



# Kaipara District Council

## Procurement and Contract Management Manual

September 2014



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# 1 Introduction

## 1.1 Purpose

The purpose of this Procurement and Contract Management Manual (“the Manual”) is to describe the processes, policies, guidelines and supporting tools and templates that, collectively, form the common approach to executing procurement and contract management within Kaipara District Council (“Council”).

The requirements documented in this manual are the minimum required standards that must be followed by all employees of the Council and consultants assisting Council in procurement and contract management matters to provide assurance that:

- Procurement activities support Council's broader objectives;
- Procurement activities comply with relevant legislation;
- Procurement activities are aligned with best practice guidelines from the Office of the Auditor-General;
- Procurement decisions are aligned with the Council's policies and objectives;
- Procurement risks are considered and mitigated;
- Procurement processes are consistent and coordinated across the Council; and
- Contract Management is carried out diligently to promote best outcomes for Council ratepayers.

## 1.2 Scope

This Manual covers activities associated with the purchasing of all goods and services by the Council. Additionally, the subsequent contract management processes are included; those being contract initialisation through to contract expiry.

### 1.2.1 Contract and Procurement Guidelines for Local Government

This Manual has been tailored for Procurement and Contract Management activities carried out within Council. Supporting this Manual is a document titled ‘Local Government Contract and Procurement Guidelines’ (“**LGCPG**”). References to sections within this LGCPG document are made where further detail on a particular subject will provide greater clarity to the process. Standard templates and forms are also referenced within this Manual.

## 1.3 Objectives

The objectives of Council's Procurement and Contract Management Manual 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 market sustainability, where appropriate;
- Ensures Council's purchasing activities are in accordance with its legal responsibilities and the requirements of funding agencies; and
- Promotes sound contract management 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.

The Manual 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 Manual's objectives.

## **1.4 Exceptions**

This Manual does not cover:

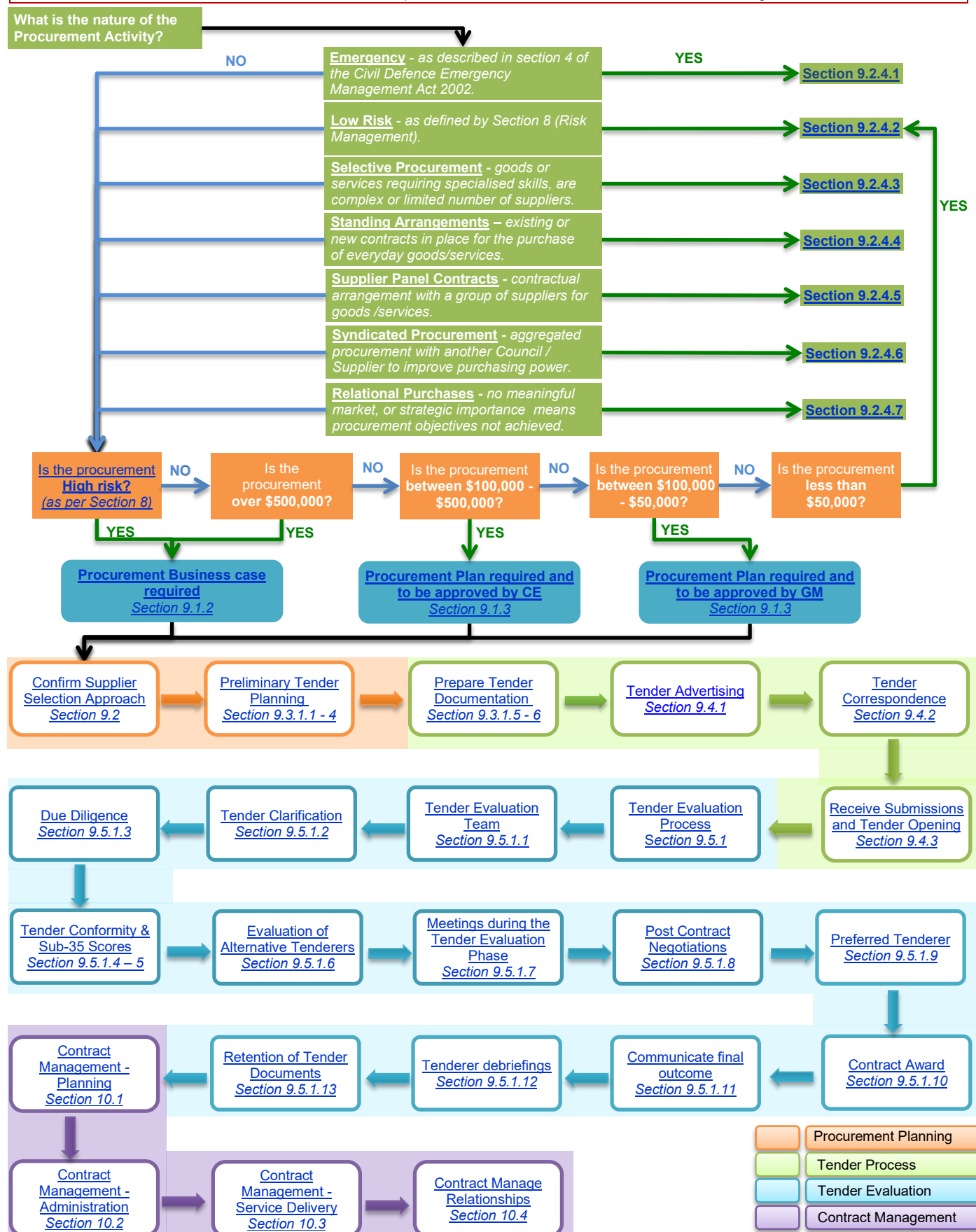
- The engagement of employees;
- Individual employment agreements and benefits;
- Wider Council benefit programmes; and
- Grants.

Where a significant departure from this Manual 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.

## 2 Quick Reference Guide

### Kaipara District Council – Procurement and Contract Management Quick Reference Flowchart

**NOTE TO USER:** This Quick Reference Flowchart is intended to be used as a guide only. It shall be used exclusively by Council employees and/or Consultants that have read and understood the Kaipara District Council Procurement and Contract Management Manual.



## 3 Principles

### 3.1 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.

### 3.2 Who are these Principles for?

These principles underpin any procurement entered into by, or on behalf of the Council, and 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.

### 3.3 Council's Broader Objectives

Council accepts and supports the implementation of processes that choose 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; and
- 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.

### 3.4 Principles

The following principles shall underpin all Council procurement:

- **Accountability** - Council shall be accountable for its performance and have 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.

### 3.5 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 in accordance with Council's Risk Policy. 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.

