

**Manawatu District Council**

# **Procurement Policy 2018**

Adopted: 31 May 2018

Commences: 31 May 2018

Review date: 1 June 2020

Policy type: Governance

## Introduction

The Manawatu District Council (MDC) Procurement Policy was developed from the Ministry of Business Innovation and Employment – Government Rules of Sourcing and the Office of the Auditor General’s Procurement Guidelines for Public Entities.

MDC rules for planning procurement, approaching the market and contracting, represent the Council’s standards of good practice for the procurement of goods and services.

Council spends millions of dollars every year buying a wide range of things, from lawn mowing services to public convenience upgrades, stationery and IT services to roading maintenance works. Public services are widely delivered by private businesses as suppliers, so choosing and managing these relationships well is critical to achieving the best results.

Council needs to attract creative, clever and commercial suppliers to help deliver innovative and effective solutions to get the best value for the ratepayers of the Manawatu District - which isn’t always the cheapest price. To be an attractive customer, it is essential that Council fosters productive relationships with suppliers.

The MDC rules for planning procurement, approaching the market and contracting, provide the foundation of best practice procurement and will demonstrate that Council is open, transparent and accountable. The rules help to design processes that are robust, and build confidence in Council procurement practices. This will build greater public trust and confidence that Council spending is well-planned and well-executed.

Smart public procurement will deliver better public services and provide value for money to the ratepayers of the Manawatu District.

## Context

### What are the Rules?

Manawatu District Council (MDC) Procurement Policy 2013 replaced the MDC Procurement Policy 20/05/2010, and was adopted by Council resolution at the Council meeting 17 April 2014. The 2014 Policy was reviewed and the Procurement Policy 2018 was adopted on 31 May 2018.

### Focus on procurement

The term ‘procurement’ covers all aspects of acquiring and delivering goods, services and works (eg renewal and new construction). It starts with identifying the need and finishes with either the end of a service contract or the end of the useful life and disposal of the asset.

These Rules focus mainly on the process of procurement which covers planning the procurement, market research, approaching the market, evaluating responses, negotiating and awarding the contract.

### Changes

The purpose of the rules is to:

- Provide a plain English format that is easy for MDC and suppliers to use
- Modernise the MDC’s approach to procurement to align with good national practice and provide better value for the ratepayers of the Manawatu District
- Ensure MDC uses more strategic approaches and commercial expertise when procuring

- Encourage MDC to engage early with the market to stimulate competition and innovation, and work with suppliers to develop better solutions

### **Application to Council**

MDC is required to apply the Rules and will be audited for its compliance with them. Suppliers have a right to complain if they think Council has not complied with them.

The Rules are a compulsory requirement for Council when procuring goods or services unless varied by formal Council resolution.

### **How to use the Rules**

The Rules contain headers and boxes with more information, definitions, links to guides tools and templates and examples. Information in these boxes does not form part of the Rules. It is there to assist with interpretation and to give greater context for the reader.

### **Headings**

The following Headings are used to show supplementary information

Example

Definition

More information

Guides, tools and templates

For more information you can read more about Manawatu District Council's Procurement Policy and practice at MDCs website: [www.mdc.govt.nz](http://www.mdc.govt.nz)

### **Annotations**

April 2019. This document was converted from the graphic-designed version (as adopted in May 2018) to MS Word version. Formatting and numbering is updated to conform with current MDC policy format.

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# Chapter 1 Getting Started

## 1 What's so special about MDC procurement?

- 1.1 Delivering good public services to the Manawatu District starts with good procurement.
- 1.2 How well money is spent has a direct impact on the quality of services ratepayers' experience. It also reflects the district council's efficiency and effectiveness. It can provide opportunities to increase competition and productivity that lead to innovation and contribute to greater economic growth.

## 2 Why have rules?

- 2.1 To strengthen accountability
  - 2.1.1 Local authorities must account for how they spend ratepayers' money. The rules, along with the Office of the Auditor-General's (AOG's) Procurement Guidelines for Public Entities, provide a framework that promotes responsible spending when purchasing goods, services, and works. This framework supports proactively managing procurement process and delivery risks.
  - 2.1.2 The rules also establish processes that are consistent and predictable, making it easier for the Council and suppliers to engage with each other.
  - 2.1.3 The Council must also be aware of, and comply with the common law of contract, public law and, where appropriate, commercial law obligations.

### Example

Value for money over the whole-of-life

Council publishes a Request for Tender to supply steel mesh fencing for a new depot. It does not specify any quality standards and accepts the lowest price bid.

The fencing is installed. Within 1 year it begins to rust, within 3 years it is beginning to fail, and by 6 years it needs to be replaced.

Had Council specified quality standards, it could have assessed bids based on best value for money over the whole of the life of the product. There was another supplier whose price was slightly higher, but whose fencing carried a 15-year warranty. Despite the higher initial cost, this supplier's product would have represented the best value for money over the whole-of-life.

### Examples of commercial law legislation:

- Sale of Goods Act 1908
- Frustrated Contracts Act 1944
- Commerce Act 1986
- Fair Trading Act 1986
- Minors' Contracts Act 1969
- Illegal Contracts Act 1970
- Contracts (Privity) Act 1982

- Contractual Mistakes Act 1977
- Contractual Remedies Act 1979
- Construction Contracts Act 2002
- Sale of Goods (United Nations Convention) Act 1994

**Example of commercial law case:**

- Pratt Contractors Limited v Palmerston North City Council

**Examples of public law legislation:**

- Public Finance Act 1989
- Public Audit Act 2001
- Public Records Act 2005
- Official Information Act 1982
- State Sector Act 1988
- Ombudsmen Act 1975
- Public Bodies Contracts Act 1959

**Example of public law case:**

- Diagnostic MedLab Ltd v Auckland District Health Board

Council must comply with other relevant legislation and should make sure it covers all relevant risks when selecting and managing suppliers (eg health and safety). For more information see: A principal's guide to contracting to meet the Health and Safety in Employment Act 1992 at: [www.osh.govt.nz](http://www.osh.govt.nz)

2.2 To promote our values

2.2.1 Manawatu District Council is committed to open, transparent and competitive procurement that:

- delivers best value for money (which isn't necessarily the cheapest price)
- does not discriminate against suppliers (whether local, national or international),
- meets agreed OAG standards.

2.2.2 The Rules reflect these values and standards

2.3 To encourage commercial practice

2.3.1 Early market engagement and continued open dialogue with suppliers are essential to the results that can be achieved. There are sound commercial reasons why building stronger relationships with business is important. The Rules aim to encourage better commercial practice by promoting these types of behaviours and achieving greater value for money.

**Definition - Value for money**

Value for money isn't always the cheapest price. Value for money means using resources effectively, economically, and without waste, and taking into account:

- the total costs and benefits of a procurement (total cost of ownership), and
- its contribution to the results you are trying to achieve.

The principle of value for money is about getting the best possible outcome over the whole-of-life of the goods, services or works.

Selecting the most appropriate procurement process that is proportionate to the value, risk and complexity of the procurement will help achieve value for money. Good procurement is about being risk aware, not necessarily risk averse.

### **More information**

It is important that the longer-term impacts of procurement decisions are considered and not just the immediate results (eg will the decision substantially reduce competition or create a monopoly in the future market place?).

- 2.4 To ensure maximum value for money expenditure
- 2.4.1 As a medium sized, rural local authority, MDC needs to ensure the best spend of every ratepayer dollar it is entrusted with.
- 2.4.2 Following the Rules is essential:
  - to provide open and fair competition that supports innovation and helps create a competitive, productive market place in the Manawatu District.
  - for Council to be valued as a desirable principle / client organisation – that demonstrates professional practice and has a reputation for integrity.

