



Procurement Policy

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1 Purpose

The policy provides the process to be applied to the procurement of capital items and professional services by the Office of the Privacy Commissioner (OPC) which meets the generally accepted guidelines of the Office of the Auditor General (OAG) and the best practices of the State Sector. The OPC has taken a conservative approach and reduced the thresholds recommended by OAG further, to reflect the risks associated with capital and professional services expenditure within a small Crown entity.

The OPC does not consider it necessary to put in place a formal procurement strategy. Whilst the procurement of external contractors has increased over recent years, procurement itself is not a core element of the office and therefore this detailed policy and related procedures is deemed to be sufficient.

This policy should be read in conjunction with other policies developed by the OPC including the OPC Code of Conduct, Conflicts of Interest and Fraud policy.

1.1. Principles of Government Procurement

As a State Services Agency, we are required to apply the Government Procurement Rules (as updated in 2019) when planning, sourcing and managing our procurement, as these set the standard for good practice (including financial thresholds and procedures for advertising procurement opportunities). We will also implement the Progressive Procurement Policy approach which is being led by Te Puni Kōkiri to increase the diversity of suppliers.¹

The way we buy goods/services/works will vary depending on the value, complexity and risk involved. We will apply the approach best-suited to the individual purchase, within the framework of the Procurement Rules – encouraging competitive tendering whenever possible.

¹ More information on this policy can be found at www.tpk.govt.nz/progressiveprocurement.



For a copy of the Government Procurement Rules see www.procurement.govt.nz. The following sets out how the OPC will act in line with these principles.

1.2. Government Procurement Charter

In addition to the 5 Principles as noted above, OPC is also required to take into account the Government Procurement Charter in their procurement. This Charter sets out the Government's Expectations on how procurement will be conducted to achieve Broader Outcomes. These Broader outcomes are covered under Rule 16 of the Government Procurement Rules and can be social, environmental, cultural or economic. OPC is required to consider and incorporate, where appropriate, these outcomes when undertaking a procurement for good or services.

In particular, the Rule sets out 4 Priority Outcomes which are the specific Broader Outcomes that Cabinet has agreed will be leveraged through procurement. These are as follows:-

- Priority 1: *Increase Access for New Zealand Businesses.* OPC must consider how they can create opportunities for New Zealand Businesses with a particular focus on opportunities for Maori, Pasifika, and regional businesses as well as social enterprises.
- Priority 2: *Construction skills and training.* This area is not specifically relevant to OPC.
- Priority 3: *Improving conditions for New Zealand workers.* OPC must ensure that contracts clearly set out expectations that suppliers and contractors comply with employment standards and health and safety requirements. Appropriate monitoring must be carried out to ensure good conditions for workers.
- Priority 4: *Transitioning to a net-zero emissions economy and designing waste out of the system.* OPC should support the procurement of low-emissions and low-waste services and work.

Further information on these priorities is set out in Rules 17-20.

2 The planning phase

Prior to initiating a significant formal procurement for goods or services, the OPC should ensure that appropriate planning has been undertaken as identified in Principle 1 and Section 2 of the Government Procurement Rules.

The level and detail of this planning will differ depending on the value and relative complexity of the procurement, but for a significant procurement of either a capital item or an external contractor to work on a strategic project, a business case should be completed and approved as required at Senior Leadership Team (SLT) level. A Procurement Approval form has been developed and this sets out some of the key areas to be considered prior to a procurement being approved. This form should be used for procurements over \$5k. See Appendix 2 for further information regarding the planning phase and a link to this form

3 Procurement Methods to be Used

Procurement within the scope of this policy must use one of the following procurement methods. The methods are the minimum requirement and the most effective and efficient method commensurate with the risks and value of the purchase should be used.

Using the most transparent and competitive method even for small value procurement (e.g. using an open tender for purchases less than \$100,000) is encouraged.

Using one of these methods will help to ensure that the OPC gets value for money from the services that are procured.

All values are GST exclusive.

4 Valuation of the Procurement

In determining whether the procurement/potential contract values are at or above the thresholds used for determining which procurement method to use, the valuation is based on the maximum total estimated value of the procurement over its entire duration (exclusive of GST). The entire duration includes both the initial term of the contract and any provisions for additional terms.

