same item(s) from the same supplier are to be placed on one purchase order only, including where a written Council supply agreement for the goods and/or services to be purchased is in place.

It must be noted that Financial Delegations are defined as being EXCLUSIVE OF GST (if any).

12. GENERAL APPROACH TO PROCUREMENT

12.1 Procurement environment

Council operate a de-centralised procurement environment led by the Group Manager Finance and Technology, and on a day to day basis by the Contracts and Procurement Team Leader.

Where a particular Group is the primary purchaser of particular goods, works or services, it makes sense for that Group to conduct the procurement activity. However, engagement and prior approval by the Contracts and Procurement Team Leader is required as indicated below:

- Annual Council wide procurement plan
- Individual procurement plans with an indicative TCO in excess of \$350,000
- Requests for dispensation from procurement process
- Contract drafting and approval
- Contract variations
- Templates – Procurement and Contract
- Procurement policies and processes.

Support for procurement activities, particularly formal tender and more complex contract processes, will be provided by the Contracts and Procurement Team where necessary. Guidance is provided in Part 4 of this manual – Procurement Procedures, while standard contract models, forms and other standard documentation are available.

12.2 Selection of procurement method

Council has considerable discretion on how it procures goods and services. However, officers have a responsibility to manage Council's resources in an efficient and effective manner and in accordance with its obligations under legislation for sound business practice, due diligence, probity and fairness. Refer also to Part 4 of this manual - the Procurement Procedures.

Direction is given to which procurement method is to be used. This is based on Council's status as a public body, the term of expected relationship, and whole of life costs, risk and complexity.

12.3 Urgent requirements

It is recognised that there may be times when expedited procedures are required, for instance, civil defence emergency. Departure from the procurement principles and policies defined in this document must be supported by the Contracts and Procurement Team Leader and authorised by the Group Manager Finance and Technology or Chief Executive Officer.

12.4 Aggregated or joint procurement initiatives

Council participates in a range of collaborative joint procurement activities.

When considering collaborative buying initiatives, Council must carefully consider the effects that joint procurement activity could have on the local market, in particular, to ensure that they do not create a monopoly or oligopoly situations.

12.5 Negotiated supply arrangements

There may be instances where the best outcome for Council can be achieved through the negotiation of a longer-term supply agreement without compromising obligations as to fairness, and avoiding monopolies. This could include such things as "Alliancing", "Public-Private Partnerships" or simply a negotiated contract for a particular (or range of) product or service.

In the event that approval is granted, a carefully defined negotiation strategy must be documented along with appropriate decision structures, objectives and "exit strategies".

12.6 External procurement requirements

A particular procurement method or process required by an external funding agency may take precedence over the Council's procurement policy and procedures in agreed circumstances. Where the process may be in conflict with Council policy, Chief Executive Officer approval is required for dispensation.

All procurement activity that is subject to the provisions of the Land Transport Management Act 2003 and funding from the National Land Transport Fund is subject to the provisions of the New Zealand Transport Agency's (NZTA) current Procurement Manual.

Council is obliged to follow the NZTA Procurement Manual for NZTA subsidised activity.

This manual prescribes processes for various supplier selection methods; lowest price conforming method; purchaser nominated price method; price quality method; quality based method and direct appointment. These procedures and evaluation methods should be strictly followed as failure to do so may result in NZTA declining to pay a previously approved subsidy.

Council's procedure for LPC evaluation is described in Appendix 1, this clarifies and refines the LPC process and will take precedence.

For NZTA subsidised contracts with an estimated total value exceeding \$200,000, Council must ensure that at least one member of the proposal evaluation team, holds the:

- National Certificate in Civil Engineering – Asset Management (Competitive Pricing Procedures), or
- National Certificate in Transport Agency Procurement Procedure, or
- New Zealand Certificate in Infrastructure (Procurement Procedures).

When engaging an agent, Council also needs to ensure that an experienced officer with the necessary delegated authority works with the agent. Council's own procurement policies and procedures should be used during the procurement process.

13. LEGAL CONSIDERATIONS

13.1 Compliance with legislation

Compliance with legislation is mandatory in all procurement activity.

Council's governing legislation, particularly the Local Government Act 2002, include obligations to consult with the community or key stakeholders on significant issues.

If a tender (or other procurement process) may result in significant changes to the content or level of services being delivered to the community by Council (e.g. Library Services), Council may need to consider the relationship between the procurement process and community consultation obligations.

13.2 Public law considerations

As a public body, Council's procurement processes may be scrutinised by judicial review. Judicial review is the mechanism used by the Court to ensure that public bodies adhere to higher standards of decision making than private organisations. Officers should always take account of the risk that its procurement actions and decisions could be subject to judicial review, or a complaint to an Ombudsman, or to the Office of the Auditor-General.

Council's fundamental public law obligation is always to act fairly and reasonably, and in accordance with the law. This imposes a higher standard of conduct than that which applies in the private sector.

Public law obligations could apply to any aspects of a procurement process – including the pre-selection of potential tenderers. The Council, as a public body, must meet the legitimate expectations of prospective tenderers. An example of a breach of such an expectation would be where a prospective tenderer, who is a current supplier and has relevant experience and expertise, has not been invited to submit a tender.

This means that:

- when deciding whether or not to tender, Council may have an obligation to consult with affected or interested persons. For example, existing suppliers may have reasonable expectations in relation to continuity
- each decision in the overall process may have legal significance. Particular attention may need to be paid to how decisions are communicated to potential suppliers
- care must be taken:
 - with the selection of evaluation criteria and decisions on how they will be weighted; and
 - with the decisions on the level of detail to be disclosed to potential suppliers

- when advising suppliers who have provided quotes, tenders, proposals or the like on the outcome of the selection process, and details of the successful or other unsuccessful participants in the process.

The tender process and rules must be:

- fair to all prospective tenderers
- determined before the tender process starts
- communicated clearly to prospective tenderers
- comply with contract documents and contract law
- followed consistently
- able to be amended if the tender process is not working provided it is fair to the tenderers.

13.3 Legal Advice

Legal risks may exist in relation to procurement by Council, and officers should consider seeking legal advice when necessary to assess and manage these (and any other) risks.

Officers are to consult with Contracts and Procurement Team Leader regarding any legal matters pertaining to procurement or contracts. Legal review will be authorised as required.

14. DECLARATIONS OF INTEREST

As part of the general obligation to act fairly, officers must also take care that their decision-making processes cannot be challenged on the basis of actual or perceived bias particularly in relation to conflicts of interest. These legal obligations will often be mirrored in the ethical standards that govern public sector conduct.

Sometimes Council's governing legislation will include formal requirements for the disclosure and management of conflicts of interest. For the local government sector, specific rules are set out in the Local Authorities (Members' Interests) Act 1968.

Compliance with any relevant statutory requirements will not necessarily be sufficient, however, to ensure that decision-making processes meet the more general public law requirements of fairness. Council must also take steps to ensure that no other aspect of the process could be tainted by a conflict of interest arising outside of those processes regulated by statute.

For example, the statutory requirements tend to be confined to the declaration and management of conflicts of interest by members of a governing board or Council but conflict problems might also arise as a result of the interests or associations of officers, consultants engaged by Council to assist with the selection process, or of those tendering or bidding for contracts.

Council requires its staff to declare any personal interest which may affect, or could be perceived to affect, their impartiality in any aspect of their work. Declarations may then provide the basis for deciding the steps needed to manage any potential conflict of interest. Conflicts of interest can have both legal and ethical dimensions. Under no circumstances should a procurement process allow an officer to receive preferential treatment in a contracting situation.

Council and officers must be aware of the potential for conflicts of interest throughout the entire procurement process for every staff member who is directly or indirectly involved in it. This includes governance, management and operational staff where they are involved in any aspect of a procurement process.

Receipt of gifts, hospitality, or other incentives from suppliers is also subject to the Council conditions of employment.

Detailed guidance on the receipt of gifts and hospitality is available in Council's Sensitive Expenditure Policy on Council's intranet or at www.oag.govt.nz in the 2007 good practice guide, Controlling Sensitive Expenditure: Principles for Public Entities. Examples of gifts could be lunch, tickets to an event, or a conference involving free travel.

Whilst conducting a vendor selection process for physical works, consultancy, goods or services, officers shall ensure that they are not exposed to a conflict of interest by receiving any form of "gift". If in any doubt, discuss with your Group Manager.

15. CONTRACTUAL CONSIDERATIONS

Officers must be aware of, and able to comply with, the relevant law concerning the formation and performance of contracts.

Officers must take particular care to avoid inadvertently creating a contractual situation during the procurement process itself. It should be noted that offers and acceptances do not have to be written. A contract is binding in law if anything is said or done which can be construed as an offer and acceptance.

Particular legal risks exist when making procurement by way of a competitive tender process. In general, an invitation to tender or a request for tender is an "invitation", not an "offer" to purchase goods or services. However, a preliminary contract may sometimes exist in relation to the tender process itself. This is sometimes described as a "contract to treat" being a contract in relation to the tender process itself.

Requests for Tenders (RFTs) and similar documentation must include a provision to the effect that no contract exists unless and until a signed letter of acceptance is issued or a contract signed by both parties.

For example, if Council specifically defines the process in tender documents which it issues to potential suppliers, this could be construed as an offer to proceed in that manner which a tenderer accepts by submitting to the tender process. That may be sufficient to create a binding contract in relation to the process – a "contract to treat".

If Council then follows a different process, or materially departs from the prescribed process, it may risk legal action for breach of contract.

16. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

16.1 Commercially sensitive information

Council must take particular care in its handling of commercially sensitive information.

Confidentiality is a common characteristic of any competitive procurement process. However, Council may face particular risks in its handling of confidential information when it procures goods or services in a statutory context.

Council may, for example, have a statutory obligation to consult third parties in the course of procuring goods or services. This may require some disclosure of information which the entity has received from potential suppliers. Council and officers will also need to consider their obligations under either the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987, as these will affect their capacity to give comprehensive assurances about the protection of sensitive information. Legal advice may at times be required on how to reconcile duties of this nature with Council's contractual or common law obligations to maintain commercial confidentiality.

16.2 Intellectual property and copyright

Officers must consider the risks associated with the development of intellectual property in the course of procurement. They must consider the value of any intellectual property ownership and whether it would be more cost effective to leave ownership with a supplier in return for a lower priced contract.

In any case, Council must:

- identify all intellectual property likely to be developed or created in the course of a procurement and any background intellectual property;
- seek legal advice on how to secure its continuing right to use intellectual property as required – including in the event that a contract is placed with a different supplier in future; and
- be clear about the difference between what is intellectual property and what is said commercially in confidence.

There may be differences between the way in which pre-existing intellectual property ownership and subsequent use rights might be managed compared with new intellectual property created through the delivery of services or works. Similarly, intellectual property which is created jointly by Council and its supplier working together will need to be managed carefully so as not to exclude Council from having unfettered access to it – and its use – in future.

There are also issues relating to “embedded” intellectual property. This relates to intellectual property that is itself part of the deliverable. Examples are embedded software or algorithms and design features in a building.

17. LIABILITY

When contracting for goods or services, a supplier may try to limit its liability under the contract, for example, it is not uncommon for suppliers to propose limiting liability to an amount that is a multiple of the value of the contract value or fee.

Limiting a supplier’s liability within a contract has the effect of exposing Council to liability above the limit within the contract. This may have both direct and indirect costs to Council. The contract needs to be very clear about:

- the scope and limit of the liability
- the events that might cause liability to be incurred
- the number of those events to be covered.

In circumstances where there is a limit on a supplier’s liability, associated costs to Council should be taken into account when considering that supplier’s goods or services. Without a limit being defined in the contract, the supplier’s liability will be determined by the general law.

Officers should be aware of any “hold harmless” or “waivers of indemnity” or “subrogation” clauses that may be contained in any response, or amended within the Indemnity and Insurance sections of contracts or agreements.

Generally, these are detrimental to Council and have the potential to adversely affect Council’s insurance programme and/or legal rights. Any such waivers or hold harmless provisions must be referred to Contracts and Procurement Team Leader or legal representative for comment prior to acceptance or sign-off.

18. ETHICAL CONSIDERATIONS

Officers must observe ethical standards, principles and behaviour throughout the procurement process. Often these standards will reinforce legal requirements.

Officers will act, and be seen to be acting, in a fair, open and unbiased manner when Council procures goods or services.

18.1 Accuracy and use of information

Council requires its staff to:

- respect the confidentiality of information received in the course of their work
- not use this information for personal gain
- always communicate information accurately, impartially, and in a manner not designed to mislead
- respect the sensitivity of information provided by potential suppliers during the procurement process. Officers must not use confidential information in a way which may influence other potential suppliers.

18.2 Contact with potential suppliers during the a competitive tendering process

Informal communication between tender evaluation, personnel and potential suppliers could prejudice the integrity of the tender evaluation. Officers must ensure that all communications take place on a formal basis.

Officers must establish a single point of contact in Council for potential suppliers to use during a procurement process. This may entail the officer, who is the point of contact, arranging for others within the organisation to deal with technical queries. This will reduce the risk of one potential supplier playing one member of the procurement team off against another. If a question is answered to one prospective tenderer, the question and answer shall be communicated to all prospective tenderers. The key contact must be available to answer queries throughout the tender period.

Confirmation from tenderers that they have not canvassed any member, director, employee, or adviser of the entity in connection with the proposed award of the tender, and that they will not do so during the tender process, can be covered off with standard form RFT documentation. Specific provisions would allow Council to disregard any tender from a supplier who is found to have attempted to influence the process outcome in such a way.

Particular care should be exercised with regard to contact with any current supplier when they will be tendering for a future contract.

18.3 Use of consultants or procurement agents

If Council engages a consultant or an agent to assist in the procurement process, the contract of engagement must require the consultant or agent to observe the same ethical standards, principles, and processes set out in this manual. This includes compliance with Council's own procurement policies and procedures and checking that the consultant or agent does not have a conflict of interest.

19. PROBITY

"Probity" requires that Council conduct its procurement activities ethically, honestly and fairly.

Elements of a procurement culture that promote and demonstrate high standards of probity include the following:

- ensuring all suppliers are treated equally and given every opportunity to participate in open procurement projects
- ensuring communication with suppliers is consistent and does not disadvantage or advantage one supplier over others
- acting in a manner that is consistent with Council's employee responsibilities
- ensuring appropriate checks and balances are in place throughout the procurement process
- ensuring the concept of conflict of interest or interest is well understood and strategies are in place to identify and manage potential issues
- ensuring officers are not compromised in their ability to act, or to be seen to act, impartially
- ensuring confidentiality of supplier information and evaluation processes is secure.

19.1 Context

19.1.1 Relationship to the Procurement Policy

The Council is committed to ensuring the integrity of procurement decision-making processes.

Council procurement will be able to withstand public scrutiny and instil confidence that all potential suppliers are given fair and equitable treatment.

Depending on the procurement at hand, one thing that can help achieve this is the use of a probity auditor and/or advisor.

19.1.2 Council responsibility

The engagement of a probity auditor and/or advisor does not transfer the requirement for ensuring probity away from Council, and should not be seen as a substitute for procurement officers managing a well-planned process that addresses probity requirements. Regardless of the procurement value, the highest standards of ethical behaviour must always be exercised to ensure probity of the procurement process.

Council is responsible for ensuring that systems, policies and procedures are in place to ensure the integrity of the procurement decision-making process. These must be able to withstand public scrutiny and preserve private and public sector confidence in the procurement process. The engagement of a probity auditor or advisor is seen as complementing existing sound probity processes.

19.2 Probity plans

For all projects in excess of \$1m, or where there is high corporate risk, a description of the risks and probity issues must be described in the procurement plan. The plan will identify the related management strategies for the procurement including the role and responsibilities of each stakeholder in responding to those risks. Including whether a probity auditor and/or probity advisor is to be engaged and the scope and nature of the probity services that will be delivered.

Staff involved in the procurement or project including the steering committee, advisors and other project stakeholders must be aware of arrangements put in place to preserve the probity of the process and should be provided with a copy of the probity plan.

19.3 Probity auditors and probity advisors

There is no legal or professional standard in relation to the correct or agreed use of the terms 'probity auditor' and 'probity advisor'. Although the terms 'probity auditor' and 'probity advisor' are often used interchangeably, there are distinct differences in the roles of probity audit and probity advice.

19.3.1 Probity audit

A probity audit is an assurance engagement in which a probity auditor provides an independent scrutiny of a procurement process and expresses an objective opinion as to whether the prescribed probity requirements have been adhered to. The conclusion expressed should be based on evidence gathered against prescribed criteria.

Independence is essential to a probity audit. A third party to the procurement should be able to rely on the probity audit to obtain greater confidence as to whether the probity requirements of that procurement have been adhered to.

Key elements of a probity audit are:

- a. Criteria. These are the predetermined benchmarks used to measure and evaluate whether the probity requirements within the procurement have been met.

The criteria should be clarified and agreed prior to the commencement of the audit and would be informed by a probity plan or probity framework. The criteria are then used by the probity auditor to establish a program of audit investigation and assessment.

- b. Evidence. The probity auditor is required to obtain sufficient appropriate evidence for all established criteria.

The probity auditor's decision must be supported by robust facts and documentary evidence. It is not sufficient for professional judgement to be used as the justification for decisions that are not otherwise supported by the facts and circumstances of the audit, or sufficient relevant evidence. However, the probity auditor will use professional judgement as to whether the evidence is adequate so as to support the decision based on the determined criteria.

The results and opinions of the probity auditor as to whether the probity requirements have been met are documented in a probity audit report, which includes any significant issues that have been identified, and that impact upon the opinion that the probity auditor provides.

19.3.2 Probity advisor

The role of probity advisor involves the provision of advice and assistance before and during the course of the procurement process as a basis for improving the procurement outcome and addressing unexpected probity issues that arise. The key difference between a probity advisory engagement and a probity audit is that an engagement for provision of probity advice does not provide a verification role and is not intended to provide an opinion as to whether the probity requirements have been met (as in the case of a probity audit). Thus, it is not intended to provide assurance as to compliance with probity requirements.

A probity advisor provides guidance and advice on how probity issues should be addressed, and may also assist in anticipating problems and advising on courses of action to be taken. In the course of providing probity advice, the probity advisor may become aware of real, perceived or potential breaches of probity. In these cases, the probity advisor would be required to report these in a timely and informed manner to the appropriate level of management. This would however be incidental to the primary function of probity advice.

A probity advisor may also be expected to provide comment on matters and issues of probity accountability and transparency during the procurement process, how probity risk issues are being managed, and how strategies set out in the probity plan are being applied.

The Group Manager Finance and IT services will make the appointment of the Probity advisor, Probity auditor or audit service as required.

19.4 High-risk procurement and probity

Council will demonstrate that we have used a documented, rigorous and defensible approach for determining what level of risk a procurement has.

19.4.1 Significant procurement planning

During a significant procurement planning process, procurement and project officers are expected to consider the specific risks associated with that procurement in more detail, including risks associated with procurement in general (e.g. supply market considerations and business risk considerations), as well as risks particular to probity of the procurement process. This can assist in clarifying the specific role that the probity auditor and/or advisor will play and the particular issues that he/she may be required to address.

These considerations should form part of probity planning and be documented within a probity plan. A probity plan should be developed with each significant procurement plan.

19.4.2 Factors to consider in determining procurement risk

The determination of risk involves analysis and the application of judgement to the specific circumstances and context of the particular procurement. The onus is on Council to demonstrate that a thorough risk analysis has been undertaken and to provide justification for the assigned risks to a procurement (and how these risks are to be managed).

As part of the risk assessment process, the following factors may indicate that a procurement is high risk. However, these factors should not be regarded as either complete or conclusive when determining whether the procurement is high risk.

- The project is of high value.
- Council is not an informed buyer, or lacks experience in managing the nature or magnitude of the project or procurement being undertaken.
- The procurement is subject to a high degree of public scrutiny.
- The evaluation process will be protracted with lengthy and detailed face-to-face meetings with proponents.
- There has been a history of controversy or litigation in relation to the procurement, the project, the agency or one of the potential suppliers.
- The selection criteria involve a high level of subjectivity.
- The project is complex, unusual or contentious.
- The project will utilise a complicated contract structure. This could include, for example, non-traditional contract forms such as alliances and public-private partnerships.
- The project involves a high level of intellectual property.
- A proponent has already been involved in a feasibility study or pre-tender stage of the project and thereby gained an advantage.
- The nature of the marketplace makes supplier grievances more likely (such as where competition is strong and commercial confidentiality is particularly important).
- The market is highly concentrated or involves very few players, or where there are many players, but some are very dominant. In such an environment, information sharing and the potential for collusion or other anti-competitive behaviour is usually high.
- There is a high potential for a conflict of interest or perceived conflict of interest. For example, where a public sector entity, or an incumbent contractor with a strong relationship with the agency, is bidding for the supply/contract.

