



Kaipara District Council

Procurement Policy

March 2012



Kaipara te Oranganui

**KAIPARA
DISTRICT**

Two Oceans Two Harbours

Table of Contents

1	Procurement Policy	3
1.1	Policy Scope	3
1.2	Policy Objectives	3
2	Policy Principles	4
2.1	What is Procurement?.....	4
2.2	Who are these Principles for?	4
2.3	Council’s Broader Objectives	4
2.4	Principles.....	5
2.5	Giving Effect to the Principles	5
3	Sustainability	7
4	General Obligations	8
4.1	Government Policy	8
4.2	Financial Delegations	8
4.2.1	Council Committee Delegations	9
4.2.2	Staff Delegations	9
5	Legal Considerations	10
5.1	Compliance with Legislation.....	10
5.2	Public Law Considerations	10
6	Ethical Considerations	11
6.1	Ethics.....	11
6.2	Accuracy and Use of Information	11
6.3	Contact with Participants during Procurement Process.....	11
6.4	Use of Consultants or Procurement Agents.....	12
6.5	Engagement of Ex-Employees.....	12
6.6	Fraud and Impropriety.....	12
7	Conflicts of Interest	13
8	Confidentiality	14
8.1	Commercially Sensitive Information.....	14
8.2	Intellectual Property and Copyright	14
9	Liability	15
10	Economic Considerations	16
10.1	Total Cost of Ownership (“whole of life” cost)	16
10.2	Value for Money	16
11	Risk Management Considerations	17
12	Contractual Considerations	18

13	Record Keeping	19
14	Exceptions	19
15	Strategic Procurement Planning	20
16	Planning for Procurement	21
16.1	Procurement Business Case.....	21
16.2	Procurement Plan	21
17	Selecting the Method of Procurement	24
17.1	Competitive Processes	24
17.1.1	Open Tenders.....	24
17.1.2	Closed Tenders	24
17.1.3	Oral Quotations	25
17.1.4	Written Quotations.....	25
17.1.5	Competitive Tenders or Proposals.....	25
17.2	Direct Procurement	26
17.2.1	Low Value Low Risk Good or Services	26
17.2.2	Selective Procurement	26
17.2.3	Emergency Procurement.....	26
17.2.4	Standing Arrangements.....	27
17.2.5	Panel Contracts	27
17.2.6	Syndicated Procurement	28
17.3	Relational Purchases	28
18	Tender or Proposal Management and Evaluation	29
18.1	Selecting an Evaluation Model.....	29
18.2	Inviting and Receiving Tenders and Proposals.....	29
18.3	Evaluation Process	31
18.4	Awarding the Contract.....	32
19	Contract Management	34
19.1	Contract Document Preparation	34
19.2	Contract Monitoring and Completion	34
20	Independent Oversight or Assurance	35
21	Audit and Compliance	35

1 Procurement Policy

1.1 Policy Scope

This policy covers activities associated with the purchasing of all goods and services by the Kaipara District Council ("Council").

1.2 Policy Objectives

The objectives of Council's Procurement Policy are to provide clear direction to management and staff in relation to the purchasing function and establish a decision framework that:

- Ensures purchases are made in an open, fair and transparent manner.
- Delivers best value through the most appropriate service provider.
- Ensures open and effective competition with open tendering applied to purchases above \$100,000.
- Supports environmental procurement and sustainability.
- Appropriately manages risk.
- Promotes efficient purchasing practices and their continuous improvement.
- Encourages local suppliers and manufacturers.
- Ensures Council's purchasing activities are in accordance with its legal responsibilities and the requirements of funding agencies.

The Procurement Policy shall be submitted for approval by the Kaipara District Council.

The Chief Executive shall ensure that procedures and guidelines are in place to achieve the Procurement Policy objectives.

2 Policy Principles

2.1 What is Procurement?

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

The procurement process covers the lifespan of a product or service, that is, 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.

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

- Subject to the standards of probity and financial prudence that are expected of a public entity; and
- Able to withstand Parliamentary and public scrutiny.

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

2.2 Who are these Principles for?

These principles are written to assist Council in its responsibilities as covered by section 5 of the Public Audit Act 2001. They set out the standards to be followed when procuring goods and/or services on behalf of the Council. They also include provisions relating to procurement contracts and apply to all groups and departments of Council.

The principles are based on guidelines issued by the Office of the Controller and Auditor-General "Good practice guide: Procurement guidance for public entities" June 2008.

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

2.3 Council's Broader Objectives

Council accepts and supports the implementation of any process that chooses the best supplier with regard to Council's broader objectives.

In defining these broader objectives, relevant considerations will include:

- The number of service providers in a particular market with regard to ensuring that a sufficient number remain over the long term to retain competitive pricing in the future.
- Ensuring that when purchasing assets, goods or services they are fit for purpose and selection is based on whole-of-life cost.
- Support for local organisations will be achieved through a process, such as that where two or more tenders or quotations are evaluated as being equal in all aspects, then the Kaipara District based vendor will become the preferred supplier.
- The requirements of funding agencies, such as NZ Transport Agency.

The way in which these broader principles are taken into consideration needs to be compatible with fair treatment of all suppliers and the methodology outlined in the procurement documentation or process.

