

Procurement Policy

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Purpose

This policy defines Waitaki District Council's approach to the procurement of all works, goods or services to support the community in an affordable and efficient manner. It provides a standardised approach to procurement for all Council departments.

The principles described in this policy promote the fair and equitable treatment of all potential suppliers and meet Council's business requirements. The policy is underpinned by procedure documents that outline the procurement process that is expected to be followed.

This Policy must be read in conjunction with the Tender Procedures, Quotation Procedure, and Financial Delegations Register. These can be found in the Related Documents section of this policy.

Scope

This policy applies to all procurement activity completed by Waitaki District Council, with the exception of activity detailed below.

The following activities are out of scope:

- a) Internal procurement being the procurement of services by one part of Council from another part of Council.
- b) Procurement in the case of a Civil Defence Emergency or Business Continuity Event.
- c) Procurement in the event of an urgent event or emergency situation, as agreed by a member of the Executive Leadership Team.
- d) Procurement completed by Council Controlled Organisations.
- e) Procurement completed as part of an insurance claim.

Background

As a public entity, employees and representatives of Waitaki District Council (Council) must have, and be seen to have, the highest standards of honesty, propriety and integrity in meeting their obligations to the community. To enable this Council will follow a Procurement Framework to ensure that it obtains best value for money for the services and goods it buys.

Strategic Alignment

Council's Procurement Policy has been shaped by the following legislative/strategic priorities:

- a) Public accountability - Council is publicly accountable for the use of its funds.
- b) Strategic alignment - Council's strategic focus is to ensure that Waitaki is "The best place to be!". Areas critical to the achievement of this vision are "Prosperous District", "Strong Communities" and "Quality Services". Enhancing Council's financial position is imperative.
- c) Reputation protection - Supporting the fair and equitable treatment of all potential suppliers to Council, which enhances Council's reputation.
- d) Guidance from the OAG - [Good Practice Summary: Procurement \(oag.parliament.nz\)](https://www.oag.parliament.nz/) and [Government Procurement Rules | New Zealand Government Procurement and Property](https://www.government.nz/topics/procurement)
- e) Sound business practice – the need for confidentiality through the procurement process to preserve competition and realise true value for money. Ref section 14(1)(f) LGA 2002: [legislation.govt.nz](https://www.legislation.govt.nz/)

POLICY PRINCIPLES

Generally Accepted Principles

Council will carry out the procurement of works, goods and services in a manner that will support Council's community outcomes, agreed levels of service, organisational goals and its values.

Council will be clear about the overall objective, value and risk of the procurement, and select a procurement method that will provide the best value for money.

Council's procurement is governed by the following key principles:

- **Accountability** - Council will be accountable for its performance and be able to give complete and accurate accounts of the use to which it has put public funds.
- **Openness** - Council will be transparent in its administration of funds, both to support accountability and to promote clarity and shared understanding of respective roles and obligations.
- **Competition** - Council will follow best practice procurement processes that encourage innovation and promote competition to yield improved results.
- **Collaboration** – Council will work together, across departmental and agency boundaries to improve outcomes.
- **Value for money** - Council will use resources effectively, efficiently, economically and without waste, with due regard for the total costs and benefits of an arrangement, and its contribution to the outcomes Council is trying to achieve. 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 must 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.
- **Integrity** - Anyone who is managing public resources must do so with the utmost integrity.

Open and Fair Competition

Open and fair competition between suppliers supports Council's commitment to obtaining best value for money and ensuring transparency, probity and ethical behaviour.

It is the responsibility of the business area (procuring the goods/services) to ensure:

- a) The procurement method and approach promote competition and are appropriate for the specific procurement;
- b) Staff involved in the process have up-to-date knowledge of the market and Council's requirements;
- c) Potential suppliers are:-
 - i. provided with consistent information and opportunity; and
 - ii. evaluated against defined criteria; and (check criteria defined)
 - iii. expected to bare minimal/reasonable cost for participating in the procurement process; and
- d) Specifications and tender documentation will not be prepared to favour or disadvantage particular suppliers.

Transparency, Probity and Ethical Behaviour

Council conducts its procurement processes with the highest regard for transparency, probity, equity, and ethical behaviour such that:

- a) Goods and services will be procured for authorised business purposes only and not private use, in accordance with external legislation and/or obligations as well as Council's policies and procedures;
- b) Confidentiality will be maintained in all dealings within legislative constraints – e.g. Local Government Official Information and Meetings Act;
- c) Conflicts of interest (potential, perceived or actual) and personal/business relationships will be disclosed and dealt with in accordance with Council's Conflicts of Interest Policy;
- d) Gifts, gratuities or any other benefits that may influence (or be perceived to influence) the procurement process will be declined;
- e) Accurate and sufficiently detailed records will be kept to document the process, justify the outcome and provide an audit trail for regular review; and
- f) In the event of a perceived or actual conflict of interest, the relevant staff member or involved personnel may be excluded from aspects of the procurement process as appropriate in accordance with Council's Conflicts of Interest Policy.