## 4 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.

### 4.1 Compliance with Legislation

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

- Commerce Act 1986
- Fair Trading Act 1986
- Health and Safety in Employment Act 1992
- Local Authorities (Members Interests) Act 1968
- Local Government Official Information and Meetings Act 1987
- Local Government Act 2002
- Official Information Act 1982
- Public Records Act 2005
- Civil Defence Emergency Management Act 2002
- Contracts (Privity) Act 1982
- Goods and Services Tax Act 1985
- Withholding Tax Regulations
- Land Transport Management Act 2003
- Resource Management Act 1991
- Contractual Mistakes Act 1977
- Construction Contracts Act 2002
- Public Works Act 1981
- Public Finance Act 1989
- Electronic Transactions Act 2002

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.

### 4.2 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; and
- 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.

## 5 Policy

### 5.1 Purpose

The purpose of this section is to outline the mandatory policies that will be applied to all procurement activities, without exception. The procurement policies in this section must be applied to all procurement entered into by, or on behalf of, the Council. These policies are designed to further define the minimum standards applied to procurement activities and to provide guidance for employees when making decisions relating to procurement.

### 5.2 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.

### 5.3 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.

### 5.4 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.

## 5.5 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.

## 5.6 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.

## 5.7 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 stand down 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.

## 5.8 Fraud and Impropriety

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

## 5.9 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;
  - Where appropriate, supporting businesses and industry groups that demonstrate innovation in sustainability; and
  - Where appropriate, supporting suppliers who are socially responsible and adopt ethical practices.

During the procurement process, officers will undertake the following types of activities to support sustainable outcomes, 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;
- Encourages suppliers to improve their sustainability performance; and
- Encouraging sustainable innovation in the supply of goods or services.

## 5.10 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.

### 5.11 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.

### 5.12 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 licenses granted to Council.<sup>1</sup> Any variation from this must be approved by the Chief Executive.

### 5.13 Sensitive Expenditure

Kaipara District Council has in place an approved '*Sensitive Expenditure Policy*', dated October 2012, that shall be strictly adhered to for expenditure that provides, has the potential to provide, or has the perceived potential to provide a private benefit to an individual Council officer that is additional to the business benefit to council of the expenditure. It also includes expenditure by Council that could be considered unusual for Council's purpose and/or functions. The requirements of this policy document shall be followed for all purchases that are classed as sensitive expenditure.

### 5.14 Use of Council Accounts

Council has standing arrangements and existing contracts with suppliers for various good and services. Competitive rates have been agreed by Council for these existing contracts. The use of any existing contracts and/or agreements is for the exclusive benefit of Kaipara District Council and its ratepayers. In no circumstances shall these contracts and/or agreements be used by Council employees for personal purchases, except as specifically allowed for as part of Council's employee benefits package.

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

## 6 General Obligations

### 6.1 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.

### 6.2 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; and
- 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.

### 6.3 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.

## 6.4 Staff Delegations

Council shall approve general 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 are required to acknowledge that they have read and understood their financial delegation.

## 6.5 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, and should be referred to Council's insurers for comment prior to acceptance. 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;
- 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, potential 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.

When setting Liability of Limits, refer to **LGCPG Section 7.3**.

## 7 Economic Considerations

### 7.1 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, and if in doubt Council’s Finance team should be consulted.

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

### 7.2 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 sufficiently capable individuals; and
- Adopting performance and success measures for the procurement strategy.

## 8 Risk Management

Kaipara District Council has in place a '*Risk Management Policy and Framework*' document, dated December 2012, that should be consulted in the first instance to risk assess procurement activities and before undertaking any procurement related risk management processes.

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.

Further guidance on Procurement Risk Management principles can be found in **LGCPG Section 7.**

### 8.1 Insurance

Insurance is a way for Council to mitigate risks that cannot be entirely removed. For the various forms of Insurance that can be required under various contracts, see **LGCPG Section 7.2.**

If there is any doubt around insurance requirements, additional advice should be obtained from Council's insurance and legal advisors.

## 9 Procurement Process

The five stages of the Procurement Process are:



### 1. Strategic Procurement Planning

The Strategic Procurement Planning involves the upfront planning undertaken before carrying out the procurement process. This involves taking a strategic approach to the procurement process, and adopting a Procurement Plan, Strategy or Business Case.

### 2. Supplier Selection Approach

The supplier selection approach is the means of obtaining the preferred supplier to deliver the outputs based on best value for money principles

### 3. Tender Planning and Documentation

Once the appropriate supplier selection approach has been agreed, the tender procurement process is decided, amongst various other tender issues that need to be considered. Following this, the tender documentation is prepared.

### 4. Active Tender Period.

The active tender period involves the tender document going out to the market, and the Council managing correspondence with all tenderers in a fair and impartial manner.

### 5. Tender Evaluation

Once tenders are received, the evaluation process is undertaken to decide on a preferred tenderer for contract award.

## 9.1 Strategic Procurement Planning

Before any procurement activity is undertaken, the value and risk profile of the project should be determined. As per Section 8 (Risk Management), the risk profile is essential in determining the procurement requirements of the project.

Once the value and risk profile has been determined, the strategic context must be considered to ensure that the proposed approach to delivering the activity is consistent with the strategic intent. This is done to ensure that the approach to purchasing the outputs is consistent with Kaipara District Council's strategic approach and that the right supplier selection methods are used to maximise the opportunity to obtain the best value for money spent.

Therefore a strategic approach to Procurement shall be taken for all procurement activities, and the process will depend on the type of activity being procured, and its associated value and risk profile. These processes are listed below.

### 9.1.1 Procurement Strategy

Council will take a strategic approach to procurement to better increase its chances of obtaining value for money. Procurement Strategies shall be prepared for significant, generally long-term procurement activities undertaken by Council (e.g. Roading, Wastewater etc.). A strategy is a long-term plan of action designed to achieve a particular goal and is differentiated from immediate actions by its nature of being planned, reviewed and often consulted on. A strategy is about the choices that need to be made in order to affect outcomes. Generally a Procurement Strategy outlines:

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

When preparing a Procurement Strategy, Council should take into account:

- Value and risk of the goods and services over the term of the strategy;
- 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.

For further details see **LGCPG Section 4.6.**

### 9.1.2 Business Case

A business case shall be submitted to Council as part of the approval process for any high risk or 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 contributes;
- Identify the specific objectives of the proposed procurement and how these relate to Council's objectives and strategies;
- Assess the costs, benefits, and risks involved;
- Examine whether the initiative is feasible and affordable;
- Identify the preferred strategy and method for the procurement, including a Procurement Plan;
- Identify and assess a range of options;
- Provide for consultation with affected persons where appropriate;
- Show that the preferred option will meet the procurement objectives;
- Justify any departure from this Procurement Manual;
- Provide details of market research undertaken where Council does not have existing knowledge of and involvement in the market; and
- Consider 'Whole of Life' costs including operations, maintenance and depreciation.

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.

### 9.1.3 Procurement Plan

Procurement plans shall be prepared for goods and services over \$50,000 with similar value and risk characteristics. Procurement plans shall be approved by the Chief Executive if over \$100,000, and General Manager if under \$100,000.