## **3 How do the rules fit with other guidance?**

- 3.1 The Rules are only one part of what makes up good procurement practice. The framework that supports good practice consists of the Procurement Policy, the Rules contained therein and good practice Guidance.
- 3.2 What's good procurement?
  - 3.2.1 Public value

Councils that maximise their return on spending will achieve the best possible results for ratepayers. Good procurement means better public value.
  - 3.2.2 Policy framework

Council procurement is based on Policy, Rules and good practice Guidance. Collectively, these provide a broad framework that supports accountability for spending, sound business practice and better results.

Good practice isn't just mechanically applying the rules. It's about developing a strong understanding of all of the aspects of the procurement lifecycle and skilfully applying these to deliver the best results. While compliance with the rules is still necessary, the process should be designed proportionate to the value, risk and complexity of the procurement. It's about applying sound commercial judgement to achieve the best value for money, which isn't always the cheapest price, and drive innovation and performance.

Understanding suppliers and the market is part of the careful planning essential to developing the right approach to market. All procurement covered by the rules should be for programmes of work and projects budgeted for in a Long Term Plan (LTP) or Annual Plan (AP). Unspecified or unbudgeted projects must be supported by a robust business case and procurement plan that's level of detail reflects the size, value and complexity of the procurement.

Procurement also covers proactively managing supplier and other key stakeholder relationships throughout the sourcing process and for the duration of the contract. This embraces continuing to develop the supplier and driving value for money through on-going efficiency gains.

Staff must also take into account the council Sensitive Expenditure Policy and act within the framework of the Delegations Manual at all times.

The council Fraud Policy sets a clear framework for staff to operate within to ensure the integrity of staff and the council when working within procurement activities.

### 3.2.3 Principles

The principles of the OAG procurement guidelines apply to all local authorities and provide the overarching values. The Principles apply even if the rules do not. Council can use the principles for guidance and to help make good procurement decisions.

**Examples of guidance on government procurement practice include:**

Office of the Auditor-General's Procurement Guidance for Public Entities [www.oag.govt.nz](http://www.oag.govt.nz)

## 4 The five principles of Manawatu District Council procurement

4.1 The Council's five Principles are the foundations for good procurement. The Principles must be reflected in everyday practice. Everyone engaged in procurement must understand and know how to apply the Principles.

### 4.2 Principle 1. Plan and manage for great results

- Identify what is needed and then plan how to get it.
- Set up a team with the right mix of skills and experience.
- Involve suppliers early - let them know what Council wants and keep talking.
- Take the time to understand the market and Councils' effect on it. Be open to new ideas and solutions. Choose the right process - proportional to the size, complexity and any risks involved.
- Encourage e-business (for example, tenders sent by email).

### 4.3 Principle 2. Be fair to all suppliers

- Create competition and encourage capable suppliers to respond.
- Treat all suppliers equally - don't discriminate.
- Make it easy for all suppliers (small to large) to do business with Council. Be open to subcontracting opportunities in big projects.
- Clearly explain how Council will assess suppliers' proposals - so they know what to focus on. Talk to unsuccessful suppliers so they can learn and know how to improve next time.

### 4.4 Principle 3. Get the right supplier

- Be clear about what Council needs and how suppliers are assessed - don't string suppliers along. Choose the right supplier who can deliver what is needed, at a fair price and on time.
- Build demanding, but fair and productive relationships with suppliers.

- Make it worthwhile for suppliers - encourage and reward them to deliver great results. Identify relevant risks and get the right person to manage them.

**4.5 Principle 4. Get the best outcome for everyone**

- Get best value for money - account for all costs and benefits over the lifetime of the goods or services.
- Make balanced decisions - consider the social, environmental and economic effects of the outcome. Encourage and be receptive to new ideas and ways of doing things - do not be too prescriptive. Take calculated risks and reward new ideas.
- Have clear performance measures - monitor and manage to make sure Council delivers great results. Work together with suppliers to make on-going savings and improvements.
- It is more than just agreeing the outcome - be accountable for the results.

**4.6 Principle 5. Play by the rules**

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

**5 What values underpin the Rules?**

5.1 The Council's five Principles are the foundations for good procurement. The Principles must be reflected in everyday practice. Everyone engaged in procurement must understand and know how to apply the Principles.

**5.2 Rule 1 - Principles**

5.2.1 Council must have policies in place that incorporate the five Principles of local authority procurement. The Principles apply to all procurement.

5.2.2 Council must make sure that:

- all staff engaged in procurement have been trained in the five Principles of procurement
- its procurement practices reflect the five Principles
- it is able to show how it has used sound research to plan an appropriate approach to market strategy that is proportionate to the nature, risk, value and complexity of each procurement.

5.2.3 There is no discrimination and no favouritism in Council's procurement. This means treating all suppliers equally – local, national and international.

**More information**

**Procurement planning**

Good procurement starts with good planning. Knowing what Council needs to buy and understanding the market makes Council a "smart buyer".

Before choosing a procurement process, think about the nature of the goods, services or works needed, and assess the best way to approach the market. Ensure that:

- all suppliers get fair notice of the contract opportunity

- the process encourages competition
- suppliers have enough time to respond.

Decisions should be based on a clear understanding of Council's needs and an appropriate level of market research. It's important that the process chosen reflects the value and complexity of the procurement. Don't overcomplicate a straightforward tender simply because the Rules apply.

### 5.3 Rule 2 - Integrity

5.3.1 Council must have in place policies that safeguard the integrity of its procurement activities and processes. The policies must require that:

- Council and all staff involved in procurement can justify their procurement decisions
- those involved in procurement decisions stay impartial
- procurement processes are fair, transparent and reasonable
- all staff involved in procurement act responsibly, lawfully and with integrity.
- The council Purchase Order Policy must be followed when ordering work from a successful contractor following a procurement process.

5.3.2 Council must have policies in place that help all staff involved in procurement to identify, notify and manage conflicts of interest. Council must be able to show how it uses sound judgement to manage conflicts of interest.

### 5.4 Rule 3 - No offsets

5.4.1 Council must not ask for, take account of, or impose any offset at any stage in a procurement process.

### 5.5 Rule 4 - Non-discrimination

5.5.1 All suppliers must be given an equal opportunity to bid for contracts. Council must treat suppliers from anywhere in the country no less favourably than local suppliers.

5.5.2 Procurement decisions must be based on the best value for money, which isn't always the cheapest price, over the whole-of-life of the goods, services or works.

5.5.3 Suppliers must not be discriminated against because of:

- the region the goods, services or works come from
- their degree of foreign ownership or foreign business affiliations.

#### Definition

Offset has a special meaning within the context of the Rules. An example of an offset is where, in order to be awarded a contract, a supplier is required to purchase in return local goods, services or works. The purpose of an offset is to impose a condition intended to subsidise the local economy and potentially restrict the achievement of best value. Examples of offsets include:

- requiring goods, services or works from a specific region
- applying weighted evaluation criteria that favour local content or give local suppliers a price preference.

## 6 Dealing with commercially sensitive information

6.1 Council often has access to sensitive information about a supplier's business. This could be new ideas or pricing structures. This information must be protected.

## 6.2 Rule 5 - Protection of suppliers' information

6.2.1 Council must protect suppliers' confidential or commercially sensitive information. This includes information that could compromise fair competition between suppliers.