Value for Money

Officers should adopt a 'value for money' approach when procuring goods or services. Value for money means the best possible outcome for the total cost of ownership including the cost of the procurement process relative to the cost of the goods or services procured. 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. This policy is flexible; where the approach detailed in the policy may not deliver best value for money, an exemption can be approved by an Executive Team Member independent of the procuring department.

Sustainability, Social Value and Local Supply

Broader Outcomes are the secondary benefits that are generated from the procurement activity. They can be environmental, social, economic or cultural benefits. Where appropriate, suppliers may be evaluated against criteria that provide broader outcomes, such as sustainability, social value and local supply.

Risk Management

Risk Management is a primary consideration and potential risks will be identified, analysed, evaluated, treated and monitored across the procurement process. Risk management is the responsibility of the business area (procuring the goods/services).

Council has no tolerance for losses (this includes financial loss and loss of reputation) through fraud or impropriety. As such, risks associated with fraud should be identified and managed appropriately.

Responsible Financial Management

Council will exercise responsible financial management in all procurement processes such that:

- a) Council funds will be used appropriately, and effort will be made to contain the costs of the procurement wherever possible;

- b) Procurement activities will not be initiated without confirmation that funds are available within an approved Council budget;
- c) Staff will not authorise or approve expenditure of Council's funds in excess of delegation; and
- d) The performance of ongoing contracts will be monitored and evaluated to ensure continued value for money for Council.

Public Law Considerations

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

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

Activity Approval

The table below details the approvals required for different stages of procurement activity.

Approval Required	Who can approve
Procurement/Project Initiation	In accordance with financial delegations – starting with procuring department's manager and moving one-up if spend exceeds delegation Spend level over \$1,500,000 must be approved in principle by Elected Members.
Business Case	Procuring Officer's Unit Manager
Procurement Plan	Procuring Officer's Unit Manager
Successful Supplier/Contract Award	In accordance with financial delegations – starting with procuring department's manager and moving one-up if spend exceeds delegation
Cost Variation from Initial Estimate	>15% variation must be reviewed and approved by the Risk & Procurement Advisor, procuring department's General Manager, and an independent ELT Member.
Contract Variation	Where a variation will result in a spend level of $\leq 20\%$ of the original contract value, this can proceed where financial delegation allows. Approval will need to be sought where the original procuring officer's financial delegation does not allow for the price increase. (Delegation must be for the full contract amount + variation, not just the variation value). For a variation of $>20\%$ of the original contract value, reasons for variation as opposed to tendering for a new contract must be documented, with evidence. A request can then be made for Overspend Variation Approval by gaining initial approval from the procuring department's General Manager, then passed to

	an independent ELT Member with the appropriate financial delegation for final approval.
Exemption Request – Quotation Procedure (>\$10k-<=\$200k)	Procuring officer’s direct manager (within financial delegation) If spend exceeds direct manager’s financial delegation, further one-up approval is required
Exemption Request – Tender Procedures (>\$200k)	Obtain initial approval from procuring department’s General Manager and final approval from ELT Member independent of procuring department (within financial delegation)

Note: Approving managers take on accountability in the approving process. Managers should ensure that where an approval is granted this is backed up by strong reasoning and/or evidence which is saved for audit trail purposes.