Procurement plans will include:

- Description of the goods and services;
- Procurement method (s);
- 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; and
- Confirmation of source of funding.

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 by the Chief Executive if over \$100,000, and General Manager if under \$100,000.

#### 9.1.4 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).

## 9.2 Supplier Selection Approach

The supplier selection process is the means of obtaining the preferred supplier to deliver the outputs based on best value for money principles. 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. Further detail on considerations relevant to procurement methodology can be found in **LGCPG Section 5.2.2**.

Approval for the method of procurement must fall within the financial delegation of the approving officer. An open invitation for tender or proposal is Council's preferred method for procurement and shall be the default position. Open tendering shall be applied for all purchases over \$100,000 except as provided for elsewhere in this Policy.

### 9.2.1 Open Tenders

An open tender offers all interested suppliers a 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.

#### 9.2.1.1 Expression of Interest (EOI)

An Expression of Interest (EOI), or Request for Expression of Interest (REOI) is essentially a pre-qualification process, as a first stage in a two stage tender process. It is undertaken to pre-qualify a pool of tenders for a subsequent Request for Tender (RFT) stage. Use of a pre-qualification stage prior to the tender itself is appropriate where:

- The likely number of tenderers wishing to participate in the tender process is larger than can be conveniently accommodated;
- The services required are complex or difficult and ability to provide the service is an issue; and
- Where the tender preparation is complex and costly.

Further details regarding the EOI process can be found in **LGCPG Section 5.6**.

An REOI Template can be found in:

5.6.14 **Form 7.5 Request for Expression of Interest (REOI)**

#### 9.2.1.2 Request for Tender

A Request for Tender (RFT) is a formal open tender process, where the required outcome is clearly defined. This is the preferred council procurement methodology. Three RFT Templates can be found in the LGCPG, which are:

- 5.3.3 (a) **Form 7.1 – Standard Tender Conditions**
- (b) **Form 7.2 – Standard Tender Conditions following pre-qualification**
- (c) **Form 7.3 – Standard NZS 3910 tender conditions**

### 9.2.1.3 Request for Proposal

A Request for Proposal (RFP) is a tender process which has much less procedural formality than a normal tender. Characteristics include:

- More face to face interaction with tenderers during the process;
- Proposals form the basis of discussion and negotiation with the council in an endeavour to identify a basis for formation of the contract;
- Negotiation is explicitly anticipated and provided for in the RFP documents;
- Anticipated the bids will be modified during the RFP process; and
- Evaluation criteria and weightings are less defined or expressed only in general terms.

Further details on the characteristics and appropriateness for use can be found in **LGCPs Section 5.4.**

An RFP Template can be found in Form 7.4 Request for Proposal (RFP).

### 9.2.2 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. Further details regarding Single stage closed tenders can be found in **LGCPG Section 5.5.**

### 9.2.3 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.

Further details regarding Quotations can be found in **LGCPG Section 5.8.**

A template for Quotations can be found in LGCPG Section 5.8.5 Form 7.7 Quotation Request Letter.

## 9.2.4 Direct Procurement

### 9.2.4.1 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 2002<sup>2</sup>.

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.

Further details regarding the EOI process can be found in **LGCPG Section 5.11**.

### 9.2.4.2 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.

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 each potential 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.

Further details regarding Quotations can be found in **LGCPG Section 5.8**.

### 9.2.4.3 Selective Procurement

Procurement from a selected supplier with a value in excess of \$50,000 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;

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<sup>2</sup> **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

- 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.

For further details see **LGCPG Section 5.9.**

#### **9.2.4.4 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.

For further details see **LGCPG Section 5.10.**

#### **9.2.4.5 Supplier Panel Contracts**

A panel contract is a contractual arrangement with a group of suppliers to provide goods or services as and when required, under a schedule of rates for each supplier or based on a quotation. A Business Case will need to be prepared to confirm the purpose, plan and process for procuring a supplier panel.

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 suppliers 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, or it would not be beneficial to do so.

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.

Further details regarding the EOI process can be found in **LGCPG Section 5.7**.

#### **9.2.4.6 Syndicated Procurement**

Council may approve a business case to enter into a syndicated procurement arrangement with a supplier or Council. The intention will be to aggregate procurement requirements and 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.

#### **9.2.4.7 Relational Purchases**

Subject to a business case or a procurement plan, Council may enter into major and minor relational purchases<sup>3</sup> 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.

### **9.3 Tender Process - Planning and Documentation**

#### **9.3.1 Preliminary Tendering Planning**

The preliminary planning phase involves confirming the method of identification or selection of tenderers. As per Section 9.2 in this Manual, Supplier Selection Approach, the options that need to be considered before commencing with the tender process include:

- Pre-qualification;
- Open Tender process; or
- Closed Tender process.

<sup>3</sup> 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.

The second step is to confirm the procurement process (i.e. RFT or RFP). Once these two fundamental items have been confirmed, there are a range of other subsequent decisions that need to be made. For a full list and further details, refer to **LGCPG Section 10.1.4, 10.2, 10.3 and 10.4**.

### **9.3.1.1 Tender Process Risk**

Tender processes can constitute a significant risk management challenge for Council. Tender process complaints can:

- expose Council to damage actions;
- expose council to litigation management cost; and
- lead to delays in contract award.

It is therefore important that tender documents are prepared with care and that they:

- Are clear and transparent;
- Set out an adequate process;
- Create a process that is fair to all participants; and
- Include sufficient reservations and rights to allow council to efficiently manage the process.

Further details on Tender process risk can be found in **LGCPG Section 6.2**.

### **9.3.1.2 Independent Assurance - Probity Advisors**

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 probity advisor 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 probity advisor 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.

Probity Advisors can add value by providing an independent professional opinion on the tender process, which promotes compliance and assurance and therefore overall integrity. This advice can be provided at various stages of the tender process, from initial planning through to contract award. Probity assurance can also be provided “real time” through the tender process as to conformity with good tendering practice. For further details on Probity Auditors and their use, refer to **LGCPG Section 10.5**.

The following two tables provide some guidance on the engagement requirements of Probity Advisors. Table 1.1 states indicative guidelines for Professional Services and Table 1.2 for Physical Works. Note that the following requirements are stated as a guideline only, and each project shall be assessed individually for Probity requirements. If in any doubt, the General Manager shall be consulted in the first instance.

Probity Requirements - Professional Services		
Value	Risk Level	Probity Advisor Required?
< \$50k	Low	
	Medium	
	High	✓
\$50k - \$100k	Low	
	Medium	
	High	✓
\$100 - \$500k	Low	
	Medium	✓
	High	✓
>\$500k	Low	✓
	Medium	✓
	High	✓

**Table 1.1:** Probity Advisor Requirements – Professional Services

Probity Requirements - Physical Works		
Value	Risk Level	Probity Advisor Required?
< \$100k	Low	
	Medium	
	High	✓
\$100k - \$500k	Low	
	Medium	
	High	✓
\$500k - \$1m	Low	
	Medium	✓
	High	✓
>\$1m	Low	✓
	Medium	✓
	High	✓

**Table 1.2:** Probity Advisor Requirements – Physical Works

### 9.3.1.3 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 obligations<sup>4</sup>.

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

<sup>4</sup> 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.