The value of the procurement over the entire duration includes the value of the initial purchase and the value of any subsequent purchases (e.g. a \$20,000 per year contract for a three year duration equates to a \$60,000 contract for the purposes of valuing the procurement). The basis for assessment of value should be *“reasonable and honest”* based on the best available knowledge known at the time.

The procurement must not be prepared, designed or otherwise structured or divided at any stage in order to circumvent this policy or the Government’s procurement rules.

5 Buy from Existing Contract

If an existing National, Regional or Local preferred supplier agreement, including a panel contract, is already in place for the goods or services being procured, then a purchase of any value may be made pursuant to the terms and conditions of that agreement/contract.

Only purchases that fall within the scope or deliverables of the existing contract can be purchased using this method. The General manager will advise if there is an existing contract available.

5.1 Buying from All of Government (AOG)

Where OPC is a signatory to individual AoG contracts, purchases of supplied goods should be made under those contracts. OPC is currently signatory to:

- Advertising services
- Air travel services
- Consultancy services
- Design Services
- External legal services
- External recruitment services
- IT hardware
- Media
- Office Supplies
- Print technology and associated services
- Rental vehicles
- Talent Acquisition Services
- Travel management services

5.2 Buying from Panel Contracts

A panel contract is where a group of suppliers or “panel” has been awarded a contract through an open tender process. This is generally a government wide contract and is normally managed through the Ministry of Economic Development. When purchasing from a Panel arrangement, competitive secondary procurement processes will be used as set out in Rule 57 of the Government Procurement Rules. As set out in Rule 57.11 this can include getting quotes, direct sourcing, using a preferred supplier from the panel and location of supplier.

6 Selective Purchase (\$10,000 or less or for special circumstances)

Selective purchasing is the exception and not the norm. Provided that a selective purchase is not being used to avoid competition, this method may be used in the following circumstances:

1. For one-off purchases of goods or services less than \$10,000 where seeking of competitive quotes would not be cost effective.
2. No reasonable alternative/substitute exists – selective purchasing is permitted where there is an absence of competition for technical reasons, or can only be supplied by a particular supplier and no reasonable alternative or substitute exists.
3. Additional deliveries by the original supplier - where a change of supplier would compel the OPC to procure goods or services not meeting requirements regarding such things as compatibility with existing equipment (e.g. replacement parts), software, services or conditions under original supplier warranties.
4. Syndicated procurement.
5. Alternate tender – in the unlikely event that a successful tenderer fails to supply, or there are no conforming tenders, it can be appropriate to approach one of the unsuccessful tenderers on a selective purchase basis.
6. Additional quotes are not required if an existing supplier is the best option due to the consistency with previous related work.

As a general rule, the cost of the tender process outweighing the benefits is not in itself justification for making a selective purchase or not following a transparent and competitive process.

The justification for making a Selective Purchase should be clearly set out in the procurement approval form.

7 Competitive Quotation (\$10,000 to \$50,000)

Quotes should be used when price is the main determining factor in the purchasing decision and the purchase will total less than \$50,000. Goods or services required must not be split into packets of work of less than \$50,000 in order to use a quote rather than a tender process.

Quotes should be sought from at least three different vendors supplying comparable services/supplies using a request for quotation (RFQ). All quotes, including the price and other conditions of supply, are to be recorded and a record kept of the decision process as to which quote was selected.

Written quotes are necessary, except for emergency purchases. For an emergency purchase, a telephone quote is acceptable provided that it is confirmed in writing after the purchase.

8 Closed Tender (\$50,000 to \$100,000)

Closed tenders (where invitations to tender are issued to a predetermined list of suppliers) do not allow equal access to all suppliers in the market meaning that a better source of supply may be missed.

Where the value of the procurement is less than \$100,000 a closed tender can be used. When using a closed tender, the method used for determining the list of suppliers to tender should be thorough and, above all, demonstrably fair. In particular, the Progressive Procurement Policy must be taken into account to ensure a diversity of suppliers is considered.