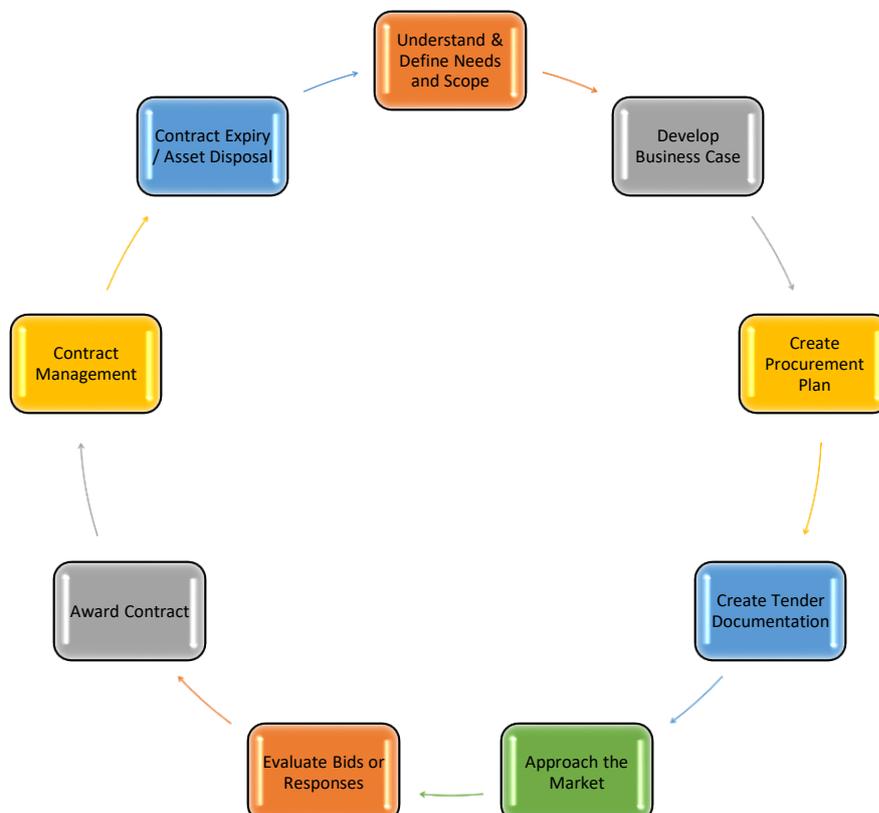
PROCUREMENT PROCESSES AND PRACTICES

PROCUREMENT CONSIDERATIONS AND PLANNING

What is Procurement?

Procurement includes all the processes involved in acquiring and managing goods and services from a supplier. Procurement spans the whole cycle from the identification of needs to the end of a service contract or the end of the useful life and subsequent disposal of an asset.

The Procurement Cycle:



Understanding Business Needs

Prior to starting any procurement activity, Council's needs should be analysed. Understanding what is required and, in addition, what is desired will support decision making as the procurement process is progressed. The Quotation Procedures and all Tender Procedures provide further detail on this step.

Estimating Cost

The cost of a procurement must be estimated, and the correct procedures followed. Where an estimate is close to the upper limit of one of the spend categories, the risk profile of the procurement should be considered in deciding whether to apply the procedures for a higher spend procurement.

For example:

Council is looking to procure essential services and will award a contract spanning several years. The estimated spend is \$495,000. As the services are essential and will be provided for a number of years, the risk profile of this procurement would suggest the procedures for >=\$500,000 are used in this instance. This also provides a buffer if the actual price exceeds the estimate.

Using Procedures

Following the correct procurement procedures enables Council to achieve the best procurement results whilst reducing risk.

Each procedure level is listed by value in the table below. Consideration should always be given to the risk profile of the procurement and a decision made as to whether the next level of procedure should be used e.g., a procurement with a spend level of \$80,000 but with high interest and focus from the local community may require the use of a tender procedure if this will attain the best value and ensure risks are adequately managed.

Level of Spend (exc. GST)		<= \$10,000	>\$10,000 - <=\$200,000	>\$200,000 - <=\$500,000	>\$500,000 - <=\$1m	>\$1m	Prof. Services <=\$50,000	Prof. Services >\$50,000
Procedures	Purchasing Procedure	✓	✗	✗	✗	✗	✓	✗
	Quotation Procedure	✓	✓	✗	✗	✗	✓	✗
	Level 1 Tender Procedure	✓	✓	✓	✗	✗	✓	✓
	Level 2 Tender Procedure	✓	✓	✓	✓	✗	✓	✓
	Level 3 Tender Procedure	✓	✓	✓	✓	✓	✓	✓

Key	
✓	Procedures must be used for level of spend
✓	Procedures should/could be used where the procurement activity is considered high risk or costs may exceed estimated spend
✗	Procedures should not be used unless an exemption is approved

All purchases must be made in accordance with purchasing procedures. A Purchase Order (PO) should be raised for all goods, services, or works where a formal contract is not in place. Formal contracts must be stored in the Contracts Register for the PO exemption to apply and the payment to be processed by Finance.

Quotations

Procurements with a spend of >\$10,000 - \$200,000 require three quotes to be obtained and evaluated. All quotes received must be written. The method of evaluation of quotes must be decided upon prior to requests being sent to firms. Quotation Procedures must be followed when undertaking this activity.

Business Case

All procurements costing \$200,000 (GST exclusive) or more require a business case. Where a procurement costs less than \$200,000, but is complex or of high importance, consideration should be given to completing a business case.

The scale and complexity of the business case should be proportionate to the risk and value of the procurement. In some instances, a preliminary business case or equivalent document may be used in the early stages of a particularly large or complex procurement. This will then be refined and transformed as the procurement/project continues.

A Business Case Template is linked in the Templates & Tools section of this policy.