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 is maintained or enhanced.

#### **9.3.1.4 Planning for Tender Evaluation**

Generally the evaluation model will be either the “Lowest Conforming Price” or “Price Quality” (refer **LGCPG Section 12** for definitions).

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.

For further guidance regarding planning the appropriate tender evaluation methodology, including attribute selection and weighting, refer to **LGCPG Section 12**.

For a two stage tender process, which requires a pre-qualification process between tender stages, refer to **LGCPG Section 13.1** for guidance and relevant templates.

### 9.3.1.5 *Prepare Tender documentation*

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); or
- 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. This should form part of the business case rationale if selecting a two stage process.

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

- Specification of the goods or services to be provided;
- 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 participant's 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.

### 9.3.1.6 *Tender Documentation Considerations*

There are a number of Tender documentation issues that require consideration when preparing tender documents. These include:

- **Late tenders**

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.

- **Alternative tenders**

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.

- **Extensions of time**

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; or

- There is no potential for actual or perceived bias towards a participant.
- **Suspension of the tender or proposal period**

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; or
- All participants have been made aware of that possibility.
- **Cancellation of the tender or proposal**

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.

Other factors related to tender documentation preparation that will need to be considered include:

- Evaluation attributes and weightings (Refer **LGCPG Section 12**)
- Errors
- Health and safety
- Total programme tenders
- Linked bids
- Business unit or council controlled organisation bids
- Local supplier bias

For further details and guidance on all issues listed above, refer to **LGCPG Sections 10.9 – 10.16**.

## **9.4 Tender Process - External Communication**

### **9.4.1 Tender Advertising**

In an open tender process, the advertising 'coverage' has a significant effect on the outcome of the process. From Council's perspective, the primary objective is for the tender to reach as many prospective tenderers as possible.

For further details on Advertising requirements, refer to **LGCPG Section 10.17**.

Note that it is important to maintain a register of parties uplifting tender documents, which will be used for issue of any subsequent 'Notice to Tenderers'. If the tender is issued on TenderLink, then this register can be retrieved from the TenderLink notice.

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.

### 9.4.2 Tender Correspondence

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.

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.

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.

During a contract renewal process, Council shall have formal processes to govern contact 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.

Further details can be found within the **LGCPG Section 10.19**.

### 9.4.3 Receive Submissions and Tender Opening

Further details on receiving tenders and tender opening can be found in LGCPG Sections 10.20 (Receipt of tenders), 10.21 (Tender Opening), 10.22 (Tender receipt and opening procedure).

## 9.5 Tender Process - Evaluation & Award

### 9.5.1 Evaluation Process

The evaluation process shall be documented in the procurement plan. Guidelines to the Tender Evaluation Process can be found in the **LGCPG Section 11.2**.

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.

The more significant tender evaluation issues as related to Kaipara District Council are listed in the following sections below.

#### **9.5.1.1 Tender Evaluation Team**

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 evaluation the tender or proposal; and
- Terms 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 (see **LGCPG Form 8.2** for a template).

#### **9.5.1.2 Tender Clarification**

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

- Quality and performance or particular terms and conditions of their tender;
- 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.

Further details on Tender Clarification process can be found in **LGCPG Section 11.5**.

#### **9.5.1.3 Due diligence**

Due diligence, to ensure that the participant has the capacity and stability to fulfil all the requirements of the contract, will be 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.

#### **9.5.1.4 Tender Conformity**

Establishing Tender conformance is the first stage in the tender evaluation. Tenderers that fall short of the tender requirements may be deemed non-conforming and their tender may be rejected. For further information, refer to **LGCPG Section 11.3 (Pricing Information two envelope non-conformance)** and **Section 11.4 (Tender Conformance generally)** and **LGCPG Section 11.6 (Evaluation of non-conforming tenders)**.

#### **9.5.1.5 Sub-35 Scores**

Further details regarding the scoring of non-price attributes that fall below a score of 35 is contained in **LGCPG Section 11.7**.

#### **9.5.1.6 Evaluation of Alternative Tenderers**

Further details regarding the evaluation of Alternative Tenders is contained in **LGCPG Section 11.8**.

#### **9.5.1.7 Meetings during the Tender Evaluation Phase**

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; and
- 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.

Further details regarding meetings with tenderers can be found in **LGCPG Section 11.10**.

#### 9.5.1.8 *Post Contract Negotiations*

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;
- Do not focus is not solely on reducing bottom-line costs;
- Do not disadvantage other participants by negotiating an agreement that is materially different in scope from what was described in the tender or proposal documents; and
- Result in a negotiated agreement that 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.

Further details can be found in **LGCPG Section 11.11.**

#### 9.5.1.9 *Preferred Tenderer*

The process to nominate a preferred tenderer is outlined in the **LGCPG Section 11.12.**

#### 9.5.1.10 *Contract Award*

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.

Further details related to the awarding of the contract can be found in **LGCPG Section 11.13.**

#### 9.5.1.11 *Communicate final outcome*

All participants must be notified in writing of the outcome of the tender or proposal process and offered a debriefing. There are specific requirements regarding the level of detail of the information released to tenderers. Further guidance can be found in **LGCPG Section 11.14.**

For Acceptance and Decline letter templates, see **LGCPG Form 8.3, 8.4 or 8.5.**

#### 9.5.1.12 *Tenderer debriefings*

Good practice is to allow debriefing meetings with unsuccessful tenderers on request. These meetings shall be treated carefully; specific guidance is provided in **LGCPG Section 11.15.**

#### 9.5.1.13 *Retention of Tender Documents*

For guidance concerning the retention of tender documents, refer to **LGCPG Section 11.16.**

## 10 Contract Management

### 10.1 Overview

The main aim of contract management is to ensure that goods and or services are delivered on time, at the agreed cost and to the specified requirements. Contract management is the process that enables both Council and the supplier to meet their obligations in order to deliver the outcomes required by the contract. It ensures that benefits and value gained early in the procurement process are sustained throughout the life of the contract.

Relationship contracts are seen as a sound approach to achieving best value for whole of life cost to all parties. Council's Contract Management framework is based on NZ best practice principles and NZ Government Guidelines (NZ Government - Contract and Relationship Management - A Guide; March 2011).

To achieve good contract performance, Council needs to ensure that the terms of the contract are adhered to, and that the supplier and Council's staff understand their respective obligations.

Council needs to monitor and manage its Suppliers' performance to ensure they deliver value for money. The best way of achieving this is through the development and use of a Contract Management Plan.

