



PROCUREMENT POLICY

Whanganui District Council

Ownership – Executive Leadership Team

Created: May 2014

Revised version effective: From June 2023

Council approval required each Triennium.

This policy applies to WDC, and WDC-appointed consultants and procurement agents.

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1 Purpose

This document provides information on Whanganui District Council's (WDC's) procurement policies which include procurement principles and rules.

The following principles and rules are designed to provide an efficient and effective procurement practice on a best value-for-money basis for the delivery of the Council's Long Term and Annual Plans, and support Council strategies.

WDC procures a wide variety of goods and services, including but not restricted to, major civil construction works, large infrastructure and property maintenance contracts, land, building, and art acquisitions, through to minor goods and services. Risk factors vary for each procurement so risk levels will vary from high to low and are not necessarily dependent on the cost of the contract.

The following procurement principles and rules are in line with the Office of the Auditor-General's expectations of Local Government procurement policies, strategies and procedures. This document should be read in conjunction with the Office of the Auditor-General's "Procurement guidance for public entities", published under section 21 of the Public Audit Act 2001, June 2008.

These principles and rules also work alongside other specific guidelines, e.g. Waka Kotahi NZ Transport Agency's procurement rules for roading. Other related WDC Council Policies are not repeated in the document but are referred to. Therefore, where necessary, this policy must be used in conjunction with other relevant Council and Government policies.

Procuring in line with the information provided in this document, the Office of the Auditor-General's "Procurement guidance for public entities", the Waka Kotahi NZ Transport Agency Procurement Manual where required as well as relative legislation, will assist in ensuring probity is achieved in WDC's procurement practices.

Probity

The quality of having strong moral principles; honesty and decency.

"Financial probity"

Synonyms: integrity, honesty, uprightness, decency, morality, rectitude, goodness, virtue, right-mindedness, trustworthiness, truthfulness, honour, honourableness, justice, fairness, equity.

This policy should also be read in conjunction with the WDC Procurement Process document.

See Appendix 2, page 43, for links to related policies and information.

Responsibility for maintenance and updating of this document lies with the General Manager, Finance. This policy shall be reviewed in full every three years although amendments made be made throughout that time.

Schedule of Amendments

Date	Amendment	Approved
21/11/2017	Section 12 – Late Tenders	ELT
01/05/2018	Section 15.1 – Buy Local Premium	Council
17/07/2018	Section 9.3 - Procurement Rules Based on Levels of Expenditure	ELT
30/08/2020	Triennial Review – general wording edits.	ELT
30/08/2020	Addition of section 11 - Non-procurement Activities.	ELT
30/03/2023	The removal of the Tenders Board	ELT
30/03/2023	The inclusion of Broader Outcomes	ELT

2 Definitions

Alliance is a Public-Private Partnership (PPP) contract for the provision of goods and/or services where all parties share the responsibility for planning, programming, and executing the activities required to provide the particular goods and/or services and who share the benefits and penalties. The WDC alliance form of agreement is known as a Collaborative Working Agreement (CWA). WDC operates one alliance contract for the provision of maintenance and minor construction of the roading network.

All of Government Contracts An All-of-Government contract (AoG) is a type of approved collaborative contract. NZGP of MBIE, establishes supply agreements with approved suppliers for selected common goods or services purchased across the government sector.

All-of-Government (AoG) contracts are open to the New Zealand public sector. This includes:

- Agencies within the state sector
- Local authorities, and
- State-funded schools.

Broader Outcomes are the secondary benefits that are generated by the way a good, service or works is produced or delivered. These outcomes can be social, environmental, cultural or economic benefits, and will deliver long-term public value for New Zealand.

Bulk Purchasing Agreement is an agreement for purchasing larger than usual quantities, usually to achieve a unit price that is lower than the standard price.

Buy Local Premium allows for a reduction for evaluation purposes only on tenders or quotes from a “local” company of up to 5% for procurements up to the value of \$100,000, and a maximum of \$5,000 for procurements over the value of \$100,000.