19.5 Auditor / Advisor independence

Ensuring the independence of the probity service provider will help to make sure that they provide an objective and impartial view of probity within the procurement process. The involvement of an independent probity service provider provides greater assurance to the public and to suppliers wishing to do business with the Council as to the probity of the procurement process.

19.5.1 Determining independence

A key element of independence is impartiality which means being free from bias and not affected by influences or interests that compromise professional judgment.

Impartiality allows the probity advisor or auditor to act with integrity and to exercise objectivity in respect of the probity engagement. In order for a probity advisor or auditor to be impartial and free from bias, he/she should not be exposed to situations or relationships that may impair his/her objectivity with respect to the engagement or that may be perceived as impairing his/her objectivity with respect to the engagement.

Probity advisors and auditors must not only be independent in action but must also be perceived to be independent. The appearance of independence, as demonstrated by external facts and circumstances, provides an important indicator of actual independence. The potential threats to independence as well as potential safeguards that mitigate these threats are provided below.

Threats to independence

- **Self-interest.** This occurs where the probity service provider stands to benefit from a financial or significant non-financial interest in a probity client (agency). When evaluating the significance of the self-interest threat, consider the type of interest (direct or indirect) and the materiality of the interest.
- **Self-review.** This occurs where a probity auditor reviews their own advice. For example, a probity advisor provides advice regarding probity within a procurement process and then conducts a probity audit over the procurement.
- **Advocacy.** This occurs where the probity service provider or related entity promotes, or may be perceived to promote, an agency's position to the point that objectivity may, or may be perceived to be, compromised. For example, this can arise where a probity services entity promotes a particular procurement strategy which has not been reviewed for probity by a third party.
- **Familiarity.** This occurs where a close relationship between the probity service provider and the agency causes the probity service provider to become biased to the agency.
- **Intimidation.** This occurs where the probity service provider is deterred from acting objectively by threats (actual or perceived) from the officers of the agency. For example, a probity service provider may be threatened with replacement over a disagreement over a probity issue in the procurement process or have their credibility threatened.

Safeguards for independence

Where there is a potential threat to the independence of the probity service provider, the agency should determine whether there are any safeguards that could eliminate or reduce the threats to independence. Safeguards could include:

- A governance structure that provides oversight and support for probity within procurement. For example, the probity service provider could report to the steering committee of a project rather than to the project director or project manager.
- Processes and procedures that support probity within procurement.
- Training employees so that they are well informed with regard to probity requirements in procurement.
- Following a structured process in the appointment of the probity service provider to ensure independence.
- Allocating different staff the responsibility for providing a probity audit service in the case where probity advice has been provided on the procurement. This applies in the case where a single firm provides both probity advice and probity audit.

Conflicts of interest

Conflicts of interest represent one of the potential threats to independence. A conflict of interest means having an interest (whether personal, financial or otherwise) which conflict with, or may reasonably be perceived as conflicting with, the ability of the probity auditor or advisor to perform his/her obligations fairly and objectively.

Recommended practice

The issue of independence should be specifically considered and addressed prior to engaging either a probity auditor or probity advisor. At this stage, potential threats to independence should be considered as well as any safeguards that might eliminate or reduce the threats to independence.

In the case of a probity audit, independence is essential. A third party to the procurement should be able to rely on the probity audit to obtain greater confidence regarding whether the probity requirements of that procurement have been adhered to.

Potential probity service providers should be required to divulge all potential threats to independence, including conflicts of interest, at the time of offer or as soon as any conflict becomes apparent during the probity service agreement. The probity service provider should be required to provide written assurance that he/she has no conflict of interest in the procurement, is able to remain objective and impartial throughout the engagement, and will provide notification of any conflict of interest or compromise to independence that arises during the probity engagement.

19.6 Choosing between probity audit and probity advice

The choice as to whether probity audit or probity advisory services or both would be sought for, a procurement process should be made as part of the significant procurement planning process and will depend on the specific probity and procurement issues identified in that procurement.

The key emphasis in probity audit is whether the process has complied with the set criteria, standards and principles. A probity audit may be required or used by a party other than the one responsible for ensuring the probity requirements of the procurement are met, to derive assurance as to whether or not probity requirements have been addressed. This could occur, for example, where a project steering committee engages a probity auditor to derive greater confidence as to the probity of the procurement; or where one agency is sponsor and owner of a project but another agency is responsible for managing the procurement process within the project.

The key emphasis of probity advice is to assist with and provide advice on how a process can comply or could be made to comply with the set criteria, standards and principles of probity. The intended user is generally those who have responsibility for the procurement's policy, although other stakeholders may also have an interest. For a complex procurement process and contracting structure, it is likely that probity advice will be required during the conduct of the procurement, but in addition, a probity auditor may be engaged to derive assurance as to whether or not probity requirements have been met.

At the outset of the procurement process, during procurement planning and when developing a probity plan, all parties should clarify and confirm the role and service that the probity service provider/s is being engaged to perform for that procurement.

On high-risk projects, it is generally desirable to separate the audit and advisory functions through separate engagements (and from different organisations). This would allow the probity audit function to be performed strictly at arm's length from the project. Such arrangements assist in meeting the independence requirements for a probity audit.

In some procurement situations it is possible for an individual, while performing the role of probity audit, to provide probity advice at the same time. However, in these cases, it is essential to ensure the independence requirements are not compromised.

It is not suitable for a probity advisor, for a particular procurement, to also be engaged to provide probity audit services for that procurement due to the threat of self-review.

19.7 Selecting a probity auditor or probity advisor

19.7.1 Use of internal resources for probity services

In some situations, an internal resource may be able to provide a valuable source of probity expertise. In such situations, standards should be observed considering the:

- capacity of the internal resource to provide the required services
- capability of the internal source to provide the relevant services including relevant experience, knowledge, understanding and skills.
- where internal resources are used to provide probity services, it is essential that they can clearly demonstrate their impartiality and objectivity in relation to the procurement at hand and address the requirements relating to independence. This is of particular importance where the role to be provided is that of probity audit in which impartiality is fundamental to the engagement.

A conflict of interest and independence declaration will be required from the internal resource.

19.7.2 Use of external resources for probity services

Probity Auditors or Advisors, will on recommendation from the Procurement and Contracts Team leader, be appointed by the Group Manager Finance and Technology for all procurement projects with a value in excess of \$5m.

Council has a panel of Legal Service and Probity service providers that provide probity service and advice.

Contact the Contracts and Procurement Team Leader to engage these services.

Additionally, the New Zealand Government Procurement Service manages a whole-of-Government common-use supply arrangement for the provision of Legal Services.

Using this arrangement when engaging external providers, simplifies the process of selection while providing confidence that the providers on the panel meet required standards.

A probity advisor or auditor must not be a legal advisor to a procurement, and vice versa.

19.8 Probity Advisor appointment criteria

Independent probity advisers will be appointed in accordance with the following:

- For procurement projects with a value less than \$1m follow procurement manual procedures
- procurement project \$1m - \$5m Probity Advisor appointment should be considered
- procurement project \$5m+ appointment of Probity Advisor mandatory
- as required, provide periodic and specific reviews of procurement and contracting process

20. ECONOMIC CONSIDERATIONS

20.1 “Whole of life” cost

When assessing a procurement proposal, officers should be aware of the “whole of life” cost (also referred to as Total Cost of Ownership) of the goods or services it is procuring.

Often, the acquisition cost of a product is only a small proportion of this total cost of ownership. Usually, most of the total cost lies in operating and maintaining the product over its life. This makes it important to base a procurement decision not only on the acquisition cost but also on the costs of using and maintaining the product.

When assessing the “whole of life” cost, officers should differentiate between one-off costs and recurring costs. One-off costs are “sunk” once the acquisition is made, and are generally predictable. Recurring costs, on the other hand, continue to be incurred throughout the life of the product, and can increase with time if the product is liable to wear and tear, which results in increased maintenance costs.

When acquiring new assets, such as buildings, Council has an obligation to fund future renewals or replacement through depreciation. Consideration should be given as to whether this is also a “whole of life” cost or simply a funding implication. Similarly, care should be taken when considering the implication of cost escalation clauses in contracts.

20.2 Value for money

Officers must adopt a “value for money” approach when procuring goods or services. “Value for money” means the best possible outcome for the total cost of ownership. Value for money does not necessarily mean selecting the lowest price. Rather, officers should achieve the right quality, quantity and price, at the right place and time. Care should be taken to ensure that unreasonable risk is not assumed in pursuit of the lowest “whole of life” cost.

Value for money can also be conceived as a broad concept that incorporates environmental and social, as well as economic, aspects. Thinking of value for money in these terms is sometimes referred to as a “triple bottom line” approach. In some instances, cultural value may also be included making the approach a “quadruple bottom line”.

20.3 Local Economic Impact

The local economic impact must be considered for each procurement process. This will include consideration of the size, scope and value of the project, scope of advertising, availability of local suppliers or expertise, evaluation attributes, and pre-tender communication with suppliers.

Local suppliers should be encouraged to compete for business.

Council will consider all supplier proposals based on the stated evaluation criteria.

Council will make a balanced decision, considering the social, environmental and economic effects of any proposal.

Where two or more tenders or quotations are evaluated as being equal in all aspects, then any Bay of Plenty owned business will become the preferred supplier.

20.4 Overseas suppliers

Purchases are only to be made from overseas suppliers when:

- the goods or services are unavailable in New Zealand, or
- the goods or services are unavailable in New Zealand at an appropriate price or acceptable quality.

20.5 Broader Outcomes

Government has provided direction for the achievement of broader outcomes through procurement. The Government procurement rule 16 and the Local Government Community wellbeing Amendment Act 2019 refer.

These rules introduce the direction of public value that required government agencies and the wider public sector to seek broader outcomes and benefits beyond the immediate contract requirement.

Both seek to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

Social, economic including skill development, training and apprentice practices suppliers provide to employees, environmental, and cultural wellbeing are highlighted.

These broader opportunities will be consider formally as part of the procurement process and evaluation of supplier’s proposals (including any sub contractors) for projects in excess of \$5m, otherwise the use of judgement for procurement in excess of \$1m on a case by case basis.

Council will conduct reasonable due diligence and manage the contract to ensure proposed services and or outcomes are delivered.

20.6 Sustainability

Procurement activities will wherever possible support Council's sustainability objectives.

Council is committed to providing leadership that ensures that the Western Bay becomes a more sustainable district. All procurements of goods, works and services must support these objectives.

Sustainability involves thinking broadly about objectives, considering long-term as well as short-term effects, assessing indirect as well as direct effects, and taking extra care when changes brought about through procurement might be irreversible or uncertain.

While sustainability is included as an overriding consideration, given the growing strategic importance of sustainability within Council, considerations of sustainability may occur throughout the entire procurement process.

In particular, procurement activities will aim to support:

- the reduction and management of waste
- the increased use of recyclable products
- the minimisation of packaging
- the minimisation of greenhouse gas emissions, particularly vehicle emissions
- the use of 'green' building techniques
- water and energy saving measures
- compliance with relevant occupational health and safety and environmental regulations
- verifying suppliers' sustainable management practices
- rating supplier performance against sustainability criteria
- sustainability improvement targets for suppliers
- the improvement in the sustainability performance of suppliers
- the encouragement of sustainable innovation in the supply of goods and services.

21. RISK MANAGEMENT CONSIDERATIONS

Business risk will be assessed and managed in all stages of the procurement process. Risk is inherent in any procurement activity. The approach of the Council is to manage risk so that it is acceptable from a contractual and delivery point of view, to ensure that ratepayers are not exposed to significant unmitigated risk and future liability.

An element of risk management can be achieved by selecting the appropriate contract/basis of payment method. The general principle of risk management will be for Council to assume the risk and not transfer it to the contractor or consultant.

All Council staff are responsible for identifying and managing or mitigating risk effectively through each stage of the procurement process within their respective areas of responsibility. Council will also promote a "risk aware, risk prepared" culture to all its staff and managers.

By ensuring that procurement is conducted in a fair and transparent manner, the risk of fraud or impropriety should be reduced. Following appropriate procurement policies and procedures, and having appropriate internal controls in place, should assist this.

Council must ensure that each employee or agent involved in a procurement process has the required skills for the type and level of procurement.

22. PROCUREMENT PLANNING

For procurement activity to be fully effective and achieve best value, it needs to be planned. Because we are spending public money, it also needs to be auditable with appropriate controls in place. An approved procurement plan commensurate in detail with the value or risk of the project, is required prior to approaching the market on the following:

- the value of the procurement – where total spend is over \$100,000 a procurement plan is mandatory
- the type of procurement – for example, whether the procurement is sensitive, unique, collaborative, high risk, or of strategic significance to Council's success
- the nature of the procurement – for example, whether it involves intrinsic risks and ethical or process issues.

A Procurement plan may encompass a project's professional services and physical works or that which is integrated with one-another e.g. where several stand alone physical projects form one location's programme of work.

Procurement plans must be initially drafted by the officer responsible and then reviewed and approved by the person with the appropriate delegated authority.

Procurement plans over an estimated value of \$350,000 over the term of the relationship/contract must also be supported by the Contracts and Procurement Team Leader.

For projects over \$1m the procurement plan must include a detailed probity plan.

A procurement plan may not always be necessary. See Appendix 3.

23. PROCUREMENT METHODS

23.1 Background

Supplier selection should be based on the need to achieve best value procurement whilst avoiding unnecessary tendering costs for both Council and suppliers. Anticipated spend and the nature of the procurement provides direction for procurement process.

Approved purchasing processes, as defined in this policy, must be used in every case.

All contractual relationships must be documented in writing based on the Council's standard terms and conditions. Standard Council templates are to be used.

23.2 How we purchase

Council purchase goods and services in the following way.

23.3 Petty Cash

Council's petty cash policy contained within Council's existing sensitive expenditure policy (and located under the policy tab on the intranet) must be followed. In summary, petty cash should only be used when money is needed in advance for small purchases of unknown amounts. A GST receipt is required to validate the expenditure. Petty cash should not be used for the payment of koha or any other donation.

23.4 Corporate credit card purchases

Council's credit card policy contained within Council's existing sensitive expenditure policy (and located under the policy tab on the intranet) must be followed. A GST receipt is required to validate the expenditure and should also document for who, what, and where the expenditure was incurred.

23.5 Purchase orders

Purchase orders commit Council expenditure for goods and services.

Purchase orders reference, Council's Standard Terms and Conditions of Purchase, these terms detail our commitment and expectations from Council to suppliers.

A purchase order must be raised for goods and services prior to the time of purchase as it ensures all our terms and conditions are detailed, and commitments are captured in the Council's financial systems.

The purchase order must refer to the written quotation or offer.

Purchase orders are to be created and approved by an appropriately delegated staff member at the point of ordering the goods and services and not after the event. The only exception is purchasing via corporate credit card, where approval is retrospective.

All new appointees are required to attend Purchase Order training provided regularly by the Procurement Team.

The Purchase order should be sent by email to the supplier via the Ozone Financial system.

Refer Part 4 Procurement Procedures, Point 2.2 for further information.

Council utilises two types of purchase order: electronic and manual.

23.6 Electronic Purchase Order

The primary purchase order used is an electronic purchase order created from our financial and procurement system – Ozone.

The contributing information is sourced from our ERP system, delegation structures and details goods and services, quantities and unit price/total price. The purchase order references our Terms and Conditions of Purchase, which is the basis we purchase the particular goods and services.

In most cases the Purchase order will be electronically sent to the supplier via the Ozone Financial system.

23.7 Manual Purchase Order

Council has a small stock of hard copy manual purchase order forms. These are in a booklet format with self-carboning duplicate copies. Each manual purchase order has its own unique number (purchase order number) that can be provided directly or quoted to the supplier.

Manual purchase orders create additional administrative work and are difficult to reconcile. While manual purchase orders are utilised, this is the least preferred method of procurement documentation and are being phased out. Manual handwritten purchase orders may be used in two circumstances:

a. IT or electronic system failure:

IT or electronic failure – when normal IT infrastructure or software has failed or is unavailable. This manual process will provide a simple alternative to process purchases that are immediately required.

b. Civil Defence Emergency:

In the event of a civil defence emergency, the Contracts and Procurement Team Leader or Finance Manager may issue manual purchase order stationery to the Logistics section of the Civil Defence Team. Manual purchase orders are a simple interim method to document commitments.

Suppliers requested to provide services or goods are to be issued with a manual purchase order number.

Whenever a manual purchase order is used, all associated documentation must be held.

As soon as practicable after use, notification of purchases must be made to the Finance Manager outlining:

- Circumstances of use and all relevant information
- Full details of purchases
- Confirmation good/services requested
- It indicates the type, quantities and agreed prices for products and services.

23.8 Publically Advertised Procurement/Sufficient time to respond

Where the value of goods or services proposed to be purchased exceeds \$5,000, and in the absence of an existing supplier/contract, Council will adopt a competitive approach to the market via a Request for Quotation or open competitive RFX via the Government Electronic Tender Service (GETS).

Council will allow sufficient time for suppliers to respond. The following minimum time periods must be applied and are expressed in business days:

	RFO \$10,000 - \$100,000	RFT / RFP / RFX \$100,000 +
Minimum time period (Business days)	10	21

Table 1 - Publically advertised procurement response time

These response times should be extended when:

- the level of information and detail from suppliers is significant and a supplier would realistically require additional time to complete
- the extent of complexity anticipated with subcontracting and joint bids
- the complexity of the project, goods or services; and
- the level of risk to the parties.

Where Council adopts a two stage process e.g. through a Registration of Interest (ROI) then Request for Tender (RFT) or Request for Proposal (RFP), then we will utilise the Government Rules of Sourcing, July 2015; rule 26-31 as the basis of the calculation and reference for minimum response times.

A closed tender approach to the market without open publicity is to be the exception, in which case approval must be recorded as a dispensation request in the Procurement Plan. Requests for a dispensation to not go open or competitive must be endorsed in writing by the Contracts and Procurement Team Leader and approved by the Group Manager or Chief Executive in accordance with their delegation.

Exceptional circumstances are primarily defined as (but not limited to) where there is a very limited number of suppliers, a specialist supplier, or in cases of obvious emergency.

For procurement over \$100,000 the reasons for not going out to open public tender for these contracts shall be reported by the Chief Executive Officer.

23.9 Emergency procurement

Emergency procurement of goods or services may be authorised when:

- life, property or equipment are immediately at risk, or
- standards of public health, welfare or safety needing to be established without delay, such as in the case of disaster relief or Civil Defence Emergency.

23.9.1 Arranging emergency procurement

Emergency procurement allows all normal procurement rules to be set aside to meet an emergency. The prime element that constitutes an emergency procurement is that unforeseen circumstances have arisen that require urgent attention by Council.

When the goods or services that are needed to cope with an emergency cannot be obtained within the required time by normal procurement procedures, they may be purchased from the most convenient suitable supplier provided that:

- the purchase is limited to meeting the requirement needed to cope with the particular emergency, and
- the price quoted is a fair market price at the time and place where the purchase is made.

Any Council employee who holds financial delegation may exercise emergency procurement up to the level of their delegation provided that the person can later justify their actions.

Responsibility for determining that the circumstances warrant an emergency purchase rests with the employee placing the emergency request. An individual may be liable for any expenditure or loss resulting from misuse of the emergency purchase procedure.

23.9.2 Post the emergency procurement

As soon as practicable after the emergency procurement has taken place, notification of the emergency procurement must be sent to the Contracts and Procurement Team Leader and your manager responsible for the expenditure outlining:

- the reason for the emergency procurement
- the value and term of the emergency procurement
- the supplier appointment, any form of contract used, and why
- any other relevant information to support the emergency procurement.

The manager will review the commitments as necessary. All documentation relating to the purchase must be retained.

24. RESPONSIBILITIES AND AUTHORISATIONS

24.1 Procurement responsibilities

The Group Manager Finance and Technology, has responsibility for the procurement and contracting process within Western Bay of Plenty District Council including implementation of the associated Procurement Policy. On a day to day basis he is supported by the Contracts and Procurement Team Leader.

Each Group Manager or delegate is responsible for managing the operational aspects of contracts and services in their respective areas.