Effective contract management relies on three separate and related factors:

- Managing Contract Administration
- Managing Service Delivery
- Managing Relationships

#### 10.1.1 Contract Management Essentials

The essentials for successful contract management are:

- **Good preparation** - Accurately assessing Council's needs to ensure a clear understanding of the results expected, the quality required and any time or budget constraints.
- **Careful supplier selection** - By carefully considering the attributes, capacities and capabilities required for each contract, and designing a process to test potential suppliers against them to ensure Council selects the best supplier at a price that represents value for money.
- **Appropriate contract selection** - The contract mechanism and terms and conditions chosen should reflect the nature and value of the purchase and manage Council's exposure to financial, legal and operational risks. Importantly, the contract should cover how the quality of delivery and the supplier's performance will be measured.
- **Comprehensive description of the goods or services** - All contracts must comprehensively specify the requirements in a concise, easy-to-understand way that provides the supplier with all the information it needs to deliver successfully. Council should also offer the supplier the opportunity to ask questions about any aspect of the contract before delivery begins.
- **A Contract Management Plan** - A Contract Management Plan can be a useful tool, particularly for high-value, complex, unique or strategic procurements. It greatly increases the chances of achieving a successful outcome.
- **Single business focus** - Each party needs to understand the other's business. Both parties' objectives under the contract must be achievable.
- **Service delivery management** - Manage service delivery proactively to ensure that the goods or services required are delivered as agreed, to the required level of performance and quality, and within budget. Monitoring supplier performance consistently ensures that Council continues to get value for money.

- **Relationship management** - Effective contract management relies on good communication based on mutual respect, trust, understanding, openness and accountability. Keep the relationship between Council and supplier open and constructive, resolving or easing tensions and identifying issues early.
- **Contract administration** - Make sure Council keeps full and accurate records of its business transactions, to ensure good governance, transparency and accountability. Council must be able to demonstrate that it is delivering efficient and effective services to its stakeholders.
- **Continual improvement** - Council can ensure continual improvement by taking a flexible approach to the contract, through which Council and the supplier can negotiate continual improvements in quality and achieve greater ongoing efficiencies and benefits.
- **People, skills and continuity** - Council needs to appoint a contract manager at the outset. If the contract is long term or complex it might also need a contract-management team comprising a mix of specialists with the right skills to understand the requirements and manage the supplier relationship at all levels.
- **Knowledge** - The Contract Manager needs to understand the business, the results Council is looking for and the way that they'll be delivered under the contract. That way they'll understand the implications of potential issues and opportunities.
- **Flexibility** - Both parties to the contract need to be flexible and willing to adapt to unanticipated challenges. Flexibility in finding mutually acceptable solutions can be key to the contract's success.
- **Proactivity** - Good contract management anticipates and responds promptly to issues, risks and emerging business needs.

### 10.1.2 Contract Management Plan

Council needs to monitor and manage its suppliers' performance to ensure they deliver value for money. While the written contract is a record of the mutual legal obligations, it's not designed as a contract-management tool. A Contract Management Plan is useful, as it enables both parties to understand and record the contract's operational implications.

A formal Contract Management Plan is required for all term contracts over \$250,000 and procurements that are more than \$1,000,000 or high risk, complex, novel or likely to attract specific media attention or come under significant public scrutiny. The Plan should be tailored to the individual contract; the contents and amount of detail will depend on the nature of the procurement.

A contract management plan should include:

- identification and contact details for each party's contract manager;
- the contract managers' key responsibilities;
- a timeline of key actions, deliverables, milestones and payment dates;
- the reporting requirements (frequency, type, content and distribution);
- the meeting requirements (chair, location and standard agenda items);
- the process for achieving and checking key deliverables;
- the quality / standards and measuring process (e.g. KPIs) to ensure innovation and efficiency gains throughout contract;
- payment procedures;
- the process for agreeing and controlling variations and changes to the contract;
- a contract management risk plan;
- a fixed asset plan and register (fixed assets could include laptops or vehicles that Council buys and that suppliers uses in delivering services);
- guidance on any agency policies or procedures that apply to the supplier (if appropriate); and

- ordering procedures (if appropriate)

A Contract Management Plan is a living document and should keep it updated throughout the contract.

## 10.2 Managing Contract Administration

### 10.2.1 Range of Contracts

There are a range of contracts that Council enter into, and the choice of underlying contract model is an important decision that must be made. The more usual contract models include:

- Consultancy Contracts ( refer **LGCPG Section 15** )
- Service Contracts – including Performance Based ( refer **LGCPG Section 16** )
- Physical Works (construction) Contracts (refer **LGCPG Section 17** )
- Asset Maintenance contracts ( refer **LGCPG Section 18.1** )
- Information Technology Contracts (refer **LGCPG Section 18.2** )
- Good Supply Contracts ( refer **LGCPG Section 18.3** )

The reference material contained in the LGCPG document provides background information and guidance related to the particular contract model. The choice of underlying contract model is the first step in the contract management process, and will set the parameters for the rest of the contract management process. Once the contract model has been decided, the Contract form shall be agreed, discussed and confirmed. Guidance on this process can be found in **LGCPG Section 19**.

### 10.2.2 Contract Documentation Preparation and Signing

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 and 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.

Reference to contract document templates can be found in the corresponding contract model LGCPG section (see section 10.1.1 above). Care should be taken when using contract document templates. Internal templates should be regularly updated, and should only be used as a starting point. The documents should be modified to suit the particular commercial arrangements. For further information on the use of templates, refer to **LGCPG Section 21.1**.

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

Legal advice should be sought where contracts are:

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

For further guidance on legal advice, refer to **LGCPG Section 20.1**.

### 10.2.3 Contract Drafting Issues

#### 10.2.3.1 Risk allocation

In contract management, the term 'risk management' incorporates all the activities required to identify, control and manage risks that might have a negative impact on the contract being performed effectively – and ultimately to ensure

value for money. The traditional approach to management of project risk through contracts is that the party best able to manage the risk should bear the risk and will price the risk lower.

Many contract management risks relate to the supplier being unable to deliver to the required level, quality, time or cost. Other risks can relate to the nature of the goods or services themselves and how they impact on the ultimate end users. For Council, risk can be categorised as:

- Operational;
- Legal;
- Financial;
- Reputational (for Council); or
- Political.

Risks that are within the supplier's control generally include:

- organisational capacity;
- staff capabilities;
- the cost of materials;
- resources and effort;
- effectiveness (driving quality);
- efficiency (driving value for money); or
- ongoing business direction and research and development.

Risks that are beyond the supplier's control include:

- Council's demand for the goods or services being much greater than expected and the supplier being unable to cope;
- Council's demand for the goods or services being much lower than expected and economies of scale being lost, making delivery unprofitable;
- Council's subject matter expert or contract manager (who has established key relationships with the supplier) being transferred or moving on;
- changes in Council's requirements, such as new policy or legislation, that require Council to make demands that the supplier can't meet;
- extraordinary events (force majeure), where factors beyond the supplier's control disrupt delivery. For example, premises might flood and therefore can't be accessed; or
- Council being unable to meet its obligations under the contract.