6.2.2 Council must not disclose confidential or commercially sensitive information unless:

- the supplier has already agreed to it in writing, or
- the disclosure is required by law (eg. under the Local Government Official Information and Meetings Act 1987), convention or Parliamentary or Cabinet Office practice, or
- it is a limited disclosure expressly notified in a Notice of Procurement which suppliers have consented to by participating in the process.

### More information

Commercially sensitive information is information that, if disclosed, could prejudice a supplier's commercial interests. It includes:

- the design and content of a tender
- trade secrets and 'know how'
- new ideas
- innovative solutions
- intellectual property
- copyright
- pricing structures
- profit margins
- market strategies.

Council must understand what commercially sensitive information is and how to handle that information.

Examples of prohibited disclosure of information include:

- disclosing commercially sensitive information to a supplier's competitor
- using or adopting an idea or solution without the supplier's agreement.

It is good practice to include instructions to suppliers to mark their responses, or the relevant parts of their responses, 'commercial in confidence'.

If, as part of the evaluation process, there is a need to share responses with other Councils or advisors, seek permission for such disclosure by making this a condition of participation in the Notice of Procurement.

## 7 When do the Rules apply?

7.1 The Rules apply for all Council procurement

### 7.2 Rule 6 - When the Rules apply - goods or services

7.2.1 The Rules apply to the procurement of all goods or services or renewal works, or a combination of goods or services or renewal works.

7.2.2 To estimate the maximum total estimated value (Rule 8) for goods or services or renewal works Council must take into account:

- all related services (eg installation, training, servicing, management consultancy services)

- all types of goods (eg operating consumables)
- all subcontracted goods or services or works.

7.2.3 This Rule does not apply to goods, services or renewal works that are purchased for commercial resale

**Definition**

In the context of the Rules, **renewal works** relate to the refurbishment of an existing building, road, bridge or dam. It covers renovating, repairing or extending.

It does not include replacing an existing construction as this is deemed to be new construction works.

**Example**

An example of **goods purchased for commercial resale** could be items that a library purchases for resale in its gift shop.

**More information**

**Disposals** at the end of the useful life of a contract are not commercial goods, services or works purchased for resale. Disposals are not subject to these Rules.

## 8 How to estimate the value of a procurement?

### 8.1 Rule 7 - When the Rules apply - new construction works

8.1.1 The Rules apply to the procurement of all goods or services or works for new construction works.

8.2 To estimate the maximum total estimated value (Rule 8) for new construction works Council must take into account:

- all related services (eg design, architecture, engineering, quantity surveying, and management consultancy services)
- all types of goods (eg construction material, health and safety equipment)
- all phases of the construction through to completion
- all subcontracted goods, services and works.

**More information**

**No 'salami slicing'**

When dealing with new construction works, individual contracts for goods, services or works are deemed to be part of the whole and should be openly advertised unless there is good reason to separate parts of the contract/project. Where this occurs, the reasoning must be documented in advance of any procurement with segregation of components approved by the Chief Executive or relevant General Manager.

8.3 The rules apply if the value of a procurement meets or exceeds a certain value threshold. There are several things you need to know when you estimate the value of your procurement.

### 8.4 Rule 8 - Estimating value

8.4.1 Council must estimate the total value of a procurement to determine whether it meets or exceeds the relevant value threshold. Council must act in good faith and use good

judgement to estimate the value of a procurement. Council must include the estimated value in its business case or procurement plan. This estimate is referred to as the maximum total estimated value.

- 8.4.2 Council must consider the total value over the whole-of-life of the contract/s when estimating the procurement's maximum total estimated value. The estimate must include the value of all of the contracts that may result from the procurement.
- 8.4.3 The value is the total amount excluding GST.
- 8.4.4 If Council cannot estimate the maximum total estimated value of a procurement it must apply the Rules.
- 8.4.5 When Council calculates the maximum total estimated value of a procurement, it must include everything required for the full delivery of the goods, services or works. This includes the value of:
- options to purchase additional goods, services or works
  - options to extend the term of the contract
  - paying any premiums, fees or commissions to the supplier or a broker
  - any revenue streams a supplier receives
  - any other form of remuneration or payment due to the supplier or to a third party or any interest payable.

#### **More information**

##### **Estimating value**

Even if the value of a procurement is less than the value threshold, Council is still expected to follow good procurement practice. This means applying the Principles and having regard to other good practice Guidance.

It is better to be cautious. If the estimated value is getting close to the value threshold (eg services valued at \$98,000), always consider using the next stage process i.e. three prices. After all, the calculation is only an estimate.

#### **Example**

An example of revenue streams: a supplier receives tolls from a road built under a Public Private Partnership (PPP).

## **9 Non-avoidance**

9.1 Council must not intentionally avoid applying the Rules.

### **9.2 Rule 9 - Non-avoidance**

9.2.1 Council must not intentionally avoid applying the Rules when planning for, valuing or undertaking a procurement.

9.2.2 When calculating a procurement's maximum total estimated value (Rule 8), Council must not intentionally avoid applying the Rules by either:

- deliberately dividing a procurement into separate parts without good reason
- using a non-standard or alternative valuation method to lower the estimated value.

### **9.3 Rule 10 - Types of contract**

9.3.1 The Rules apply to all contract types, including:

- when purchasing outright
- purchasing through hire-purchase
- when renting or leasing
- where there is an option to buy
- 'build-operate-own' type contracts (eg Public Private Partnerships (PPP))
- contracts accessed through a third- party commercial supplier or broker.

#### 9.4 **Rule 11 - Opt-out procurements**

9.5 The following is the list of valid opt-out procurements:

- **Non-contractual arrangement:** Any non-contractual arrangement (e.g. a Memorandum of Understanding between local authorities or with a government department) or any form of assistance including cooperative agreements.
- **Council to Council negotiated agreement:** Any agreement negotiated directly with another local authority for the provision of goods or services. Where the agreement includes any component of externally sourced goods or services as part of the offering, Council must satisfy itself that the procurement policy, rules and principles of the partnering local authority are broadly in line with that of its own.
- **Technical / functional specialist:** Where a supplier is deemed to provide a unique or specialist service that is specific to the needs of Council. This may include a service that is not available from any other supplier or a preferred service from a specific supplier based on Council's requirements e.g. a consultant to assist in a resource consent application process.
- **Proprietary technology:** Where a supplier is the sole supplier and/or patent holder of a specific product that is required by Council. Council must be satisfied that the proprietary technology is the most appropriate for the needs of Council.
- **Land and buildings:** Purchasing or renting land or existing buildings or other immovable property.
- **Conditional grant:** Any form of conditional grant. However, Council must not design or structure a procurement as a form of conditional grant to avoid applying the Rules.
- **Internal business unit:** Any form of internal business unit offering goods or services to another business unit. Notwithstanding this, each business unit must follow the rules for the procurement of externally sourced goods or services if it forms part of an internal offering i.e. consultancy services.

#### **More information**

##### **Third-party commercial supplier or broker**

Council cannot avoid applying the Rules by purchasing through a third-party commercial supplier (eg GSB Supplycorp Ltd).

##### **Number of contracts**

Council cannot split a procurement into smaller contracts to avoid applying the Rules. However, it may indicate in its Notice of Procurement the possibility, or its intention, that the procurement maybe let in separate lots. For example, having undertaken the evaluation of responses, it could consider 'chunking' the work into separate parts and awarding these to more than one supplier.

## 10 Does Council have to openly advertise?

10.1 The default position for Council procurement is to openly advertise all contract opportunities exceeding \$500,000 in value. This gives all suppliers a fair chance to bid for the contract. It also encourages competition, which leads to better value for money and stimulates innovative new ideas and solutions.