The following instances could indicate that a closed tender process is appropriate:-

- Market research has identified that the goods and services are only available from a few suppliers;
- If an open competitive process has been used, for the same service to be procured, within the last 12 months (in this instance a direct source procurement could also be used);
- a change in supplier would cause significant inconvenience or substantial costs for OPC; or
- There is genuine limited time for the procurement process.

For this process and the open tender process documented in section 9 below, an appropriate tender evaluation panel should be appointed along with the process that will be used to evaluate the tenders or proposals. See appendix 3 for more information on the tender process.

Note: Conducting a closed tender following an open pre-qualification process (i.e. after an open registration of interest or expression of interest) is considered to be an open tender.

9 Open Tender (\$100,000 or Greater)

Government procurement rules (“the Rules”) require open tendering to be the default method for all procurement valued at \$100,000 or greater (\$9 million for building construction contracts).

OPC’s policy will be to put out to competitive tender, all potential contracts over \$100,000, where the value of the initial purchase and all anticipated purchases with the supplier will be greater than this amount. The \$100,000 limit is not limited to a single financial or calendar year (see Rule 8 in the Government Procurement Rules for further guidance).

The exception to this process will be if an existing contract is already in place that specifically covers the service being procured, if there is an AoG contract in place for the service required or it is an emergency purchase. See Rule 14 for valid exemptions. In such cases, OPC is still required to either obtain quotes through a closed competitive process or direct source.²

² An example of a service that may fall within this area could include an enhancement to the existing IT systems/Website used by OPC. OPC have utilised the services of a number of key suppliers over the years and these suppliers have developed a detailed knowledge of the system used by OPC. There is also a need to ensure compatibility with existing integrated system. This is a specific example set out in Rule 14 of the Government Procurement Rules

An exemption must be authorised by the Privacy Commissioner and all rationale for this must be documented clearly on the Procurement Approval Form

As noted in 8 above, see Appendix 3 for further detailed considerations in relation to the open tender process.

9.1 Single Stage Open Tender

Under a single stage open tender, a request for proposal (RFP) or a request for tender (RFT) is issued without a pre-qualification (short-listing) process and all potential suppliers have an equal opportunity to respond to the tender.

As a general rule, a single stage open tender should be used when there are 4 or less potential tenderers.

9.2 Multi-Stage Open Tender

As open tenders can be expensive to administer, when there are a large number of potential suppliers, or the cost of preparing a full tender response is likely to be significant to the supplier, a multi-stage open tender should be used.

This process allows for the pre-qualification (short-listing) of suppliers based on an initial assessment of their capacity to fulfil a subsequent contract following an expression of interest (EOI) or registration of interest (ROI). Tender documents can then be issued to the short-listed suppliers. In some cases, it may be that the second stage of the multi-stage open tender will take the form of an interview and presentation by the short-listed suppliers rather than a further formal RFP (Request for Proposal). The OPC will need to provide clear guidance to the short-listed suppliers on what is required from them at this second stage as well as an indication of the evaluation criteria to be used.

The OPC has developed a template ROI document which should be used as part of the first stage of a multi-stage open tender process. This document should be as detailed as possible in terms of the services required so as to ensure that only those entities with the right set of skills respond.

The responses to the ROI will be reviewed by a tender evaluation panel with pre-determined evaluation criteria which should be set up and agreed at the pre-tender stage. See Appendix 3.

A request for information (RFI) cannot be used as part of the pre-qualification process and short-listing of suppliers.

10 Responding to potential suppliers

During the tender process, it is expected that some suppliers may seek further clarification on certain aspects from the OPC. For example, a supplier may ask for more guidance on a presentation in terms of content expected. Where answering a query could be seen as

giving one potential supplier an additional advantage over the other potential suppliers then the answers must be shared with all potential suppliers as required under Rule 40 of the Government Procurement Rules. This will ensure that they all have the same level of information on which to base their tender responses.

11 Emergency Purchase

To warrant an emergency purchase, the situation should be one that genuinely justifies all normal purchasing rules being set aside. Emergency purchases are permitted when:

- Life or property is immediately at risk;
- Standards of public health, welfare or safety have to be re-established without delay, such as in the case of disaster relief; or
- The OPC's service delivery would be significantly impaired if it failed to respond promptly (e.g. election process could be jeopardised).