The Procurement Team is responsible to assisting and facilitate the procurement processes and contract provision. The Procurement Team will:

- ensure preferred local established suppliers are used wherever possible
- provide support, leadership and training to colleagues associated with the procurement / contract establishment process
- facilitate consideration of existing syndicated or collective contracts
- endorse high value / high risk procurement plans
- facilitate and assist in tendering, evaluation and contracting processes
- ensure probity matters are managed
- support key stakeholders in proposed new and varied contract terms and conditions
- assemble contract documents and facilitate the execution
- manage, review, and supply Council procurement and contract templates
- regularly monitor and report on procurement and contracting activity and processes
- provide direction, review and, as applicable, endorse requests for dispensation

24.2 Group Manager and Managers

The Group Manager and Managers will, to level of their delegated financial authority, consistent with annual plan and LTP:

Group Manager and Managers responsibilities	
<ul style="list-style-type: none"> Ensure that best value is attained by all services and contracts 	
<ul style="list-style-type: none"> consider, reject or approve 	<p>procurement plans, dispensations and procurement recommendations (GM only)</p> <p>Written contracts in accordance with Delegated Financial Authorities</p> <p>Contract variations when the total contract term and value are within 50% of the original contract (GM only)</p>
<ul style="list-style-type: none"> emergency works 	<p>ensure procurement policy and procedure is followed</p> <p>ensure that approved budget is available</p> <p>ensure a project plan is in place for resourcing of contract, supplier performance and management</p>

Table 2 - Group Manager and Manager Responsibilities

Group Manager and Managers approval limits delegated financial authorities			
Value \$	Manager	Group Manager (GM) & DCE	CEO
\$0-\$50k	Approve Contract (<1 Year)	GM Up to 3 Years	Yes
\$50k-\$100k	Approve Contract up to 1 Year \$100k ¹ [Note this special subset]		
\$100k	Beyond delegation support recommendation	DCE up to 5 years	
\$350k		Beyond delegation support recommendation	
\$350k+			

Table 3 - Group Manager and Manager Approval Limits Delegated Financial Authorities

¹ Approve contract up to one year – value \$100,000 Asset & Capital Manager, Engineer & Special Projects Manager, Reserves & Facilities Manager, Strategic Property Manager, Transportation Manager and Utilities Manager.

24.3 Employee responsibilities

For all purchases, regardless of value, Council requires employees to ensure that:

- the need is business related and justified
- they have considered carefully and, as necessary, sought advice whether a procurement activity is necessary
- requirements have been clearly defined and appropriate specifications are defined for goods or services
- there is an approved budget or budgets (in consultation with Finance Manager) for the goods or services to be procured
- best value for money is achieved by awarding contracts on a whole of life cost basis
- the procurement conforms to the policies and procedures of this manual and all relevant requirements
- the decision to purchase can be justified in all respects, and is transparent and accountable
- consideration is given to existing collaborative procurement arrangements (e.g. all of Government and BOPLASS arrangements)
- where appropriate, sustainability and broader outcomes are included as important criterion, provided that neither cost nor availability inhibits service delivery
- if applicable, effectively manage preferred supplier contracts over the contract life.

24.4 Authorisations and delegations

All procurement and contract management processes must be undertaken in accordance with this manual and the delegated financial authority held by the staff member.

All purchases must be approved by an appropriately delegated staff member at the point of ordering the goods and services and not after the event. The exception is purchasing via corporate credit card where approval is retrospective.

All goods and services are to be purchased within the annual budget or specifically approved budgets, and within delegated financial authority.

Acceptance of tenders for the purchase of goods, works or services, on either a lump sum or continuing basis, shall be in accordance with Council's approved delegations.

24.5 Staff purchasing

The use of Council funds for the purchase of items for personal use is strictly forbidden.

Where staff purchase personal goods and services using discounts obtained through Council buying privileges schemes, the transaction must be paid for in advance by the staff member personally.

24.6 Endorsement

Generally, employees must not endorse any products or service. If an employee receives a request to endorse any product or service, they must refer the request to the Contracts and Procurement Team Leader or delegate. However, from time to time, staff are asked to be referees for contractors or consultants who are bidding for other external (non-Council) contracts. Staff must obtain the approval of their Group Manager prior to taking any such action.

25. CONTRACTS

Sound contract management helps to ensure that all parties to the contract continue to understand and observe their respective obligations, and benefits and value gained early in the procurement process are sustained throughout the life of the contract.

To the maximum extent possible and reasonable, Council's standard forms of contract must be used as a template upon which the more specific requirements relating to a particular project or type of work is built. The chosen method of contract management should reflect the contract environment and the risks associated with the project.

Contracts should be written in a practical, simple and readily understood manner consistent with a realistic assessment of the likelihood of a conflict arising. It is expected that employees involved with contracts will have experience in formulating contracts or have the required level of competency.

Legal advice via the Contracts and Procurement Team Leader must always be sought where contracts are negotiated or non-standard, or the circumstances are unusual, or the risks associated with the relationship are high.

26. CONTRACT EXTENSIONS, VARIATIONS AND RENEWALS

All procurement functions are undertaken in accordance with staff and managers financial delegations.

Contract extensions, variances and renewals based on an approved procurement plan can occur but must be considered in a total value and term perspective and approved within financial delegation. Supporting information and approvals are to be held in *Objective* and referenced in *Ozone*.

It is acknowledged that where the additional costs of a service or project are small in relation to the costs of preparing specifications, seeking tenders and contractors preparing their offers, an approved contract variation or extension will often be preferred to a new or separate tender process.

Contracts may be varied by the Group Manager to the following levels

- o where variation is no greater than 50% original value
- o where term is not extended beyond 50% of the original contract term

Refer 32.6.5 Conduct and Managing the Competitive Process - Contract Variation

27. SUPPLIERS

27.1 Approved preferred supplier list

The Procurement Team will maintain an approved preferred supplier list, and wherever possible goods and services should be purchased from these suppliers. The approved supplier list can be found on Council's intranet.

Employees should take care not to be too reliant on one supplier for particular goods or services unless Council has entered into a contractual relationship with the supplier, or the supplier has already been appointed as the preferred supplier.

Council will ensure that there is an equal opportunity for all suppliers who meet the stated criteria to participate in tenders.

Where specialist equipment is to be maintained or serviced, the supplier or agent for the equipment may be used without the need to obtain a competitive prices.

27.2 New suppliers

Approval to use any new supplier must be gained prior to committing spend with that supplier.

A search of existing suppliers must be undertaken before a new supplier is requested.

Requests for new suppliers shall be made to the Contracts and Procurement Team Leader and/or the Finance Manager.

A standard New Supplier form must be completed as it links the supplier to our terms and conditions of purchase.

27.3 Conflicts of interest considerations

Conflicts of interest may arise prior to or at any time during the procurement process. All employees must, therefore:

- utilise the Council template to declare in writing all conflicts of interest whether real or potential
- where involved in a procurement project with a value in excess of \$100,000 or where the project is of high risk or importance, complete the Council's conflict of interest and confidentiality declaration
- remove from the relevant process any employee, where there is an agreed conflict of interest, and allow these processes to be carried out by another employee who is not connected to the supplier, or determine a mitigation plan to deal with the conflict in cases where alternative employees are not available
- ensure that information belonging to Council and its existing or potential suppliers is confidential, and must not be used for personal or commercial gain by employees or suppliers, and must not be shared with anyone for their personal or commercial gain
- must not purchase goods and services from employees, their relations, companies or any other entity in which they have a material interest with the prior written approval of the Manager
- ensure that any gifts or hospitality are avoided during any selection procedure. In all other cases, gifts or hospitality must only be accepted in accordance with Council's gifts policy and declared appropriately
- quality.

28. DOCUMENTATION

28.1 Records management

Council must keep sufficient records to show that due process was followed with officers having due consideration to each offer, and having observed the overall principle of equity and fairness; responded to queries from unsuccessful suppliers; recorded the outcome of meetings or correspondence during the procurement process; provided evidence for audit purposes; and planned any subsequent re-tendering.

The complexity of the procurement will determine the nature and amount of documentation, which is desirable, along with the obligation in the *Public Records Act 2005* to maintain full and accurate records in accordance with normal prudent business practice. Appropriate records of dealings with all suppliers must be kept in the Council's Objective software.

For each proposed procurement project resulting in a written contract, the Procurement Team will provide a contract number and Objective file structure and basic template forms for completion over the contract term.

Documents to be held include:

- copy of approved procurement plan, tender documentation, tender process and evaluation procedures and documentation
- supplier quotes, tender responses, associated correspondence, recommendations, notification of acceptance, payments and variations
- reviews or probity reviews
- copies of all signed agreements / contracts / variations entered into with suppliers
- contract performance records, including any items under dispute
- correspondence between Council and its suppliers, including, but not limited to
 - notices
 - contract performance reports
 - variations
 - contract extensions
 - invoices and payment documentation,
 - price increase or decrease documentation and
 - contract closure documentation (Form 19).

28.2 Procurement templates

Council Procurement and Contract templates must be used wherever applicable.

Completed formal RfX documents must be approved by the Contracts and Procurement Team Leader and or Group Manager Finance and Technology or Group Manager before offering to supplier.

This ensures the documentation is up to date and all relevant performance supply information is detailed within the contract documentation e.g. service levels, payment terms, insurance, completion date, outcomes sought etc.

Supplier instigated contracts (i.e. contract terms proposed by the supplier) are to be approved prior to execution by the Group Manager and Contracts and Procurement Team Leader.

The template documents are available on request from Procurement Team.

29. RELATED POLICIES AND LEGISLATION

29.1 Related policies

All employees are required to comply with the Western Bay of Plenty District Council's policies and should familiarise themselves with the following procurement related policies:

- Conflicts of Interest Policy
- Delegations Policy
- Fraud and Corruption Prevention Policy
- Koha Payments Policy
- Petty Cash Policy
- Risk Management Policy
- Sensitive Expenditure Policy
- Significance and Engagement Policy
- Sustainability Statement.

29.2 Relevant legislation

All procurement must comply with relevant legislation. The following references provide more detailed information that may be required for specific procurement activities:

- Building Act 1991
- Commerce Act 1986
- Construction Contracts Act 2003
- Consumers Guarantees Act 1993
- Fair Trading Act 1986
- Health and Safety at Work Act 2015
- Financial Reporting Act 1993
- Official Information Act 1982
- Land Transport Management Act 2003
- Local Authorities (Members' Interests) Act 1968
- Local Government Act 2002
- Local Government Official Information and Meetings Act 1987
- Privacy Act 1993
- Public Audit Act 2001
- Public Finance Act 1989
- Public Records Act 2005
- Sale of Goods Act 1908
- Resource Management Act 1991

PART 4 – PROCUREMENT PROCEDURES

30. PURPOSE OF PROCUREMENT PROCEDURES

30.1 Introduction to this section

Council officers shall make themselves familiar with the Western Bay of Plenty District Council Procurement Policy and Principles sections of this Manual in conjunction with the following Procurement Procedures.

The Procurement Procedures are designed to assist Council officers with procuring goods and services using best practice for contract arrangements with suppliers, contractors and consultants. They include guidelines on issues that need to be considered when sourcing and the use of standardised procedures and documents when:

- selecting a procurement method
- completing a procurement plan
- undertaking evaluation planning
- assessing supplier selection models
- managing the competitive process
- communicating with tenderers
- evaluating submissions
- preparing contract documents
- implementing contracts
- managing the contract and the supplier
- processing contract payments and variations
- closing out a contract.

Council officers must ensure the procurement fits with Council's Procurement Strategy, ensure funding is available and identify and manage any risks associated with the procurement activity at all times.

30.2 Benefits of using standard procedures and documents

The advantages of using standard contract procedures, forms and templates are that:

- they reduce or limit Council's exposure to risk and liability as they cover off all common areas of risk to the Council
- they are user-friendly and use everyday language which helps ensure all parties are clear on their responsibilities and thus minimising the need for legal consultation
- they assist Council to focus on identifying its targeted outcome and the process required to achieve that outcome
- they ensure a greater consistency of contractual terms, and enable Council to reduce its contract administration and legal costs.

30.3 Limitations of procurement procedures

The Procurement Procedures are comprehensive but cannot take into account all contractual nuances and therefore should not be solely relied upon. You should seek advice whenever you are uncomfortable with the process or the document as it applies to your particular circumstances.

In the first instance, you should obtain assistance from your manager. If the matter is not resolved, you should seek the assistance of the Contracts and Procurement Team Leader or appropriate Group Manager.

30.4 Community expectations

Council is a public body representing the community of Western Bay district using ratepayers' money to perform required service functions. The ratepayers can expect the following with respect to procurement:

- activities are carried out with a high level of probity
- procurement processes are efficient, economical and effective
- the requirements of relevant legislation and common law are met
- the policies and delegations of Council are met
- there are mechanisms in place for monitoring and controlling performance and to ensure the above expectations have been met.

30.5 Source of funding

30.5.1 Budgeted Expenditure

All expenditure within any one financial period will be funded from within the pre-determined budgetary provisions for that period.

Adequate provision for the funding of all known or proposed expenditure should be made in the budget of the appropriate department in the year in which the expenditure is anticipated in accordance with the Annual Plan Procedures.

30.5.2 Unbudgeted Expenditure

Where adequate provision does not exist for committed or proposed additional expenditure, the procedures relating to "Unbudgeted Operational Expenditure", as detailed in the Delegations Manual, will apply. It is up to the appropriate department in the year in which the expenditure is anticipated to make provision for the required sum, in accordance with the Annual Plan Procedures.

Where expenditure is likely to exceed the sum for which approval has previously been obtained, e.g. through variations to the engagement, it will be necessary to obtain additional approval to the original sum before any further expenditure is incurred provided funding is available or is obtained through appropriate procedures.

31. METHOD OF PROCUREMENT

Council use the following methods for approaching the market to procure:

31.1 Preferred suppliers

A preferred supplier is a supplier of goods, services or works to Council that has been selected by:

- the adoption of an approved procurement plan presented to the Management Team and subsequently approved as such
- following a subsequent competitive open procurement process indicating a preferred supplier status will eventuate
- as applicable, is SHE accredited and has completed the Council Health and Safety induction programme (refer to contracts admin for details)
- has or is assessed to provide services and goods to a high standard and is considered to provide good value for money
- has been secured by written contract detailing terms.

Council will use that supplier in preference to all other suppliers who may also be able to provide those goods, services or works. A current list of preferred suppliers will be maintained on the Procurement page on the Intranet.

31.2 Ordering of goods or services using a purchase order

Council requires that all purchases, including those made under contract, are initiated by electronic purchase order via the Ozone finance system.

There are various advantages in using the electronic purchase order system. A purchase order:

- documents Council's formal request to supply
- recites a unique reference number that must be referred to by the supplier in all accompanying documentation
- is a legally binding written document and provides suppliers with proof that services or products were ordered
- provides confirmation of a quoted price so it can be matched to invoices and delivery notes

- assists accounts payable by giving the ability to track expenditure and alerts them to committed/forecasted spend
- references the Council's Terms of Purchase
- sets out the payment terms
- evidences the persons who raised and approved it and therefore who must take responsibility for the procurement
- provides a foundation authority to check against when the goods arrive and before making payment.

The purchase order must reference the applicable quotation/estimate or contract.

Note:

- There should only be one purchase order issued per quotation.
- The Council's terms and conditions of purchase apply to all purchase orders (the terms are automatically referred to on the printed purchase order) unless agreed and stated otherwise.

31.3 Completing a procurement plan

For procurement activity to be fully effective and achieve best value, it needs to be planned. Once planning is completed, the procurement plan serves as the foundation document for the procurement process and ensures that the procurement has appropriate controls in place.

Note: The procurement plan should take into account the benefits of competitive bidding and the cost of the process to Council and prospective suppliers.

A procurement plan is a mandatory requirement for all:

- competitive tender/proposal processes
- high-risk procurement
- procurement exceeding \$100,000.

Council has mandatory procurement plan templates.

31.4 Selecting a procurement process

It is important to ensure that the process/method is reasonable for the overall cost of the procurement. Open and effective competition should be promoted throughout the process.

The first step in finding the right supplier is to determine the range of prospective suppliers. An appropriate level of market research should be carried out in order to ensure an informed decision is made. Once you determine your prospective supplier range, you need to determine how you will invite them. It can be a single stage or a multi-stage process, and open or closed (see the flowcharts in the Appendices for more detail).

31.4.1 What is a competitive process?

A competitive process is an invitation involving more than one prospective supplier. A contract can be awarded to the supplier evaluated as providing best value for Council. Depending on the value and risk of the procurement, competitive processes can involve verbal quotations, written quotations, or formal written tenders/proposals.

Council endorses an open and competitive approach to the market and will ensure full and fair opportunities for all suppliers. Where a closed or non-competitive process is chosen there needs to be a compelling and strategic business reason such as:

- a lack of suppliers in the market
- a sole supplier in the market
- Council has a requirement for a selective procurement of goods, services or works.

Note: The procurement process described in the tender or proposal documentations must be followed. If weightings or 'pass or fail' requirements are included in the competitive process documentation, these can not be changed without formally updating the procurement plan and RFx document.

31.4.2 Competitive process methods

Depending on the complexity of your procurement, you will either use a single or multi-stage and an open or closed process which will include one or more of the following invitation methods:

Request for quotation (RFQ)	A formal means of seeking quotations from the market for new goods or services Council has not purchased before. RFQ is a closed direct approach to the market, to at least three suppliers whom we believe may be able to provide the goods. An RFQ is best used where price is the main selection criteria, the requirement is for "stock standard" or "off the shelf" goods or services at a procurement value below \$100,000 and where the risk is low.
Request for information (RFI)	A formal request for information to gain a more detailed understanding of the supplier market as well as the range of solutions and technologies that may be available. It is not a request for offers from the market and must not be used as the basis for the selection of a supplier.
Expression of interest (EOI or ROI)	An EOI is an optional first stage in a multi-stage procurement process and is used to reduce the number of interested suppliers in order to minimise costs to all parties. It identifies suppliers interested in and capable of delivering the required goods or services. Price information is generally not requested at the EOI stage. The only time indicative price information might be requested would be where the project had a limited budget and suppliers with solutions over the budget would not be considered.
Request for proposal (RFP)	A formal means of seeking proposals from the market for goods, services or works where the Council is open to supplier innovation and seeks a solution to a problem or process. Use an RFP when you know the outcomes but you are not clear how best they can be achieved.
Request for tender (RFT)	A formal means of seeking tenders from the market to provide goods, services or works where Council's specifications or requirements are clearly defined and there is little room for flexibility or innovation. This method is often used for construction projects. Price normally plays a significant role within an RFT.

Table 4 - Competitive Process Methods

Note: It must be made clear that there is no commitment by the Council to purchase goods or services or to proceed to an RFP or RFT as a result of issuing an ROI, RFQ, EOI or RFI.

The cost of the process (including advertising, providing documents and evaluating tenders or proposals) should be realistic for the size and complexity of the procurement and be balanced against the benefits received.

31.4.3 Open competitive process

An open competitive process is the Council's preferred mechanism to approach the market as it promotes open and effective competition and gives all potential suppliers an opportunity to participate.

However, the open competitive process should not be used where:

- a limited number of suppliers are known to have the capability to supply
- an emergency situation exists
- the cost of an open competitive process will exceed any direct savings that might be made.

31.4.4 Closed competitive process

In a closed competitive process, invitations are issued to a predetermined list of suppliers without an open pre-selection or procurement process. This method does not allow equal access to all suppliers in the market, meaning that a better source of supply may be missed. Limited use should be made of this process.

Note: The closed competitive process must not be used to limit the number of potential participants. If you wish to limit the number of potential participants for a procurement, pre-conditions and or a multi-stage method should be used.

The use of a closed competitive process must be justified and approved in the procurement plan and dispensation form.

When to use a closed competitive process, here are some examples:

- a limited number of suppliers are known to have the capability to supply
- there is a genuine limited time for the procurement process which is not due to the lack of planning
- the cost of conducting an open competitive process outweighs the benefits so a closed competitive process is more efficient.

31.4.5 Methods to determine potential supplier market include:

- issuing a Request for Information
- making use of knowledge and experience within the Council (or someone known to it) across a category of service / goods
- construction sector knowledge
- knowledge from allied agencies such as Tauranga City Council
- canvassing the market using a variety of sources of information such as Google or the Yellow Pages.

Document the method used in the procurement plan and keep sufficient records to show that you have followed the method and that you have addressed any risks.

31.4.6 Single stage procurement

In a single stage procurement, an RFP or RFT is issued to the market without a pre-qualification process and all responses received as a result of the RFP or RFT are evaluated.

31.4.7 Multi-stage procurement

A multi-stage procurement allows for the pre-qualification of suppliers or to establish a list of potential suppliers. This will be based on an initial assessment of their capability and capacity to fulfil the potential contract by inviting suppliers to participate in an EOI, ROI or an RFI. These processes are used to provide a shortlist of suitable suppliers to whom an RFP or an RFT can be offered. The multi-stage process saves non-suitable suppliers the costs associated with the tender or proposal process. However, it is a time-consuming process and therefore also costly to the Council.

A multi-stage process should be used where the market is large. It may also be worth considering using a multi-stage process if the Council is not sure about the state of competition in the market.

This method can be used where the market is large and when you wish to reduce the cost of the competitive process by restricting the issue of formal tenders or proposals to those suppliers with demonstrated capability. It also can be used where the goods or services being procured are complex and difficult to specify.

Stage 1: Issue an EOI or ROI to find out more about the goods or services, the market, and the capability of suppliers to satisfy the procurement need.

Stage 2: After reviewing the EOI/ROI responses, an RFP or RFT is issued requesting suppliers to submit an offer for goods or services or to propose a solution.

Stage 3: The responses received from the RFP or RFT are then evaluated. Negotiations are undertaken and a contract is awarded to the successful supplier. There may be more than one supplier identified through the process.