### 10.2 Rule 12 - Requirement to openly advertise

10.2.1 Wherever possible Council should use open competitive procurement processes to give all suppliers the opportunity to compete.

10.2.2 Council must openly advertise on the Tenderlink service if:

- the maximum total estimated value of the procurement meets or exceeds \$500,000 and
- there is no exemption from open advertising (Rule 13).

10.2.3 Council may advertise using other media, as well as Tenderlink.

**Note:** The New Zealand Transport Agency (NZTA) has a requirement for any project in excess of \$200,000 to be openly advertised and procured via a competitive procurement process. Therefore, this value must be adhered to when Council is procuring Roading related goods and services which attract an NZTA subsidy

#### More information

##### Open competitive process

Good procurement is about good process and good results.

Open competitive processes that comply with the Rules include:

- one-step processes such as Requests for Quote or Requests for Tender
- multi-step processes such as a Registration of Interest followed by a shortlisting and then a Request for Proposal or Request for Tender.

**Tenderlink** is a nationally recognised tendering service that is available to all commercial suppliers. It supplies information about tender opportunities and ensures open, transparent and fair competition.

Tenderlink is accessible to all interested suppliers, both domestic and international.

## 11 When does Council not need to advertise?

11.1 There are some limited situations where the rules apply, but where Council does not need to openly advertise. These are called exemptions to open advertising.

11.2 Where one of these exemptions arises, Council may choose not to openly advertise the contract opportunity, other requirements of the Rules.

### 11.3 Rule 13 - Exemption from open advertising

11.3.1 Council can exempt a contract from open advertisement if the following processes apply:

- Contracts with a value of \$100,000 to \$500,000 may be procured using a closed competitive process (with a minimum of three known suppliers)
- Contracts with a value up to \$100,000 may be procured via a direct source process (with a single known supplier).

11.4 Council **must not** exempt a procurement from open advertising to:

- avoid competition
- protect local suppliers
- discriminate against any local or national supplier.

11.5 Document the rationale

11.5.1 If Council exempts a procurement from open advertising, it must document the rationale for the decision. This rationale may form part of the business case or procurement plan or may be a stand-alone document.

11.5.2 The rationale document must include:

- the name of the supplier
- a description of the goods, services or works
- the maximum total estimated value (Rule 8) of the goods, services or works
- the specific exemption/s that applies and an account of the facts and circumstances which justify the exemption.

11.5.3 The Chief Executive or a General Manager must endorse the rationale before the procurement is undertaken.

11.5.4 Council must retain the documented rationale on the contract file for audit purposes.

11.6 Direct negotiation – subsequent stages of work

11.6.1 Council may negotiate a contract directly with a supplier provided that:

- the supplier has won a Stage One contract via an openly advertised procurement or closed competitive process
- the quoted price for the subsequent stage(s) of the project is reflective of the initial competitively tendered rates
- the quality of the Stage One works was delivered at or above the required standard
- the health and safety and environmental management of the Stage One works was delivered at or above the required standard.

Note: Council should declare its intention or willingness to negotiate a subsequent stage of works in the Notice of Procurement of the initial stage of the contract.

### **More information**

#### **Closed competitive and direct source**

Processes that comply with the Rules where there is a valid exemption from open advertising are:

- Closed competitive: a Request for Quote, Request for Tender or Request for Proposal restricted to a minimum of three known suppliers
- Direct source: a closed Request for Proposal or Request for Tender restricted to a single known supplier.

If an exemption from open advertising applies, Council must still comply with all the other Rules.

If Council uses a direct source process (with one known supplier) it does not necessarily mean that it can instantly contract that supplier. It should request a formal proposal from the supplier and evaluate the proposal, assess its value for money, which isn't always the cheapest price, and undertake due diligence before deciding to negotiate a contract. It must not simply

approach one supplier and award a contract without proper evaluation of capacity, capability, risk, value for money and due diligence.

## 12 What happens when there is an exemption from open advertising?

12.1 Where one of the exemptions arises, Council may choose not to openly advertise the contract opportunity, but must still meet all of the other requirements of the Rules.

12.2 Exemption from open advertising

12.2.1 Valid exemptions from open advertising are:

- **Emergency:** A genuine emergency such as a civil defence declared emergency. Urgent situations that are created by Council, such as lack of advance planning, do not constitute an emergency.
- **Following an open tender:** Council may use a closed competitive process or direct source process to procure goods, services and works if:
  - it has openly advertised the contract opportunity in the last 12 months, and
  - it has not substantially changed the core procurement requirements, and
  - the first time the opportunity was advertised it:
    - did not receive any responses, or
    - did not receive any responses that conformed with or met the requirements (including quantity), or
  - received responses from suppliers who it has reasonable grounds to believe have colluded, and no other responses conformed with or met the requirements.

### Example

#### Guides, tools & templates

- Read the Quick Guide to Emergency Procurement at: [www.procurement.govt.nz](http://www.procurement.govt.nz)
- Read more about **collusion and bid rigging** in the Commerce Commission's Guidelines, How to recognise and deter bid rigging at: [www.comcom.govt.nz](http://www.comcom.govt.nz)
- Collaboration is not necessarily unlawful. In certain types of procurement you may want suppliers to collaborate (eg to form a joint venture). This can be allowed for in the Notice of Procurement and include conditions that suppliers must be transparent about their collaboration (eg suppliers must state who they have collaborated with to prepare their response).
- If there are reasonable grounds to believe that suppliers have colluded, the Commerce Commission may be alerted given its role of investigating this kind of conduct. For more information: [www.comcom.govt.nz](http://www.comcom.govt.nz).

12.2.2 Valid exemptions from open advertising continued:

12.2.3 Only one supplier: If the goods, services or works can only be supplied by one supplier and there is no reasonable alternative or substitute because:

- for technical reasons there is no real competition, or
- the procurement relates to the acquisition of intellectual property or rights to intellectual property, (including patents or copyrights) or other exclusive rights, or
- the procurement is for a work of public art.

12.2.4 **Additional goods, services or works:** Goods, services or works additional to the original requirements that are necessary for complete delivery of a project. This Rule applies where all three of the following conditions are met:

- the original contract was openly advertised, and
- a change of supplier cannot be made for economic or technical reasons, and
- a change of supplier would cause significant inconvenience or substantial duplication of costs for Council.

12.2.5 Exceptionally **advantageous conditions:** For purchases made in exceptionally advantageous conditions that only arise in the very short term and at the discretion of the Chief Executive. This exemption does not cover routine purchases from regular suppliers.

#### **Example**

##### **A technical reason could be:**

- a need to match with existing equipment, software or services
- where Council has a bespoke IT system that was custom designed for it and only the supplier that designed it fully understands the code base
- where one supplier has, over a period of time, developed such an intimate knowledge of an outdated or complex system that the Council can reasonably claim that other suppliers would not have a similar level of readily available knowledge
- where a spare part or component is only available from one supplier.

A procurement relating to intellectual property rights could be:

- where Council is purchasing an online subscription to content or other services with unique characteristics
- where Council is purchasing software licences from a proprietary supplier for software that is embedded in its operating environment
- a unique piece of art that is protected by copyright and not available elsewhere.

##### **Examples of additional goods, services or works include:**

- in a construction contract, additional ground works that were only discovered on excavating the site
- supplying replacement parts
- additional consultancy services where an unexpected issue arises
- an enhancement or change to an integrated IT system.

#### **Definition**

Exceptionally advantageous conditions include a sale by public auction or a sale resulting from liquidation, bankruptcy or receivership.