Capital Expenditure (CAPEX) means costs or expenditure above \$2,000 incurred by the Council where the benefit of the expenditure will occur over a period greater than 12 months. The costs are usually for the acquisition or creation of a physical item (asset) and include the costs directly attributable to bringing the item to working order. The costs are normally written off periodically over the useful life of the asset to account for the consumption or loss of economic benefits. This write-off is known as depreciation or amortisation.

Closed Tender is a tender process where only selected suppliers (preferably a minimum of three) are invited to respond. This is usually used post an EOI process.

Cluster refers to a group of public sector entities that collaborate before going to the market and approach the market collectively (that is, they aggregate their requirements). This arrangement is used in syndicated procurement.

Commercial in Confidence (CIC) is a description applied to confidential information provided for a specific purpose that is not to be used for any other purpose.

Common use Provision (CUP) is a clause included in procurement and contract documents to enable eligible public entities to join the contract during its term. The clause is used in syndicated procurement arrangements.

Contract Manager (CM) is the person who has the delegated authority to expend money on a specific project and has the overall responsibility for managing the contract from beginning to satisfactory completion including but not limited to, contractor performance, financials, reporting, and record-keeping.

Delegated Financial Authority provides specified individuals with the ability to authorise expenditure up to a defined limit within an approved budget.

Executive Leadership Team (ELT) is a team of General Managers appointed by the Chief Executive, who meet regularly to coordinate, oversee and manage the activities of Council.

Expression of Interest (EOI) is similar to a Registration of Interest (ROI) in that it is used to identify suppliers interested in and capable of, delivering the required goods and/or services. Potential suppliers are asked to provide information on their capability to do the work. It is usually the first stage of a multi-stage tender process.

Full Business Case (FBC) is a document that seeks authorisation to procure specific goods and services. The FBC details what need has been identified, the justification for the purchase (e.g. benefits to WDC and/or its stakeholders), specifications of what is to be procured, and financial information which support the request to procure.

Market in the context of these guidelines means the sellers of goods or services who are potentially available as suppliers to WDC.

Open Tender is a tender process in which the invitation to tender is publicly advertised so that all interested suppliers may respond.

Operating Expenditure (OPEX) is the costs or expenditure incurred by the Council in its day to day operations and which are generally consumed immediately or within a short period.

Panel Contracts are a contractual arrangement with a group of suppliers to provide goods or services as and when required, under a schedule of rates for each supplier or on a quotation basis.

Preferred Supplier Agreement is a contract for the supply of particular goods and services that are sourced from a supplier that is preferred in terms of being a business that WDC would like to work with. A Preferred Supplier Agreement differs from a Bulk Purchasing

Agreement and Panel Contracts, in that the purchases will be made periodically as and when required.

Procurement is all the entire process associated with purchasing, spanning the whole cycle from the identification of the need to the end of a service contract or the end of the useful life and subsequent disposal of an asset.

Procurement Plan is a document that follows after the FBC which details how the goods or services plan to be procured, such as the procurement process, methodologies and type of contract to be used.

Procurement Cards are charge cards that work in a similar way to credit cards. Fuel cards and supermarket cards are monitored by the relevant internal departments and by the Finance Group.

Public Entity and **Entity** have the same meaning as in section 5 of the Public Audit Act 2001. This includes schools, State-owned enterprises, government departments, Crown entities and local authorities, as well as any subsidiary or other controlled entity of the principal entity.

Public Sector The public sector comprises the State sector ('central government') and all local authorities ('local government'), including council-controlled organisations.

Registration of Interest (ROI) is similar to an expression of interest (EOI) in that it is used to identify suppliers interested in, and capable of, delivering the required goods or services. Potential suppliers are asked to provide information on their capability to do the work. It is usually the first stage of a multi-stage tender.

Request for Information (RFI) is a formal request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies that may be available.

Request for Proposal (RFP) is a formal means of seeking proposals from the market for goods or services where the public entity is open to supplier innovation – that is, where the outputs and outcomes are important, rather than the process the supplier follows to deliver them.

Request for Quotation (RFQ) is a formal means of seeking quotations from the market for goods or services where the price is the main selection criterion, the requirement is for "stock standard" or "off the shelf" goods or services, and the procurement is low risk.

Request for Tender (RFT) is a formal means of seeking tenders from the market to provide goods or services where the public entity's specification or requirements are clearly defined and there is little room for flexibility or innovation.