MBIE has produced a "Quick guide to emergency procurement"³ which provides more information on the situations where this type of procurement can be used and some considerations.

If an emergency purchase is made, it is OPC policy that:

1. Emergency purchases require the prior authorisation of the General Manager
2. Quantities purchased are limited to those necessary to cope with the particular emergency;
3. Reasonable steps should be taken to obtain a fair price;
4. Following an emergency purchase, an appropriate written record is made of the circumstances of the purchase, including prior authorisation, and a copy is to be retained for audit purposes.

Note: Emergency purchases ought to be few and far between (it would be rare for the OPC to have to use an emergency purchase).

12 Awarding and on-going management of the contract

12.1 The Contract

The OPC has a standard contract template which should be used for most contracts awarded unless a more suitable format is available. The project manager should ensure that the contract accurately sets out the full specification of the goods/services that are expected

³ This guide can be found at <https://www.procurement.govt.nz/assets/procurement-property/documents/guide-emergency-procurement.pdf>

to be delivered and the deadlines for the delivery of these. Where more emphasis is expected on certain deliverables, this should be clearly articulated.

Appropriate Key Performance Indicators (KPIs) should also be included within the contract where appropriate to enable effective management of the contract. These KPIs could include meeting the deadlines, quality of the deliverables, regularity of communications, meeting expectations etc.

The contract needs to be signed by both parties and a copy retained.

12.2 Management of the contract

The ongoing delivery against the contract should be managed by the project manager and updates provided through to the SLT with sufficient regularity to ensure significant progress or issues are identified and actioned as soon as possible.

Some tools for the effective management of a contract are included in Appendix 4.

13 Documentation of the procurement process

The documentation relating to the procurement process must be retained by the OPC. As set out under Rule 52 of the Government Procurement Rules these must be retained for 3 years and should include the following:-

- The procurement process;
- All the decisions that were made as part of that process;
- The contract awarded; and
- All reports and recommendations.