## Chapter 2 Planning your procurement

### 13 Preparing to approach the market

13.1 An external supplier may be engaged to manage a procurement process, but there are some Rules that must be taken into account.

#### 13.2 Rule 14 - Third-party agents

13.2.1 Council may purchase the services of a third-party agent, (e.g. All of Government Procurement), to advise, arrange or manage a procurement or part of a procurement on its behalf.

13.2.2 If Council uses a third-party agent to manage a procurement, Council, through the agent, must still comply with the Rules.

#### 13.3 Rule 15 - Procurement advice

13.3.1 Council should not purchase procurement advice from a supplier that has a commercial interest in the contract opportunity. To do so would prejudice fair competition (eg a supplier is asked to write the contract requirements and then bids for the contract opportunity).

#### 13.4 Rule 16 - Subcontracting

13.4.1 Once a supplier has been awarded the contract, any subsequent subcontracting that the supplier does is not subject to the Rules.

13.4.2 However, Council may ask that a main contractor meets certain procurement standards in its subcontracting at the time of tender. The standards should be consistent with good procurement practice, as outlined in the Principles, the Rules and other procurement Guidelines.

#### More information

##### Procurement advice

Rule 15 does not prevent Council from using early market engagement to clarify needs or identify possible solutions.

What Rules apply to technical specifications?

If detailed technical specifications are included in a procurement process, there are some restrictions on how these may be written.

#### 13.5 Rule 17 - Delivery date

13.6 When identifying or estimating the delivery date for the goods, services or works, Council should take into account any of the following factors that apply:

- the complexity of the procurement
- how much subcontracting there might be
- a realistic time to produce, stock and transport goods from the point of supply to the delivery address
- a realistic time to deliver services given their nature and scope.

#### 13.7 Rule 18 - Technical specifications

- 13.7.1 Council must not apply technical specifications or prescribe conformance requirements in a way that creates unnecessary obstacles for suppliers.
- 13.7.2 Where appropriate, technical specifications must be based on:
- performance and functional requirements, not on design or a prescribed licensing model or a description of their characteristics
  - international standards where they exist, or the appropriate New Zealand or Australian standards, technical regulations or building codes.
- 13.7.3 When Council describes technical specifications, it must not (except under Rule 18.4, see 13.8.4):
- require or refer to a particular trademark or trade name, patent, design or type
  - refer to the specific origin of the goods, services or works or the name of the producer or supplier.
- 13.7.4 The exception to Rule 18.3 (see 13.7.3) is when it is the only way to make the requirements understood. In this case, Council must include words like 'or equivalent' in the specification and make it clear that it will consider equivalent goods, services or works that can be demonstrated to fulfil the requirement.

### **13.8 Rule 19 - Pre-conditions**

- 13.8.1 Council may include essential conditions about capacity or capability in its Notice of Procurement. These are called pre- conditions.
- 13.8.2 Suppliers must meet all of the pre- conditions to be considered for the contract opportunity.
- 13.8.3 Council must limit pre-conditions to the following critical areas:
- legal capacity financial capacity
  - commercial or operational capacity or capability to deliver
  - appropriate technical skills or expertise or relevant experience.
- 13.8.4 Council must not make it a pre- condition that a supplier has been previously awarded a contract by a named buyer or another New Zealand Local Authority.
- 13.8.5 To assess whether a supplier meets the pre-conditions, Council must:
- evaluate responses against the pre-conditions that it published in its Notice of Procurement, and
  - take into account the supplier's business activities in New Zealand and overseas.

#### **More information**

##### **Pre-conditions**

Pre-conditions allow Council to do a 'first cut' and eliminate suppliers who do not have the minimum capacity or capability to deliver the contract.

Pre-conditions are usually answered by 'yes' or 'no', or 'meets' or 'does not meet'.

Suppliers who meet all of the pre-conditions are then eligible to be assessed against the scored evaluation criteria.

## **14 How much time should suppliers be given to respond?**

- 14.1 When going out to the market, it is essential to set a realistic time period for responses.

14.2 Unrealistic time periods introduce unnecessary risk. If insufficient time is allowed, it can impact on the quality of the results achieved, compromise the integrity of the process and affect Council's reputation as a credible buyer.

### 14.3 Rule 20 - Sufficient time

14.3.1 Council must allow sufficient time for suppliers to respond to a Notice of Procurement. It must act in good faith and use sound judgement when calculating sufficient time.

14.3.2 The key factors to take into account when calculating sufficient time include:

- the nature and complexity of the procurement
- the type of information and level of detail suppliers need to provide in their responses
- the nature of the goods, services or works
- how simple or difficult it is to describe the deliverables
- the level of risk
- the extent of any anticipated subcontracting or the likelihood of any joint bids
- how critical the procurement is to Council's success
- the time it takes for domestic and foreign suppliers to submit tenders, particularly if Council asked suppliers to deliver hard copies.

#### More information

Don't jeopardise the results that could be achieved with a rushed process. If insufficient time is allowed, it may limit the:

- number of suppliers that can respond and the quality of their responses
- level of competition and Council's ability to get the best value for money
- choice of solutions offered and Council's ability to purchase the right one.

Consider the suppliers' perspective and calculate how much time is sufficient time. How long will it take to:

- obtain, read and analyse all tender documents

- ask questions to clarify the requirements and get answers
- develop a meaningful response that includes accurate pricing information
- prepare, check and submit the response and deliver it on time, and...
- carry on with 'business as usual'!

To decide how much is sufficient time:

- Be realistic, set timelines that are fair to all suppliers and reflect the nature and complexity of the information you are seeking.
- Take weekends and national New Zealand statutory holidays into account.
- Avoid publishing contract opportunities on Tenderlink right before Christmas or in early January. Most of New Zealand is on holiday for a good part of January.
- Make sure your sufficient time is not less than the minimum time period set out in Rule 31.
- Where there is the possibility of joint bids, consortiums or subcontracting, allow at least 27 business days. This gives suppliers time to consult and collaborate. It means, for example, small and medium sized businesses (SMEs) have the opportunity to put together a joint bid, where one SME may not have the full capability to deliver on its own.

## 15 What is a business day?

15.1 When the sufficient time is calculated, business days must be used not calendar days.

## **15.2 Rule 21 Business day**

15.2.1 Council must calculate time periods in 'clear' business days.

15.2.2 A business day is a day when the Council is normally open.

15.2.3 Business days exclude Saturdays and Sundays, New Zealand (national) public holidays and all days between Boxing Day and the day after New Year's Day.

15.2.4 A 'clear' business day is a full day from 8am to 5pm. The day a Notice of Procurement is submitted for publication on Tenderlink is not a clear business day. The time starts on the next business day at 8am.

## **15.3 Rule 22 Fair application of time**

15.3.1 The time period Council sets for submitting responses must apply to all interested suppliers.

15.3.2 Other than in exceptional circumstances, no supplier can be given more or less time than any other supplier.

15.3.3 Council may reserve the right to accept a late response in exceptional circumstances if there is no material prejudice to any other interested supplier. Council must not accept a late response if:

- there is any risk of collusion on the part of the supplier
- the supplier may have knowledge of the content of any other response
- it would be unfair to any other supplier to accept the late response because the late supplier is given additional time to prepare its response.

### **Example**

#### **'Clear' business day**

- A Notice of Procurement is published on Tenderlink at 11am on Friday, 1 July. The time period for submissions begins at 9am on Monday, 4 July.
- Suppliers have 20 clear business days to respond. This means the deadline for submissions is 5pm on Friday, 29 July.
- If Council wants the responses at noon and not the end of a business day, the deadline will be noon Monday, 1 August.