2.4 Principles

The following principles shall underpin all Council procurement:

- **Accountability** - Council shall be accountable for its performance and be able to give complete and accurate accounts of the use to which it has put funds, including funds passed on to others for particular purposes. It shall also have suitable governance and management arrangements in place to oversee funding arrangements.
- **Openness** - Council shall be transparent in its administration of funds, both to support accountability and to promote clarity and shared understanding of respective roles and obligations between Council and any external parties entering into funding arrangements.
- **Value for Money** - Council shall use resources effectively, economically and without waste, with due regard for the total costs and benefits of an arrangement, and its contribution to the outcomes it is trying to achieve. In addition, the principle of value for money for 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).
- **Lawfulness** - Council shall act within the law and meet its legal obligations.
- **Fairness** - Council has a general public law obligation to act fairly and reasonably. It must be, and must be seen to be, impartial in its decision-making. Council may also at times need to consider the imbalance of power in some funding arrangements, and whether it is significant enough to require a different approach to the way it conducts the relationship.
- **Integrity** - Anyone who is managing public resources must do so with the utmost integrity. The standards applying to Council staff and agents are clear and Council must make certain, when funding other organisations, that it expects similar standards from them.

2.5 Giving Effect to the Principles

When deciding how to give effect to the Procurement Principles, Council shall take into consideration the following:

- **The goal** - It is important for Council to focus on what it is trying to achieve. The process should not dominate at the expense of the outcome.
- **Simplicity and proportionality** - The requirements put in place for the funding arrangement will be as simple and practical as possible, considering the amounts involved, the complexity, and the level of risk. Compliance costs for both parties should be considered and reduced, where possible.
- **The context** - The arrangements should fit within the overall context of the funding arrangement, including any general relationship that an external party has with Council or any other local authority. For example, a funding arrangement between Council and the regional council may need to take account of any general policies of both councils.

- **The risk** - Council will identify risks in or around any funding arrangement and consider how to manage those risks. This should not be seen as encouragement to be overly risk averse. The key is to make a conscious decision to get the right balance between risk and expected benefit.
- **The nature of the parties** – The needs and standards of Council (for example, for accountability or transparency) may be different to those usually encountered by the external party and vice versa. For example, Council may have unique obligations to its ratepayers, or groups of ratepayers. Relationships between the parties are likely to proceed more constructively and effectively if each party understands the needs of the other and the consequences of those needs for them.

3 Sustainability

Council will take a sustainable approach towards its procurement activities by:

- Taking into account the social, economic, environmental, and cultural well-being of people and communities, the need to maintain and enhance the quality of the environment, and the needs of future generations;
- Thinking broadly about objectives, considering long term as well as short term effects; assessing indirect as well as direct effects; considering economic, social, and environmental aspects; and taking extra care when procurement causes changes that might be irreversible or uncertain.
- Following public sector principles used to develop sustainable procurement strategies, including:
 - Adopting strategies to avoid unnecessary consumption and manage demand;
 - In the context of whole-of-life value for money, selecting products and services that have lower environmental impacts through their life cycle compared with competing products and services;
 - Supporting businesses and industry groups that demonstrate innovation in sustainability; and
 - Supporting suppliers who are socially responsible and adopt ethical practices.

During the procurement process, officers will undertake the following types of activities to assist sustainability, where appropriate, and where it does not contravene the procurement principles:

- Specifying products and services considered to be sustainable;
- Verifying suppliers' sustainable management standards;
- Including a sustainability clause in contracts;
- Rating supplier performance against sustainability criteria;
- Insisting on sustainability improvement targets for suppliers;
- Assisting suppliers to improve their sustainability performance; and
- Encouraging sustainable innovation in the supply of goods or services.

4 General Obligations

4.1 Government Policy

Officers should be aware of current government policies and mandatory rules relating to procurement and, if applicable comply with such policies and rules. The framework of government procurement policy principles comprises:

- Best value for money over whole-of-life;
- Open and effective competition;
- Full and fair opportunity for all eligible suppliers;
- Improving business capability, including e-commerce capability;
- Recognition of New Zealand's international trade obligations and interests; and
- Requiring sustainably produced goods or services whenever possible, having regard to economic, environmental, and social impacts over their life cycle.

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

4.2 Financial Delegations

Financial delegations shall be approved by Council or the Chief Executive (within his/her financial delegation) in writing and recorded in a delegations register.

Financial delegations should be set at a level that does not place undue restrictions and administrative burden, taking into account:

- The function the officer is responsible for performing;
- The value and complexity of associated contracts;
- The fiscal risk to Council.

Officers must comply with any applicable financial delegations when they procure goods or services.

Council policies and delegations may limit authority to commit to particular types of expenditure. Accordingly, officers must be aware of their financial delegation and any restrictions on its use, as well as the levels of financial delegation granted to committees or community boards applicable to the officer's field of responsibility or work.

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 should be noted that financial delegations are defined as being exclusive of GST (if any).

The Chief Executive is responsible for ensuring that officers have the required skills for the type and level of procurement.

4.2.1 Council Committee Delegations

Council may approve financial delegations to Committees, where appropriate in a way that reinforces the wholeness of the Council's job and does not interfere with the delegation from Council to the Chief Executive.

Approved financial delegations will be recorded in the Committee's Terms of Reference or Delegation and reviewed, at least, at the beginning of each term of Council.

Committees may not sub-delegate their financial delegation without specific approval from Council.

4.2.2 Staff Delegations

Council shall approve financial delegations to the Chief Executive or, where appropriate, through a specific delegation.

The Chief Executive may sub-delegate his/her financial delegations, subject to any restrictions imposed by Council.

The approved schedule of staff sub-delegations shall be reviewed at least annually and officers required to acknowledge that they have read and understood their financial delegation.

5 Legal Considerations

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.

For complex procurements, the Chief Executive shall obtain whatever legal advice, or professional expertise on technical or probity matters, he or she considers necessary, particularly when developing or reviewing procurement documentation.