Prior to awarding the contract or contracts, potential suppliers can be invited to provide a presentation or submit their final bid (called "the best and final bid") to assist in determining whom the contract(s) should be awarded.

31.4.8 Dispensation from open competitive process

The following dispensations from an open competitive RFX market approach may be granted by the Group Manager or Chief Executive Officer up to the level of their financial delegation.

Request for dispensations must be supported by the Team Leader Procurement and Contracts. Monthly summary of all dispensations are provided to the Senior Management Team.

Circumstance	Description
Legal requirement or directive	There is a legal requirement or directive from the Chief Executive Officer to use one supplier.
Emergency procurement	For employee safety reasons, to address other risk issues urgently or if the Council is likely to suffer significantly financially because of the emergency situation. Note that an emergency procurement must only be used in genuinely unforeseen circumstances and that poor planning is not in itself a sufficient reason for not conducting a contestable process if it would otherwise be required.
Disproportionate procurement cost	The cost of the procurement process is likely to be disproportionate to the value or benefits likely to be gained.
Contract privity	Parties to a contract (that was sourced via an open competitive market approach) make available to Council a right to take up a contract at the same or very similar beneficial conditions and there is suitable information available to confirm that the proposed arrangements are commercially advantageous to Council.
Limited number of suppliers	Selected capable suppliers are invited to submit proposals for goods or services. For example: there is a limited number of suppliers that are known to have the capability to supply, or there is a need for the procurement to be confidential.
Monopolistic market	Only one supplier is available in the market place and there is adequate evidence to demonstrate that this is the case.
Syndicated procurement	When considering syndicated procurement, Council must: <ul style="list-style-type: none"> consider how it will exit any current contractual arrangements and obligations so that the timing of its exit from a current contract coincides with entry into a new one consider carefully the effect of a syndicated procurement on the market where possible, join the syndicate at the beginning of the procurement process as this provides an opportunity to have input to the decision making process, and ensures that the Council's potential volumes are represented satisfy itself of the stability and ongoing participation of all syndicate members ensure that the proposed arrangements are commercially advantageous to Council.

Extending contract	<p>This is related to <i>like for like</i> work, goods or services. Recognition and acknowledgement of good performance is supported by Council.</p> <p>This may be done when an incumbent, selected through an open competitive process, has performed well against managed targets through the term of the contract, continues to provide value for money and it can be demonstrated the market conditions have not changed substantially.</p> <p>This principle can apply without having previously negotiated a right of renewal (RoR) in the contract.</p> <p>Factors to consider in extending a contract:</p> <ul style="list-style-type: none"> • the expected duties are precisely those enjoyed in the current relationship • the current supplier's performance • end user satisfaction • the effectiveness of the contract itself and whether any improvements could be negotiated • developments in the market • the existing suppliers competitiveness compared with that of other suppliers • the costs associated with re-tendering and the transition to a new contract.
Optimising aggregation of volumes	<p>In order to maximise the benefits of a contract, it may be appropriate to disaggregate services (unbundle) and/or aggregate volumes (bundle).</p> <p>This may be done as part of a procurement process and may also be added to or subtracted from a contract during a term contract, where additional products or services are identified to sit logically with an existing supplier or contract. This also applies to items that are purchased from a preferred supplier not under contract, bundled to become part of an existing contract.</p>
Recognise supplier intellectual property and innovations	<p>When a supplier provides innovation or intellectual property (IP) it is important to respect their innovation or IP where it can be demonstrated to be in the best interest of Council.</p>

Table 5 - Dispensation from Open Competitive Process

31.5 Evaluation planning

31.5.1 When is a formal evaluation process and evaluation team required?

Formal evaluation process is required when:

- the value of the work exceeds \$100,000 in accordance with Appendix 1
- supplier selection will not be based solely on price
- a competitive process has been undertaken
- for high/very high-risk procurements.

31.5.2 Evaluation team

Identify the evaluation team in the procurement plan. The team should be nominated early enough so that they will have sufficient time to assist in reviewing and developing the evaluation criteria and weightings when creating the competitive process documentation. Early nomination will also allow the procurement project manager or facilitator to ensure that the evaluation team members can set aside sufficient time for the duration of the project to perform their role and responsibilities. It is critical that once confirmed that all members of the evaluation team see the whole procurement through to completion.

The evaluation team is responsible for:

- supporting the Project Manager in choosing the evaluation model, criteria, weightings and scoring scale
- evaluating the submissions received
- identifying the supplier who offers best value for money for Council
- maintaining high levels of probity throughout the project
- completing full documentation and securing that within Objective.

The project manager and evaluation team need to agree on the evaluation model before the competitive process documentation is published.

31.5.3 Evaluation team selection

The size and membership of the evaluation team will depend on the value, complexity and risk of the procurement. For Lowest Price Conforming evaluations there needs to be at least two evaluators. For all other evaluations at least three evaluators are required. Additional non-voting advisors may be necessary.

It is good practice to have a selection of the following voting roles on the evaluation team:

The Project Manager and:

- a person(s) with appropriate subject matter technical expertise
- a person with commercial or financial expertise
- a person with procurement process experience.

For high value (in excess of \$350,000) or complex procurements, the Contracts and Procurement Team Leader or delegate should act as a procurement adviser to the team. The team members, as a group, must provide all the necessary subject matter knowledge and experience in evaluating competitive processes.

It is mandatory all evaluation team members, advisors and the Project Manager to complete and sign the confidentiality and conflicts of interest declaration associated with the project and to advise any change to this status throughout the project. If using external consultants to manage the competitive process, the same rules apply. The use of external consultants to manage the competitive process must be approved by the Contracts and Procurement Team Leader.

The Project Manager will manage any conflict of interest or confidentiality issues that may arise. Assistance associated with these issues is available from the Procurement Team.

Team members must be selected on the basis of providing the knowledge and skills required to ensure that submissions can be properly assessed with regard to:

- outcomes required
- technology that might be employed
- existing supplier market
- best value outcome for Council.

31.5.4 Evaluation criteria

Evaluation criteria are the specific and objective attributes used to compare submissions. They must be identified and described in terms of:

- differentiating submissions
- relative weightings or pass or fail
- a balance between price and non-price attributes.

Evaluation criteria will normally consist of:

- compliance checks or mandatory criteria scored as a pass or fail (or yes or no)
- non-mandatory criteria that participants are evaluated against.

To assist the participants in understanding what is required, you must provide a description of each of the evaluation attributes. It is best to discuss and agree on the description with the evaluation team. This will ensure each member has a good understanding of what is required and will be marking on the same criteria.

Advice should be sought in deciding the weightings and the importance of price versus quality from the Contracts and Procurement Team Leader, or someone who holds the:

- New Zealand Certificate in Infrastructure (Procurement Procedures), or
- National Certificate in Civil Engineering – Asset Management (Competitive Pricing Procedures), or
- National Certificate in Transport Agency Procurement Procedure.

31.5.5 Weightings and pass or fail requirements

The weightings chosen for non-price attributes must reflect their importance. The balance between price and non-price attributes should reflect the potential variability in the quality of goods, services or works likely to be offered by participants and best value for Council.

Pass or fail requirements may be used when criteria are critical for the successful implementation or management of the contract.

31.6 Evidence of probity during evaluation

Evaluation scoring/grading and selections must be made on the basis of the material requested and included in the response, together with information obtained through meetings, presentation and clarification.

31.7 Source and select the supplier

31.7.1 Quotations

Quotations are the preferred procurement method when procuring low value, low/medium risk goods and services. The objective is to achieve value for money. There are two types of quotation process that can be used and your selection will be determined by the procurement value and level of risk.

31.7.2 Types of quotations

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Verbal quotations	<p>Where possible, use an existing preferred or frequently used supplier. If none are available, verbal quotations provide a quick and convenient way of exploring the market and determining availability, and price for low value, low/medium risk goods or services. In summary:</p> <ul style="list-style-type: none"> • Ensure you are consistent in the description of goods/services required. We are wanting like-for-like quotations. • Two verbal quotes may be obtained for procurements up to a value of \$5,000. • It is important to have a clear, written statement of the requirements and any questions to ask before speaking to suppliers. This will help to gather the same information from across the suppliers to properly compare the goods and services. • Records of quotes obtained and decisions, including the reason for recommending and deciding on the offer selected, must be documented in Objective. • Be careful when talking to suppliers to avoid inadvertently making a verbal promise to purchase from that supplier.
Written quotations Request for Quotation (RFQ)	<p>Where possible, use an existing preferred or frequently used supplier. If none are available, written quotations follow the same principles as verbal quotations. As the value and risk of these goods or services are higher, the process and documentation must be more comprehensive. In summary:</p> <ul style="list-style-type: none"> • Three written quotes are required, where practicable, for procurement between \$5,000 to \$100,000. • The process and documentation must be more comprehensive than verbal quotations. Records of decisions, including reasons for the selection and rejection of offers, must be documented in Objective • Be careful when talking to suppliers to avoid inadvertently making a verbal promise to purchase from that supplier. • Use RFQ template and response template.

Table 6 - Types of Quotations

Where ever possible we will purchase from suppliers designated as *'preferred suppliers'* where preferred supply relationships have been established.

31.7.3 Direct negotiations

The term "direct negotiations" refers to exclusive negotiations entered into with a prospective supplier without first using a competitive process. Even for low dollar value and low/medium risk procurements, the Council procurement guidelines require staff to obtain quotes before negotiating directly with a supplier. This is to test the market and ensure the best possible value is obtained unless clear and unambiguous circumstances indicate that direct negotiations are appropriate.

Situations where direct negotiations may be appropriate include:

- the spend is of low dollar value and is for standard, frequently procured goods or services from a supplier already within the Ozone financial system (less than \$20,000), or \$100,000 for NZTA physical works or professional services projects, or
- the supplier selection process commences but only one potential supplier is identified, or
- a monopoly supplier situation exists
- the proposed suppliers track record and relationship with Council is acceptable.

Before commencing negotiations and signing the contract, the Council must be satisfied that the price paid is consistent with market values.

Note: Any estimates of fair price must not be disclosed until after the supplier being negotiated with has put forward their own estimate. A post-implementation review to assess "overall value for money" may also enhance control.

When is it appropriate to negotiate directly with a supplier?

- when the value and risk of the procurement is low and the purchase of these goods or services are on an "as-required" basis
- for low dollar value and low/medium risk procurement when you are negotiating to extend an existing contract for a period longer than originally envisaged, or to include substantially different goods or services
- when an appropriate competitive process has not produced a suitable offer and the next best option is to negotiate with the party who made the best offer (or any party who has expressed serious interest if no best offer was made).
 - Direct negotiations must not be used in these circumstances if the original process was inadequate. The negotiations should not be conducted in a way that coerces the participant with the best offer to reduce the price without commensurately reducing the scope of the contract
- when it is without a doubt that there is only one supplier who can meet Council's well-defined and justified needs.
 - Where there is any doubt and there has been no demonstration of the lack of alternative suppliers, the market must be tested. It is often prudent to test the market by calling for expressions of interest, to avoid partiality or the perception of partiality.
- when there is an unforeseen need to alter the scope of the project in a minor way and the cost of re-entering the market will outweigh the potential benefits. In these circumstances, you must be confident that an objective and appropriate delegated approval has been received.

When is it not appropriate to negotiate direct with a supplier?

- When negotiation excludes legitimate or anticipated variations to a contract, which falls within the scope of the goods, works or services. Negotiations conducted with a preferred participant in a properly run competitive process are not considered direct negotiations.
- When a contract is nearing completion and the market has not been tested for in the past three years, even if the contracted supplier was the only participant in a previous process. Do not assume that there are no alternative suppliers.
- When following a tender process in which one tender is accepted, and subsequently the project specifications are changed so significantly that in effect it is a different project.

31.8 Contract selection and basis of payment

It is noted that Council standard Purchase Order Terms and Conditions are referenced on all purchase orders. A purchase order is a contract.

Where we have commercial relationships that require extended terms and conditions, or there is higher than normal risk, a written contract is required.

In general, a contract provides a summary of what has been agreed between Western Bay of Plenty District Council and the supplier.

The contract documents:

- identify the parties to the contract
- describe the parties' basic obligations
- define which documents are included in the contract
- form the basis for administering the contract.

Documents usually included in an infrastructure contract are:

- general conditions of contract
- special conditions of contract
- schedule of prices
- basis of payment
- specification
- successful supplier's submission/tender
- letter of acceptance
- site/project specific health and safety plan
- insurance confirmation
- notices to tenderers
- tender correspondence
- minutes of meetings
- maps and drawings.

Some of these documents deserve further elaboration.

31.8.1 Schedule of Prices

The purpose of the Schedule of Prices is:

- to provide such information as to enable tenders to be prepared efficiently and accurately
- to provide prices for the proper and convenient comparison and evaluation of tenders
- to form a basis for accurate project planning
- to be used for the calculation of progress payments
- to be used for the valuation of variations.

Items of work should be grouped together in their respective asset categories in the Schedule, generally in accordance with their respective trades, and the materials and labour related to the finished work.

The Schedule of Prices identifies or locates the items of work and is not intended to be a repeat of the Specification.

Provisional items may be inserted in the Schedule to cover possible variations or additions to the contract work. The purpose of these items is to obtain rates for such work should it be required. In lump sum contracts where the quantity of work that will be required is unknown, provisional quantities may be nominated for the purpose of obtaining unit prices. Such quantities should be described as provisional and subject to measurement and adjustment on completion of the work.

31.8.2 Basis of Payment

A Basis of Payment outlines how and when the specific items or work from the Schedule of Prices are to be paid and should be included in all cases. It is important to choose the right contract payment type to ensure procurement success. The objective, when selecting a contract payment type, is to have a reasonable distribution of risk between the organisation and the supplier. It can also be used as an incentive for the supplier's efficient and economical performance.

Table 7 - Basis of Payment

Basis of Payment	Description
Fixed Price also known as Lump Sum	<p>This method is used when the scope of works is well defined and the level of cost certainty is commercially acceptable. One price is agreed on for all the work, Council has the least cost risk because the risk of higher costs is borne by the supplier. Therefore, the supplier is most concerned with the scope of work in this type of contract.</p> <p>Advantages are:</p> <ul style="list-style-type: none"> • less work for you to manage • the supplier has a strong incentive to control costs • the total cost is known at the start. <p>Disadvantages are:</p> <ul style="list-style-type: none"> • the supplier may underprice the work and try to make up profits on change or variation orders • the supplier may not complete some of the scope of work if they begin to lose money • defining the scope and deliverables takes significant effort to ensure that the potential for changes or variations is reduced or minimised • the supplier may add significant costs into the price for their exposure to risk • there is less incentive for a contractor to minimise schedule duration than is the case for reimbursable contracts • minimised quality management activities (in order to reduce costs) may result in quality problems • re-negotiation of the price may occur as fixed-price contractors are reluctant to proceed with any work associated with a change request before resolving the cost of the changes. This may have a negative impact on the schedule of the project.

Cost Reimbursement	<p>The supplier's costs are reimbursed but the Council has the most risk because the total costs are unknown. Cost reimbursement is most often used when the Council can only describe what it needs rather than what must be done. In these cases, the supplier often writes the scope of work.</p> <p>Advantages are:</p> <ul style="list-style-type: none"> • simpler scope of work means less work to write the scope • the supplier tends to add in less to the price to cover risk. <p>Disadvantages are:</p> <ul style="list-style-type: none"> • may need to audit the supplier's invoices • need to place more effort into managing the supplier and contract • supplier has a moderate incentive to control costs • the total price is unknown.
Cost Plus Fixed Fee or Percentage Fee	<p>Council pays for all costs incurred by the supplier plus either a fixed fee or a fee based on a percentage of the costs incurred by the supplier. This is commonly used when it is too difficult to sufficiently define the scope of work for a fixed contract approach. Council could use a fixed fee based upon an estimate of the value for goods and or services that may be included in the contract. This fee would only change when an approved change to the contract or variation occurs. Alternatively, Council could use a percentage fee which is calculated by multiplying the agreed percentage times the actual cost of goods and/or services.</p> <p>Advantages are:</p> <ul style="list-style-type: none"> • requires less time for the procurement process activities that must be completed prior to signing a contract. <p>Disadvantages are:</p> <ul style="list-style-type: none"> • one of the most difficult contracts to administer • requires extensive management of the contract • changes in conditions have little impact on reimbursable contracts because the contractor or supplier is reimbursed for any additional costs that are incurred in implementing a change.
Cost Plus Incentive Fee	<p>Pay suppliers actual costs plus either an agreed upon fee based on performance or a bonus for beating the incentive. In general, performance incentives are for schedule, cost or quality objectives. Incentive fees can also be combined with fixed fees.</p> <p>Advantages are:</p> <ul style="list-style-type: none"> • can be used to motivate the supplier to control costs and strive for outstanding technical or schedule performance • can be awarded faster than fixed-price contracts and are most frequently used for service contract work <p>Disadvantages are:</p> <ul style="list-style-type: none"> • it is very important that they are selected carefully, structured well and administered effectively to be able to achieve a good outcome.
Measure and Value also known as Time and Materials or Unit Price	<p>This is a combination of fixed price and cost reimbursement and is a common method of payment for civil works contracts. It should be used to schedule identifiable phases of the work that are measurable, such as earthworks volumes, base course volumes, seal areas etc.</p> <p>The time and materials component is generally applied to day works where scheduled items are not applicable. Price is on a per hour or per item basis and has elements of a fixed price contract (fixed price per hour or item) and a cost reimbursable contract (in the material costs and the fact that the total cost is unknown).</p> <p>The contractor is paid for in actual labour hours at hourly rates plus materials at cost. The rates typically include direct and indirect costs and profit. It is usually used for small value works. Council bears most of the cost risk.</p>

	<p>The time and materials/unit price component is appropriate when the Council wants to be more in control, when the scope of work is not known or is incomplete, as well as for short-term services. This is appropriate when work can be well defined but the total quantities are uncertain.</p> <p>It can be used in an emergency to begin work immediately when a scope of work is not written or completed.</p> <p>It is not suitable for long-term projects as there is little incentive for the supplier to complete the work.</p> <p>Advantages are:</p> <ul style="list-style-type: none"> • when the work needed has to be started quickly as it is quick to establish. <p>Disadvantages are:</p> <ul style="list-style-type: none"> • the supplier's profit is in every hour billed • supplier has little incentive to control costs • requires day to day supervision.
<p>Target Price also known as Purchaser Nominated Price</p>	<p>This is a fixed price contract where at the start of the contract the client and supplier agree to the scope of work for the target price.</p> <p>The supplier bears most of the cost risk though both parties need to be clear about the outputs/outcomes expected in return for the fixed price.</p> <p>This method is used when the client has a fixed budget and the scope of works is negotiated with the contractor to fit the budget (target price). Used when it is difficult to quantify the scope of works or service. A target price contract is used in a competitive tender where the price provides an indication to competing bidders of the scope of Council's expectations and they are able to tailor their offers to meet the Council's expectations.</p> <p>Target price is commonly used within Council for minor consultancy engagements when the Council is seeking innovation in the proposals.</p> <p>It is also used where investigations are possibly open-ended and may involve unspecified consultation as a component of the project or rainfall catchment (hydrology) survey where the quantity of the outcome is a function of the input. The project manager has to be able to define the outcome of the project.</p> <p>It is never used for procuring standard materials, engineered materials or equipment</p> <p>Advantages are:</p> <ul style="list-style-type: none"> • does not require as much detailed specification of the scope of work • can put onus on consultant to deliver <p>Disadvantages are:</p> <ul style="list-style-type: none"> • may not provide strong incentives for performance.

31.8.3 Specification

The Specification is the written technical description of the work, which is complementary to (but not conflicting with) the pictorial descriptions and notes given on the drawings.

When writing the Specification it is customary to divide the work into distinct sections or trades (e.g. scope of work, list of drawings, preliminaries, drainage, pavements, concrete, joinery, fencing etc.) with clauses written to cover the materials to be used, and if necessary the method of work to be used, the tests to be satisfied, how defective work should be remedied, and the method of measurement and payment. Reference can be made to other documents (such as New Zealand Standards), but this should not be done indiscriminately.

The Specification is an integral part of the design, as are the drawings. This is often overlooked with the result that inappropriate or outdated specifications are selected or replaced by a few brief notes on the drawings. Sufficient time should be spent specifying the quality of the work, as it is not possible to price, build, test or measure the work correctly unless this is done.

31.8.4 Special Conditions of Contract

The special conditions are restricted to modifications and qualifications of the general conditions such as type of contract, completion date, bond and insurance requirements.