### **Definition**

#### **New Zealand national public holidays**

- New Zealand national public holidays are:
- New Year's Day and the day after New Year's Day (1 and 2 January)
- Waitangi Day (6 February)
- Good Friday, Easter Monday (dates vary)
- ANZAC Day (25 April)
- Queen's Birthday (the first Monday in June)
- Labour Day (the fourth Monday in October)
- Christmas Day and Boxing Day (25 and 26 December).

### **More information**

**Competitive Dialogue** is a technical term for a type of open procurement process often used where there is no known solution in the market place. It involves a structured dialogue phase with each shortlisted supplier who invents a possible solution to meet Council's needs. It is not the same as market engagement which is a generic term for any time you talk to suppliers.

Key features of Competitive Dialogue include:

- openly advertising an Invitation to Participate which states that it is a Competitive Dialogue process
- shortlisted suppliers are often paid for their participation in the dialogue phase
- Council writes its specification of requirements during or at the end of the dialogue phase
- Council then issues a Request for Tender or Request for Proposal to all shortlisted suppliers.

See the Guide to Competitive Dialogue at: [www. procurement.govt.nz](http://www.procurement.govt.nz)

## Chapter 3 Approaching the market

### 16 How to openly advertise?

16.1 When Council is ready to approach the market, it must list the contract opportunity on Tenderlink.

#### 16.2 Rule 23 - Open advertising

16.2.1 Under Rule 12 a Council must openly advertise a contract opportunity unless an exemption under Rule 13 applies.

16.2.2 To openly advertise, Council must list the contract opportunity on Tenderlink.

#### 16.3 Rule 24 - Tenderlink listing

16.4 The listing must attach the Notice of Procurement and contain the following information:

- the Council's name
- the name of the contract opportunity
- the type of procurement process (eg Request for Tender)
- the deadline for responses from suppliers
- the address for enquiries and the name of the contact person

#### 16.5 Rule 25 - Notice of Procurement

16.6 The Notice of Procurement must:

- be published on Tenderlink
- be available on Tenderlink until the deadline for supplier responses

#### Examples of a Notice of Procurement include:

- Request for Quote
- Registration of Interest
- Request for Tender
- Request for Proposal
- Invitation to Participate in a Competitive Dialogue process
- Invitation to Qualify for a Pre-qualified Supplier List.

A response from a supplier is a supplier's reply to a Notice of Procurement. Examples include:

- Registrations of Interest
- Quotes
- Tenders
- Proposals
- Applications to Participate in a Competitive Dialogue process
- Applications to Qualify for a Pre-qualified Supplier List.

### 17 What should be included in a Notice of Procurement?

17.1 Everything that suppliers need to know about the contract opportunity in order to prepare meaningful responses must be included.

## 17.2 Rule 26 - Content of Notice of Procurement

- 17.2.1 Each Notice of Procurement must contain all of the information that suppliers need to prepare and submit meaningful responses.
- 17.2.2 Each Notice of Procurement must clearly identify which procurement process is being used (eg Request for Quote or Registration of Interest followed by a Request for Tender).
- 17.2.3 Subject to Rule 25 (see 16.5), each Notice of Procurement must contain the following information:
- a. the Council's name and address
  - b. the name and contact details for the Council's contact person
  - c. a description of the goods, services or works and any technical specifications, plans, drawings or instructions, or a description of the outcomes the supplier is expected to deliver
  - d. the quantity (if known) or estimated quantity of the goods, services or works
  - e. the estimated timeframe for delivering the goods, services or works, or the estimated length of the contract and any options relating to the length of the contract (eg 3 + 2 + 1)
  - f. any service levels, response times or other performance measures suppliers will need to meet
  - g. any conditions for participating in the procurement process including any pre-conditions (Rule 25) or certificates or standards the supplier must meet
  - h. any limitations on the number of suppliers that may be shortlisted
  - i. all evaluation criteria Council will use to assess responses
  - j. unless the price is the only criterion, an indication of the relative importance of each evaluation criterion
  - k. the deadline and address for submitting responses
  - l. any restrictions or instructions on how suppliers are to submit responses (eg faxes will not be accepted) or details of how responses are to be submitted through an e-procurement system
  - m. any other terms or conditions relating to the procurement or the procurement process
  - n. if the procurement will be conducted electronically (eg using e-tender software), all the information suppliers will need to participate electronically

### More information

#### Evaluation criteria

The form of the evaluation criteria (Rule 18.1) that you include in the Notice of Procurement will depend on the type of process, eg:

- for a one-step Request for Tender, you would usually list the criteria you will use to award the contract
- for a multi-step process, you would usually list in the Registration of Interest the criteria you will use to shortlist suppliers. In the subsequent Request for Tender or Request for Proposal you would list the criteria that you will use to award the contract.

#### Relative importance

When listing the evaluation criteria (either in the Notice of Procurement or subsequent RFP or RFT), you must, unless price is the only criterion, indicate the relative importance of each criterion (Rule 26 see 17.2.3 i.). You can achieve this by ranking the criteria in priority order or adding individual weightings to each criterion.

## 18 Evaluation criteria

18.1 Types of scored evaluation criteria include:

- Lowest price conforming
- Weighted attributes
- Price quality method

### More information

It is good practice to include additional information in the Notice of Procurement, such as:

- details of how additional information will be communicated or changes to the process
- the contract terms and conditions that will apply
- the indicative timeframe for the procurement process, eg the:
  - deadline for suppliers' questions
  - date/s for shortlisted supplier presentations
  - date when suppliers will be notified if they have been successful or not – date/s debriefs will be held
  - anticipated contract start date.

Rule 27 (see 19.2.4) recognises that sometimes in multi-step procurements detailed information can be made available only after shortlisting suppliers.

## 19 What does 'other tender documents' mean?

19.1 Other tender documents are normally attachments to the Notice of Procurement. They are usually standalone documents that provide additional information for suppliers.

### 19.2 Rule 27 - Other tender documents

19.2.1 Other tender documents are documents that are relevant and essential to the procurement.

19.2.2 These documents may be included in the Notice of Procurement as annexes. If they are standalone documents, they may also be referred to in the Notice of Procurement.

19.2.3 Council **should** make other tender documents available to suppliers at the same time the Tenderlink listing and the Notice of Procurement are published. Where possible, they **should** be uploaded as attachments to the Tenderlink listing.

19.2.4 If other tender documents can't be made available on Tenderlink, Council **must** state in the Tenderlink listing how suppliers can obtain a copy (eg by requesting a hard copy or by referencing an e-procurement system where the document is freely available). Council **must** promptly provide a copy, to any supplier who requests one, or provide instructions on how to obtain one from an e-procurement system.

### Example

Examples of other tender documents include:

- architectural drawings
- engineering plans
- detailed technical specifications
- reports
- extensive specifications in an electronic file that is too large to upload to Tenderlink.

## 20 Managing the procurement process

20.1 The following rules help Council manage the procurement process fairly.

### 20.2 Rule 28 - Responding to queries

20.2.1 Suppliers may ask questions about any Notice of Procurement.

20.2.2 Council **must** promptly reply to all questions and reasonable requests for information from suppliers. If Council is unable to promptly reply to a question, it **should** consider extending the deadline for responses.

20.2.3 When Council responds to a supplier's question, it **must** not give information that might give that supplier an unfair advantage over the other suppliers. If Council wishes to disclose advantageous information, it **must** make it available to all suppliers at the same time.