5.1 Compliance with Legislation

Officers must comply with all applicable legislation throughout the procurement process. The legislation includes, but is not limited to:

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

Where a procurement process is as a result of significant changes to the content or form of services that Council delivers, or a change of approach to the way it funds some services, the statutory consultation obligations must be completed before any commitment to procure is made. In this context, Council's Policy on Significance will be taken into consideration.

5.2 Public Law Considerations

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

Council shall consider the following risks and obligations in its procurement decisions:

- Procurement actions and decisions could be subject to judicial review, or a complaint to an Ombudsman or the Auditor-General;
- The Courts have shown a willingness to intervene in commercial relationships to ensure that any public entity acts fairly and in keeping with its public law obligations;
- If unsolicited proposals are received from potential suppliers, officers must make it clear to the supplier that, if Council proceeds with considering the proposal, it may choose a competitive tender or proposal process, depending on the type and value of the procurement and any statutory obligations.

6 Ethical Considerations

6.1 Ethics

Council is committed to dealing with suppliers in a fair and equitable way.

- The following principles must be followed by all officers, in respect to the management of, involvement in, and advice on procurement processes:
- No officer shall engage in deceptive or misleading conduct (as defined under the Fair Trading Act 1986);
- Price fixing must be avoided (refer to the Commerce Act 1986);
- Officers must not be under any obligation (or appear to be under obligation) to anyone other than Council for the performance of their duties;
- No gifts or gratuities are to be accepted from prospective suppliers who are actively tendering for the provision of goods and services;
- Officers must not request any gifts, favours or forms of entertainment in return for business, services or information; and
- All gifts or gratuities offered by suppliers must be managed in accordance with Council's Sensitive Expenditure Policy.

6.2 Accuracy and Use of Information

Council requires its officers 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; and
- 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.

6.3 Contact with Participants during Procurement Process

Council shall nominate one point of contact only for participants to use during a procurement process to reduce the risk of a potential supplier extracting an advantage by playing off one member of the procurement team against another. The officer, who is the point of contact, may arrange for another officer to deal with technical queries.

The procurement documentation shall state that, during the procurement process, participants may not contact any member, elected representative, employee, or adviser of Council about the procurement other than the person nominated.

All communication during the procurement process shall be formal as informal communication between evaluation personnel and participants during the procurement process could prejudice the integrity of the evaluation.

Any information provided to one participant must be provided to all participants.

During a contract renewal process, Council shall have formal processes to govern contacts with current suppliers, when tendering or proposing for a future contract, to minimise any perception that current suppliers may have an advantage in their knowledge of Council and its requirements. This process shall include a requirement that the current supplier must not discuss the requirements and contents of the new tender or proposal with officers or members of the evaluation panel, unless the discussion is part of the formal procurement process.

6.4 Use of Consultants or Procurement Agents

If Council engages a consultant or an agent to assist in the procurement process, the contract of engagement will require the consultant or agent to observe the same ethical standards, principles and behaviour that apply to officers, including compliance with this policy and any associated processes. An experienced officer with the appropriate delegated authority will be appointed to brief and work with the consultant or agent.

6.5 Engagement of Ex-Employees

Council will usually require that ex-employees are engaged through a contract with a limited liability company.

However, the Chief Executive may approve the engagement of an ex-employee subject to:

- An appropriate standdown period since employment was terminated;
- Compliance with Inland Revenue Department industry guidelines on self-employed contractor or employee; and
- Consideration of relevant employment case law.

6.6 Fraud and Impropriety

Any instances of fraud or impropriety, or suspected fraud or impropriety, shall be managed in accordance with Council's Fraud Policy.

7 Conflicts of Interest

As part of the general obligation to act fairly, Council shall take care that its decision-making processes cannot be challenged on the basis of actual or potential bias and/or conflicts of interest. The Local Authorities (Members' Interests) Act 1968 shall be complied with at all times.

Officers should be aware of the potential for conflicts of interest of anyone who is directly or indirectly involved in any aspect of the procurement process. This includes governance, management, operational staff and the person approving the procurement.

Any officer involved in the procurement process shall declare a personal interest that may affect, or could be perceived to affect, their impartiality. The Chief Executive (or Council in the case of a conflict of interest declared by the Chief Executive) will then decide what steps are necessary to manage the conflict, having regard to relevant statutory requirements.

A register of declarations of conflicts of interest that records any conflicts of interest and how they were managed shall be maintained.

The Chief Executive shall put in place procedures and guidelines for declaring, managing and monitoring actual or perceived conflicts of interest.

As a guide, the following types of interest, which might create a conflict with an officer's procurement duties, should be disclosed with respect to a business or organisation that has dealings with Council:

- Being an employee, advisor, director, or partner;
- Pursuing a business opportunity;
- Being a member of a club, society, or association;
- Having a professional or legal obligation (such as being a trustee);
- Owning a beneficial interest in a Trust;
- Owning or occupying a piece of land;
- Owning shares or some other investment or asset;
- Having received a gift, hospitality, or other benefit;
- Owning a debt;
- Holding or expressing strong political or personal views that may indicate prejudice or predetermination for or against the business or organisation;
- Being a relative or close friend with someone who has one of these interests (or who could otherwise be personally affected by the procurement decision).and
- Any other matters which the public might reasonably regard as likely to influence the officer's actions during the course of their duties.

If an officer is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the officer should seek guidance from a General Manager or the Chief Executive immediately.

8 Confidentiality

8.1 Commercially Sensitive Information

Officers shall take particular care when handling commercially sensitive information and note that confidentiality obligations apply throughout the entire procurement process, and also after the contract has terminated or expired.