Procurement Planning

All procurement activity should be planned in accordance with business needs. A decision should be taken by the department or person completing the procurement as to whether a request for quote, tender or proposal is required. Procedures for each level of procurement are linked in the Related Documents section of this policy.

All procurements costing \$200,000 (GST exclusive) or more require a Procurement Plan. As found in the Procurement Plan Templates, plans should include the following:

Procurement Plan Templates are linked in the Templates & Tools section of this policy.

Tender Documentation

Tender documentation should be produced in line with this policy and the relevant procedure. Procuring officers are encouraged to use available templates to produce tender documentation, however, these are not a requirement. Minimum standards are detailed in procedure documentation.

Changes to scope or requirements

Where the scope or requirements of a procurement change, the action taken by Council is dependent on a number of factors, including at what stage the change is identified and the value and risk associated with the activity.

When change is identified	Acceptable Actions	Considerations
Prior to inviting suppliers to provide quotes, tenders or proposals	Update specification or requirements	Consider how this impacts total spend – if this takes the spend into another category the correct procedural documentation must be used (e.g., from <\$10,000 to >\$10,000)
Once procurement has been advertised/ suppliers have been engaged, but prior to deadline	Update specification or requirements	Consider how much more time the suppliers will need to respond to the new requirements. Ensure that all participating suppliers are notified at the same time.
After responses have been received to original request, but prior to evaluation	Consider updating specification or requirements based on materiality	Consider how to approach suppliers fairly and how the integrity of the process will be preserved if the requirements are changed at this stage. Consider the additional spend and whether, had this been advertised originally, additional suppliers may have responded with a bid. Obtain approval from one-up manager with appropriate financial delegation.
After contract awarded – Contract Variation	Variations may be considered. If material (i.e., over 20% of initial contract), consider new tender or, where best value can be gained through contract variation, refer to the Risk & Procurement Advisor, and seek approval from your Executive Team Member, followed by final approval from an independent Executive Team Member.	Consider the additional spend and whether this materially changes the requirements or specification. Achievement of ‘best value’ should be considered in these scenarios and detailed reasoning for decisions made should be documented and saved with relevant project/procurement information. For a contract variation of <=20%, approval can be provided by a one-up manager with appropriate financial delegation. For a variation of >20%, approval must be sought from the relevant Executive Team Member and an independent Executive Team Member, following referral to the Risk & Procurement Advisor. In all cases, detailed reasoning and consideration of other approaches must be documented in the approval request. All requests and responses must be saved for audit trail purposes. Consider risks, such as reputational damage, prior to making a final decision. Approval can only be granted if within the approver’s financial delegation.

Third Party Agents/Consultants

Council may use an agent to act on its behalf in procurement activities. This does not change the basic obligation on Council. Even if from the private sector, an agent, when acting for Council, must meet the same standards of good procurement practice.

Council will not engage any agent to provide advice or act on its behalf if the agent has a commercial interest in the contract opportunity. Any potential or actual conflicts of interest should be raised immediately and escalated to the Finance and Corporate Development Group Manager.

Subcontracting

Council requires all suppliers to meet the same standards through sub-contracting as they would in fulfilling the contract themselves. It is in the planning stage that Council should decide whether subcontracting is acceptable for the procurement in question. Following receipt of tenders this decision can be reconsidered if appropriate.

Technical Specifications

When defining technical specifications or prescribing conformance requirements, these must not be written in a way that creates unnecessary obstacles for suppliers.

Where appropriate, technical specifications must be based on:

- a. performance and functional requirements, not on design or a prescribed licensing model or a description of their characteristics, and/or
- b. international standards where they exist, otherwise the appropriate New Zealand technical regulations, standards, or building codes.
- c. specific item detail where compatibility is required with existing infrastructure or assets.

Procurement of professional services

Any procurement for the engagement of professional consultants and independent contractors that is valued at over \$50,000 (GST exclusive) must follow the tender procedures and have a procurement plan, to ensure that Council acts in accordance with the key principles in this Policy. Direct appointment can be utilised for procurement for the engagement of professional consultants and independent contractors that is valued at under \$50,000 (GST exclusive). Where appropriate the quotation procedure, or tender procedures should be utilised.

Officers may utilise Panels to engage suitably qualified professional consultants and independent contractors as this enables a streamlined process. Further detail on Panels is documented later in this policy.

APPROACHING THE MARKET

Open Advertising

In general, Council aims to openly advertise contract opportunities. This may be through the Government Electronic Tenders Service (GETS) website, or via a different solution suitable for the type of procurement and its associated cost. It should be noted that advertisement on GETS is encouraged as this is a free service for Council and suppliers.

When advertising on GETS, Government Procurement Rules 36, 37 and 38 should be followed. These can be found in the Government Procurement Rules [here](#).