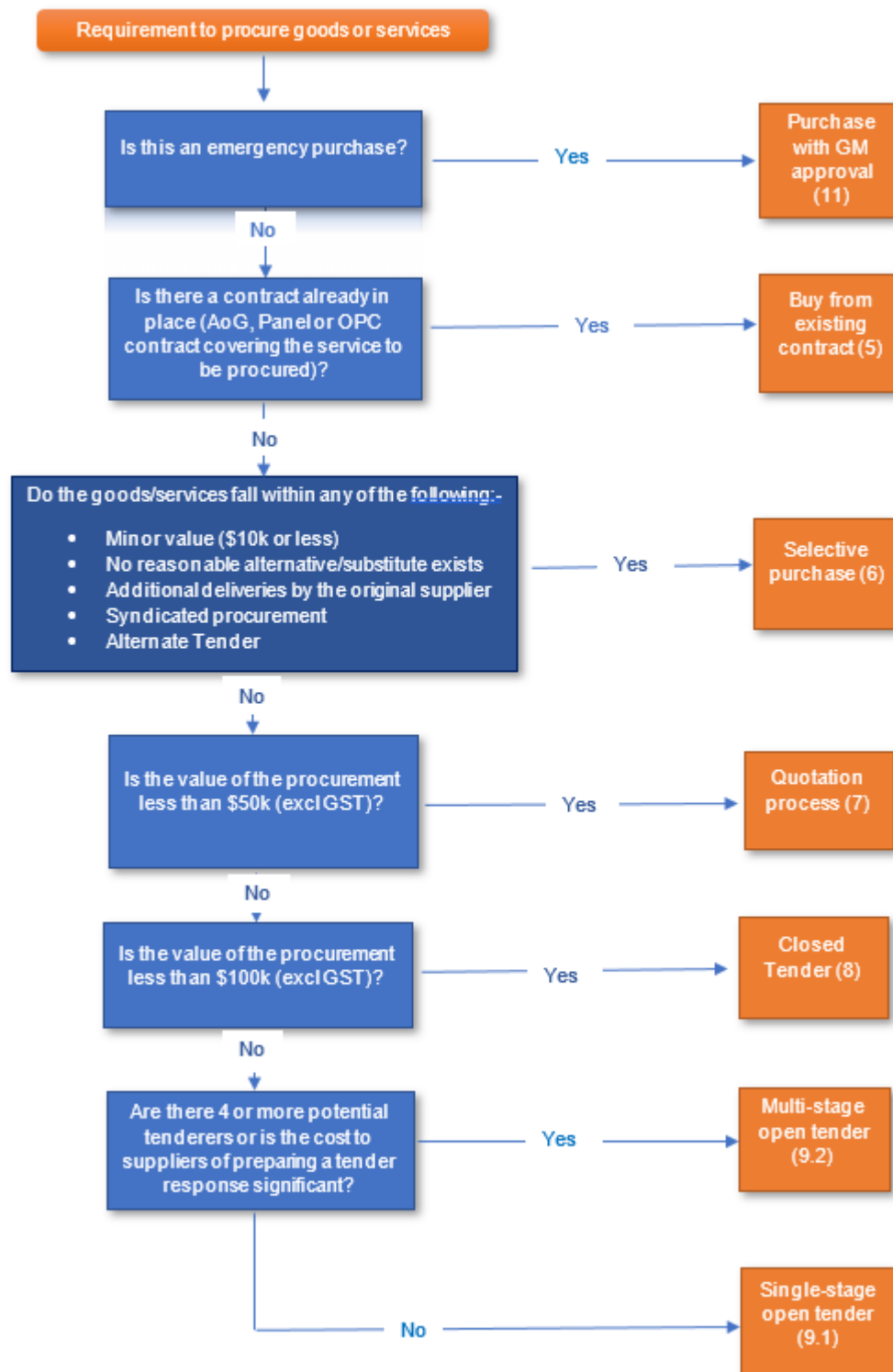
In addition to the above, the OPC will document and manage any conflicts of interest in line with the conflicts of interest policy and Rule 2 of the Government Procurement Rules.

14 Post procurement analysis

A formal post procurement analysis should be carried out. Ideally this should take place once the service had been delivered and the project has been completed. A de-brief meeting should be held with the supplier to ensure that all angles of the project are covered. A short analysis should be prepared and could cover:-


- A summary of how the contractor performed;
- Areas of specialism for the contractor;
- Any areas for improvement identified as part of the analysis and our response to those; and
- Whether, based on performance during the project undertaken, we would recommend using this contractor again.

Appendix 1. Selecting the right procurement model



Appendix 2: The planning phase

The following checklist could be used during the planning phase of a project involving a significant procurement:

Task	Completed
<p>Complete a detailed project plan or business case. Ensure that the specific requirements of the project are as detailed as they can be. The Procurement Approval Form also needs to be completed for procurements over \$5k – see  Procurement approval form.obr</p>	Y/N
<p>Ensure that the following key aspects (in addition to standard requirements) are included within the project plan:-</p> <ul style="list-style-type: none"> - The proposed budget - The proposed procurement process to be adopted - Any significant risks associated with the project and how these will be mitigated - The broader outcomes to be generated as set out in Rule 6 of the Government Procurement Rules (environmental, social, economic or cultural) 	Y/N
<p>Agree on the timeline requirements for the project and assign a project manager who will be responsible for the operational and budget management of the overall project.</p>	Y/N
<p>Where we are proposing to use a closed tender process, ensure that we have clearly documented why we think this is the most appropriate method to use considering the aspects noted in section 8 of the OPC procurement policy.</p>	Y/N
<p>Ensure appropriate approval has been obtained for the project to go ahead including approval for the procurement process proposed (usually this will be required at SLT level) making use of the Procurement Approval Form.</p>	Y/N
<p>Ensure that the budget as proposed in the planning documents has been specifically approved as part of the approval noted above</p>	Y/N
<p>Ensure any points of clarification on the project have been discussed and agreed prior to going ahead with the procurement process</p>	Y/N