Where Council has a statutory obligation to consult third parties in the course of procuring goods or services, officers may need to seek legal advice on how to reconcile this duty with its contractual or common law obligations to maintain commercial confidentiality.

Officers must consider obligations under the Local Government Official Information and Meetings Act 1987 to disclose information in the public interest. This obligation may override grounds under the Act to withhold information that may unreasonably prejudice the commercial position of a potential supplier.

8.2 Intellectual Property and Copyright

Where procurement involves the purchase of intellectual property rights, such as computer software development, officers shall determine whether it would be more beneficial for the rights to be held by the supplier or by Council. Relevant factors may include the effect on the price of the contract and the ongoing ability of the parties to develop innovations.

In each case, officers shall:

- Identify all intellectual property likely to be developed or created during a procurement;
- Seek legal advice, where necessary, on how to secure its continuing right to use intellectual property as required, including if Council procures the goods or services from a different supplier in future;
- Be clear about the difference between what is intellectual property and what is said commercially in confidence;
- Determine who should own any intellectual property; and
- Be satisfied that claims of intellectual property by suppliers are valid.

For information and communication technology contracts, Council shall adopt the default position that the supplier owns new intellectual property with licences granted to Council¹. Any variation from this must be approved by the Chief Executive.

¹ Refer State Services Commission, *Guidelines for the Treatment of Intellectual Property Rights in ICT Contracts*, 2008.

9 Liability

When contracting for goods or services, a supplier may try to limit its liability under the contract. 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:

- Scope and limit of the liability;
- Events that might cause liability to be incurred; and
- 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 should be referred to Council's insurers for comment prior to acceptance or sign-off.

10 Economic Considerations

10.1 Total Cost of Ownership (“whole of life” cost)

When assessing a procurement proposal, officers should be aware of the “whole of life” cost of the goods or services being procured.

Often, the acquisition cost of a product is only a small proportion of the 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, plant, vehicles and computer equipment, 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.

Items for consideration when assessing “whole of life” cost include planning, research, access, accommodation, infrastructure support services (e.g. power, drainage, etcetera), staffing, training, cost of asset, maintenance, consumables, servicing, spares, refurbishment, decommissioning and disposal.

10.2 Value for Money

Officers should adopt a “value for money” approach when goods or services are procured or used. “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.

Council's value for money approach will be maintained or enhanced by working within a strategic approach to procurement that includes:

- Understanding the role of procurement in realising value for money spent;
- Developing and maintaining knowledge of the supplier market;
- Encouraging a sustainable supplier market and minimising barriers to competition since competition is one of the best means of ensuring value for money;
- Ensuring efficiency by avoiding unnecessary process costs or the imposition of unwarranted compliance costs;
- Using a combination of procurement approaches and capabilities; and
- Adopting performance and success measures for the procurement strategy.

11 Risk Management Considerations

Risk management involves the systematic and timely identification, analysis, treatment, management and mitigation of risks. To obtain value for money, Council shall proactively identify, evaluate and manage any risks, opportunities and issues arising out of the procurement process.

Risk can arise at any stage of the procurement process and can be broadly identified as:

- activity – risks surrounding scope and scale;
- process – risks that relate to the use of procurement procedures;
- contract and relationship – risks that arise as the activity is delivered; and
- termination and transition – risks as the contract nears completion.

To manage risk, Council will:

- Establish effective dialogue between the purchaser and supplier(s) to best understand the risks for the activity;
- Allocate risk in an optimal manner to the parties who are best placed to manage and mitigate the risk over the life of the activity (the supplier is not always the best party to manage or mitigate certain types of risk);
- Use appropriate risk transfer and enforcement mechanisms so that the cost of risk is borne by the parties as initially agreed; and
- Maintain an active risk management framework and programme to protect and preserve value for money in the procurement process.

All officers are responsible for identifying and managing risk within their area of responsibility and a risk management approach shall be applied when making any purchasing or procurement decisions on behalf of Council.

12 Contractual Considerations

Council must comply with any relevant law on the formation and performance of contracts. In particular, legal risks may exist when procuring with a competitive tender or proposal process. At times, it may be appropriate for Council to create a contractual situation during the procurement process itself (a “process” contract). However, officers must be careful that they deliberately, and not inadvertently, create any legal obligations².

Council may seek to minimise risk by excluding or limiting liability in the procurement documentation for any breach during the procurement process. Where participants participate on that basis, a Court may be likely to recognise such an exclusion or limitation provision as being contractually effective. If contracts of this nature are entered into, legal advice should be obtained to reduce the level of risk.

Value for money will be maintained or enhanced through the contract delivery process by:

- Granting sufficient flexibility in the contract to capitalise on any favourable changes that may arise in the marketplace (e.g. having mechanisms in place to adjust the price and scope of term contracts to account for changes in demand);
- Using performance monitoring to actively manage the contract for time, cost and quality;
- Creating sufficient incentives within the contract to encourage innovation and efficiency in delivering the outputs;
- Encouraging collaborative processes between suppliers and purchasers;
- Setting the contract term to account for changes in technology and the requirement to refurbish or maintain any assets or resources put in place; and
- Developing contract management skills and expertise to ensure that value for money spent is maintained or enhanced.

² By way of explanation, in general, an invitation to submit a tender or proposal, or a request for tender or proposal, is an “invitation”, not an “offer” to purchase goods or services. However, a preliminary contract may sometimes exist for the tender or proposal process itself.