20.2.4 When Council responds to a supplier's question, it **must not** discuss or disclose another supplier's confidential or commercially sensitive information.

### 20.3 Rule 29 - Additional information

20.3.1 Council may make additional information available to all participating suppliers after a Notice of Procurement is published on Tenderlink and before the deadline for responses closes.

20.3.2 Council may publish additional information on

20.3.3 Tenderlink or, following a shortlisting, send copies to all participating suppliers.

20.3.4 Council **must** make additional information available to all participating suppliers at the same time.

#### Example

An example of when **all participating suppliers** are known to Council could be the second stage of a multistep tender.

This is where Council has published a Registration of Interest, and after receiving and evaluating the responses has shortlisted suppliers. Council then invites the shortlisted suppliers to submit full tenders. These suppliers are all participating suppliers known to Council.

## 21 What if more information needs to be given to suppliers or the requirements change?

21.1 It's possible to provide additional information and change requirements after a tender has been advertised. However, there are Rules that apply to these processes.

### 21.2 Rule 30 - Changes to process or requirements

21.2.1 Council may make changes to its procurement process or its requirements after a Notice of Procurement has been published on Tenderlink and before the deadline for responses closes.

21.2.2 Council **must** notify all participating suppliers of any changes to the procurement process or requirements. Council **must** publish all changes on Tenderlink or, following a shortlisting, send them to all participating suppliers.

21.2.3 Council **must** make all changes available to all participating suppliers at the same time.

- 21.2.4 Council **must** give suppliers enough time to respond to the changes. This may mean extending the deadline for responses, or allowing suppliers who have already submitted their responses a fair opportunity to change their responses.

#### **Example**

Changes to procurement processes or requirements may include changing:

- any essential aspect of the specification of requirements or technical specifications
- a pre-condition (Rule 26 see 17.2.3.g) or evaluation criterion (Rule 26, see 17.2.3.i)
- the ranking or weightings of the evaluation criteria
- the deadline for responses or critical dates in the procurement process
- the rules or conditions that apply to the procurement process.

## **22 Evaluating responses**

### **22.1 Rule 31 - Treatment of responses**

22.1.1 Council must have in place procedures that guarantee all suppliers' responses are treated fairly. This includes receiving, opening and evaluating responses.

22.1.2 To be considered for an award of contract, a supplier **must**:

- submit its response in writing (this can be through electronic means such as email if specifically allowed for in the Notice of Procurement)
- comply with all pre-conditions (Rule 26 see 17.2.3.g) if any, or other conditions for participating in the contract opportunity.

22.1.3 Council **must not** penalise a supplier who submits a late response, if the delay is solely the Council's fault.

22.1.4 If, after opening the responses but before evaluating them, Council offers a supplier the opportunity to correct unintentional errors, it must offer the same opportunity to all participating suppliers.

### **22.2 Rule 32 - Reasons to exclude a supplier**

22.2.1 Council may exclude a supplier from participating in a contract opportunity if there is a good reason for exclusion. Reasons for exclusion include:

- bankruptcy, receivership or liquidation
- making a false declaration
- a serious performance issue in a previous contract
- a conviction for a serious crime or offence
- professional misconduct
- an act or omission which adversely reflects on the commercial integrity of the supplier

22.3 Council **must not** exclude a supplier before it has evidence supporting the reason for the exclusion.

#### **More Information**

If it is discovered that the same errors appear in responses from different suppliers (eg misspelled words or the same mathematical mistakes), this may indicate that these suppliers have shared information (eg cut and paste from each other's responses) and may be acting anti-competitively.

For more examples, see the Commerce Commission fact sheet, How to recognise bid rigging, at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

## Chapter 4 Awarding the contract

### 23 Awarding the contract

#### 23.1 Rule 33 - Awarding the contract

23.1.1 Council must, unless there is a legitimate reason to cancel the procurement, award the contract to the supplier/s that has both:

23.1.2 demonstrated that it fully understands and has the capability to deliver the requirements and meet the contract conditions, and

23.1.3 offered either the:

- best value for money over the whole of the life of the goods, services or works (which isn't always the cheapest price), or
- lowest price, if price is the only criterion.

23.1.4 If a supplier offers a price that is substantially lower than other responses (an abnormally low bid), Council may seek to verify with the supplier that the supplier is capable of both:

- satisfying all of the conditions for participation, if any, and
- fully delivering all of the contract requirements (eg quality, quantity, time and location) and meeting all of the contract conditions for the price quoted.

#### More information

A **legitimate reason** to cancel a procurement could include a:

- Change of policy
- Change to an appropriation that affects funding for the initiative
- Council direction

Look out for **abnormally low bids**. An abnormally low bid may reflect a more efficient supplier or one that is willing to make an investment in the relationship by taking a lower margin on the contract. Such competitive responses should be encouraged but ensure a robust evaluation process to ensure that a low bid will not impact negatively on service delivery? Council should check an abnormally low bid with the supplier to make sure that the price is realistic and that the supplier can fully deliver the contract for that amount. If the supplier is unable to demonstrate this, Council may consider rejecting the bid. First, make sure the conditions have stated that the lowest price bid will not necessarily be accepted. An abnormally low bid could also be the result of the supplier taking advantage of its market power in breach of section 36 of the Commerce Act 1986. Report any such concerns to the Commerce Commission at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

A bid that is substantially lower than other bids can sometimes be a sign that a cartel may be operating in the market. For examples see the Commerce Commission's fact sheet, How to recognise bid rigging, at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

### 24 How are suppliers informed of procurement outcomes?

24.1 It's good practice to set out an indicative timeline for the procurement process in the Notice of Procurement. This should include the date that the evaluation process is expected to be completed. Suppliers then know when to expect to be notified of the outcome. Suppliers must be kept informed of any changes to key dates. When the successful supplier is selected, the unsuccessful suppliers must be informed.

**24.2**

**24.3 Rule 34 - Informing suppliers of the decision**

- 24.3.1 After evaluating the responses and making the decision to award the contract to a particular supplier/s Council must promptly inform all of the unsuccessful suppliers in writing of this decision.

## Chapter 5 Types of supply lists

### 25 Supplier lists

25.1 There are a number of different types of supplier lists.

#### 25.2 Rule 35 - Types of supplier lists

25.2.1 If Council regularly purchases a specific type of good, service or works, it may establish a list of suppliers. Common types of lists include:

- Registered Suppliers List (Rule 36)
- Pre-qualified Suppliers List (Rule 37)

#### More information

Where a **supplier list** has been established, do individual contract opportunities still need to be openly advertised?

Where Council establishes a **Registered Suppliers List** or **Pre-qualified Suppliers List**, it must still openly advertise (Rules 14 and 32) individual contract opportunities that meet or exceed the appropriate value threshold.

### 26 What is a Registered Suppliers List?

26.1 A Registered Suppliers List is a list of suppliers who have registered an interest in supplying specific goods, services or works. When buying from a Registered Suppliers List where the estimated value of the contract meets or exceeds the relevant value threshold the contract opportunity must still be openly advertised on Tenderlink.

#### 26.2 Rule 36 - Registered Suppliers List

26.2.1 A Registered Suppliers List is a list of suppliers who have registered an interest in supplying specific types of goods, services or works.

26.2.2 A Registered Suppliers List is appropriate where Council wants to know which suppliers are active in the market supplying the specific type of good or service.

26.2.3 Where Council establishes a Registered Suppliers List it is not exempt from open advertising where a contract opportunity meets or exceeds the relevant value threshold (Rules 7 and 8). Council must openly advertise each such contract opportunity on Tenderlink.