31.8.5 Ozone financial system set up - Purchase Order versus Contract modules

Our Financial system, Ozone, has two primary modules where we can establish a record and make payment from. The two modules are:

1. Purchase Order system
2. Contract module system

Use the following table to identify the best module for paying via:

	Create a Purchase Order in Ozone	Create a Contract profile in Ozone
Value	Normally less than \$100,000 in value	Normally greater than \$100,000 in value
Source	From a written or verbal quotation or from a schedule of prices	From a written contract document (theirs or ours) that indicates a start finish date, a level of commercial complexity with associated terms and conditions.
Terms and conditions	Purchase Order Terms and Conditions apply	The terms and conditions of the written contract.
Term	Less than one year	May detail an extended commercial relationship of greater than one year.
Payments	Expect up to two or three payments to the total amount	Expect multiple payments, to a documented total value.
Renewal	No	Indicates potential renewal options
Exceptions	For a Community Grant (which may have a written contract) indicating a single payment, create a Purchase Order	For a Community Grant (which may have a written contract) indicating multiple payments and is over \$10k. Pay by Contract in Ozone.
Exceptions	For a Short Form Agreement indicating a single payment and variations are unlikely create a Purchase Order.	For a Short Form Agreement indicating multiple payments or possible future variation and is over \$10k. Pay by Contract in Ozone.

Table 8 - Purchase Order vs Contract

31.8.6 Choosing a written contract format/template

The form of the written contract will depend on the value and complexity of the procurement 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 either party assumes risk in the performance of the contract.

For low/medium dollar value and low/medium risk procurements, the contract may be as simple as completing a purchase order. By using a purchase order, the supplier will be bound by Council's Purchase Order Terms and Conditions.

For high value and high/very high-risk procurements where you use a competitive process, you will need to choose the appropriate contract at the start of your procurement. An indicative form of contract should be included in your tender or proposal documentation.

The formal contract proposed must be detailed in the procurement plan. The level of contract preparation required will depend on the complexity or size or value of your procurement. Council has a suite of standard contract templates which should be used.

Where a contract needs to be created for a unique supply arrangement or where any of the standard contracts require a change, the Contracts and Procurement Team Leader (or delegate) must be involved.

The following table serves as a guide to help you choose an appropriate contract. Contact the Contracts and Procurement Team Leader if you have any questions or uncertainties. The templates are available in Objective and once drafted, must be approved by the Contracts and Procurement Team Leader (or delegate).

31.8.7 Contract templates summary

Contract templates must be obtained from the Contracts Administrator or Procurement Team. This ensures consistency, completeness and transparency in the management of Council's contracts.

Appendix 3 details available contract templates.

Note: All contracts must have a corporate contract number, provided by the Contract Administrator.

31.8.8 NZS 3910: 2013

For major physical works projects, unless agreed to otherwise by a Group Manager and the Contracts and Procurement Team Leader, you must use a NZ Standards templates e.g.:

- NZS 3910:2013 Conditions of Contract for Building and Civil Engineering Construction
- NZS3916:2013 Design and Construct
- NZS3917:2013 Fixed Term

It is not necessary for NZS 3910 to be incorporated into the contract documents other than by reference.

Anyone involved in the design, administration or supervision of physical works contracts should make themselves fully conversant with NZS 3910:2013.

32. CONDUCT AND MANAGING THE COMPETITIVE PROCESS

32.1 The invitation to tender

When preparing your invitation package, you should consider what information is required to ensure that the prospective suppliers understand your requirements in terms of both the outcomes to be achieved and the procurement process.

Tender documents must be developed in consultation with the Contracts and Procurement Team. This ensures adequacy, consistency, completeness and transparency in Council's approach to the market.

32.1.1 Contents of the invitation package

Depending on the procurement method you follow, you will have different requirements to include in your invitation package. The following documentation is required for competitive tender or proposal processes:

- covering letter to all prospective suppliers (Closed invite only)
- tender document
- response template
- specifications and supporting information invitation to tender or proposal
- proforma contract, see contract templates summary at 2.9.6

32.1.2 Guidelines on advertising and distribution of the invitation package

The Contracts and Procurement Team on conjunction with the Group Manager will ensure advertising for the competitive tender or proposal process is appropriate for the target market.

To fulfil our best practice and probity requirements Council use the GETS website to openly advertise all opportunities.

Government Electronic Tenders Service (GETS)	GETS is a free government online portal allowing the public sector to publish information with the following key features: <ul style="list-style-type: none">• to advertise procurement opportunities and related information• meets all requirements associated with 'open' public consultation and probity• receive GETS activity reports on suppliers who have reviewed or downloaded the attachments of respective tenders or proposals.• GETS is the preferred method of advertising.
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Table 9 - Government Electronic Tender Service (GETS)

32.1.1 Advertising and Contract numbers

Approaches to the market that will ultimately form a contract must have a unique contract number. This is allocated by Contract Administrator. This system is used Council wide and forms the basis for the creation of the formal contract file.

32.1.2 Bonds

A contractor bond is a formal undertaking by a third party to pay up to a specified amount to the principal under a contract if the contractor defaults under the contract. Typically bond security documentation is provided by the bank.

Generally taking a bond is a good idea where the contractor has the ability to do damage to the Council or cost the Council money in some way – being more than just not providing the service to the required level. If the likely response to a major default is to merely terminate the contract and find a new provider then a bond is less relevant (but even in that case the issue does remain as to whether council would want to be covered for re-tendering costs).

Bonds can be a useful risk management technique. Bonds are not essential for service contracts and in some service areas may be unusual. Taking bonds is standard practice for construction contracts.

Another factor is the nature of the service provider and their capacity to provide a bond. Are bonds a regular part of their business or does the provision of a bond pose a problem? This is often the case for low capital or 'mum and pop' businesses – given that bond arrangements constitute a utilisation of balance sheet capacity. Bonds would be less appropriate for contracts where the general industry approach is not to provide them.

Similarly bonds would be inappropriate for modest value and/or modest risk contracts where the cost of providing the bond outweighs the advantage to the council.

As a general rule bonds are appropriate for construction contracts New Zealand Standard Contracts (NZ 3910, 3916, 3917) and service contracts where if the service is not provided properly the council would need to spend money remedying the work in error (as opposed to merely paying someone else to carry on). Bonds can also be appropriate for contracts where if the contractor fails to provide the service properly council will suffer a loss under another third party contract that is dependent on the outcomes of the first contract.

The bond shall be between 10% – 15% % of the contract value or other amount as specified by the appropriate Group Manager upon consideration of the related risk. Nonetheless, no bond shall be greater than the reasonably expected loss in the event of the contractor defaulting.

When required Bonds shall be in the form of NZS: 3910:2013 Third Schedule. The surety shall be a bank, insurance company or recognised lending company. Alternatively, the contractor may provide a cash bond.

Where the bond is not required, or the basis of the bond calculation is other than 10%, the engineer must agree and have the manager with suitable delegation approve the rationale for such.

Only contractor performance bonds, which comply fully with the requirements of the Council standard Form of Contractor's Performance Bond, should be accepted from contractors. These can only be discharged upon satisfactory fulfilment of the requirements of the contract as evidenced by the issue of the Defects Liability Certificate. Performance bonds with expiry dates should be rejected.

32.1.3 Tender and document deposits

Refundable tender deposits or document charge are not required.

32.1.4 Insurances

Insurance is one way to transfer financial risks in a project. Insurance does not remove risk. It provides a fund that the affected party can resort to should the risk materialise.

32.1.5 Public Liability cover (Third party cover)

Public liability insurance covers contractors for damage to people or property during a construction project. It doesn't cover the contract works.

Generally council require its contractors (including consultants and other service providers) to hold third party liability cover (also known as public liability cover) in relation to third party claims arising from the carrying out of the contract. Third party cover is not unduly expensive.

Third party cover typically covers the contractor for liability to third parties arising from the performance of the contract. In most instances there is potential for council (as principal) to be implicated in such claims so it is usual to require council to be covered under the policy as a co-insured.

32.1.6 Motor vehicle third party

Motor vehicle third party insurance covers third party risk arising through the use of motor vehicle. Motor vehicle third party cover should be required where the contractor uses motor vehicles in the performance of the contract.

32.1.7 Contract Works

Physical works should be covered under a contract works policy (also known as contractor all risks insurance) providing cover for loss or damage to the contract works. It covers damage to the works being undertaken under the contract. It doesn't cover damage to existing property or to contractor's plant and equipment.

Usually the construction contractor is required by the contract to hold contract works cover. Note that most material damage policies exclude damage arising from carrying out contract works.

The cover should be for the value of the works plus other add-ons such as escalation, demolition, claim preparation etc.

Note that issues can arise as to insurance cover for damage to council assets not included in the works (e.g. where work is carried out on part of an existing building). The 'other' assets will usually be excluded from a contract works policy and damage to existing assets arising from contract work is usually excluded from normal building loss or damage policies.

This risk can be covered under third party policies but cover under those policies may be inadequate. Consideration should be given as to potential loss exposures re existing assets and where required advice taken from council's insurance advisers to ensure all relevant risks are covered.

Where works which include alterations or extensions to existing assets are involved the Contracts Work it can be appropriate that the Contract Works cover is taken out by Council. This is to avoid conflict between insurers and to retain clarity over what is insured and for what. These arrangements should be clearly covered in the contract.

Sometimes special arrangements are appropriate which can include having council arrange the necessary project insurances itself.

Note that the Insurance Council has issued a warning re contract works policy wording difficulties relating to working on roads. The Insurance Council has issued two suggested clauses for inclusion in construction contracts that involve working on roads (Optional Memoranda No.220 – Road Construction and No. 230 – Road Construction). Refer to the council's insurance advisers or brokers for further information on these memoranda.

32.1.8 Professional indemnity

Professional indemnity insurance (PI) covers contactors (mainly consultants) for damages claims arising from the negligent provision, errors and omissions. Professional indemnity cover is usually only available in relation to the provision of professional services or services providing intellectual outputs (e.g. design services).

If a consultant is found liable, the insurance will cover them for:

- legal costs
- any damages awarded to put the problem right.

A council would usually require all consultants providing professional services to hold professional indemnity cover. Professional indemnity insurance is expensive. While it is important to consider the benefits of PI cover re the management of project risk caution is needed before requiring excessive cover amounts as these costs will inevitably be passed on to the council. PI cover is usually seen as a partial risk moderation technique. Requiring PI cover for the maximum potential damages for negligence for major projects is usually not warranted. Typically PI cover requirements are in the order of \$5m to \$10m, but this can be increased for major projects or where the supplier is a major firm and holds a larger cover as a matter of course.

Note that the contractor or consultant's risk is not limited by the amount of cover required so theoretically the consultant remains liable for all losses arising from its negligence. However in practice the contract will also limit liability to the same amount. Both issues are normally dealt with in tandem.

32.1.9 Statutory liability cover

Statutory liability insurance covers liability for fines and defence costs in relation to statutory obligations.

Statutory liability cover is not typically required under council contracts but can be relevant where the contract performance involves performance of (or exposure to) statutory obligations.

Cover amounts should be determined taking both risk and cost into account.

32.1.10 Fidelity and theft cover

It is possible to insure fidelity and theft risks, sometimes through extension of Professional Indemnity policies. Fidelity and theft cover can be appropriate where the honesty of the contractor and its employees is an issue (particularly where significant amounts of council money are collected on the council's behalf).

32.1.11 Environmental Impairment cover

Environmental Impairment insurance covers some pollution and environmental damage risks. Environmental Impairment cover can be appropriate where a contractor is managing a facility or providing a service for council that has the potential for significant environmental damage or clean-up costs following default, such as operating a sanitary landfill or a sewage treatment facility.

32.1.12 Plant and equipment cover

Plant and equipment cover is a usual feature of construction contracts and can be relevant to any contract where the contractor utilises plant and equipment in the performance of the contract.

Cover amounts are more modest, often in the region of \$50,000. Note that the essence of the requirement is to ensure the contractor has adequate insurance in place to enable replacement of damaged or lost equipment to allow completion of the contract. Where the replacement cost falls well within the contractor's financial capability the insurance is less relevant. Other than for construction contracts, where the requirement is usual, you would normally only insist on plant and equipment insurance for contracts requiring specialised equipment or in special circumstances.

Certificates of Insurance are required to provide proof of insurance cover arranged by the contractor.

It is important that the officer responsible for letting the contract understands the conditions requested in the Certificates of Insurance and the reasons for them. Officers should be aware that policies of insurance are contracts in their own right and they do not cover all risks.

Be very careful to ensure that there are no **'hold harmless'** (contracting out of all liability) clauses in standard contracts coming from suppliers

That contractors do not try to cap their liability. Some contractors will cap their liability at the same level as their liability sum insured – This is reasonable. However, some contractors (particularly those such as engineers or architects) often have a much lower liability cap in their contract and it might be tied to the amount of money you are spending with them. For example, engineering contractors often have a clause in their contracts seeking to cap any liability to five times their invoiced fees to you. So if you spend \$25,000 in fees with them, and they cause a loss, their liability will be capped at a maximum of \$125,000 regardless of the amount of the loss you have suffered and regardless of the amount of liability insurance they have. These types of liability caps must be avoided.

The decision as to whether insurance of the physical works is required is at the discretion of the officer letting the contract and in consultation with the Contracts and Procurement Team Leader

32.1.13 Recommended Insurance Cover

Assessing the nature of the work or services being undertaken will help determine the risk exposure and the type and level of insurance cover that may be required by the contractor. As there are many exposures that exist, and these are not always obvious, your organisation has set recommended PL and PI insurance cover in its Contract for Services.

Insurance type	Recommended	Minimum	May be waived if...
Public Liability (PL)	\$10,000,000	\$2,000,000	Provides cover for business against the financial implications if they are found liable for loss or damage to other people's property, or cause illness or injury that is not covered by the Accident Compensation Commission (ACC). Waived if advice only is provided to Council without being on Council property OR the risk assessment justifies this. Important: Generally, this insurance should not be waived.
Professional Indemnity (PI)	\$10,000,000	\$2,000,000	Advice is not provided (they provide services only) OR Council does not intend to rely (and act) on the advice given / work provided.
Contract Works (CW)	Contract Value	Contract Value	For repair or redoing the work in progress if it's damaged by an insured event like fire, flood, storm, vandalism or theft.
Environmental Impairment cover	Project specific	Project specific	Environmental Impairment Liability (EIL) Insurance — a specialized insurance policy that covers liability and sometimes clean up costs associated with pollution.
Vehicle Plant and equipment cover	\$500,000	Insured Value	An amount to cover replacement of vehicles undertaking the work Only insist for this cover where specialised equipment is used or in special circumstances

Table 10 - Insurance Types with indicative value

Reducing the PL or PI cover below these recommended levels is only justified in certain limited circumstances and may expose us to unacceptable risks and financial loss. A risk assessment and the valid business reasons for any reduction or waive of cover must be documented and authorised by the appropriate manager in Council. Our contracted insurance broker, Aon are available to discuss individual terms and provide professional advice.

Where work is to be undertaken on Council property, our Insurance Broker must be advised via the Council's insurance officer and an extension to Council's insurance of the property shall be completed for the particular work.

For those persons, other than independent contractors or consultants, who may be undertaking work at the direction of Council (not-for-profit organisations, seconders and volunteers are good examples), the work performed will be covered under Council's public liability insurance.

Run any draft contracts of any size past the Contracts and Procurement Team Leader or appointed insurance advisor (AON NZ Limited) for clarification on any matters or terms contained in the forms or contract insurance generally.

All suppliers and contractors undertaking work or services in medium to high-risk activities are required to hold SHE accreditation. SHE accreditation is addressed in the tender and contract documents.

32.2 Communication with tenderers

It is essential to ensure all communications within the proposal or tender submissions process:

- do not disadvantage any prospective supplier
- are able to show the reasons for any decisions made
- comply with the conditions of submission and require the same of prospective suppliers
- respect the privacy of prospective suppliers and the confidentiality of their submissions and intellectual property.

32.2.1 Notices / GETS Addenda

The answering of enquiries during the tender period should be restricted to one person only, usually the Project Manager. All answers to enquiries are to be written and sent to all tenderers as a Notice to Tenderers. However, considerable care should be taken to ensure that the documents are sufficiently clear and informative to allow tendering without questions. Ideally, there should be no need for any verbal communications with tenderers prior to acceptance.

Every notice to prospective tenderers must:

- be consecutively numbered and approved by the Project Manager and respective Procurement Team member
- be issued in writing at the same time to all prospective suppliers
- be acknowledged in writing by each prospective supplier
- have a copy filed on the project or contract file
- be added to any invitation documents still to be issued.

If appropriate, prospective suppliers who have already submitted documents must be given the opportunity to submit an addendum to their original submission. If it is too late for prospective suppliers to adjust their submissions, then the submission time should be extended or the issue should be resolved in the evaluation or negotiations period depending on the matter's significance. The conditions of submission should specify how these matters will be managed.

32.2.2 Clarification meetings

Meetings and site visits with prospective suppliers should be held prior to the tender submission. When a meeting is required, ensure that:

- an agenda is issued
- an attendance record is taken
- the meeting minutes note that the supplier decision has not yet been made
- other prospective suppliers and their submissions are not discussed.

Prospective suppliers may make site visits. If this is not specified in the conditions of submission and one prospective supplier wishes to visit the site, then you may at your discretion consent or decline the request. If you consent, a notice should be issued to all prospective suppliers inviting them to visit the site, to ensure fair and equal treatment.

32.2.3 Supplier briefings (site meetings)

Where participant briefings are a formal part of the procurement process, the competitive process documentation would normally include this requirement and how the participants will be advised of the briefing.

Participant briefings should be considered for complex or unusual procurements that are of strategic value to the Council's core business, or where the relationship plays a vital role and the Council need to explain their culture and strategic direction. The briefings could occur as part of the release of the competitive proposal documentation, after the release or as individual participant briefings.

Any briefing as part of the release of the competitive documents should be advertised. This process does not give the participants time to familiarise themselves with the requirements and should only be used when the procurement is straightforward and is easy to define.

A briefing after the release of the competitive documents is useful when the procurement has more complex requirements. It gives the participants an opportunity to review the requirements and arrange for the appropriate people to attend the briefing.

Individual participant briefings give the participants an opportunity to tailor their questions and ensure they have a clear understanding of the requirements. This can be a very time-consuming process and you need to ensure that all participants receive the same information on an equal basis so that no participant receives an unfair advantage. This approach should only be used when the requirements are very complex. Time should be provided before and after the briefing to ensure the participants can familiarise themselves with the requirements and respond to any issues raised.

32.2.4 Briefing record keeping

Participant briefing records must include at least:

- the names and positions of the people attending
- the date, location and time (start and finish) of the briefing
- the presentation material
- a record of questions asked and answers
- any amendments to, or clarification of, the competitive process documents by way of a formal written addendum.

32.3 Tender process

The following section outlines the procedures to be followed during the various stages of processing tenders.

32.3.1 Submission process

Request for written quotations may be submitted electronically directly to the project manager, the generic procurement email address (procurement@westernbay.govt.nz), or for larger files, a ShareFile folder.

All other responses are to be submitted via the Tender Box, Council office, Barkes Corner Cameron Road Tauranga.

You should request as many hard copies responses as there is evaluators, together with an electronic copy held on a USB stick.

Council does not offer an E-Tendering function.

32.3.2 Tender closing

Tenders will usually close in the Tender Box at the Council main office at Barkes Corner at 5:00 pm on the nominated working day.

The tender box is located in the Customer Service Centre, Barkes Corner, Tauranga. The box is to remain locked at all times between the calling for tenders and the closing of tenders.

Customer services staff will annotate each parcel with the date and time received plus signature.

32.3.3 Late tenders or proposals

Although Council reserves the right to extend the tender period allowed for the submission of a tender at its sole discretion, the Council principle will be to disqualify late tenders unless there are exceptional circumstances where the tenderer is unable to deliver the tender on time. In this instance, the Project Manager will obtain Contracts and Procurement Team Leader endorsement and approval from the Chief Executive Officer with appropriate written notification to accept a late tender.

Late tenders or proposals should only be accepted when:

- there were circumstances outside of the control of the tenderer that prevented the achievement of receipt by closing time
- there is no possibility of unfair advantage
- the participant has no knowledge of the other tenders or proposals
- the late tender conforms in all other aspects to the criteria set out in the competitive proposal documents
- the tender is receipted into the Council tender box.

Electronic RFQs will only be accepted when stated in tender documents.

If late queries are significant, then special arrangements may include:

- extending the period for receiving submissions
- giving those who have already submitted documents the opportunity to submit an addendum to be read with their original submission as long as this does not create an unfair advantage over the other participants.

32.3.4 Tender opening

Tenders will not be opened in public.

The tender box shall be opened at the time and place specified in the RFx. Tenders must be opened in the presence of:

Two of the below

1. Contracts and Procurement Team Leader
2. Contracts Administrator
3. Procurement Specialist

Or one of the above and one from below

4. Group Manager or Departmental Manager nominee
5. The Procurement Project Manager
6. Pre-approved evaluator.

All conditions of the tender and/or contract must be adhered to.

Where there is a significant breach of the tender conditions, the tender shall be invalidated. Where there is a doubt regarding the significance of the breach of the matter, refer it to the Contracts and Procurement Team Leader for a decision.