Closed Tenders

In some cases, the type of service, goods or works to be procured may mean that an open call for tender or proposal is not practicable or cost-effective or may not produce the best procurement outcome. In these cases, a closed tender may be the preferred procurement method. In order to minimise the risk that a better source of supply may be missed, officers will document the reason for pursuing a closed tender such that the following conditions are satisfied:

- Appropriate market research has identified that the goods or services are only available from a few suppliers;
- The public entity 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 a contract is due to expire without having been properly managed in good time.

These details can be documented in a Non-standard Procurement Report. Once documented, the reason should be supplied to a one-up approver independent of the procurement activity – this could be the procuring officer's direct manager if they have had no prior involvement in the procurement. Approval must be documented and saved for audit trail purposes.

Multi-stage tenders

A multi-stage tender is an appropriate procurement method where Council wishes to limit the number of tenders or proposals or is unsure about the size of the market.

When deciding whether to use a multi-stage open tender or proposal process, the following must be considered:

- the value and risk associated with the procurement;
- the degree to which the entity is able to specify the requirement;
- the number of available suppliers and current market conditions;
- whether the entity is looking for innovative solutions; and
- the cost and resources required of both the entity and the potential suppliers.

Sufficient Time

Council must allow sufficient time for suppliers to respond to requests for quotes, tenders or proposals.

Officers must take into account:

- The nature and complexity of the procurement
- The type of information and level of detail suppliers need to provide
- The level of risk
- The nature of the goods, services or works
- The extent of any subcontracting
- The time it takes for domestic and foreign suppliers to submit tenders

No supplier can be given more or less time than any other supplier. Council may accept a late response if the delay was solely Council's fault.

Suggested timescales can be found in procedural documentation linked in the Related Documents section of this policy.

Supplier Panels

In order to achieve best value for ratepayers, Council may employ the use of Supplier Panels for the procurement of goods, services or works. Panel procurement can be completed up to \$200,000 exc. GST, per transaction with anything over \$200,000 requiring the use of the Tender Procedures.

When establishing a panel, each department must follow the Supplier Panel Procedures, ensuring the following steps are taken: :

- Open advertisement of the opportunity, including required detail as listed in the Supplier Panel Procedures;
- Upfront definition of evaluation method and ideal number of suppliers on the panel;
- Effective, informed evaluation of suppliers before appointment to the panel;
- Agreement of panel approach to secondary procurement; and
- Nomination of a panel manager to monitor performance and distribution of work.

Supplier Panel Procedures are linked in the Related Documents section of this policy.

Contact with potential suppliers during procurement

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

Confirmation from suppliers that they have not canvassed any member, director, employee, or adviser of the entity in connection with the proposed award of the contract, and that they will not do so during the tender process can be covered off with an 'Appropriate Contact Agreement' which can be included with tender documentation for suppliers to return. This is linked in the Templates & Tools section of this policy. Specific provisions would allow Council to disregard any tender from a supplier who is found to have attempted to influence the process outcome in such a way.

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

EVALUATION AND CONTRACT AWARD

Evaluation team

For all procurements following the tender procedures, an Evaluation Team will be established. The procuring department or officer will ensure the composition of the evaluation team is determined at the planning stage of the procurement. The panel will comprise suitably qualified personnel to undertake the procurement activity. The size and membership of the evaluation team will depend on the value, complexity, and risk of the procurement.

An evaluation team member may hold multiple positions where appropriate i.e., they may hold the position of a person with commercial expertise and a person with technical expertise.

Spend Level	Team Constitution
>\$200,000 - <\$500,000	<p>- Suitably qualified personnel (based on value, complexity and risk of the procurement), including where possible:</p> <ul style="list-style-type: none"> • an officer with procurement knowledge, who ensures that the evaluation process is managed in a fair, robust, and defensible manner, and who understands the rules of the evaluation and ensures that they are followed; • a person with commercial or financial expertise; • a person with appropriate technical expertise; and • A chairperson (who should be appointed from within the team).
>\$500,000 - <\$1,000,000	<p>- Suitably qualified personnel (based on value, complexity and risk of the procurement), including where possible:</p> <ul style="list-style-type: none"> • an officer with procurement knowledge, who ensures that the evaluation process is managed in a fair, robust, and defensible manner, and who understands the rules of the evaluation and ensures that they are followed; • a person with commercial or financial expertise; • a person with appropriate technical expertise; and • A chairperson (who should be appointed from within the team). <p>- Member from a department other than the procuring department</p>
>\$1,000,000	<p>- Suitably qualified personnel (based on value, complexity and risk of the procurement), including where possible:</p> <ul style="list-style-type: none"> • an officer with procurement knowledge, who ensures that the evaluation process is managed in a fair, robust, and defensible manner, and who understands the rules of the evaluation and ensures that they are followed; • a person with commercial or financial expertise; • a person with appropriate technical expertise; and • A chairperson (who should be appointed from within the team). <p>- Representative from the Finance and Corporate Development group</p> <p>- Consideration to including a member from an external business entity where that entity is believed to provide expertise, diversity and/or insight that would benefit the procurement activity and increase value.</p>

The details of the evaluation team should be included in the Procurement Plan.