Sensitive expenditure is expenditure by Council that provides, has the potential to provide, or has the perceived potential to provide a private benefit to an individual staff member of Council that is additional to the business benefit to the entity of the expenditure. It also includes expenditure by Council that could be considered unusual for the entity's purpose and/or functions.

Staff means all members, trustees, officeholders, managers, and employees of a public entity.

Syndicated Procurement involves groups of public entities aggregating their procurement requirements to achieve improved outcomes through greater purchasing power and reduced procurement costs. The two most widely used syndicated procurement models are the Common Use Provision and Cluster.

Sustainability is about meeting the needs of today without adversely affecting the needs of tomorrow. In a business sense, the key messages of sustainability tie in with what is considered sound business practices, such as building efficiency, minimising waste, and maximising resources.

Tender means the selection of a supplier using a competitive process that is rigorously conducted to ensure the integrity of both the process and the outcome.

Value for Money means using resources efficiently, effectively, economically and without waste, with due regard for the total costs and benefits of an arrangement and its contribution to the outcomes the entity is trying to achieve. Additionally, the principle of value for money when procuring does not necessarily mean selecting the lowest price, but rather the best possible outcome for the total cost of ownership (or whole-of-life cost). Value for money is achieved by selecting the most appropriate procurement method for the risk, value and objectives of the procurement.

3 Legislative Context

WDC's Procurement Policy is required to meet the following key legislative requirements:

Legislation	Specific requirements
<p>Local Government Act 2002 http://www.legislation.govt.nz/act/public/2002/0084/latest/whole.html</p> <p>Section 10 Purpose of Local Government.</p> <p>Section 14 Principles relating to local authorities. Section 14(1)(f)</p> <p>Section 14(1)(g)</p> <p>Section 17a Delivery of services</p>	<p>This section has regard to local government procuring in a cost-effective, efficient and effective manner which is also appropriate to present and anticipated future circumstances.</p> <p>A local authority should undertake all commercial transactions following sound business practices.</p> <p>A local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region.</p> <p>A local authority must review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions.</p>

<p>Land Transport Management Act 2003 http://www.legislation.govt.nz/act/public/2003/0118/latest/resultsin.aspx?search=sw_096be8ed8140ed92_section+25_25_se&p=3</p> <p>Section 25 Procurement procedures Section 25(1)</p> <p>Section 25(2)(a)</p> <p>Section 25(5)</p> <p>Section 25(6)</p>	<p>Requires that procurement procedures used by Approved Organisations (AO) be designed to obtain the best value for money spent.</p> <p>Regard must be given to the desirability of enabling fair competition that encourages competitive and efficient markets.</p> <p>For other than minor or ancillary works undertaken by an internal business unit, outputs must be purchased from external providers.</p> <p>To reinforce the value for money concept, an AO is not compelled to accept the lowest conforming price proposal.</p>
<p>Public Bodies Contracts Act 1959 http://www.legislation.govt.nz/act/public/1959/0098/latest/DLM324219.html</p> <p>Section 3 Mode of contracting by public bodies Section 3(3)</p>	<p>States that <i>no oral contracts are to be made for any sum exceeding \$1,000.</i></p>