For example, if Council specifically defines the process in the procurement documentation that it issues to participants, that definition could be construed as an offer to proceed in that manner, which a participant accepts by submitting to the procurement process. That may be enough to create a binding contract for the process. If a process contract is created, it will contain express and implied terms. The express terms will be those in the procurement documentation, and the implied terms will include a requirement to treat all participants fairly and equally. If Council then follows a different process, it may risk legal action for breach of contract.

13 Record Keeping

Council will keep adequate records of procurement decisions. The Public Records Act 2005 requires Council to maintain full and accurate records in keeping with normal, prudent business practice.

The value and risk of the procurement will determine the nature and amount of documentation that is desirable. However, adequate records shall be kept to:

- Show that Council followed due process and observed the basic principles set out in this policy;
- Establish that any potential conflict of interest issue was identified and appropriately managed;
- Record responses to queries from unsuccessful suppliers;
- Record the outcome of meetings during the procurement process;
- Provide evidence for accountability and audit purposes; and
- Plan any subsequent procurement.

Council shall keep records in a manner that facilitates audit and other normal processes of accountability. This includes ensuring that records of all decisions and supporting documentation are available for audit.

14 Exceptions

This Policy does not cover:

- The engagement of employees; and
- Grants.

Where a departure from this Policy is required in special circumstances, the Mayor, Chairperson of the Audit Committee and Chief Executive together may approve, in writing, such departure and report the departure and reasons to the next meeting of Council.

15 Strategic Procurement Planning

Council will take a strategic approach to procurement and have in place a procurement strategy, which outlines:

- Type of procurement Council undertakes;
- Value and risk associated with the procurement; and
- Importance of procurement to achieving its overall goals and business strategy.

When deciding which procurement strategy to use, Council should take into account:

- Value and risk of the goods and services;
- Availability of the goods and services;
- Importance of the goods and services to Council;
- Characteristics of the market and any action Council may want to take to develop or otherwise influence the market;
- Transaction costs associated with the procurement; and
- Council policy objectives; for example, sustainability.

16 Planning for Procurement

16.1 Procurement Business Case

A business case shall be submitted to Council as part of the approval process for any high-value procurement over \$500,000 unless Council has approved otherwise. As a minimum, every business case shall:

- Identify the outputs and outcomes to which the procurement process contributes;
- Identify the specific objectives of the proposed procurement;
- Assess the costs, benefits, and risks involved;
- Examine whether the initiative is feasible;
- Identify the preferred strategy and method for the procurement;
- Identify and assess options;
- Provide for consultation with affected persons;
- Show that the preferred option will meet the procurement objective;
- Justify any departure from a procurement method that officers are required to follow; and
- Provide details of market research undertaken where Council does not have existing knowledge of and involvement in the market.

The Chief Executive may require a business case for purchases with a value of less than \$500,000 if, in the opinion of the Chief Executive, the risk to Council is high. Depending on the level of risk, the business case may be submitted to and approved by Council, the Chief Executive or any other officer or body with the appropriate delegated authority. The Chief Executive shall determine the required contents for the business case.

Officers will need to take account of the decision-making requirements in the Local Government Act 2002, including requirements to assess the costs and benefits of options and to consider community views at various stages of the decision-making process. In some cases, a business case may need to provide for consultation or engagement with affected persons.

Officers should also refer to relevant guidelines produced by the New Zealand Society of Local Government Managers.

16.2 Procurement Plan

Procurement plans shall be prepared for all classes of goods and services with similar value and risk characteristics and approved by the Chief Executive if over \$100,000, and General Managers if under \$100,000. A condition precedent is that the budget has been approved by Council via a Long Term Plan, Annual Plan or forecasting process.

Procurement plans will include:

- Description of the goods and services;
- Procurement method;
- Selection of a tender evaluation model (including evaluation criteria) and process;
- Type of contract and contractual conditions;
- Responsibilities of officers and stakeholders;
- Risk assessment;
- Need for independent oversight or assurance over the process;
- Timelines and key milestones, as appropriate;
- Resources needed (such as, project manager, evaluation team members, tender or proposal manager and approving authority)
- Budget, including as appropriate, the budget for conducting the procurement (such as, external quality assurance, independent assurance, legal advice and project management).

Procurement plans will also provide for the following value thresholds:

- Potential contracts with a value of \$100,000 or more are to be competitively tendered, unless an exemption has been authorised by the Chief Executive.
- For contracts or purchases with a value of less than \$100,000, a closed tender (as distinct from an open tender) or quotation process may be followed, unless an exemption has been authorised by a General Manager.
- For purchases from \$50,000 to \$100,000, three quotations are required, unless an exemption has been authorised by a General Manager.
- For purchases less than \$50,000, a minimum of one quotation is required but more may be obtained if considered appropriate.

Any proposed variation from these requirements shall be supported by a written report and approved in writing or else is consistent with the standard procurement practices as provided elsewhere in this policy.

16.3 Specifying the Goods or Services

Goods and services shall be specified before procurement occurs. Depending on the value of the purchase, this may be in a separate specification document or on an approved purchase order.

The specification shall contain a clear, concise, logical, and accurate description using one of the following types of specification, depending on its nature and the particular circumstances:

- Functional specification, which focuses on what is to be achieved from the procurement; that is, the desired outcome, rather than how it will be reached;
- Performance-oriented specification, which defines the performance parameters required of the goods or services but not the methods to be used to achieve them;

- Technical specification, which usually sets out the physical characteristics of goods (for example, their size or capacity, the type of materials they contain, or their tolerance) in a highly prescriptive way; or
- Combination of the above.