Further guidance on risk allocation can be found in **LGCPG Section 27**.

### **10.2.3.2 Insurance Requirements**

Typically contracts require a contractor or consultant:

- To hold appropriate covers; and
- To include the Council as a co-insured under some forms of cover usually public liability and contract works.

The general requirement to hold insurance is relatively non-controversial. Insurance is a broad and specialised topic, and professional advice should always be sought for more complex or high value projects.

For general insurance related guidance, refer to the following sections as contained within the LGCPG document:

- **LGCPG Section 28 (Insurance – Co-Insured Issues)**
- **LGCPG Section 29 (Insurance – Deductibles)**
- **LGCPG Section 30 (Insurance – Subrogation)**
- **LGCPG Section 31 (Insurance where Council is Service Provider)**
- **LGCPG Section 32 (Earthquake Insurance Issues)**

### ***10.2.3.3 Manage Supplier correspondence***

Care should be taken to ensure contracts are not formed through correspondence inadvertently. It is possible for a contract to be formed via correspondence; therefore particular care should be taken to diligently manage supplier correspondence. Further guidelines can be found in **LGCPG Section 33**.

### ***10.2.3.4 Other Contract Drafting Considerations***

There are various other considerations that need to be considered when preparing the contract documentation, these can include:

- Preparation and signing of Documents;
- Safekeeping of Contract Documents;
- Resolutions;
- Confidentiality;
- Prompt Lists;
- Bonds;
- Retentions;
- Liquidated Damages;
- Escalation Adjustments;
- Employment Relations Act;
- Legal entities;
- Contract bundles;
- Schedules;
- Inclusion of the tender or proposal;
- Importance of correct document execution;
- Execution of deeds by a council;
- Execution of contracts by a council;
- Common seal;
- Forms of execution by council;
- Council signing process;
- Signing of deeds by the other party;
- Execution of contracts by the other party;
- Forms of execution by other parties;
- Initialling of pages and alterations;

- Dating documents; and
- No alteration to executed copy.

Refer to **LGCPG Sections 22 – 38** for guidance on these issues abovementioned.

### 10.3 Managing Service Delivery

Service delivery management is about managing a supplier's performance against the performance indicators in the contract. To meet Council business requirements, the supplier must achieve the best possible balance between time, cost and quality to deliver the goods or services. Service delivery management can help to balance these factors, providing Council with the best possible value for money.

Well structured service-delivery management helps both parties to:

- quantify the costs and benefits of the contract
- ensure that responsibilities are clearly defined and assigned
- clearly define standards for delivery
- ensure that payment is only made for goods or services that meet the required (and verified) standard
- ensure that deliverables comply with the agreed business requirements.

It will also aid in Council's development of current and future requirements.

#### 10.3.1 Monitoring Supplier performance

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.

The following table below is intended to be a guide to monitor the performance of suppliers, by recommending reporting requirements for a project, determined by its value and associated risk level.

Note that each project still needs to be assessed individually, and if in any doubt the General Manager should be consulted in the first instance.

A Client and Supplier Contract Manager shall be nominated for every project, with duties as specified in Section 10.4.3.11.

Value	Risk Level	Contract Management Requirements
	<b>As defined in Section 8</b>	<b>CM Performance Summary Reporting - see Appendix B for Report Template example *</b>
< \$50k	Low	> Completed one week following project commencement > Updates at least every 2 months.
	Medium	> Completed one week following project commencement > Updates at least every month.
	High	> Completed one week following project commencement > Updates weekly.
\$50 - \$100k	Low	> Completed one week following project commencement > Updates at least every month.
	Medium	> Completed one week following project commencement > Updates at least every fortnight.
	High	> Completed one week following project commencement > Updates weekly.
\$100 - \$500k	Low	> Completed one week following project commencement > Updates at least every fortnight.
	Medium	> Completed one week following project commencement > Updates weekly.
	High	> Completed one week following project commencement > Updates weekly.
>\$500k	Low	> Completed one week following project commencement > Updates weekly.
	Medium	> Completed one week following project commencement > Updates weekly.
	High	> Completed one week following project commencement > Updates weekly.

**Table 1.3:** General Contract Management Requirements

\* Template of the Performance Summary Report is included in Appendix B (contact the Procurement Administrator for a Word Version). This Report shall be prepared in addition to any other contract specified reporting requirements.

### 10.3.2 Measuring service delivery

There are many ways to measure delivery. In some contracts it's as simple as assessing whether the measure has been either 'met' or 'not met'. This can happen for aspects of delivery where there is nothing to be gained, or no value added, beyond whether or not delivery happened.

Additional statistics (metrics) can be developed when it's important not only to establish whether delivery has happened, but to measure its quantity or quality. Some service aspects (such as throughput, cost and accuracy) can be counted and measured in a simple, mathematical way. For example, quality can be expressed on a scale of 1 to 10, with Council and the Supplier predetermining the criterion each number value represents as well as setting the minimal acceptable level of quality.

In the early stages of contract rollout it's important to allow some flexibility in how delivery will be assessed – such as giving the supplier a reasonable timeframe to get ready for full delivery. During this initial phase it might not be productive to point out a minor transgression on standards, especially if the supplier has worked hard to bring the service 'on stream' quickly.

During contract start-up, reliability, accuracy and other aspects might fluctuate, so it's important to stipulate an appropriate timeframe for services to be bedded down and in which Council won't strictly enforce the service levels. In doing so, remember that too short a timeframe might give an unfair picture, and too long a timeframe might be similarly misleading.

### 10.3.3 Measuring service quality

Managing service delivery involves more than simply gauging whether services are being delivered to volumes, timeframes or costs. Council will also need to assess the quality of the services being delivered.

Council must ensure that it has clearly described the standards expected in the contract documents and that both parties understand and agree on the performance metrics before delivery begins. Contract management is ultimately about ensuring value for money.

Quality measures and metrics provide information on how well a supplier is performing; however it is no use providing a perfect service if the costs are prohibitive.

Ensuring value for money is about the trade-off between service quality and cost. Council contract management should focus on ensuring that value for money is achieved over time.

### 10.3.4 Contract Variations and Extensions

Contracts are often for a particular term and specified scope. The parties may however want to amend contract scope or provisions during the contract term, or agree to extend the contract term. It is therefore important that the process concerning such variations, renewals and extensions are properly documented. For further guidance and examples of variation templates, refer to **LGCPG Section 39**.