Appendix 3: The tender process

The following checklist could be used when undertaking a tender process. Note that this checklist is not exhaustive but includes key aspects to be considered throughout the process:

Task	Completed
Preparing to go to tender	
Assign a tender evaluation panel who will remain consistent throughout the process	Y/N
Agree the evaluation criteria that will be used to assess the responses to the ROI and assign weightings to these if some are deemed to be more important than others	Y/N
To openly advertise the opportunity must be listed on GETS. See Rules 35 onwards in the Government Procurement Rules.	Y/N
Complete an ROI document utilising the template ROI included in Objective.	Y/N
Ensure that the ROI document clearly sets out the following:- <ul style="list-style-type: none"> - Critical information relating to the tender, particularly regarding the specifics of the service to be delivered. This should ideally be included up front rather than in an Appendix; - Key timeframes for delivery of the project; - The evaluation criteria that will be used and where necessary those criteria that are deemed to hold more weight; and - Ensure that section 2.2 of the ROI is tailored for the procurement being undertaken in terms of the process that will be adopted for the second stage where a multi-stage procurement is being done. E.g. interview and presentation, more detailed RFP etc. 	Y/N
Consider including a copy of the standard contract as part of the ROI process.	Y/N
Ensure that the minimum time limits as set out in Rule 34 of the Government Procurement Rules have been applied to the process.	Y/N
During the tender process	
Minutes of key meetings where decisions are made are kept. These minutes should summarise the evaluations of tender responses and scorings where appropriate.	Y/N
Where queries are raised from potential suppliers during the tender process, responses are provided in a timely manner and where appropriate the responses are shared with other potential suppliers in line with Rule 40 of the Government Procurement Rules.	Y/N
Ensure that sufficient due diligence work is carried out prior to awarding the contract. This could be in the form of reference checks.	Y/N

Ensure that all relevant documentation is retained and filed within the Objective system. This should include ROI responses, meeting minutes in support of key decisions made, contract awarded etc. Under the Government Procurement Rules the documentation must be kept for at least 3 years from the contract signing date.	Y/N
Once the contract has been awarded a Contract Award Notice must be published on GETS.	Y/N

Appendix 4: Contract Management

The following should be considered in terms of management of an external contract:-

Task	Completed
Ensure that the formal contract has been signed by both OPC and the contractor and filed appropriately in Objective.	Y/N
Ensure that the any specific deadlines included within our contract template are consistent with any additional contractor work-plan produced.	Y/N
Agree communication channels and frequency of this communication, up front, between the OPC and the contractor. Particularly consider appointing one key person to communicate with the contractor to reduce the risk of inconsistent messages being conveyed.	Y/N
Agree internal communication channels and frequency of these for larger/more complex projects.	Y/N
Ensure that delivery against OPC deliverables feeding into the overall project is managed appropriately.	Y/N
Consider setting up a "Communication register" which can be populated during the project following any update meetings/discussions with the contractor and internally (see proposed template - Appendix 5).	Y/N
Regular updates are provided through to SLT on the key aspects of the project. For example, progress against KPIs set out in contract, issues (if any) encountered with plan going forward, costs against budget and forecast spend.	Y/N
On completion of the project, hold a debrief with the contractor to identify areas that worked well or areas where improvements could be made.	Y/N
Complete a post project analysis to summarise areas that worked well or things that could be improved. Where there are areas for improvement ensure that these are communicated appropriately within OPC to enable system or process amendments to be made.	Y/N

Appendix 5: Proposed template for a communication register

Date	Details (what was discussed)	People involved in discussion	Issues arising (if any)	Action proposed & responsibility	Timeframe

References: Government Procurement Rules
 “Procurement Guidance for public entities” OAG best practice guide

RESPONSIBILITIES	
Persons/ Areas Affected	ALL OPC Staff & Contractors
Contact	General Manager
Approval Authority	Privacy Commissioner
Last Review Date	May 2021

Document history (from Sept 23)

Version	Updated by	Reason for update	Consultation	Date
2.3	Emma Boddy	Minor update to AoG listing to ensure it is up to date. Formal review to be undertaken at a later date.	General Manager	Sept 23