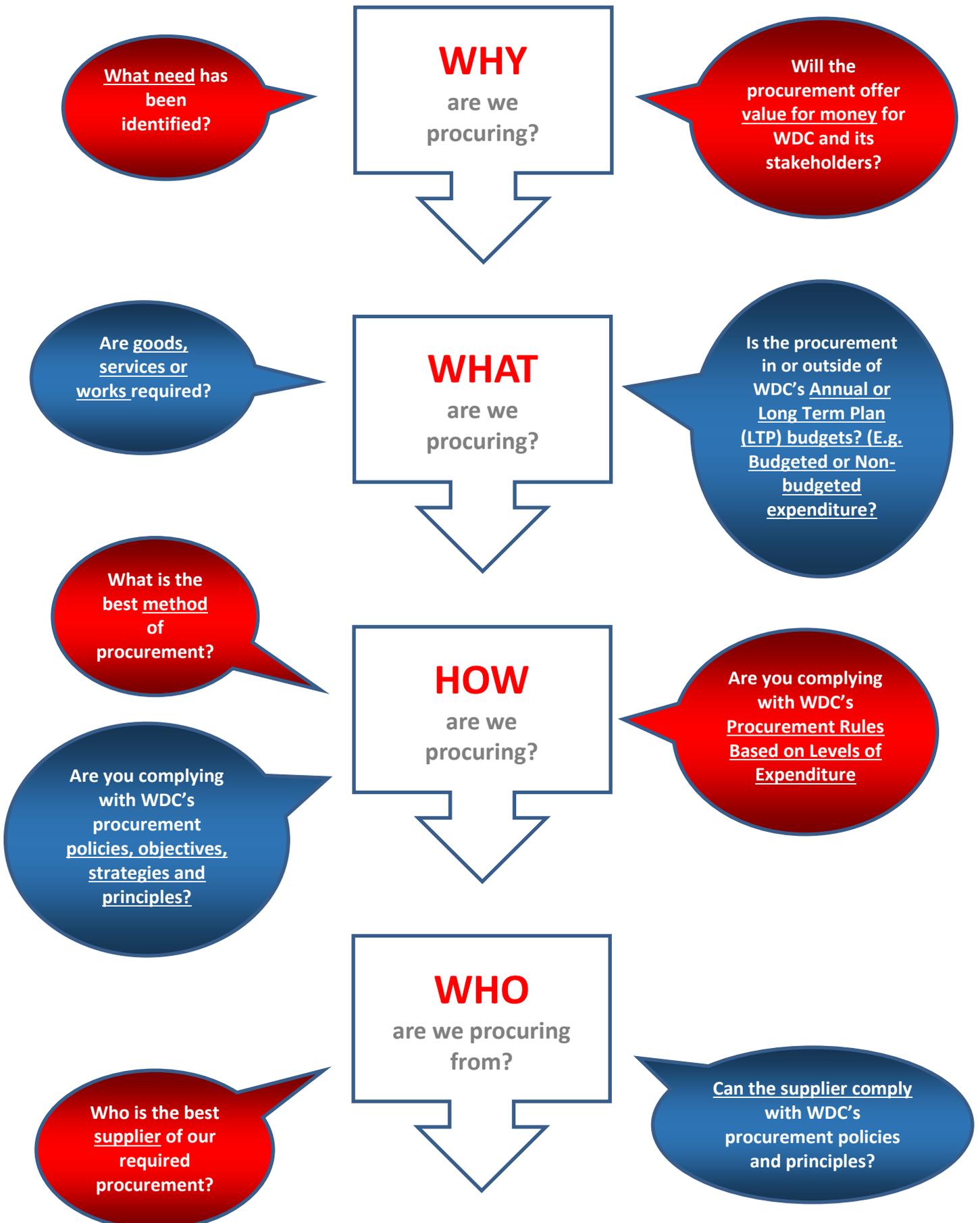
4 Procurement Policy Best Practice Guidelines

WDC's Procurement Policy and processes are required to meet the following key best practice guidelines:

<p>Office of the Auditor-General, June 2008, Procurement guidance for public entities. http://www.oag.govt.nz/2008/procurement-guide</p>	<p>This publication gives comprehensive guidance on developing and implementing clearly articulated procurement policies and procedures, including:</p> <p>awareness of economic considerations in the procurement process including total cost of ownership, value for money and market impact,</p> <p>operating with ethical standards covering confidentiality, disclosure and declarations of interest,</p> <p>effective management of risk throughout the procurement process,</p> <p>and reference to the law and legal implications around procurement.</p>
<p>Office of the Auditor-General, June 2020, Guidance for members of local authorities about the local authorities (Members' Interests) Act 1968 https://oag.parliament.nz/2020/lamia</p>	<p>The Act helps protect the integrity of local authority decision-making by ensuring that people are not affected by personal motives when they participate in local authority decision-making and cannot use their position to obtain preferential access to contracts. The two specific rules in the Act are that members cannot:</p> <ul style="list-style-type: none"> • enter into contracts with their local authority worth more than \$25,000 in a financial year; or • participate in matters before their authority in which they have a pecuniary interest, other than an interest in common with the public.
<p>Office of the Auditor-General, June 2020, Managing conflicts of interest: Guidance for public entities. https://oag.parliament.nz/2020/conflicts</p>	<p>This is a guide on how to understand conflicts of interest in a public sector context; how to identify, disclose and manage them. This is not a prescribed set of rules.</p>