Other potential contents of a specification may include:

- Mandatory requirements and non-mandatory preferences for the goods or services;
- Requirements relating to timetable, delivery date, and so on; and
- Performance standards, including key performance indicators and targets that cover inputs (the total resources), outputs (what will be produced), and outcomes (the effects of the service).

17 Selecting the Method of Procurement

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.

In deciding which procurement method to use, officers should take into account risk, complexity, and value of the goods or services to be procured as well as whole of life costs where applicable.

Approval for the method of procurement must fall within the financial delegation of the approving officer.

17.1 Competitive Processes

17.1.1 Open Tenders

An open invitation for tender or proposal is Council's preferred method for procurement and shall be the default position.

A open tender offers all interested suppliers fair and equitable opportunity, and allows a range of competing offers to be evaluated when assessing value for money. However, the method should be appropriate to the market for the particular goods or services, and the circumstances of the procurement. These considerations may mean that an open call for tender or proposal is not practicable or cost-effective, or may not produce the best procurement outcome.

17.1.2 Closed Tenders

Use of closed tenders or proposals should be limited because this method of procurement does not allow equal access to all suppliers in the market meaning that a better source of supply may be missed.

A closed tender or proposal may only be used when:

- Market research has identified that the goods or services are only available from a few suppliers;
- Council can demonstrate that it is not practical or cost-effective to conduct an open tender or proposal; or
- There is genuine limited time for the procurement process and it is not limited because of poor contract management.

If a closed tender or proposal is used, the reasons and a proper justification must be documented and approved by Council, the Chief Executive or a General Manager in accordance with the financial delegations.

17.1.3 Oral Quotations

For purchases up to \$50,000, oral quotations are permitted as a quick and convenient way of exploring the market and determining availability and price for low value, low risk goods and services. The number of quotations sought shall be determined by the value and risk of the procurement and the number of potential suppliers.

A clear, written statement of requirements and questions shall be prepared to ensure the same information is sought from the supplier so a proper comparison of goods and services can be obtained.

Records of decisions, including reasons for recommending and deciding on the selection and rejection of offers, shall be maintained.

17.1.4 Written Quotations

For purchases from \$50,000 up to \$100,000 in value, three written quotations shall be obtained.

Written processes and records shall be maintained which:

- Define the need and specification;
- Establish the potential sources of supply;
- Obtain appropriate approval for the procurement;
- Seek written quotations;
- Evaluate responses and select a supplier;
- Obtain approval for the decision;
- Advise the decision. When the evaluation process is completed, both the successful and unsuccessful participants should be advised of the decision; and
- Monitor performance of the service provider.

17.1.5 Competitive Tenders or Proposals

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

- A Registration of Interest (ROI) or Expression of Interest (EOI);
- A Request For Proposal (RFP);
- A Request For Tender (RFT);
- A combination of the above processes. However, multi-stage processes are time-consuming and expensive for all parties and should only be used for goods or services categorised as high value and high risk and should form part of the business case rationale.

17.2 Direct Procurement

17.2.1 Low Value Low Risk Good or Services

Officers may purchase directly from a supplier, after obtaining a quotation for the particular supply, where:

The value of the goods or services is less than \$50,000;

- The purchase of these goods or services is on an as-required basis;
- It is not practical to aggregate separate orders for the goods or services;
- The cost of seeking quotes or tenders would be out of proportion to the value of the benefits likely to be obtained or impractical in the circumstances; and
- Purchases and processes comply with Council's Sensitive Expenditure Policy.

Any such procurement will be in accordance with an appropriate Procurement Plan.

17.2.2 Selective Procurement

Procurement from a selected supplier may be approved by a General Manager subject to a written report, which includes evidence of appropriate market research to support the case for selective procurement.

Purchase from a selected supplier may be approved where:

- The goods or services require specialised skills or are very complex and there is a limited number of qualified suppliers;
- The required goods or services are available from only one source;
- Only one supplier has the capacity to deliver at the time required and this can be adequately attested; or
- Standardisation or compatibility with existing equipment or services is necessary, and can be achieved through only one supplier.

17.2.3 Emergency Procurement

An "emergency" in the context of procurement is deemed to be that as described in section 4 of the Civil Defence Emergency Management Act 2002³.

³ **emergency** means a situation that—

(a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and

(b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and

(c) cannot be dealt with by emergency services, or otherwise requires a significant and co-ordinated response under this Act

Officers may purchase goods and services, without competitive quotations or tendering during the response stage of an emergency provided they act within their financial delegations and within the definitions of "emergency" and "response". Such decisions may involve Council being committed to expenditure for which there is no established budget or where there is insufficient budget.

17.2.4 Standing Arrangements

Subject to a competitive process, officers may enter into standing arrangements, where Council is able to procure directly from suppliers for an agreed period of time for goods or services that have high value but where the risk to Council is low because the goods or services are widely used, have no special requirements, are simple to specify and have common standards, such as:

- fuel;
- motor vehicles;
- air travel; and
- stationery.

17.2.5 Panel Contracts

A panel contract is a contractual arrangement with a group of suppliers to provide services as and when required, under a schedule of rates for each supplier or based on a quotation.

Subject to a competitive process, the Chief Executive may approve a written request to enter into a panel contract for professional services where:

- Fixed prices, fees, or rates can be agreed with each supplier;
- The "demand" or requirement for goods or services cannot be predicted;
- The goods or services do not all need to be provided by the same supplier;
- There are specific requirements, such as specialist skills and knowledge;
- Allowing for greater choice of supplier is seen as an advantage or provides a contingency in case an alternative supplier is required because a conflict of interest arises with a preferred supplier;
- Goods or services may need to be procured at short notice;
- A variety of skills may be needed at different stages; and
- It cannot be predicted that one supplier can provide the goods or services at any point in time, for example, the work cannot be handled by one particular supplier alone.