Treatment and Evaluation of Responses

Council must guarantee that all suppliers' responses are treated fairly. This includes receiving, opening and evaluating responses.

The procuring Department will identify and document the evaluation model during the procurement planning. The Procurement plan will document the reason why it chose that evaluation model.

The evaluation model will be set out in the procurement documents so that suppliers know how the tender or proposal will be evaluated. The evaluation criteria will be detailed enough to enable the assessment of the relative strengths and weaknesses of each respondent.

When selecting an evaluation model, officers should consider a model that is appropriate to the specific needs of the procurement activity. The following evaluation models are for consideration:

- The lowest-price conforming model
- The weighted-attribute model
- Price Quality Method (PQM)
- The target-price model
- The Brooks' Law model

Details of these models can be found in procedural documentation.

To be considered for an award of contract, a supplier must submit a response in writing, either electronically or paper-based.

Responses received after the deadline will not be considered unless the delay is solely Council's fault.

Where spend does not exceed \$50,000 and variance between bids is $\leq 5\%$, preference will be given to local suppliers.

Due Diligence

Council requires due diligence checks of the preferred participants for all high value, high risk, or complex procurements to ensure that the participant has the capacity and stability to fulfil all the requirements of the contract. Due diligence activity should ensure that the supplier meets all the necessary legal and regulatory requirements where these apply.

The need for due diligence will be documented in the tender or proposal documents to ensure tenderers are aware of the process and potential timing.

Post-evaluation Negotiations

Council supports post-evaluation negotiation as an effective tool to manage risk and seek to achieve cost reductions without compromising on quality. From Council's perspective, the primary objective of the negotiations should be to:

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

Council will negotiate first with the highest ranked participant. If the outcome is unsatisfactory, Council will then negotiate with the next highest ranked participant, and so on down the list until a satisfactory outcome is achieved.

Concurrent negotiations may be required in limited circumstances. Concurrent negotiations must be approached with care to ensure that they remain fair.

The final outcome of the negotiations should be recorded in writing and included in the contract.

Variation Between Estimated Price and Received Bids

Council will allow a certain level of variance between initial cost estimates and received bids or quotes. A variance of $\leq 15\%$ (exc. GST) can proceed without further approval.

Where price is the only deciding factor outside pre-conditions, once all bids have been received, they should be immediately opened and reviewed against the estimate. Where all quoted prices exceed the estimate by $>15\%$, approval to continue should be sought in accordance with the table below.

In the event that non-price attributes are evaluated prior to the opening of price quotations, the evaluation should proceed until a successful bidder has been decided. Where the winning bid has a variance of $>15\%$, detail of the other bids along with evaluation criteria and scores, should be provided to the Risk & Procurement Advisor, procuring department's Executive Team Member, and an independent Executive Team Member for review and, where deemed appropriate, approval.

The following table shows the actions that are acceptable in each circumstance:

Variance from estimate	Action
$\leq 15\%$	This level of variance is acceptable, and bids can be assessed in accordance with procurement plans.
$>15\%$	This level of variance should be reviewed and, if found to be reasonable, a request for approval of variance should be reviewed by the Risk & Procurement Advisor, receive initial approval from the procuring department's Executive Team Member, and receive final approval from an independent Executive Team Member where delegation allows. Chief Executive approval is required where financial delegation for Group Managers is exceeded.

Suspending or cancelling a tender process

Council will reserve the right to cancel or suspend a tender where appropriate. Generally, this will be a result of an emergency situation or where the business case for the procurement is no longer valid i.e. the procurement is no longer of any value. Council will advise tenderers upon their participation in the tender of Council's rights to cancel or suspend a tender. Where a procurement activity will be cancelled, Council will communicate equally with all tenderers advising of the termination.

Where a tender is suspended, Council will communicate with each tenderer advising of the suspension duration and for the need to maintain the procurement terms and agreements.

Awarding the Contract

The Chair of the Evaluation Team or an alternate officer of the team will document the procurement outcome and make a recommendation on the preferred tenderer. The recommendation to award the contract will be communicated to an officer with appropriate delegation to authorise the award of the contract. The recommendation of the preferred participant should reflect the outcome of the evaluation process. The recommendation should include enough information to allow the approving authority to understand the evaluation process and the rationale for the recommendation.