<p>Ministry of Business, Innovation & Employment (MBIE), Government Procurement Rules, 4th edition, 1st October 2019 https://www.procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-rules/</p>	<p>The Government Procurement Rules support sustainable and inclusive procurement through the promotion of good practice for procurement planning, approaching the supplier community and contracting.</p>
<p>Whanganui District Council, Whanganui District Council Code of Conduct.</p>	<p>Information for staff on their obligations and required standards of behavior.</p>

5 Procurement Planning Assessment Flowchart



6 Overriding Considerations

6.1 Good practice principles, government policies, and rules.¹

Basic principles that govern all public spending.

- **Affordability** - When considering the acquisition of goods or services the cost of its total life needs to be considered (whole-of-life cost). Elements that affect the total cost of goods or services include the cost of the procurement, any initial set-up costs, the ongoing cost of maintenance and/or operation as well as the cost of the disposal of the goods or termination of the service.
- **Accountability** – (WDC) is accountable for its performance and must be able to give complete and accurate accounts of the use it has put public funds to, including funds passed on to others for particular purposes.
- **Openness** – (WDC) should be transparent in its administration of funds, both to support accountability and to promote clarity and a shared understanding of respective roles and obligations between entities and any external parties entering into funding arrangements.
- **Value for money** – (WDC) should use resources efficiently, effectively, economically and without waste, with due regard for the total costs and benefits of an arrangement and its contribution to the outcomes (WDC) is trying to achieve. The principle of “value for money” does not necessarily mean selecting the lowest price but rather the best possible outcome for the total cost of ownership (or whole-of-life cost).
- **Lawfulness** – Public entities must act within the law, and meet their legal obligations.
- **Fairness** – (WDC) has a general public law obligation to act fairly and reasonably. (WDC) must be, and must be seen to be, impartial in its decision-making. (WDC) may also at times need to consider the imbalance of power in some supplier arrangements and whether it is significant enough to require a different approach to the way it conducts the relationship.
- **Integrity** – Anyone who is managing public resources must do so with the utmost integrity. The standards applying to public servants and other public employees are clear and (WDC) needs to make it clear when working with other organisations that it expects similar standards from them

By applying the following principles sensibly, (WDC) can demonstrate it is spending public money wisely and properly managing the process for spending it.

¹ Procurement guidance for public entities, 2008. Office of Auditor-General. Page 11.

Practical Considerations

When deciding how to give effect to these principles, (WDC) should consider:

The goal – It's important for (WDC) to focus on what it is trying to achieve. The process should not dominate at the expense of the outcome.

Simplicity and proportionality – The requirements and processes put in place for the funding arrangement should be as simple and practical as possible, considering the amounts involved, the complexity, and the level of risk. It is appropriate to consider compliance costs for both parties and seek to reduce them where possible.

The context – the arrangements need to fit with the overall context of the funding arrangement, including any more general relationship that the external party has with WDC or with other relevant government organisations. For example, a funding arrangement between a department and a non-government organisation may need to take into account any general government policy on relationships with the community and voluntary sector.

The risk – (WDC) needs to identify risks in or around the funding arrangement and to consider how to manage those risks. This should not be seen as an encouragement to be overly risk-averse. The key is to get the right balance between risk and the expected benefits and to do so consciously.

The nature of the parties – The needs and standards of (WDC) – for example, for accountability or transparency – may be quite different from those that the external party usually encounters. Equally, the external party's needs may be quite different from those of (WDC)'s. For example, a non-government organisation may have unique obligations to constituent groups or members. Relationships are likely to proceed constructively and effectively if each party understands the needs of the other and the consequences of those needs for them.²

6.2 Procurement Strategies and Objectives

“Competent people

A public entity should ensure that each employee or agent involved in a procurement process has the required skills for the type and level of procurement.