Procurement documentation for a panel contract shall include:

- Notification that Council is seeking to engage a panel;
- Provision that enables Council to review membership, remove panel members or terminate the panel contract, if required;

- Number of suppliers on the panel and, if undetermined, how this will be evaluated;
- Criteria used to evaluate suppliers against each other and against Council's needs;
- Requirements of suppliers in terms of service levels, response times, and other performance measures;
- How Council will engage panel members to do particular work;
- How work will be allocated to panel members; and
- Circumstances that may lead to a supplier being removed from a panel.

17.2.6 *Syndicated Procurement*

Council may approve a business case to enter into a syndicated procurement arrangement to aggregate procurement requirements to achieve improved outcomes through greater purchasing power and reduced procurement costs, subject to legal advice and a procurement plan,

Before approval, Council must assure itself that the arrangement:

- Complies with the Commerce Act 1986 and avoids anti-competitive conduct and arrangements;
- Complies with public sector conditions and guidance for entering into syndicated Common Use Provision (CUP) contracts or cluster arrangements, or a combination of both;
- Considers the effects of the syndicated procurement on the market; and
- Has been legally reviewed.

17.3 Relational Purchases

Subject to a business case or a procurement plan, Council may enter into major and minor relational purchases⁴ where a contract does not fit the conventional market model because:

- There is not an effective or meaningful market to provide the goods or services; or
- The strategic importance of the goods or services, or of the relationship with the provider, is such that the objectives of the procurement may not be achieved through the market.

Consideration of any public private partnership will be managed within Council's Partnerships with the Private Sector Policy.

⁴ Examples of minor relational purchases include contracts to purchase policy or other advice from specialist advocacy or special interest representative groups, highly specialised professional advice, small and specialised research work, or a niche product for a particular and unusual requirement.

Examples of major relational purchases include major and long-term research contracts, or significant professional or consultancy relationships.

18 Tender or Proposal Management and Evaluation

An open invitation for tender or proposal is Council's preferred method for procurement and shall be the default position.

Open tendering shall be routinely applied for all purchases over \$100,000 except as provided for elsewhere in this Policy.

18.1 Selecting an Evaluation Model

Generally the evaluation model will be either the lowest conforming price or price quality.

All procurement plans shall contain an evaluation plan, or details of the selected evaluation model, criteria and process, giving reasons why that evaluation model was chosen.

The evaluation model shall be set out in procurement documents so that potential suppliers know how the tender or proposal will be evaluated.

The evaluation criteria should be detailed enough to enable Council to assess the relative strengths and weaknesses of each respondent and include;

- Suppliers track record;
- Experience of personnel;
- Resources;
- Quality;
- Health and safety;
- Proposed methodology;
- Price;
- Sustainability; and
- Business continuity.

18.2 Inviting and Receiving Tenders and Proposals

Council will treat all participants in a fair and equitable manner including:

- Ensuring that information given to one participant that could significantly affect its understanding of the procurement is also conveyed to all other participants (unless the information is commercial in confidence); and
- Advising all participants if some unforeseen and exceptional circumstance changes the rules, procedures or criteria during the tender or proposal process. Such a change should not benefit one participant over another.

A tender or proposal package, which shall be provided to all participants in an open or closed tender process, will include:

- Specification;
- Evaluation model that will be used, including the evaluation criteria;
- Rules and procedures governing the tender;
- Information required from the participant, which will enable Council to measure each participants performance against the evaluation criteria and support an assessment of the best value for money;
- Type of contract envisaged, the main conditions that are contemplated, and any business terms that summarise Council's commercial and legal position;
- Any rights Council wishes to reserve; and
- A declaration that participants do not have conflicts of interest.

Tender or proposal advertising shall be appropriate for the target market and the cost shall not outweigh the expected benefits of the advertising. The advertisement shall be advertised for long enough to allow interested suppliers to prepare and submit the tender or proposal and include:

- A description of the nature and scope of the proposed procurement;
- Any conditions that suppliers must fulfil to participate in the tender or proposal;
- Time limits for submitting tenders or proposals; and
- Contact details for obtaining all relevant documents (including the tender or proposal package) and for asking questions.

Officers are to notify and hold briefings for all participants for procurements:

- That are complex, unusual or sensitive;
- That are strategic to Council's core business; or
- Where relationships will be an important component and Council's culture, strategic direction and imperatives require explanation.

Officers may encourage participants to generate innovative ideas that depart from the basic contract specification but must explain, in the tender or proposal documents, the evaluation approach that will be taken for the alternative tenders or proposals.

Late tenders may only be accepted in exceptional circumstances, subject to approval in writing by the Chief Executive, and where:

- It is certain that there is no possibility of unfair advantage;
- The late participant has no knowledge of other tenders or proposals; and
- The late tender or proposal conforms in all other respects with the criteria set out in the tender or proposal documents.

An extension in the tender or proposal period may be approved in writing by the Chief Executive only where:

- Council has specifically reserved the right to extend the date in the tender or proposal documentation;
- The time extension is granted and notified to all participants, with sufficient time to enable all to benefit;
- No participant gains an unfair advantage;
- There is no potential for actual or perceived bias towards a participant.

Suspension of the tender or proposal period may be approved in writing by the Chief Executive where:

- There has been a material change or significant issue emerging during the process;
- All participants have been made aware of that possibility.