The approving authority shall be a one-up approval and within the approver's delegated authority.

If the approving authority rejects the recommendation, they should:

- Clearly document the reason for not accepting the recommendation; and
- Ensure that the reason is legitimate (this would usually be the result of an unforeseen event that was not identifiable earlier in the process).

In the event that the approving authority has concerns or identifies issues in relation to the probity of the process, the matter will be referred to the Finance and Corporate Development Group Manager in the first instance and, where appropriate, to the Chief Executive for advice and action.

The successful participant will be formally notified, and the contract signed.

Officers will lodge the executed contract within Council's contract register to ensure Council remains aware of the contract's expiry date so that it can plan for future provision well before that date.

Notifying and debriefing unsuccessful participants

Unsuccessful participants are to be notified of the outcome and offered a debriefing. Care should be taken during the debriefing process not to disclose commercially sensitive information that relates to other tenders or proposals.

Debriefing will be delegated only to staff who have the necessary experience and sensitivity to carry it out successfully. The debriefing should include a balanced view of the strengths and weaknesses of the tender or proposal against the evaluation criteria and how the participant can improve, rather than being just a comparison of the participant's strengths or weaknesses relative to the other participants.

POST-AWARD ACTIVITIES

Contractual Considerations

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

Contracts

Council's own contracts have preference over supplier proffered contract documents. Contracts should be written in a practical, simple and readily understood manner consistent with a realistic assessment of the likelihood of a conflict arising. It is expected that employees involved with contracts will have experience in formulating contracts or have the required level of competency.

Legal advice should always be sought where contracts are negotiated or non-standard or the circumstances are unusual, or the risks associated with the relationship are high.

Standard contract templates are linked in the Templates & Tools section of this policy.

Contract Variations

Contract variations can be considered. If material (i.e., over 20% of initial contract), consider new tender or, where best value can be gained through contract variation, refer to the Risk &

Procurement Advisor, and seek approval from your Executive Team Member, followed by final approval from an independent Executive Team Member.

Consider the additional spend and whether this materially changes the requirements or specification. Achievement of 'best value' should be considered in these scenarios and detailed reasoning for decisions made should be documented and saved with relevant project/procurement information.

For a contract variation of $\leq 20\%$, approval can be provided by a one-up manager with appropriate financial delegation for the full spend level (original contract + x%). Where a contract is worth $> \$1.5\text{m}$ and must therefore be awarded by Council, officers should consider requesting a delegation for variations is awarded to the Chief Executive. This approved delegation would allow variations of $\leq 20\%$ to be reviewed and approved by the Chief Executive in order to allow for efficiency in processing variations on high-value contracts.

For a variation of $> 20\%$, approval must be sought from the relevant Executive Team Member and an independent Executive Team Member, following referral to the Risk & Procurement Advisor. In all cases, detailed reasoning and consideration of other approaches must be documented in the approval request. All requests and responses must be saved for audit trail purposes.

Consider risks, such as reputational damage, prior to making a final decision. Approval can only be granted if within the approver's financial delegation.

Contract Management

Completion of procurement activity will be followed-up by robust contract management. The department responsible for the procurement is expected to ensure 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.

The department responsible for the procurement will maintain records in Council's document management system of the monitoring and contract management that they have carried out.

Completion and contract review

Where appropriate a formal contract completion process (including debrief) will be undertaken when the contract expires or ends.

Prior to renewing the contract via an appropriate procurement activity, Council will review the contract and past performance to assess how well the objectives have been achieved and determine where it can make any improvements.

NON-STANDARD PROCUREMENT OPTIONS

Aggregated or Joint Procurement Initiatives

Council participates or may participate in a range of shared services or joint procurement activities. When considering these joint initiatives, Council should carefully consider the effects that joint procurement activity could have on the market to ensure that they do not create a monopoly or oligopoly situation.

Negotiated Supply Arrangements

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

In the event that approval is granted in accordance with spend level and financial delegations, a carefully defined negotiation strategy should be documented along with appropriate decision structures, objectives and “exit strategies”.

Where Waka Kotahi co-investment forms part of the project, prior approval from Waka Kotahi would be required.

All of Government (AOG) Contracts

Where an AOG contract is in place, due consideration should be given to whether we should utilise these arrangements. Where this is beneficial, a direct source approach will be used. The following steps should be taken when procuring goods, works, or services via AOGs:

Spend Level (exc. GST)	Action
<=\$200,000	Obtain one-up approval in line with financial delegation.
>\$200,000	Obtain approval from the procuring department’s Group Manager, within delegation. Where delegation is exceeded, approval can be sought from the Chief Executive or Governance Team, however, other options such as conducting a tender process, must be considered and detailed in the approval request.