When engaging an agent, the public entity also needs to ensure that an experienced employee with the necessary delegated authority works with the agent.”³

The required skills and/or qualifications will vary significantly depending on the value and requirements of the procurement. As the GM or appropriate line manager is required to authorise the Contract Manager's (CM) Full Business Case (FBC) and Procurement Plan (PP), this judgement and responsibility reasonably lie with the authorising signatories for the procurement.

Additionally, collaboration across WDC groups should be considered and is encouraged in order to gain guidance and expertise for less experienced officers from more experienced

² Procurement guidance for public entities, 2008. Office of Auditor-General. Page 12

³ Procurement guidance for public entities, 2008. Office of Auditor-General. Page 17.

and/or qualified officers in the areas of tendering and contracts. This will assist in ensuring best practice, probity, protecting WDC's reputation and its relationships with suppliers.

Unless special circumstances arise, procurement is to be made in accordance with WDC's Annual and Long Term Plans, or by the Chief Executive's Delegated Financial Authorisations for variations. The key objectives when procuring are to;

- ❖ Achieve the right outcomes and best value for money for WDC and its residents.
- ❖ Promote efficient and effective purchasing practices and encourage continuous improvement.
- ❖ Ensure the procurement methods used are appropriate for the levels of risk and the benefits involved in the procurement.
- ❖ Manage risk around delivery, quality, political or public sensitivity, while allowing staff to exercise professional business judgment and be innovative.
- ❖ Consider the principles of sustainability.
- ❖ Include a Buy Local Premium wherever appropriate.
- ❖ Ensure WDC's purchasing activities are in accordance with its legal obligations.
- ❖ Be flexible to allow for emergencies and urgent variations to WDC's procurement practices.

6.3 Sustainability

When considering the purchase of any goods or services the principles of sustainability need to be considered as required under the Local Government Act 2002, section 14(1);

- (h) in taking a sustainable development approach, a local authority should take into account -
- (i) the social, economic, and cultural interests of people and communities; and
 - (ii) the need to maintain and enhance the quality of the environment; and
 - (iii) the reasonably foreseeable needs of future generations.

Guidance from the Office of the Auditor-General includes:

“Given the growing strategic importance of sustainability in public entities, considerations of sustainability may occur throughout the entire procurement process.

Examples of the types of activities that might be carried out, as part of procurement, to assist sustainability include:

- specifying products and services considered to be sustainable;
- verifying suppliers' sustainable management standards;
- including a sustainability clause in contracts;
- rating supplier performance against sustainability criteria;
- insisting on sustainability improvement targets for suppliers;
- assisting suppliers to improve their sustainability performance; and

- encouraging sustainable innovation in the supply of goods or services.”⁴

Guidance on the application of Sustainability Principles is also contained in “The Australian & New Zealand Government Framework for Sustainable Procurement”, which is available at www.apcc.gov.nz, from www.procurement.govt.nz and well as from the OAG at <http://www.oag.govt.nz/2008/procurement-guide/docs/procurement-guide.pdf> pages 25-26.

7 Risk

Risk is inherent in everything we do, whether it is crossing a road, managing a project, purchasing new systems and equipment, making decisions about the future, or even deciding not to decide at all. The need to manage risk applies to all organisations and all functions and activities within an organisation, including procurement.

Two types of risk need to be considered when contemplating the procurement of goods or services. Firstly there is the risk associated with the procurement stages of the project, goods, or service. These could include but are not limited to, lack of in-house knowledge of the product or service, poor documentation, lack of competition in the market, competing products or services reaching the market at the same time, and one supplier becoming overcommitted resulting in limited supplier options.

Secondly, there is a risk associated with the construction of the product or the delivery of the service, such as receiving inappropriate or poor quality goods or services. These risks should be addressed as part of the approval process for the procurement.

WDC has a Risk Management Policy and Process document that provides tools and mechanisms for identifying and assessing risk for both the procurement and project stage.

WDC’s Risk Management Policy and Framework documents are available from Hubble.