26.3 Establishing a Registered Suppliers List

26.3.1 To establish a Registered Suppliers List, Council must:

- publish an Invitation to Register on Tenderlink (this is a type of Notice of Procurement)
- clearly describe the specific type of goods, services or works Council is interested in procuring
- make the Invitation to Register available on Tenderlink and allow suppliers to respond at specific deadline/s – typically annually.
- notify unsuccessful applicants promptly and, if requested, provide the reason/s why.

26.4 Operating a Registered Suppliers List

26.4.1 To operate a Registered Suppliers List Council must:

- keep an updated list of Registered Suppliers and make this publicly available on request, and
- notify Registered Suppliers if the list is terminated or they are removed from the list. If Council removes a supplier from a list, it must explain why.

#### **More information**

When a supplier is added to a **Registered Suppliers List** it does not result in a contractual or legal relationship between Council and the Registered Supplier.

Registered Suppliers have the potential to win contracts over time, but they are not guaranteed any work.

## **27 What is a Pre-qualified Suppliers List?**

27.1 A Pre-qualified Suppliers List is a list of suppliers that Council agrees have the capacity to deliver specific goods, services or works. When procuring from a Pre-qualified Suppliers List, where the estimated value of the contract meets or exceeds the value threshold, the contract opportunity must still be openly advertised on Tenderlink. However, Pre-qualified Suppliers do not need to provide their non-price and non- contract specific attribute information for each new contract opportunity.

### **27.2 Rule 37 - Pre-qualified Suppliers List**

27.2.1 A Pre-qualified Suppliers List is a list of suppliers who Council has pre-approved as capable of delivering specific types of goods, services or works.

27.2.2 A Pre-qualified Suppliers List is appropriate if Council wants to:

- verify which suppliers can deliver specific goods, services or works
- make it easier for suppliers to respond to contract opportunities by only asking for qualifying information once.

27.3 Where Council establishes a Pre-qualified Suppliers List it is not exempt from open advertising where a contract opportunity meets or exceeds the relevant value threshold (Rules 7 and 8). Council must openly advertise each contract opportunity on Tenderlink. Pre-qualified Suppliers should make sure that they are listed on Tenderlink under the correct Tender

27.4 Establishing a Pre-qualified Suppliers List

27.4.1 To establish a Pre-qualified Suppliers List Council must:

- publish an Invitation to Qualify on Tenderlink and make it available for suppliers to respond by specific annual deadline/s. The Invitation to Qualify must include:
  - Council's name and address and contact details
  - for the person managing the process
  - a clear description of the specific goods, services or works potential suppliers must be capable of delivering
  - a list of any conditions and attributes that each supplier must meet to participate and explain how Council will check each supplier meets the conditions
  - state how long the list will be active for and how it will be refreshed or terminated

- assess applicants within a reasonable timeframe and add qualifying suppliers at the end of each annual cycle
- notify unsuccessful applicants promptly and, if requested, provide the reason/s why.

## 27.5 Operating a Pre-qualified Suppliers List

### 27.5.1 To operate a Pre-qualified Suppliers List Council must:

- keep an updated list and make this publicly available on request
- notify Pre-qualified Suppliers if the list is terminated or they are removed from the list. If Council removes a supplier from a list it must explain why.

#### **More information**

When a supplier is added to a Pre-qualified Suppliers List it does not result in a contractual or legal relationship between Council and the Pre-qualified Supplier.

To qualify as Pre-qualified Supplier, the supplier must demonstrate that it can meet the criteria for delivering the goods, services or works. A Pre-qualified Supplier may still need to meet other evaluation criteria each time Council wishes to purchase goods, services or works the supplier has qualified to deliver.

Pre-qualification is not the same as multi-step procurement (eg Registration of Interest followed by a Request for Proposal). There is no specific contract in mind when suppliers pre-qualify. Pre-qualified Suppliers have the potential to win contracts over time, but are not guaranteed any work.

## 27.6 Method of allocation of contracts

### 27.6.1 The Notice of Procurement must outline the method/s that Council will use to select suppliers when a contract opportunity arises. The method/s should be appropriate for the nature of the goods, services or works and the anticipated volume of work.

### 27.6.2 Accepted selection methods for secondary procurement processes include:

- **Lowest Price Conforming** Ask for quotes from suppliers and award the opportunity to the supplier who offers the lowest price
- **competitive quotes based on the supplier's expertise's, proposed solution and best value for money.** Ask for quotes from some or all Panel Suppliers and award the opportunity to the supplier who has the right level of expertise, can offer the best value for money, which isn't always the cheapest price, and deliver on time
- **Direct source, based on the best fit for purpose** Fair evaluation of all Suppliers and selection of the supplier who has the right capacity and capability to fulfil the contract opportunity and offers the best value for money, which isn't always the cheapest price, at the time of the purchase

## Chapter 6 Other rules you need to know

### 28 There are other requirements that Council should consider.

#### 28.1 Rule 38 - All-of-Government Contracts (AoGs)

28.1.1 An All-of-Government contract (AoG) is a type of approved collaborative contract. AoGs establish supply agreements with approved suppliers for selected common goods or services purchased across a wide range of government and quasi government agencies. AoGs are developed under the oversight of the Procurement Functional Leader (Chief Executive of MBIE) and managed by appointed procurement Centres of Expertise.

28.1.2 Council may purchase from the AoGs, if it is commercial advantageous to do so.

28.1.3 Before approaching the market, Council should check if there is an existing AoG which is available.

#### More information

For more information on the categories of goods and services available and how to buy from AoG contracts, see: [www.procurement.govt.nz](http://www.procurement.govt.nz)

#### 28.2 Rule 39 - Syndicated Contracts

28.2.1 A Syndicated Contract (SC) is a type of approved collaborative contract. SCs typically involve a cluster of Councils aggregating their respective needs and collectively going to market for common goods, services or works. It may involve Councils anticipating collaboration and including a Common Use Provision (CUP) clause within the resulting contract, that allows other Councils to contract with the supplier on the same terms later.

28.2.2 The Manawatu-Wanganui Local Authority Shared Service (MW LASS) is one local example of a cluster of Councils which is active in seeking opportunities for collaborative procurement. The purchase of goods and services that have been negotiated by the MW LASS are treated in the same way as an All of Government Contract and Council may purchase through an MWLASS procurement opportunity if it is commercially advantageous to do so.

#### 28.3 Rule 39A - Section 17A Review (LGA 2002)

28.3.1 Council is required to complete a periodical service delivery review under section 17A of the Local Government Act (2002). The outcome of any given service delivery review may specify the continuation of an existing contractual arrangement with a private entity or collaboration with another Local Authority or Central Government Department. In this case, the intent of Rule 11 would be applied to implement the S17A review outcome.

#### More information

For more information about Syndicated Contracts and the process of obtaining approval, see MBIE's Guide to Syndicated Procurement, at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

#### 28.4 Rule 40 - Intellectual Property

28.4.1 If Council's procurement of goods, services or works involves the supplier creating new Intellectual Property, Council must set out, in its Notice of Procurement, its intentions regarding ownership, licensing, and future commercialisation of that Intellectual Property.

**More information**

It's important to consider if new Intellectual Property will arise in a contract and to explicitly set out Council's expectations about ownership and licensing in your Notice of Procurement. This provides clarity for suppliers at an early stage and potentially reduces expense and time later on negotiating ownership and licensing.

Alternatively, suppliers can be asked to state in their responses their assumptions about any anticipate new IP.