32.3.5 Cancelling a tender or proposal process

Cancelling a competitive process should only happen in exceptional circumstances after seeking advice from the Contracts and Procurement Team Leader.

Below are some circumstances that may lead to cancellation:

- all tender or proposal documents received are non-compliant
- there has been an unforeseen and significant change to the goods or services being sought
- a significant probity concern has developed during the process which may create a risk of legal action.

32.3.6 Confidentiality of tenders

As a general principle, Council has an obligation to tenderers to protect both commercial details and intellectual property contained in tenders. This obligation must be balanced against the responsibility for transparency of decision-making processes. No information relating to tenders received may be disclosed prior to award of a contract.

In responding to requests for information (either written or oral) on prices received, the name and price of the successful tenderer, and the other prices received, can be disclosed for lowest price conforming process once the tender process has been concluded.

The following information can be disclosed once the tender process has been concluded:

- a. Name and price of the successful tenderer
- b. The range of scores
- c. The total score of the tenderer requesting the information.

32.3.7 Storing submissions

For the duration of the evaluation period, submissions must be stored in a secure place which only the evaluation and procurement teams can access.

This is required to ensure respect for:

- the confidentiality and intellectual property of submissions
- probity assurance.

If evaluation team members wish to take the submissions away to read, it is the responsibility of the Project Manager to ensure the evaluation team keep the submissions in a secure place.

Electronic documents will be held in a secured file within Objective. Only project specific people will have access to these project files, including the:

- Procurement Team
- Project Manager
- Evaluators
- Group Manager
- Chief Executive Officer.

For Lowest Price Conforming evaluation, only the lowest price tender will be available to the evaluation panel. All other proposals will be held in a secure file visible only to the Procurement Team.

32.3.8 General procedures to be followed for processing tenders

By the person or persons nominated by the relevant manager to undertake the evaluation process (including consultants):

1. Prior to commencing the evaluation process, all members of the evaluation team are to sign declarations as to any, actual, potential or perceived conflicts of interest. This is done by signing the standard conflicts of interest and confidentiality document. The manager of the evaluation process must ensure evaluation team members are aware they have an ongoing obligation to declare any subsequent conflict of interest that may arise.
2. Record opening details and comments.
3. Acknowledge by email the receipt of tender documents. See template document.
4. Ensure an electronic version of all proposals is filed into objective.
5. Tender receipt document for each proposer filed in objective.
6. The evaluation team or person, shall then:
 - eliminate unrealistic tenders
 - check the tender has been properly completed
 - check that the tender conforms to the requirements of the Request for Tender documents
 - check on Tenderer's references, make a file note of all reference checks and ensure these are kept on the project file
 - check on Tenderer's credit rating (following the requirements of the Privacy Act 1993)
 - determine if alternative tenders have been allowed for in the Request for Tender document.

32.3.9 Clarifying submissions

During the evaluation, it may be necessary to clarify aspects of the responses that are unclear or have errors and/or items that have been tagged. It is acceptable to contact the participants to do this, however, it is ***imperative that a record of all communications be kept*** to ensure fairness and to preserve the integrity of the evaluation process. It is expected that this process does not provide the participant with the opportunity to improve their offer in a way that they would gain an unfair advantage over another participant.

Where a flaw in the competitive process documentation is causing the error, uncertainty or tags, it is necessary to communicate this to all participants. It may require the process be restarted.

One person on the evaluation team (e.g. the project manager) must be appointed to manage all communication aspects in the evaluation process. Questions from suppliers should only be asked to give clarification, not to provide them with the opportunity to improve their submission.

Where a submission is priced abnormally low compared to others, the submission should be scrutinised to determine:

- whether the participant has included all costs associated with providing the goods or services
- whether the price is sustainable
- whether the participant has proposed a new or innovative way of meeting the requirements that enable the reduction of the costs.

32.3.10 Checking references

The objective of checking references is to obtain factual information about prospective suppliers:

- technical expertise
- financial status
- management skills
- track record in delivering results and managing health and safety.

Reference check records must include:

- the name of the prospective supplier being checked
- the name and position of the person checking the reference
- the name, position and company of the referee
- the questions asked and the responses obtained
- confirmation that confidentiality has been assured.

The Project Manager will nominate one person to coordinate reference and due diligence checks.

32.3.11 Interviews and presentation

If interviews or presentations are to be held, it needs to be stated in the RFx. Consider whether presentations will be invited and the way the evaluations will be scored. All prospective suppliers must be given equal opportunities to clarify and provide additional information. A record should be kept of both the before and after presentation scores as well as the reason for the differences. After each interview or presentation is completed, the evaluation team should review the participants' score and agree on the final ranking.

All interviews or presentations should have:

- the same agenda
- the same time allotted
- questions which have been prepared in advance
- an audience for the presentation which has been made known to the participants.

No comments should be made during interviews or prospective supplier presentations that could be interpreted as:

- promises
- representations by Western Bay of Plenty District Council
- altering the meaning of the invitation package.

Interview and presentation records must include:

- the name and position of all people attending
- the date, location and time (start and finish) of the interview or presentation
- a list of the prepared questions asked in interviews
- a record of the prospective suppliers' answers to prepared questions
- any electronic media recordings created during the interview or presentation
- all presentation documents submitted by the prospective suppliers.

32.3.12 Errors and omissions in the competitive process documentation

One of the most frequent difficulties in tender evaluation is how to deal with errors and omissions, especially when these occur in the price.

Errors can arise from many sources:

- error in the extension of rate and quantity to price
- omission or double counting of schedule items
- omission of contingency
- typing, arithmetical or carry-forward errors
- misunderstanding or misinterpretation of schedule items.

If arithmetic errors are found in the prospective supplier's price or costing details, the prospective supplier must be given the opportunity to:

- confirm the total price or cost as stated in the submission
- make corrections
- withdraw its submission.

If the total price or cost is allowed to stand, then adjustments to the schedules of rates or lump sum prices making up the total must be agreed with the prospective supplier.

Another common problem arising with tenders is incomplete information. Often something specifically asked for in the competitive process documentation is not supplied or only partially supplied. Practices on handling this can vary. The evaluation team can make a judgment call on whether asking for the information will compromise the process. They need to consider if allowing extra information to be added later is unfair on the other participants, as the offending participant is effectively given extra time to complete their submission.

Asking for extra or missing information is not the same as seeking clarification of the information submitted. Clarification of the information provided is permitted. Care is required as the boundaries between the two issues are sometimes blurred. The test, which the evaluation team should always apply in marginal cases is: "does this unfairly advantage one participant over any or all others?"

32.3.13 Evaluation

The procedure for evaluating tenders and proposals will vary depending on the nature of the procurement. In simple evaluations, it is possible for the evaluation team to meet and complete a team evaluation.

For high value and high/very high-risk procurements where a two-envelope method is being used the price envelope remains unopened and is securely stored to ensure that the price does not influence the evaluation of any non-price criteria.

In order for the process to have credibility, it is essential that all team members individually read and evaluate the tenders. They then grade the non-price attributes noting their overall rating for each attribute. Each team member should record the reason behind their attribute grade allocation. . It should be noted that if the tender evaluation was to be challenged, the individual markings of each team member are not discoverable in court. Instead, the courts will check the robustness of the evaluation process used. The best evaluations come from a meeting of minds, not from an individual evaluation.

The objective of the evaluation exercise is to select the best supplier. Do this in a way that is repeatable, rational, transparent and auditable. Discussing the scores and reaching a team consensus is preferable to averaging the scores.

32.3.14 Alternative tender proposals

Note: Alternative tender proposals are not usually accepted unless specified in the tender documents.

- a. Tenderers may submit alternative tenders provided that they submit a base or conforming tender. Alternative Tenders must be clearly labelled "Alternative Tender" and outline in what respect it differs from the original method, form or materials specified in the Tender Documents with sufficient detail to enable evaluation, and the Price must be "certain".
- b. Tenderers may submit alternative tenders based on alternative contract arrangements, propose different materials or methodologies, or a change in the processes or plant outlined in the tender documents. Alternative tenders are normally submitted when a Tenderer believes they represent a saving in price, or whole-life costs while achieving the same overall result.
- c. Alternative tenders will be evaluated for design, construction and process acceptability and will be assessed for cost difference against the "best" conforming tender.
- d. If the alternative is based on documentation provided by Council that has been made available to all tenderers, and it is considered to be acceptable in principle based on design, construction and process methods, then it may be treated as acceptable tender and ranked accordingly.
- e. If, in producing an alternative tender, a tenderer has made assumptions which do not comply with the constraints specified in the tender documents but which upon review by Council are judged to be acceptable, then the Project Manager is to consider what effect the change in the constraints could have on the other tenders and whether it is appropriate for the other tenderers to be given the opportunity to submit revised tenders in accordance with the changes.

Tenderers will only be requested to consider the impact on their bids where the change in constraint is considered to be significant and would not inadvertently disclose the other tenderer's proposal. The approval of the submitter of the alternative tender to initiate this course of action is to be requested prior to contacting the other tenderers.

32.3.15 Evaluation of tender tags

Submissions may become non-conforming for a number of reasons. The most common reasons are insufficient or missing information, unsatisfactory insurance arrangements, or tags. To reject all incomplete or tagged submissions is not always in the best interests of either party. Where a response is incomplete or tagged, the missing information can be requested or the tag clarified as long as it does not create an unfairness or disadvantage to the other participants in the process.

The following are guidelines for evaluating tender tags:

- a. Tender tags or conditions are to be identified for each tender and categorised as either "contractual" or "financial". Contractual tags will relate to a tenderer's concerns over the conditions of contract, contract period, liquidated damages, bond provisions, indemnity and insurance provisions and the like, and will generally have legal or risk implications and may be difficult to readily "price out". Financial tags are generally able to be "priced out".

After identifying the apparent lowest tender, a detailed analysis of the effect of the tags on their respective tenders is to be carried out starting with the lowest tender. It is the TET's responsibility to check all those details and make adjustments to the price used to calculate the pricing score.

- b. TET's in their evaluation of the lowest tender total price including tags, must next consider the next lowest price tender with tags to confirm it's price position.
- c. It is not necessary to carry out this detailed evaluation on the higher tenders provided the overall effect on the order of tenders can be identified. A summary schedule of tags is to be prepared, including comment on the effect of each tag on the tender price and/or contract conditions, wherever possible.
- d. Unless a tag is clearly based on valid reasons, the initial approach should be to request the tenderer to withdraw the tag without changing the tendered price. This approach may be made to any or all of the tenders as necessary. Should any tenderer decline to remove the tag or attach a price to its removal, then it should be documented as a tag, priced where possible, and put aside as a negotiating point in the event of that tender being selected as the lowest preferred tender.
- e. Any tags which result in the tender being deemed non-conforming in terms of the Request for Tender documentation, and which the tenderer declines to withdraw, may result in the tender being excluded from further consideration. Prior to making this determination, the implications of rejecting the tender on the grounds it is non-conforming – having due regard for the conditions of tendering – should be discussed with the relevant Group Manager or Contracts and Procurement Team Leader who will make the final determination.

32.3.16 Pre-acceptance meeting

A pre-acceptance meeting may be held with the recommended supplier to ensure that all aspects of the submission are clear. This is to ensure the critical elements of the submission are still valid and have not materially changed from the evaluated submission.

The matters to be discussed could include:

- personnel
- other resources
- timing and availability
- the supply of materials
- work methods to be employed
- completion of insurance or indemnity confirmation forms. The contract must not be signed until the required insurance confirmation forms have been received
- a contractors performance bond. If the contract is for physical works and requires a performance bond, no contract payments can be made to the supplier until the supplier's contractors performance bond is received and duly executed by the supplier's bank
- public relations requirements (if applicable)
- health and safety management.

You must ensure that:

- all the discussed points are recorded in writing
- there are no unresolved issues before you recommend authorisation of the final offer.

If the recommended supplier is no longer acceptable due to the outcomes of pre-acceptance discussions, this process should be repeated with other prospective suppliers in order of ranking according to the evaluation summary.

If acceptance of the recommended supplier is authorised, the pre-acceptance meeting points will become part of the final contract.

Do not refer to the recommended supplier as "the successful supplier" at this stage. You do not have the authorisation to make any commitment.

The recommended supplier will become the successful supplier only if the supplier recommendation report is authorised by the appropriate delegated authority.

32.3.17 Negotiation

As a general rule, the Council will negotiate first with the highest ranked participant and, if the outcome is unsatisfactory, it will then negotiate with the next highest ranked participant until a satisfactory outcome is achieved.

If negotiations are to be conducted, a negotiation plan should be prepared and the participants should be advised of the possibility of post-evaluation negotiations. The parts of the competitive document that will be negotiated may be identified. Staff involved in negotiating or establishing contracts must have appropriate knowledge of contract, delegation and legal requirements as well as be a skilful negotiator. For complex or high value and high/very high-risk procurements, a negotiation team may be required.

Post-evaluation negotiations are a good risk management tool to test the understanding and assumptions that have influenced a participant in preparing the costs. You may also be able to negotiate a reduction in costs where appropriate. It is important that the negotiations are fair and do not focus solely on reducing the bottom-line costs but also ensure that the agreement is sustainable and does not compromise quality. It is important that the negotiation does not materialise into an agreement that is different in scope from what was described in the proposal documents (which could disadvantage other participants).

By the end of the negotiation, all parties should have the same expectations about their obligations and how the contract will operate. All parties should agree on all issues that might have an effect on the price and performance monitoring before the contract is signed. The outcome of these negotiations should be in writing and included in the contract.

32.3.18 General negotiation tips

Here are some helpful tips to assist you with your negotiations:

- set clear objectives before attending the negotiation so you know exactly what you want to achieve
- target the decision maker by confirming who will be attending from the supplier side and determine who will be the decision maker
- do relationship background checks, collate internal intelligence on the Council's previous dealings with this supplier
- identify the Council's most desirable outcome (MDO) - determine your highest expectation from the supplier or what you expect them to offer against each of your negotiation objectives
- identify the supplier's interests and MDO (e.g. to maintain price but offer other non-price incentives or to amend payment terms)
- determine your 'bottom line' - which areas you need and are not prepared to compromise on and vice versa (e.g. no compromise on delivery or quality to secure pricing)
- know your best alternative and have a contingency plan in the event of a deadlock.

32.3.19 Tender recommendation

The results of the evaluation must be summarised. The documentation of the evaluation decision will depend on the nature of the invitation and the complexity of the evaluation process. Standard evaluation templates are available from the Procurement Team.

The evaluation summary and recommendation will include:

- the names of prospective suppliers
- the prices received
- the evaluation criteria and any weighting factors
- any pass or fail requirements
- a summary of the ranking or scoring
- the consensus decisions reached on exclusion, inclusion or selection depending on the nature of the invitation or the process.

Note: Any personal notes and individual score sheets created by the evaluation team members should not be kept, as they may not reflect the final consensus decisions of the evaluation team.

The recommendation summary is a mandatory document for all procurements that follow a competitive process. Staff should follow the financial delegations policy and procurement plan for sign-off approval of the report and the recommended supplier. This summary should provide the holder of the delegation with enough information on the evaluation process and the rationale for the recommendation to be able to make an informed decision whether it complies with the Local Government Act 2002.

32.3.20 Accepting the successful offer

Acceptance of the successful offer or submission may be communicated when the recommendation report has been approved. The acceptance should be in writing with detail of the supplier's final offer, or acceptance of the submission for further negotiations should be confirmed. It is also important to confirm the process going forward. Ensure that there is a common understanding of the requirements, the conditions of contract and the supplier's final offer. Standard successful letter template is available from the Contracts and Procurement Team.

32.4 Contract Implementation

32.4.1 Award and sign contract

The timing for the preparation and signing of contract documents is, for those contracts based on NZS 3910, set out in section 2.7 of that document.

For all other contracts resulting from a formal competitive process, the contract documentation should be prepared as soon as possible following contract award and be signed by the supplier, and by the appropriate signatory on behalf of Council (under the appropriate delegated authority).

An original of the final signed contract and any appendix documents must be filed in Objective.

Any major contract let by the Council, a Council Committee, or an officer under delegated authority, is to be sealed with the seal of the Council and attested in the manner approved by the Council or under standing orders. The Contract Administrator will ensure that one set is retained in archives and the other is forwarded to the contractor either personally, by courier, or by registered mail.

If a contract is to be approved by the Council with changes made to the standard contract templates, Council's Contract and Procurement Team Leader or delegate shall approve the contract documents before the offer is accepted.

The contract document must be finalised before any delivery of goods, services or works under the contract. There should be no unresolved issues at the time the contract document is signed.

Ensure that the correct version of the contract, drawings, supporting documentation and the schedules are presented for signing and that the contract is dated as the terms may commence on the date of signing.

32.4.2 Participant debriefs

After the procurement process is complete and the contract is awarded, it is important the unsuccessful/successful tenderers are given the opportunity to discuss their responses with a member of the evaluation team.

This will benefit all parties to the process and provide opportunity for continuous improvement in tenderers approach to the process.

The Procurement Team will provide a template of topics to be covered in the debrief. It is preferable the debrief is in-person. However, the details can also be provided by letter, email or phone.

The debrief will:

- reflect the nature of the evaluation method – note the difference between a LPC evaluation and other price / non price criteria evaluation
- provide the reasons why the offer was or was not successful, note the LPC process
- explain how the offer performed against the pre-conditions and the evaluation criteria, note the exception for LPC
- indicate the offer's relative strengths and weaknesses, note the exception for LPC
- explain in general terms the relative advantage/s of the successful offer, note the exception for LPC
- address any concerns or questions from the tenderers
- seek feedback from the tenderers on the procurement process.

Care should be taken not to disclose any information that is likely to reveal another tenderer's market strategy in a competitive market, or any other confidential or commercially sensitive information.

Before the debrief

You must be able to justify information and any rationale that you give to the supplier:

- Assemble the RFX documents and evaluation material.
- Summarise how the offer was evaluated – scores, rankings, strengths and weaknesses.

At the debrief

- Allow 30–45 minutes for your debrief and the supplier's questions.
- Explain that debriefing is a way to help tenderers improve their competitive performance. Your constructive feedback aims to help the supplier in future opportunities.
- State that this is an informal discussion to explain (as applicable) how the tenderer's offer performed against the evaluation criteria.
- Be clear that it's not a forum to re-litigate the evaluation process.
- If appropriate, clarify that the evaluation was carried out by a multidisciplinary panel and you will try to answer the tenderer's questions on behalf of the panel.
- Be clear to ensure commercial sensitivity and confidentiality (in relation to the other offers).
- Provide the name of the successful tenderer.
- Provide the following price details
 - The range of offers – lowest price and highest price
 - where the supplier ranked on price
 - the successful tenderer's price.
- The range of grades for each non-price attribute and the tenderer's grade.

For Lowest Price Conforming (LPC) evaluation the following information can only be provided:

- the name of the successful tenderer
- the price which is the lowest price.

Because of the nature of the LPC evaluation, no other information is to be provided.

- Do not show the tenderer anyone else's offer, documents or evaluation material.
- Ask the tenderer for their feedback on the procurement process.

After the debrief

- Write up the meeting and file it with the records.
- Follow up on any outstanding points with the tenderer.
- Give the tenderer a summary of your debrief if they ask for it.

32.4.3 Managing the transition to a new supplier

A transition plan should be prepared when service delivery could be affected by the transition from one agreement or contract to the next. Council should be aware of incumbent supplier issues such as information relating to confidentiality, bias or impartiality, as well as access to information. There needs to be a strategy to deal with these issues. For complex procurements (high value and high/very high risk), the plan may need to address some or all of the following points:

- the timeline of activities and events
- required reports on progress
- additional resource requirements
- important roles and responsibilities
- training requirements
- communication requirements
- risk assessment management
- how to address any effects on customers
- any transitional arrangements that may need to be negotiated with the incoming or outgoing supplier
- managing the outgoing supplier's performance through to the conclusion of their contract
- situations where a contract could be terminated before its natural end date
- how to deal with the implications of an early termination

For the effects on staff, the plan should address:

- the need for a staff communication strategy
- consultation to identify any staff or group needs during the transition period
- notification of any interim arrangements
- managing changes to staff and service delivery schedules

All new suppliers must be created in Ozone before they are engaged to provide goods or services. A New Supplier form must be completed and provided to the Procurement Team.

32.5 Contract and supplier management

32.5.1 Managing the supplier relationship

This section is a high-level summary of the contract and supplier management process. To achieve good contract performances, all parties to the contract must understand their respective obligations.

Contract management may include managing contractor performance, site issues, correspondence, contract variations, the project budget, meetings, all progress inspections, any health and safety inspections, as well as any practical completion inspections.

The management of a contract should only be undertaken by staff who have had experience in that type of goods, services or works. The management process should be confirmed at the outset of the procurement process.

Supplier relationship management is the ongoing strategic management of the contract. All contracts should have a relationship manager appointed as early as possible so that they gain a full understanding of the background and objectives of the procurement. For high value (\$200,000+) and high/very high-risk procurements, a supplier management plan should be prepared.