COMPLIANCE

Organisational Compliance and Monitoring

The Risk & Procurement Advisor is responsible for monitoring compliance with this Policy and managing the exemption process.

The implementation of, and compliance with, this Policy and the supporting procedures will be audited as part of Council's internal audit cycle.

Legal Compliance

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

Officers should seek timely legal advice for any new or unusual contractual relationships – such as those contemplated in negotiated supply arrangements. Compliance with legislation is mandatory in all procurement activity.

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

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

Insurance Considerations

Assessing the nature of the work or services being procured helps determine the risk exposure to Council and the type and level of insurance cover that may be required by various parties. As there can be many exposures that exist and these are not always obvious, Council as a general principle operates within guidelines recommended by its insurance brokers particularly in relation to public liability, professional indemnity and contract works cover.

Commercially Sensitive Information

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

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

Intellectual Property and Copyright

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

In any case, Council should:

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

Liability

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

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

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

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

Officers should be aware of any "hold harmless"/indemnity or "waivers of 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 the Finance and Corporate Development Group Manager who will determine if legal advice is required.

Accuracy and use of information

Council requires its staff to:

- respect the confidentiality of information received in the course of their work;
- not use this information for personal gain;
- always communicate information accurately, impartially, and in a manner not designed to mislead; 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.

Technical Compliance

The objective of the technical compliance is to ensure conformance with any technical requirements. For example; IT Governance, IT Security Architecture, Playground Standards or streetscape design documents. It is the responsibility of the business area (procuring the goods/services) to ensure:

- a) Technical requirements are understood and documented appropriately, and that technical approval has been obtained prior to purchase if required;
- b) Where the purchase involves change to business practices the Business Change and Transformation Policy is implemented; and
- c) Where the purchase includes information technology, be it hardware or software, regardless of price, the IT Governance policy, Software Purchase and Change Policy and Device and Equipment Purchase and BYOD Policy must be implemented.

Record keeping

Officers will keep adequate records of key procurement decisions. Good record keeping is a key component that supports accountability and ongoing transparency.

The complexity of the procurement will determine the nature and amount of documentation which is desirable, along with the obligation in the Public Records Act 2005 to maintain full and accurate records in accordance with normal prudent business practice.

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

FURTHER INFORMATION

Glossary

Item	Definition
Procurement	Business processes associated with purchasing, spanning the whole cycle from the identification of needs to the end of a service contract or the end of the useful life and subsequent disposal of an asset.
Total Contract Value	Total value of the contract, including any contingency, stated in NZD.
Value for Money	Using resources effectively, economically, and without waste, with due regard for the total costs and benefits of an arrangement, and its contribution to the outcomes the entity is trying to achieve.
OAG	Office of the Auditor-General
ICT	Information and Communication Technology
Public-private partnership	An arrangement between a public sector entity or entities (including Council) and a private sector entity or entities for the purpose of jointly or cooperatively undertaking a project for mutual benefit.
Local supplier	A ratepayer of the Waitaki District Council and/or an organisation that employs Waitaki District residents.
Broader Outcomes	The secondary benefits that are generated from the procurement activity. They can be environmental, social, economic, or cultural benefits.
GETS	Government Electronic Tenders Service – a free tendering portal for government procurement.
Hold harmless or indemnity clause	A hold harmless agreement protects business owners from being sued when someone suffers damage, bodily injury, or financial loss on business property or while a service is being provided. If a supplier inserted such a clause into a contract, we would have no legal recourse in the event of any of these incidents occurring.
Waivers of subrogation	A waiver of subrogation prevents an insurer from seeking recovery from a third party for damages paid. In other words, if subrogation is waived, the insurance company cannot "step into the client's shoes" once a claim has been settled and sue the other party to recoup their losses. Thus, if subrogation is waived, the insurer is exposed to greater risk.

Related Documents

This policy is linked to a number of internal documents, which should be read and understood. The related procedure documents represent the minimum standard for

procurement activity and should be followed as required. Related documents are listed below:

- Quotation Procedure
- Level 1 Tender Procedure (>\$200,000 - <=\$500,000)
- Level 2 Tender Procedure (>\$500,000 - <=\$1,000,000)
- Level 3 Tender Procedure (>\$1,000,000)
- Supplier Panels Procedure
- Financial Delegations Register
- WDC Financially Assisted Roading Procurement Strategy

Templates & Tools

Templates have been defined and should be referred to as a minimum standard. Procuring officers are permitted to use different templates where procurement activity requires a more unique approach, however, the detail in templates below should always be included.

All templates and tools can be found at: [Policy, Strategy and Plans - Procurement - All Documents \(sharepoint.com\)](#)

Additional templates can be found at procurement.govt.nz