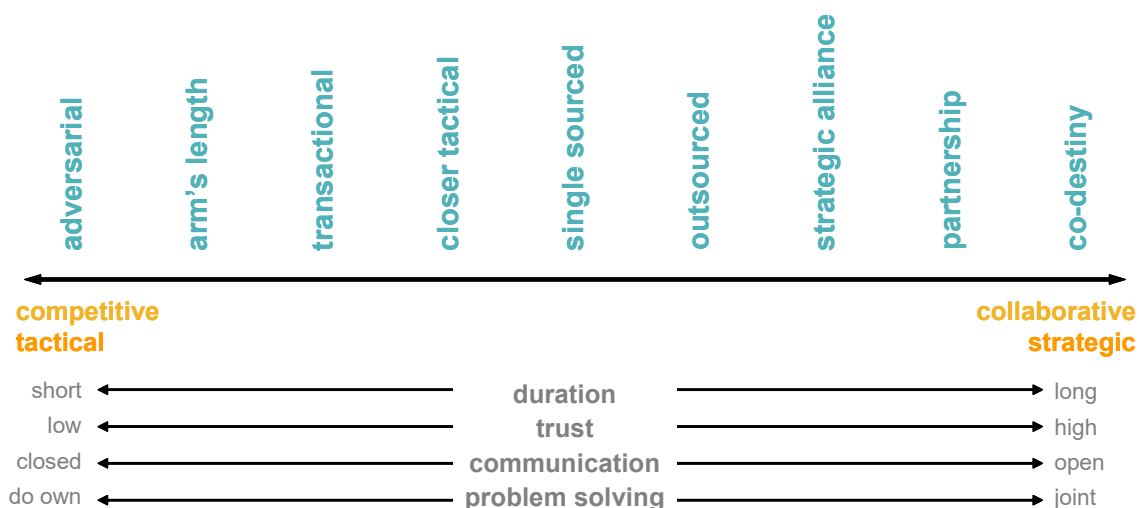
### 10.3.5 Assignments

Assignments of contracts arise where either Council has a contractual relationship with another party, or the contractor sells its business to a third party. The outgoing contractor will need to transfer its interest in the contracts to the incoming contractor. The transfer of contract in such situations is known as an assignment, and documented by a 'Deed of Assignment'. Further details and guidance on this process can be found in **LGCPG Section 40**.

## 10.4 Managing relationships

In contract management, it is important to establish effective working relationships with Council's suppliers. The nature of the procurement will help to determine the relationship Council wished to develop with the supplier.

The relationship spectrum shows the differing degrees of closeness that can exist between buyers and suppliers – depending on the nature of the contract.



Relationships between Council and suppliers can be either:

- competitive (often called 'win-lose' relationships), where a gain by one party results in a loss to the other, or
- collaborative (often called 'win-win' relationships), in which both parties acknowledge the benefits of doing business together and adding value, from which they can both gain.

### 10.4.1 Competitive relationships

Competitive relationships are associated with 'transactional procurements': simple exchanges in which the supplier provides goods or services and the buyer provides money in payment. Transactional procurements typically involve:

- standard products or services;
- many competing suppliers;
- wide supply markets;
- a need for a high degree of trust; and
- an environment in which the cost of switching from one supplier to another is low.

In a competitive relationship Council seeks to obtain the best possible price for the required quality and delivery standards. While this approach is unlikely to produce a long-term relationship, it should always be professional and ethical.

### 10.4.2 Collaborative relationships

In a collaborative relationship Council seeks to develop a long-term relationship with the supplier – one in which both seek ways to add value for the ultimate benefit of the buyer, the supplier and end users. It is a proactive relationship focused on looking for improvements, not a 'cosy customer-supplier' relationship in which the status quo is allowed to prevail.

The supplier and Council must:

- look for improvements and innovations together, secure in the knowledge that any benefits achieved will be shared; and
- jointly set targets for improvements in cost and quality, and meet regularly to discuss progress in achieving them.

Collaborative relationships take time and effort to develop and are associated with more strategic procurements. They are not suitable for procurement where a failure in supply would not be damaging to the buyer.

Collaborative relationships typically involve:

- shared objectives and incentives;
- a mutual search for greater efficiency;
- joint planning for the future;
- each party understanding the expectations of the other and seeking to meet them; and
- an environment of equal partnership.

The three key factors for successful collaborative relationships are:

- clear, open and honest communication;
- mutual trust, respect and understanding; and
- collaboration and joint problem-solving.

### 10.4.3 Communication

Many cases of mistrust or concern result from a failure to communicate effectively – whether it is on the specifics of the deliverables, Council's overall business goals, or concerns about underperformance.

At the negotiation stage, Council and/or the supplier might be concerned about unduly exposing its position for fear that the other will exploit information. However, if the requirement is a long-term, collaborative relationship, information-sharing should be encouraged from the outset, with a view to developing trust and working together to achieve

mutually beneficial results. Note though that there should be a realistic balance between openness and reserving negotiating positions at this stage.

#### *10.4.3.1 Mutual trust*

Trust can be the defining characteristic of a collaborative relationship between Council and the Supplier. In this context it might mean having confidence in the other party's:

- capability to 'do the job' well;
- goodwill – having the interests of 'us' and the relationship at heart;
- integrity – acting and speaking honestly; and
- commitment to the relationship beyond the letter of the contract.

Trust can only be won through developing strong relationships, often between the people managing the contract on a day-to-day basis. It has to be built and 'earned' through actions and behaviours, rather than assertions, and is often tested when problems arise.

#### *10.4.3.2 Joint problem-solving*

No matter how good the relationship between Council and the supplier, and how stable the delivery of the goods or services, problems can still arise.

Good contract management involves Council and the supplier co-operating to ensure that problems are recognised and resolved quickly and effectively. Council can do this by:

- agreeing on problem-handling procedures in advance through a risk management plan and dispute-resolution protocol;
- ensuring clear, timely notification, reporting and escalation procedures that enable problems to be resolved before they develop into disputes; and
- ensuring the supplier has its own risk-management procedures, including internal escalation procedures, and uses them when needed. These procedures should seek to prevent problems as well as resolve them.

Council has an obligation to communicate any concerns about the supplier's performance – after all, the supplier can only fix a problem if they know about it. Failing to notify the supplier of a problem could result in a series of small problems building up to become material performance issues, which is unfair on the supplier.

Whatever the nature of the problem, it is vital that:

- Council notify the supplier immediately;
- The Contract Manager choose the appropriate notification channel, depending on the problem's severity (e.g. phone call, e-mail, letter, face-to-face meeting);
- Council records the problem as part of tracking overall performance;
- Both Council and the supplier must act in good faith to negotiate a mutually acceptable resolution;
- the problem-solving approaches are practical, clear, achievable and effective; and
- Council needs to follow escalation procedures if the initial approaches are unsuccessful.

#### *10.4.3.3 Escalating disputes*

Council's response to problems should match the nature and severity of the failures. For small problems, it may be enough to tell the supplier what the problem is and how it affects Council. For more critical failures the contract will usually specify a particular approach, such as withholding part payment against an invoice until delivery has been made in full.

The contract will normally provide a process for escalating problems and, if escalation is unsuccessful, the additional actions parties can take. Options include mediation, arbitration and litigation.