32.5.2 Principles of Contract Management

Supplier performance should be managed pro-actively to achieve the right results on time, at the agreed cost and at the required quality.

- The supplier's management of health and safety should be monitored and managed.
- All communication that may have contractual significance must be documented.
- Records should be kept to show appropriate contract monitoring and management.
- The conditions and terms of the contract should be understood and adhered to by all parties to the contract.
- Contract risk, including business contingency and continuity, should be managed.
- Supplier invoices can only be approved for payment and transacted in Ozone by those with the necessary delegated financial authority.
- All equipment, intellectual property and materials belonging to Council must be fully returned prior to contract completion.
- There should be formal acceptance that the product(s), service(s) or the work is acceptable.
- The learning points from the problems and successes experienced should be identified. These will be used to improve the management of the contract process throughout Council in future.
- A factual assessment of the supplier's competencies should be recorded and used as a reference in future contract activities.
- The supplier shall be advised of Council's evaluation of their performance so that they can have the opportunity to address any issues prior to future tender submissions.

32.5.3 Contract Management documents

Documents that may be used during the term of the contract:

Instructions to contractor	Instructions to contractors are issued to convey contractual information or requirements to the supplier. They are numbered and recorded on file.
Variation orders	Variation orders confirm changes to the contract requirements or terms and conditions. They are numbered and recorded on file.
Quality control records	Quality control records must be certified, recorded on file, and include the following: <ul style="list-style-type: none"> • the results of any inspections or measurements • the procedure used • the required standard • certification of pass or fail.

Contract diaries	<p>Contract diaries should include a summary of the actions, observations and informal communications of the project manager or supervisor. These diaries should be kept on the contract files. Contract diaries are official information and discoverable in the event of dispute. To avoid embarrassment and the possibility of comments being misconstrued, do not:</p> <ul style="list-style-type: none"> • keep intimate personal notes in the same document • make emotional or over the top comments in the documents.
File notes	<p>File notes should be kept for any informal communications that might possibly have contractual implications. If in doubt, keep a record.</p> <p>File notes should include the following:</p> <ul style="list-style-type: none"> • date, time and place • participants • topics and main points.
Plans, drawings and equipment records	<p>Plans, drawings or equipment records may be required for contract implementation or subsequent maintenance. All such documents must be kept on the contract file.</p>
Meetings minutes	<p>Minutes should be kept for all formal meetings. The agenda should normally include:</p> <ul style="list-style-type: none"> • health and safety • progress during the period of review • variation orders issued • details of any claims to be submitted • details of any problems or opportunities anticipated • an action plan. <p>Generally, the minutes on these items should include:</p> <ul style="list-style-type: none"> • the reference numbers of any relevant documents issued • a brief description of the issue • the action taken or proposed, with an action number which remains in the minutes until the action is completed • who is responsible • when the action should be completed. <p>If there is nothing to report, then this must be documented in the minutes.</p>
Visual records	<p>Visual records include:</p> <ul style="list-style-type: none"> • photographs • videos • drawings <p>They can be used either:</p> <ul style="list-style-type: none"> • proactively, to record the conditions before works start • reactively, to record the consequences of activities or events <p>They need to be identified with the following:</p> <ul style="list-style-type: none"> • scene • reason for recording • date and time of recording • name and position of the recorder • names and positions of any witnesses <p>Visual records should be numbered and these details kept on the contract file.</p>
Notifications regarding customer service	<p>In many cases, contract work will affect members of the public. It is important to ensure that the public are informed of all the aspects of the work. It is essential to work with the Communications and Customer Services staff when conveying information to the public. Keep these groups informed of all projects that will have an impact on the public.</p>

Document Transmittal Form A871263	<p>Numbered Document Transmittal Forms are one way of being able to demonstrate that the supplier did, in fact, receive important documents.</p> <p>The form lists the following:</p> <ul style="list-style-type: none"> • type of document • title and date of the document • urgency of delivery • date and time of dispatch and receipt • name and position of the sender • name and position of the intended recipient.
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Table 11 - Contract Management Documents

Note: All important contract information must be scanned and saved on the appropriate file in Objective.

32.6 Contract payments, variations and extensions

32.6.1 Supplier payments

The objective in processing supplier invoices or claims for payment is to:

- address the invoices as soon as possible so that payment can be made on time or earlier
- ensure that the goods, services and works invoiced have been received in full, on time and to specification
- ensure that they relate to a commitment that has been properly authorised by a purchase order or approved contract
- ensure that payments are made in line with the contract obligations. For construction works contracts, ensure that they are managed within the timeframes of the Construction Contracts Act 2002.

Once a contract has been approved, any payment to be made as the work progresses is to be approved by the contract's project manager and is managed through an administrative process to the limit of the person's financial delegation.

Invoices will be paid on the 20th of the month following the invoice date, except where other arrangements were made.

All suppliers are to be advised to send their invoices via email quoting the contract or purchase order reference number to:

accounts@westernbay.govt.nz

with a electronic copy to the Project Manager (*staff member responsible for the project).

How to make a contract payment see: **A3536717**

32.6.2 Progress payments for construction contracts

It is usual for construction contractors to lodge a monthly progress claim. The contract or project manager must review, check and approve all progress payments. The supplier for each progress claim should complete a Claim for Progress Payment (also known as a Pre-Invoice Payment Claim, or a Progress Payment Certificate).

This progress claim should:

- be received from the supplier within the timeframe specified in the contract documents
- be dated as the final day of the month
- provide the supporting details for either the tax invoice provided by the supplier or the buyer created tax invoice created by Council.

Buyer created invoices can be issued in some circumstances. If a buyer created tax invoice is issued, the supplier must not issue an invoice. There must be only one invoice created. Council has Inland Revenue Department (IRD) authority to issue buyer created tax invoices for contract progress payments where:

- there is a signed agreement between the parties specifying the use of buyer created tax invoices
- the supplier will not issue a tax invoice for that contract.

One copy of the buyer created invoice is sent to the supplier and another is retained in Council files.

Progress Payment Certificates and Pre-Invoice Payment Claims from suppliers should include the following:

- the contract name and number
- the date of submission
- an estimate of the percentage completion (as appropriate)
- the estimate or measure of the quantities of materials provided (as appropriate)
- the hours worked.

Progress Payment Certificates and Pre-Invoice Payment Claims from suppliers should also include:

- the value of retentions to be withheld
- the total value of physical works completed
- the value of physical works previously certified and paid.

32.6.3 Late claims

Late claims are payments outside the timeframe within which a cheque or direct credit is normally issued. Whether the claim will be paid at all, depends on whether agreement was reached and a commitment given to the supplier.

For the supplier to be paid on time, the claims should be received before the date prescribed in the conditions of contract. If claims are not received on time, they must wait for the next cheque run unless there are exceptional circumstances. If any leeway is given, Council must reserve its rights to enforce the procedure in the future.

32.6.4 Timeframes imposed by the Construction Contracts Act 2002

The Construction Contracts Act 2002 covers new building contracts entered into after 1 April 2003. The Act imposes an increased duty on those who certify payments, particularly in terms of timeframes. It should be noted that the definition of construction is very broad and may include contracts other than construction contracts (e.g. maintenance contracts if there is a construction component).

In general, the timeframe for the issue of payment schedules and Certificates of Progress Payment is that:

- the Council understand and follow the requirements for management of the payment process as described in the contract (NZS3910:2013 imposes specific timeframes which need to be followed)
- the Council makes a payment to the supplier within the timeframe set in your contract documents.

The consequences if a payment is not made in time (or you make a reduced payment less than the amount specified certified) are that:

- the original claim by the supplier (or the outstanding amount) becomes a debt due enforceable in court together with actual and reasonable costs of recovery
- in addition, the supplier is entitled (after giving 5 days' notice) to suspend work and claim an extension of time, place a charging order over the land or to put the matter to adjudication or other dispute resolution process.

32.6.5 Contract variation

From time to time, it may become apparent that the contract requires amendment either to meet requirements or due to a change in circumstance. Some changes will be anticipated and provision for that change made in the contract (e.g. regular reviews of price or key performance indicators). Not all variations will be anticipated. Unanticipated variations should be carefully considered before being accepted.

Unanticipated variations may be needed during contract implementation for one or more of the following reasons:

External or environmental reasons	These include changes in legislation, unexpected physical conditions or suppliers experiencing problems with quality or delivery.
Errors or omissions	Errors or omissions may be found in the statement of requirements (e.g. incorrect information may have been provided or the boundaries of the scope have not been properly defined).
Opportunities to add value	The scope may be changed to take advantage of new technology or other opportunities that may add functionality or save costs.
New work	<p>An opportunity for additional work may occur.</p> <p>The following criteria apply:</p> <ul style="list-style-type: none"> • The proposed new work must be the same in nature as allowed for in the existing contract. • The proposed work must be in the same location. • where variation is no greater than 50% original contract value • where the time extension is no greater than 50% of the original contract term.

Table 12 - Unanticipated Contract Variations

The objective when managing any variations (changes or extensions) is to balance the right of the supplier to be fairly compensated for difficulties or additional costs that were unanticipated and yet also ensure Council does not end up paying for anything it is not contractually liable for.

It is also important to ensure that:

- contract implementation is not delayed by anything foreseeable
- the supplier is not unfairly disadvantaged by issues that they could not reasonably have foreseen
- all variations are properly considered and fully documented.

A variation approval does not apply to contracts which allow the contract price to be increased by following a cost index or other quantifiable adjustment mechanism.

Claims for variations should include the following:

- the contract name and number
- the variation order number
- date of submission
- a description of the variation
- the name of the authorised signatory who approved the variation
- the value of the claim
- supporting documentation
- the name and signature of the supplier submitting the claim.

32.6.6 Form of variation

Whether anticipated or not, *all variations must be formally documented in writing as they form part of the contract*. The variations, once documented in writing and accepted by both parties, are legally binding.

A variation may take the form of:

- a Variation Agreement (A2600467) or Deed (appropriate for changing legal conditions such as term)
- an exchange of letters confirming the variation
- a Variation Agreement accompanied by a replacement schedule
- for physical works contracts, a variation order signed by both parties.

When managing variations it is important to consider:

- the impact of the variations on related procurements or projects
- delegated financial authority required for the new total value of the contract and variation.

32.6.7 Contract extension

A contract extension by variation may be granted providing the terms of the original contract and delegations permit such extensions. In addition, the contractor must be willing to continue. The original signatories, or appropriate delegated authorities, should approve the proposed new total value of the contract and contract extension(s).

The benefit and cost of an extension to a contract should be considered before agreeing on the extension.

All contract extensions that accumulatively exceed the originally approved contract price by 50% must be reported to the Chief Executive Officer.

32.7 Contract completion and close out

32.7.1 Process of contract completion (Goods or Works)

It is important to ensure the process of completion allows for maintenance, defects liability or a guarantee period, if appropriate. Projects involving goods or works often require maintenance, defects liability or a guarantee period.

The contract completion process may include some or all of the following steps:

Pre-handover inspection	A pre-handover inspection confirms whether the goods or works meet all the requirements of the contract.
Handover of operating manuals, drawings and equipment records	Upon completion of the contract works, the supplier must provide to the project manager manuals, drawings and other equipment records required under the terms of the contract. Documentation or information to handover can include: <ul style="list-style-type: none"> • operating manuals • as-built/records of what was built in specific format • specific product information for materials used • intellectual property.
Confirmation of operational and maintenance guarantees	Upon completion of the contract works, the supplier must provide to the project manager any operational or maintenance guarantees required under the terms of the contract.
Certification of code of compliance for building consent	Projects that require a building consent also require a code of compliance certificate from the Council. This is issued on completion of the physical works.
Practical completion	The practical completion stage involves the following: <ul style="list-style-type: none"> • practical Completion Certificate • release of supplier's performance bond • operational handover of project deliverables.
Certification and approval of final account	On certification of a Practical Completion Certificate, a final account should be agreed, less any retentions, and certified for payment.
Final inspections	When a defects liability period is completed, a formal inspection or site walkover of the project works must be conducted.
Final Completion Certificate	When a contract provides for a defects liability period, the Final Completion Certificate is known as a Defects Liability Certificate. The issue of a Final Completion Certificate signifies: <ul style="list-style-type: none"> • the end of the supplier's contractual obligations, apart from any exceptions allowed by the contract and subject to any dispute procedures • the transfer of all maintenance responsibility to the Council • that all remaining retentions should be released according to the contractual terms and conditions of payment.
Approving the release of retentions	<i>All outstanding retentions should be released at completion according to the contractual terms and conditions of payment.</i> For contracts with a defects liability period, it is common practice to release 50% of retentions when the Practical Completion Certificate is issued, and release the final 50% when the Defects Liability Certificate is issued.
Close out process	Complete the contract close out procedure using Form 19 (A793959).

Table 13 - Contract Completion and Close Out

32.7.2 Projects involving services only

Projects involving services generally only require steps such as:

- a review of the work to ensure that it is complete and meets quality requirements
- handover of manual documents (e.g. operating manual)
- a handover of all equipment and intellectual property belonging to the organisation, including detailed specifications and computer hardware
- formal acceptance of the work. A formal sign-off by all parties concerned that identifies that the outcome of the work is acceptable to the organization
- files, letters and other correspondence records documenting what was done and not done. Documentation needs to be retained in an organised manner so that it can be used to protect the Council and supplier in case of arguments, queries or legal action
- identification of lessons learned, to serve as a historical basis for future working practices and supplier management
- monitoring of the warranty period
- approval for final payment.

32.7.3 Infrastructure contract close out (Form 19 – Objective link A793959)

When a contract ends, the close out process needs to be followed. It is important that a supplier fulfils all their obligations under the contract before the contract ends and before the supplier is released from their commitments. For some contracts, completion may be in stages (e.g. when the work is completed or when the maintenance period has finished).

Depending on the nature of your contract, you will have different close out requirements. It is important that the learning points from the problems and successes experienced are identified and used to improve the management of contracts and the supplier relationship process.

The review process may include a debrief meeting or relational and contractual analysis. After completing the review, and where appropriate for high value and high/very high-risk procurements, it is recommended that a close out report be completed.

At the end of a contract, where a competitive process has been followed or where there are known learning points, it is good practice to carry out a formal documented contract completion process by completing a close out report.

A close out report should be written whenever:

- the contract has followed a open competitive process
- it is known that there are useful learning points
- the supplier may compete again for Council business.

It is also important that the supplier relationship manager remains aware of the contract's future provision well before the contract end date. This may include communicating with the current or other possible suppliers of a re-tender or a new proposal process. In some circumstances, warranty commitments and obligations or insurance liabilities will continue for a period.

Confidentiality requirements and intellectual property obligations may continue to apply after the end of the contract. It is important that a process exists to monitor these obligations until they no longer apply.

32.8 Consultant selection and engagement

32.8.1 Establishing the requirement for a consultant

A consultant is defined as an independent individual, firm, company or other legal body providing information, advice or service to the Council. Project management and design services also fall within the definition of consultant services. The definition excludes the provision of temporary staff who are paid through the payroll system (and who are the subject of other approval procedures) but does include engagement of those who are paid through the creditor's system. The definition also excludes the provision of legal services.

The engagement of a consultant is mainly due to one of the following reasons:

- internal resources or experience is unavailable
- to provide an independent or second opinion
- there is a legislative requirement
- it is a cost-effective option
- flow-on effect from another engagement.

Unavailable internal resources or experience

This may arise from any of the following situations:

- lack of technical or specialised knowledge or expertise
- lack of quality resources
- to augment or enhance the capacity of existing resources
- insufficient resources
- to enhance the expertise of internal resources
- one-off or irregular peaks requiring urgent resolution
- lack of available time to complete
- training requirements.

Provision of an independent or second opinion

There will arise from time to time, requirements to obtain:

- an unbiased and totally objective viewpoint
- the provision of a second and independent opinion
- an audit, peer review or special study.

Legislative requirement

Where there is a statutory requirement to obtain external services, then procedures specified in this manual apply unless specifically excluded by such legislation.

Cost effective option

Where it can be shown that the engagement of a consultant is most appropriate, then a request for services may be presented for consideration.

A business case for all professional services engagement proposals must be linked to the procurement plan. Engagement proposals must relate to discrete and specific projects and must not be part of a larger or continuing project. Individual consultant requirements for large or continuing projects must be included as part of an overall request approval.

All requests for the engagement of a consultant must be approved by a Group Manager with the appropriate financial delegation as stated in the Delegations Policy.

When making recommendations, officers must satisfy themselves that:

- the request is justifiable from a business perspective
- the request represents an efficient and cost-effective use of Council funds
- all necessary information is provided in support of the request
- the engagement is required to meet both departmental and Council objectives
- the cost is covered by an appropriate budget.

It is expected that the Contract Administrator or Objective Administrator will maintain a central file and record of all consultant engagements, and require specific Group Manager sign-off prior to a consultant engagement being actioned.

All consultancy agreements should, as a minimum, be in the form of the Short Form Conditions of Contract template and have a corporate contract number for the establishment of a specific records file.



PART 6 – APPENDICES

Appendix 1	Supplier Selection Methods
Appendix 2	Procurement Contract Processes
Appendix 3	Contract Templates

APPENDIX 1 – Supplier Selection Evaluation Methods

Introduction and overview of methods

The following supplier selection methods may be used, as appropriate, for Council procurement activities:

Method	Source
Direct Appointment	NZTA Procurement Manual based & modified by WBOPDC
Lowest Price Conforming	Developed by WBOPDC
Weighted Attributes	Terrace Publications based & modified by WBOPDC
Price Quality	NZTA Procurement Manual based
Purchaser Nominated Price (Target Price)	NZTA Procurement Manual based
Quality Based (Brook's Law)	NZTA Procurement Manual based

Council must use one of these supplier selection methods (excluding the Weighted Attributes) when purchasing for activities funded under s20 of the Land Transport Management Act (LTMA).

The Lowest Price Conforming, Weighted Attribute and Price Quality supplier selection methods include competition on price. To ensure that price competition is fair, those outputs which suppliers are asked to price must be very well specified. The risk of claims for works or services that were arguably not required will be high if the outputs that are to be priced are not unambiguously described in the RFx.

Professional services are often very difficult to describe precisely and therefore any price competition has to be carefully managed. Accordingly, use of the Lowest Price Conforming to select a professional services supplier will be rare. The same applies to other Council professional services procurement activities.

Direct Appointment

Direct Appointment is a supplier selection method in which the Council selects a single supplier and negotiates the contract terms, including price. Specific criteria and procedures are to be followed for NZTA subsidised contracts. However, the following procedures also apply for all other Council contracts where direct appointment is the selected option.

When to use Direct Appointment

Direct appointment may only be used to select a supplier and establish a contract when:

1. The contract is a low dollar value (less than \$10,000, or \$100,000 for NZTA authorised and funded projects), or
2. The supplier selection process commences, but only one potential supplier is identified (approved by Group Manager), or
3. A monopoly supplier situation exists (Approved by the Group Manager).

Step	Action
1	Undertake market research to determine potential suppliers.
2	Identify the preferred supplier and select on the basis of the supplier's experience and skills with activities of the same or similar nature
3	Negotiate contract terms with the preferred supplier and establish a contract that is designed to obtain the best value for money.

Alternative proposals

The negotiation process can accommodate any alternative proposals offered by the preferred supplier.

Lowest Price Conforming

Lowest Price Conforming is a supplier selection method in which the preferred supplier meets all the requirements set out in the RFX and offers the lowest-priced proposal, after deducting any added value premium. It is best applied when the output required is well specified.

When to use Lowest Price Conforming

Lowest Price Conforming should be used where the Council determines that best value for money will be obtained by having suppliers compete on price alone and no premium for additional quality is warranted. The preferred supplier is the supplier that offers the lowest price and meets all the minimum requirements, including quality, as set out in the RFP.

Proposal evaluation procedure

When selecting a supplier using the lowest price conforming method, officers must use the proposal evaluation procedure below.

Step	Action
1	<p>Receive and identify lowest price tender</p> <ul style="list-style-type: none">• Tender documents are submitted to the tender box.• At closing time, the Procurement Team will collect all tenders, register them and acknowledge receipt.• The Procurement Team will open the tenders and based on the Schedule of Prices rank and tender's price from lowest to highest.• The Procurement Team will check for tags and assumptions and that the supplier has made a response to the non-price attribute(s) of criteria requested in the RFT.• If a non-price criteria is missing the tender proposal will be considered non-conforming and will not progress to evaluation.• If there are tags or assumptions the Procurement Team will document this.• The Procurement Team will complete a summary sheet and provide the lowest price tender to the Tender Evaluation Team (TET)
2	<p>TET evaluate the lowest priced tender (except for alternative tenders)</p> <p>With the lowest-priced tender the TET:</p> <ul style="list-style-type: none">• Check the tender's price structure to ensure it is full and complete with no errors.• Review the Schedule of Prices calculations for accuracy.• The TET will first check for mathematical errors to be resolved.• If there are any tags, these will need to be either rejected or considered perhaps in conjunction with the supplier (note rigor is needed here as this clarification is not an opportunity for the supplier to submit a further tender).• If accepted the pricing implication of a tag will now need to be included in the tender price.• The TET now checks the revised price (tender price plus tag/s). If this tender is still the lowest priced tender, the evaluation of non price attributes will continue.• If the tendered price plus tags is more than the next lowest tender price then the evaluation of this tender will cease and the TET will request the next lowest priced tender from the Procurement Team for assessment (in accordance with the above).• Determine that the tender is within the RFT's scope and requirements.• Only the attributes of the lowest priced tender are checked for non-price attributes using the LPC Tender Evaluation Form. If all non-price attributes are passed, the tender becomes the "preferred tender" and the process is complete. The attributes of the other tenders do not need to be checked. <p>Evaluate alternative proposals</p> <ul style="list-style-type: none">• Evaluate all alternative tenders (regardless of price) in accordance with the above.• The NZTA Procurement Manual (sections 10.16 and 10.17 provides further guidance on the evaluation of alternative tenders and added value premiums.