Cancellation of the tender or proposal may be approved in writing by the Chief Executive in exceptional circumstances and following legal advice where:

- All the tenders or proposals received are non-compliant;
- The tenders or proposals received cannot be adequately or fairly compared;
- There is evidence of collusion between participants;
- A significant probity concern arises during the process that creates a risk of legal action;
- There has been a significant change to the goods or services being sought; and
- All participants are notified of the cancellation and the reasons for the decision.

18.3 Evaluation Process

The evaluation process shall be documented in the procurement plan.

Officers shall consider each tender or proposal, on an equal basis, against the evaluation criteria and be assured that the preferred participant has the capacity and capability to meet the requirements of the proposed contract. Where necessary, independent verification of the participant's capacity and capability shall be sought.

Records of the evaluation process must be kept, including a summary of the scores awarded to each participant and the reasons for the scores.

Composition of the evaluation team will be considered during the procurement planning, including:

- Size and membership of the team depending on the value, complexity and risk of the procurement;
- Skills and experience required to appropriately evaluate the tender or proposal; and
- Term of reference to govern how the evaluation team will operate and the required processes.

Evaluation team members and advisors must complete a conflict of interest declaration and the Chief Executive (or Council in the case of a conflict of interest declared by the Chief Executive) will then decide what steps are necessary to manage the conflict, having regard to relevant statutory requirements.

Participants may be invited to make a presentation as part of the evaluation of the participant's capability to carry out the procurement, subject to:

- Notification in the tender or proposal documents that a presentation may be invited;
- Personnel involved in the presentation have contributed to the preparation of the tender or proposal and will be involved in providing the goods or services if the tender or proposal is successful.

Where clarification of the tender or proposal may be sought from participants about:

- Quality and performance or particular terms and conditions of the contract;
- Uncertainty as to the meaning of the content of the tender or proposal; and
- The effect of "tags" or qualifications contained in the tender or proposal;

Officers must ensure that this process does not provide a participant with unfair advantage and a record is maintained of all communications.

Due diligence, to ensure that the participant has the capacity and stability to fulfil all the requirements of the contract, will undertaken on preferred participants for all contracts over \$5,000,000 or where the Council or Chief Executive determines that it should be undertaken for high value, high risk or complex procurements.

18.4 Awarding the Contract

Post-evaluation negotiations may be undertaken with participants to:

- Test the understandings and underlying assumptions that have influenced a participant in preparing the costs; and
- Achieve a reduction in costs, where appropriate.

Officers shall ensure that post-evaluation negotiations:

- Are conducted ethically and fairly;
- The focus is not solely on reducing bottom-line costs;
- Other participants are not disadvantaged by negotiating an agreement that is materially different in scope from what was described in the tender or proposal documents; and
- The negotiated agreement is sustainable and does not inappropriately compromise quality.

Negotiations will be undertaken in order of the participant's ranking until a satisfactory outcome is achieved. Concurrent negotiations may only be conducted with approval in writing from the Chief Executive and where:

- A negotiation plan has been prepared;
- Participants have been advised that concurrent negotiations are being carried out;
- Separate negotiations are held with the preferred participants; and
- Negotiations are fair to all parties.

The evaluation team shall provide a recommendation, in writing, that reflects the outcome of the evaluation process, with enough information to allow the approving authority to understand the evaluation process and the rationale for the recommendation. Approval must be documented.

If the approving authority rejects the evaluation team's recommendation, they must document the reason for not accepting the recommendation and ensure that the reason is legitimate.

All participants must be notified in writing of the outcome of the tender or proposal process and offered a debriefing.

19 Contract Management

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.

Officers will maintain records of the contract management and monitoring they have carried out.

19.1 Contract Document Preparation

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 officers involved with contracts will have experience in formulating contracts or have the required level of competency.

To the maximum extent possible and reasonable, Council's standard forms of contract should be used as a template upon which the more specific requirements relating to a particular project or type of work is built.

Legal advice should be sought where contracts are:

- Negotiated; or
- Non standard; or
- The circumstances are unusual; or
- The risks associated with the relationship are high.

A contract management plan should be prepared and updated regularly for contracts that has been subject to a business case or where there is a high level of risk associated with the goods or services procured.

19.2 Contract Monitoring and Completion

Officers shall ensure that the terms of the contract are adhered to during the contract by regularly monitoring that the goods or services are delivered:

- On time;
- At the agreed cost; and
- To the required quality.

A new supplier transition plan should be prepared when service delivery could be affected by the transition from one agreement or contract to the next. In relatively routine, straightforward procurements, transition arrangements may be covered in the contract management plans.

Any contract that has been subject to a business case, and continues beyond a period of 12 months from commencement, will be reviewed at least annually.

All contracts shall be reviewed and evaluated upon completion to assess how well the objectives have been achieved and where improvements can be made. A formal documented contract completion process (including debrief) shall be conducted for contracts that has been subject to a business case when the contract expires or ends.

20 Independent Oversight or Assurance

Officers managing the procurement together with other personnel, either directly or indirectly involved, must be fully accountable for the procurement process and ensure that it is in line with accepted standards.

The Chief Executive may approve the appointment of an independent adviser for high value, high risk procurement to oversee the process. Such an appointment does not negate the primary responsibility of officers for ensuring that appropriate professional standards are met or the accountability for decisions made.

Terms of engagement for an independent adviser should include:

- Reporting responsibilities, including management responsibility, frequency and timing of reports, attendance at meetings;
- Scope of the engagement; and
- Remuneration, or the method for determining it.

21 Audit and Compliance

Council shall undertake regular audits of its procurement policies and procedures as part of the internal audit programme to ensure compliance and identify areas for improvement in line with current best practice.