#### *10.4.3.4 Managing contract administration*

The key procedures involved in contract administration are:

- maintaining contract-related documentation and keeping records;
- ordering goods or services;
- paying for goods or services;
- monitoring deliverables;
- monitoring budgets;
- controlling changes and variations to the contract;
- managing and planning resources;
- undertaking management reporting; and
- managing assets.

#### *10.4.3.5 Records management*

As part of good procurement practice and according to Council's responsibilities under the Public Records Act 2005, full and accurate records of Council business activities should be kept.

Applicable to Public Service agencies, State Services agencies and local authorities, the Act's key objectives include:

- promoting government accountability through good record-keeping; and
- enhancing public confidence in the integrity of government records.

Under the Act, Council is required to:

- create and maintain full and accurate records in accordance with normal, prudent business practice. These include records of activities carried out by contractors on Councils behalf. Records must also be accessible in the future; and
- ensure that records are disposed of properly and under the authority of the Chief Executive. Disposal is usually by either destruction or transfer to archives.

#### *10.4.3.6 Change control*

Changes to services, procedures and prices can affect service delivery, performance and costs and whether the contract continues to represent value for money.

All Council's contracts should include change-control procedures that clearly identify the parties' roles and responsibilities, along with the procedures for raising, evaluating, costing and approving change requests. They should cover:

- change requests;
- impact assessments;
- costing;
- prioritisation;
- authorisation;
- recording the agreement to the change; and
- implementation control.

#### 10.4.3.7 *Management reporting*

Any requirements for service performance reports and management information should be defined before and during contract negotiations, confirmed during the transition to implementation and recorded in the contract.

Where possible, Council will use the supplier's own financial and operational reporting cycles. If the supplier's standard internal business reports would provide the information required, it saves unnecessary duplication of effort by accepting those instead. However, Council may need to allow for the timing of reports to match the supplier's normal reporting cycle.

#### 10.4.3.8 *Asset management*

If Council wishes to keep ownership of any assets the supplier buys and uses in delivering its services (such as handheld computers), Council has overall responsibility for those assets.

In many cases, the supplier will undertake the day-to-day asset management (because they have physical control of the assets), then return the assets to Council at the end of the contract.

Council's contract manager should ensure that:

- the supplier has an asset register detailing all assets purchased, their specifications, serial numbers, dates of purchase, costs (receipts for purchase), locations held and condition;
- the asset register is kept up to date;
- records are kept of any assets used by a third party; and
- maintenance, upgrades and replacements are planned and budgeted for.

The contract manager will be responsible for liaising with the supplier on asset administration, upkeep and maintenance.

#### 10.4.3.9 *Continual improvement*

Ideally, the requirement for continual improvement should be embodied within the contract and reflected in the relationship between Council and the supplier.

This can be at a number of levels, from simple price improvements through cost savings to process efficiencies leading to better delivery times.

Council should continually look for opportunities to improve how it operates. In contract management, this translates into a need for continual improvement in Council and supplier's performance and increased value for money.

Continual improvement should be part of Council's philosophy, and should include improving the performance of the contract-management team as well as delivery under the contract.

However, it is important that continual improvement is seen as desirable and beneficial for both parties, rather than as a means to drive down prices.

#### 10.4.3.10 *Managing change*

A successful working relationship requires a mutual commitment to introduce identified improvements and meet Council evolving business needs. Properly managed change, in itself, can also be a good opportunity to alter or improve a service.

It is vitally important to understand the implications of change from both Council's and the supplier's perspectives. To an extent, both Council and the supplier are taking calculated risks when entering into a long-term contract. However, the cumulative effect of change during the contract is likely to balance out for both. Joint planning for change is vital to minimise the risks.

#### 10.4.3.11 Roles and responsibilities

Individual roles and responsibilities are outlined below for a typical contract relationship, however a contract management team might be required for large, high-value, complex or high-risk contracts. All high value Contracts also require the appointment of a contract manager by both Council and the supplier. Each contract will vary in terms of the contract management resources needed.

A typical contract relationship has the following roles and responsibilities:

**Sponsor** The project sponsor is responsible for the contract's high-level results. They should be a senior executive / manager with the authority to take major decisions on behalf of Council. The supplier should have a correspondingly senior role – someone who takes responsibility for the contract's success from the supplier's perspective and has a senior level of authority.

**Council Contract Manager** Appointing a contract manager ensures single-point accountability for day-to-day operations.

The contract manager's (or contract management team's) main responsibilities are to:

- ensure that the contract reflects what has been agreed between Council and the Supplier;
- act as the single point of contact for all contract matters;
- oversee the contract's day-to-day operations;
- check invoices and only approve payment when satisfied that delivery has been made in full;
- regularly monitor and report on the supplier's performance;
- ensure issues are identified and resolved quickly and effectively;
- promote the use of pre-agreed standing arrangements and sole-source arrangements;
- escalate issues as necessary; and
- maintain an overview of the contract specifications and seek changes where appropriate to meet emerging business needs.

**Supplier Contract Manager** The main responsibilities of the supplier's contract manager are to:

- ensure that the contract reflects what has been agreed between the parties;
- act as the single point of contact for all contract matters;
- oversee the contract's day-to-day operations;
- marshal and apply the supplier's resources;
- ensure that delivery reflects the contract's requirements;
- implement the contract on time, within budget and to specification;
- monitor contract performance and report on service levels and results;
- represent the supplier at meetings with Council;
- respond to changing Council needs;
- identify and manage exceptions;
- identify and manage risk;

- ensure issues are identified and resolved quickly and effectively;
- escalate issues as necessary;
- maintain or develop service components; and
- maintain or develop supporting resources to deliver successfully.

### **Relationship managers**

Not all contracts need both a contract manager and a relationship manager. However, Council and the supplier might each need a relationship manager for large, high-value, complex or high-risk contracts.

Relationship managers are responsible for:

- encouraging an atmosphere of trust, openness and clear communication and an attitude based on working together and shared objectives;
- proactively looking for ways to improve the relationship and ensure stakeholders feel involved;
- establishing and managing an effective communication framework between all stakeholders;
- ensuring, where possible, that communications at all levels are peer to peer;
- managing the resolution of disputes – resolving ‘soft’ tensions between agency and supplier, and ‘managing upwards’ to ensure senior management are informed about issues before they escalate and can intervene as appropriate;
- establishing regular reporting procedures (formal and informal); and
- organising forums, seminars, training and other information-sharing activities.

### **Service or product users**

Stakeholders and end-users of services are responsible for:

- monitoring the quality of service from a customer perspective;
- reporting incidents, problems and issues promptly and accurately as they arise; and
- participating in any contract review.

## Appendices

## **Appendix A:**

### **Local Government Contract and Procurement Guidelines**

<https://www.business.govt.nz/procurement/for-agencies/key-guidance-for-agencies/the-new-government-rules-of-sourcing/principles-of-government-procurement>

## **Appendix B:**

### **Contract Management Performance Summary Sheet**