3	<p>Identify the preferred supplier</p> <ul style="list-style-type: none"> • The preferred supplier is the supplier that presents the tender that is within the RFT's scope and requirements, passes on all non-price attributes and has the lowest price after deducting any added value premium (if applicable). • The TET Leader submits a tender Recommendation Memo for approval by the relevant Delegated Authority. • Following approval, the TET may request to view all other tenders if desired.
4	<p>Upon approval of the Recommendation Memo, the Procurement Team</p> <ul style="list-style-type: none"> • advise the preferred supplier of their appointment. • advise the unsuccessful suppliers of the outcome and offers a debrief.

Two-envelope system

The two-envelope method may be used where Council wants to ensure that price does not influence the evaluation of the non-price (or technical) criteria of a request for tender or proposal.

Alternative proposals

Lowest Price Conforming can accommodate alternative proposals.

Negotiation

Council may negotiate with the preferred supplier, providing any negotiations are carried out in accordance with the RFT's requirements.

Weighted Attributes

Weighted Attributes seeks to balance the trade-off between price and quality. Under this model, the price and non-price attributes are weighted to reflect their relative importance for achieving the procurement outcome (e.g. a cleaning or maintenance contract where service delivery methodology and price are the key attributes for achieving best value for Council, so receive higher weightings). The quality attributes of suppliers whose proposals meet the RFP's requirements are graded, and the preferred supplier is selected by balancing price and quality through the use of a formula.

When to use Weighted Attributes

Weighted Attributes should be used where the Council determines that best value for money will be obtained by having suppliers compete on both price and quality and selecting the supplier that offers the best combination of the two. This is a commonly used supplier selection method and one that can be applied to a variety of procurement activities.

The use of Weighted Attributes is limited to officers who fully understand how the method works. Care needs to be taken in the selection of attributes, the assignment of weightings and the scoring of proposals. The evaluation team should be led by someone experienced in this method of evaluation.

The balance between price and non-price attributes should be based on the:

- potential variability in the quality of the goods, services or works
- the importance of quality versus price.

Proposal evaluation procedure

When selecting a supplier using the weighted attributes method, officers must use the following proposal evaluation procedure.

Step	Action
1	<p>Determine tender acceptability against the pre-conditions and grade each of the evaluation criteria using the grading scale and Weighted Attributes Evaluation Score Sheet template. Exclude from further consideration any tenders that score 35 or less on any evaluation criteria if this is what you said you would do in the RFP.</p> <p>Convert price to a grade using the following formula:</p> <p>Price grade = 100 x [Lowest Tender Price / Respondent's Tender Price]</p> <p>Notes:</p> <ul style="list-style-type: none"> • Remove any provisional sums in tender prices before calculating price grades. • Do not consider prices of alternative tenders when determining the lowest tender price. • If the price is specified as a schedule of rates, convert the unit price into a lump sum by multiplying the unit price by the estimate of required inputs or intermediate outputs. • Note: Western Bay reserves the right to exclude any abnormally low bids from this determination.
2	<p>Multiply the weight of each evaluation criteria by the grade and divide by 100 to give an index for each evaluation criteria. Sum all indices for each tender to give an <i>overall index</i> for each tender. Note: round overall indices to the nearest whole number.</p>
3	<p>Ranking</p> <p>The tender with the highest overall index will rank highest.</p> <p>Note: where more than one tender shares the highest overall index, whichever tender has the lowest price will rank highest.</p>
<p>Evaluation of alternative tenders (if applicable)</p> <p>Note: evaluate alternative tenders only after the evaluation of all non-alternative tenders.</p>	
4	<p>Determine tender acceptability against the pre-conditions and grading against each of the evaluation criteria using the grading scale.</p>
5	<p>Assess the difference in value of the end result offered by the preferred (that which scored the highest overall index) non-alternative tender and the alternative tender/s. Adjust the alternative tender price by this amount.</p> <p>Convert the adjusted to a grade using the formula in the evaluation methodology for non-alternative tenders, and the same tender price that was used when calculating a price grade for non-alternative tenders.</p>
6	<p>This stage shall consist of multiplying the weight of each attribute as specified in the evaluation criteria table by the grade of that same attribute and then dividing by 100 to give an index for each attribute.</p> <p>Multiply the weight of each evaluation criteria by the grade and divide by 100 to give an index for each evaluation criteria. Sum all indices for each alternative tender to give an <i>overall index</i> for each alternative tender. Note: we will round overall indices to the nearest whole number.</p>
7	<p>Final Ranking</p> <p>Compare alternative tenders with the preferred non-alternative tender to determine the ranking of the alternative tender.</p>

Two-envelopes when using Weighted Attributes

Suppliers are not require to submit their price and non-price attributes separately in two envelopes.

Price Quality

Price Quality balances price and quality by use of a formula. It enables the Council to pay more for a higher quality supplier. It is a sensible method to use when the quality of the supplier is important and trading price and quality is practically possible through the supplier selection process.

When to use Price Quality

The use of the Price-Quality method is limited to NZTA projects and/or managers who fully understand how the method works. The choices made will influence the proposal evaluation outcome because of their impact on the supplier quality premium values – the amount more than the purchaser is prepared to pay for a higher quality proposal.

Supplier quality premiums are influenced by:

- the price estimate
- chosen non-price attributes
- how the non-price attributes are graded (the spread of grades)
- weight given to price.

Supplier quality premium values must not be adjusted for an arbitrary or irrelevant reason. Adjustment will, in most instances, be viewed by suppliers as an admission by the Council that some aspect of the procurement procedure design was wrong. For example, when a decision is made to adjust all values by a fixed percentage, this will be seen as an admission that the chosen price weight was wrong.

Council should advise each proposal submitter of the value of their supplier quality premium and how it differed from the preferred supplier's supplier quality premium.

Proposal evaluation procedure

When selecting a supplier using the Price Quality method, Council must use the procedure set out in the NZTA Procurement Manual. Please see C5 and C6 of [Appendix C of the NZ Transport Authority Procurement Manual v5](#) for further detail and instructions.

Purchaser Nominated Price (Target Price)

Purchaser Nominated Price is a supplier selection method where the Council fixes the price to be paid and advises this through the RFP. Proposals must meet the requirements of the RFP and are evaluated on the basis of quality only.

When to use Purchaser Nominated Price

Purchaser Nominated Price should be used where the Council requires outputs that are difficult to specify but it has determined a price that it is prepared to pay for those outputs and described the desired outcome (in the RFP). Best value for money is then obtained by selecting the supplier that provides the best proposal for the price set out in the RFP.

The best proposal will be determined on the basis of the non-price attributes of the supplier and any differences that the competing suppliers offer in terms of quality or quantity of output. This method is typically used for such activities as strategy studies, feasibility studies, transportation studies and investigations.

Proposal evaluation procedure

When selecting a supplier using the purchaser nominated price method, officers must use the following proposal evaluation procedure.

Step	Action
1	<p>Evaluate proposals</p> <ul style="list-style-type: none"> • Determine that the proposal is within the RFP's scope and requirements. • Grade each non-price attribute for each proposal from zero to 100. • Reject (exclude from further consideration) any proposal that fails against an attribute. • Multiply the weight (specified in the RFP) by the grade for each non-price attribute and divide by 100. The result is the index for each non-price attribute. • Add all the indices for each proposal. The result is the weighted sum of the non-price attribute grades.
2	<p>Identify the preferred supplier</p> <ul style="list-style-type: none"> • The preferred supplier is the supplier that presents the proposal that is within the RFP's scope and requirements, passes on all non-price attributes and has the highest weighted sum of the non-price attribute grades.

Guidelines for proposal evaluation

Purchaser Nominated Price is not recommended for physical works or routine professional services engagements.

Alternative proposals

When the Purchaser Nominated Price method is used, all proposals are in effect alternative proposals. However, their evaluation will be based on grading the non-price attributes described in the RFP alone.

Negotiation

Council may negotiate with the preferred supplier, providing any negotiations are carried out in accordance with the RFP's requirements. However, any negotiations that led to a decision to let a contract for a price other than the price nominated in the RFP would destroy the integrity of this method.

Quality Based (Brook's Law)

Quality Based (previously Brook's Law) is a supplier selection method where the quality attributes of suppliers whose proposals meet the requirements of the RFP are graded and the preferred supplier is selected solely on that basis. A price is then negotiated with the preferred supplier, based on their price proposal.

When to use Quality Based

Where the scope of the outputs (works or services) cannot be fully described, competition on price may not help to obtain the best value for money. The Quality Based method should be used where the Council determines that best value for money will be obtained by selecting the supplier on the basis of supplier quality alone. Negotiation will take place with the supplier who has the highest overall score, to achieve the best value for Council (e.g. selecting an architect for a design project).

The Quality Based method is an advanced component of the NZTA Procurement Manual where the output being purchased is anything other than professional services. As an advanced component, Council must have the NZTA's prior written approval under s25 of the LTMA for its use on NZTA funded projects.

Proposal evaluation procedure

When selecting a supplier using the Quality Based method, Council must use the procedure set out in the NZTA Procurement Manual. Please see C5 and C6 of [Appendix C of the NZ Transport Authority Procurement Manual v5](#) for further detail and instructions.

Use NZTA evaluation criteria for NZTA funded projects

For any NZTA funded projects, Council must evaluate proposals using the following three non-price attributes as a minimum:

- relevant experience
- relevant skills
- methodology.

Additional non-price attributes may also be used to evaluate proposals including:

- track record
- resources
- financial viability.

Further, we must provide a reason for not accepting alternative tenders and include the details of the tender evaluation team (name, company, title).

Refer to the [NZ Transport Authority Procurement Manual v5](#) for further detail and instructions.

Grading and scoring scales

Council has adopted two standard scoring scales for use; NZ Transport Agency's and the Ministry for Business, Innovation and Enterprise's.

Additionally, officers may wish to develop customised scoring scales (sometimes referred to as anchored scales) for specific projects or when using Price Quality method. Please talk to the Procurement Team if you'd like to develop a customised scoring scale.

1. NZTA Funded Projects (only)

NZTA 1-100 grading scale

Grading	Definition
90, 95 or 100	Demonstrates exceptional compliance or ability to convey exceptional provision of the requirements.
75, 80 or 85	Requirements are fully covered in the all material aspects.
60, 65 or 70	Requirements are adequately covered.
50 or 55	Adequate, with some deficiencies that are not likely to have an adverse affect.
40 or 45	Barely adequate and would need considerable improvement in this attribute, if selected.
35 or less	Total non-compliance or inability to convey provision of the requirement.

2. All Other Procurement Projects (Refer NZTA (SM021) Part A – Appendix V11 Evaluation Summary Guidelines

MBIE 1-10 scoring scale

Rating	Definition	Score
EXCELLENT significantly exceeds the criterion	Exceeds the criterion. Exceptional demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	9-10

<p>GOOD exceeds the criterion in some aspects</p>	<p>Satisfies the criterion with minor additional benefits. Above average demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.</p>	<p>7-8</p>
<p>ACCEPTABLE meets the criterion in full, but at a minimal level</p>	<p>Satisfies the criterion. Demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource, and quality measures required to meet the criterion, with supporting evidence.</p>	<p>5-6</p>
<p>MINOR RESERVATIONS marginally deficient</p>	<p>Satisfies the criterion with minor reservations. Some minor reservations of the Respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.</p>	<p>3-4</p>
<p>SERIOUS RESERVATIONS significant issues that need to be addressed</p>	<p>Satisfies the criterion with major reservations. Considerable reservations of the respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.</p>	<p>1-2</p>
<p>UNACCEPTABLE significant issues not capable of being resolved</p>	<p>Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the Respondent has the ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.</p>	<p>0</p>

APPENDIX 2 - PROCUREMENT AND CONTRACT PROCESSES

Procurement and Contract Processes ²				
Value \$	Procurement Plan \$ Approval	Market Approach ^{3,4}	Probity and Broader Outcomes	Payment Method/ Contract Type
0-\$10k	No Plan Required	New Goods/Services Competitive 2 verbal quotes Otherwise Buy from an existing supplier Panel/AOG/ Direct Engagement	Follow Procurement Manual	Petty cash Corporate credit card Reimbursement Purchase Order T&Cs
\$10k-\$100k		New Goods/Services Competitive 3 Written Quotes Otherwise Buy from an existing supplier Panel/AOG/ Direct Engagement		Purchase Order T&Cs
\$100k-\$200k	GM & DCE	Open & Competitive RFx ^{5,6,7}	Complete COI Follow Procurement Manual • Consider Broader outcomes • Consider engaging Probity Advisor, detail in Procurement Plan • Appoint Probity Advisor • Include Broader Outcomes	Purchase Order T&Cs &/or Written Contract
\$200k-\$350k	DCE			
\$350k-\$1m	C&PTL ⁸ (endorsement) GM (supports) CEO (approves)			
\$1m-\$5m				
\$5m +				

² Apply to all Council procurements including professional services.

³ Verbal and written quotations, along with consideration and decision, must be documented in Objective and this file/contract number referenced in the purchase order.

⁴ Wherever possible, use existing preferred suppliers, or suppliers from the relevant 'panel of suppliers'.

⁵ RFx is a catchall term to denote Expression of Interest (EOI), Request for Information (RFI), Request for Proposal (RFP), Request for Quote (RFQ) and Request for Bid (RFB)

⁶ Direct negotiation can be used for purchase of existing goods and services from current suppliers up to \$20,000

⁷ Report dispensations for non-competitive processes over \$100,000 to the Chief Executive (Part 3, Part 3.1 – Procurement environment).

⁸ C&PTL: Contracts and Procurement Team Leader procurement plan endorsement required for procurements valued \$350,000 +.

APPENDIX 3 – Contract Templates

List of our standard templates with a brief explanatory.

Contact the Procurement Team for assistance.

Contract type	Description
Purchase Order	Purchase Orders up to any value where the purchasing approval officer has sufficient delegated authority and where no exceptional conditions apply.
Community Contracts	
Community Services Contract A2670870	Performance Based Community Contracts e.g. SocialLink and Envirohub
Community Grant Agreement A3605208	This Grant is from Council's Community Fund to the Recipient and can only be used for the Grant's purpose approved by Council.
Programme Sponsor Contract A3640222	This contract covers arrangements that do not involve a particular event (such as sponsoring planting in a park or an ongoing community service Council provides).
Event Sponsor Contract A3640218	This contract is intended for use where Council is the recipient of the Event sponsorship and not where Council is itself sponsoring a third party event. The template is intended to cover situations where there is a staged event or production with significant publicity etc. and deals with a number of issues that arise relatively thoroughly.
Volunteer Agreement A3640226	Sets out the rights and responsibilities of the Council as the party delivering the Activity and the Volunteer in relation to the duties of the Volunteer during the Activity.
Professional Contracts	
Independent Inspectors Contract A2666161	This contract is written specifically for building inspectors.
Licensing – Commissioner Agreement A3695664	This template provides for the appointment of a licensing commissioner and sets out the Duties applying when the Commissioner is appointed as a Licencing Committee chairperson. The template does not apply where a Commissioner is appointed as a Licencing Committee member.
Short Form Agreement for Engagement Based on ACENZ/IPENZ Short form A2439395	A basic contract template for provision of professional consultancy services where the procurement is low to medium risk and value is low (e.g. research report or updating documentation). This is a standard, industry familiar, template with a slight bias to the consultant. Council's purchase order is a stronger contract ensure scope of services are well defined and included in document.
Professional / Consultancy Services Agreement (Non NZTA) A601816	A long-form contract for professional consulting services where the procurement is medium to high/very high value and risk (e.g. services of engineers, project managers, architects) on large or complex projects. This type of contract is required when we use independent contractors to perform professional services for Council. It is not intended for NZTA subsidised services.
NZIA Architectural Services	(Architectural Design/Building Consultancy Services) This is a standard, industry familiar, template with a slight bias to the consultant. Council's purchase order is a stronger contract. Use a purchase order if value is less than \$10,000.
NZIA Standard Construction Contract (Architect providing client services)	Architect managing construction for client: Term – period of construction.

Services Contracts	
Physical Works Short Form Agreement A3401733 Umbrella A3401734	A short-form contract template intended for low-risk physical works and construction projects. This is a standard, industry familiar, template with a slight bias to the consultant. Use for projects valued less than \$100,000.
Contractor Service Agreement Short Form A989778	For contracts such as Patrol Services / Veterinary Services, and smaller Service Delivery Agreements
Early Contractor Involvement A3177690	Under an early contractor involvement engagement, the contractor / construction manager is engaged for a fee, effectively for preliminaries, profit and overheads. At the time of entering into the contract, the actual cost of construction is unknown. This is typically because the design is yet to be finalised, or at least has not been priced.
Service Delivery Contracts (Swimming Pools)	Refer to Objective folder: Procurement Templates > 7 Contract Templates.
Minor Services A3401731	A minor service contract with Council Health and Safety included with specific conditions. Limited to one year. This is a detailed service contract compared with the Contractor Service Agreement.
Minor Services Umbrella A3298062	A allows the council to appoint a contractor for a fixed term for multiple jobs. Council then instructs the contractor to complete specific jobs by purchase order. The contractor only provides services pursuant to a purchase order. The purchase orders cover any instruction to the contractor to do work under the agreement whether in writing or oral.
Services Contract A3766303	A service contract with standard clauses. A more robust contract than the Minor Services one. To be used for service contracts that will go over a period of years.
Civil Works	
NZS 3910:2013 Conditions of Contract for Building And Civil Engineering Construction fA456619	This standard form is widely used for infrastructure physical works. Usually with this contract form, the contractor constructs the works in accordance with the design provided by the engineer. However, it may also be suitable for contract works for which the contractor, wholly or partly, has design responsibility. Published by Standards New Zealand. Use for projects valued greater than \$100,000.
NZS 3916:2013 Design and Construct fA478835	For design build contracts but more complex projects warrant a unique document and external legal advice. Design Build Operate or Build Own Operate Transfer (and PPP and alliance) projects need bespoke documents and external legal advice.
NZS 3917:2013 Fixed Term (Maintenance or Operational) Note: Council's basic 3910 RFT can be used with all 391x templates.	This type of contract will be used where there is an "on-going" workload, many of which are with contracts negotiated between providers and the Council Asset Managers. Works include berm mowing, parks and gardens maintenance etc. In the evaluation of substantial maintenance contracts, the duration of which is greater than 36 months and greater in value than \$1m per annum, then consideration of achieving economic benefits for Council through using existing contractors must be considered. These long-term contracts shall include rights of renewal (i.e. 2+1 for 3-year contracts or 3+1+1 for 5-year contracts). Long-term contracts shall include a price escalation clause appropriate to the services being provided. Payments will usually be on a lump sum or a measure and value basis with the contractor submitting a monthly claim. Generally, retentions are not needed due to the method of payment.

Supplier Provided	
Supply of Goods A3180710	Supply of goods.
Off-Site Materials Agreement A3520764	Sometimes it can be appropriate for Council to pay for items early even though they remain off-site. For example, where a contractor has themselves made a large payment for plant or materials that have yet to be delivered to site, or if the client wishes to 'reserve' key items in order to protect the programme. Such items should be agreed in advance and listed in an annex to the contract bills. This is Schedule 14 of 3910.
Suppliers Agreement / Contract Specialist IT / Software / IT Minor Services A3437372	A supplier may offer their standard contract or Terms of Conditions for signing. The process for instructing consultants and contractors for the design, development and installation of any computer hardware or software must be approved by the Council Information Technology Manager and Group Manager Finance and Technology prior to commencement.
Where the supplier offers a contract	
Supplier provided Agreement / Contract	<p>A supplier may offer their standard contract or written Terms of Conditions for Councils consideration.</p> <p>Be wary as to any vendor/supplier generated form, particularly standard forms when offered for major transactions. They invariably favour the vendor or supplier.</p> <p>In all cases, this must be reviewed by Contracts and Procurement Team Leader prior to agreement.</p> <p>Council preference is to use WBOPDC documentation.</p>