Risk Management Policy (June 2022):

<https://hubble.whanganui.govt.nz/site/strat/psd/policy/Risk%20Management%20Policy%20and%20Framework/Risk%20Management%20Policy%20-%20June%202022.pdf>

Risk Management Framework (June 2022):

<https://hubble.whanganui.govt.nz/site/strat/psd/policy/Risk%20Management%20Policy%20and%20Framework/Risk%20Management%20Framework%20-%20June%202022.pdf>

⁴ Procurement guidance for public entities, 2008. Office of Auditor-General. Page 26.

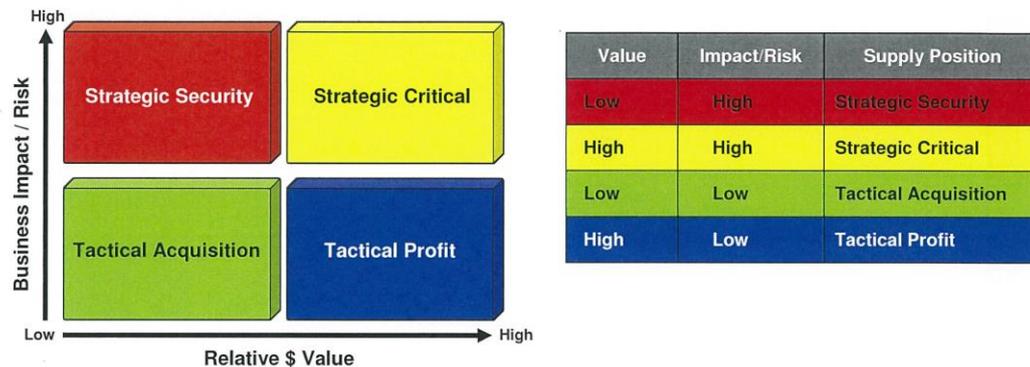
7.1 Supply Positioning Matrix

Supply positioning

Identifying how important the goods/services are to your agency will help inform the approach you take to the market as well as the amount of time and resources used in the procurement.

A useful tool to help this analysis is the Supply Positioning Matrix. This assesses the business impact and risk in the delivery of the goods/services against relative costs.

Diagram: Supply positioning matrix²



Supply positioning matrix explained

Buyer's priority	Description	Approach	Arrangement
STRATEGIC SECURITY Security of supply	<ul style="list-style-type: none"> Low-cost goods/services Strategically important Shortage of reliable suppliers 	Ensure supply	<ul style="list-style-type: none"> Long term contracts Build reserve of stock Consider alternative products
STRATEGIC CRITICAL Security of supply at a good price	<ul style="list-style-type: none"> High costs specialist goods/services Limited number of suppliers 	Manage suppliers	<ul style="list-style-type: none"> Med/long term contract Contingency planning
TACTICAL ACQUISITION Purchasing efficiency	<ul style="list-style-type: none"> Routine purchases Low-value/low-risk goods/services Many potential suppliers 	Minimal attention	<ul style="list-style-type: none"> One-off contracts/purchase orders E-purchasing Procurement cards
TACTICAL PROFIT Improving profit through costs savings	<ul style="list-style-type: none"> High-cost/low-risk goods/services Many potential suppliers 	Drive savings	<ul style="list-style-type: none"> Short term contracts Ongoing active sourcing for competitive price

7.2 Confidentiality

During a procurement process, WDC will face a particular risk of being exposed to confidential information from both internal departments and external parties. WDC must respect the sensitivity of the information provided by interested parties during the procurement process. WDC will not use confidential information to influence, advantage, or disadvantage other participants.

WDC also needs to consider its obligations under the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987. These Acts mean that public entities are not able to give comprehensive assurances to suppliers or interested parties about the protection of their sensitive information.

WDC staff must take extreme care in handling both confidential and commercially sensitive information. When uncertainty exists, WDC will seek legal advice on how to reconcile the procurement process with its contractual or common law obligations, whilst endeavoring to maintain commercial confidentiality.

WDC requires its staff to:

- Respect the confidentiality of information received in the course of their work.
- Not use this information for personal gain.
- Always communicate appropriate information to all interested participants accurately, impartially, and in a manner not designed to mislead.

7.3 Contact with Interested Parties

During the procurement process, interested parties may not contact any member, director, employee, or adviser of WDC about the procurement other than the person nominated which is usually the Contract Manager. This reduces the risk of any potential supplier extracting an advantage by playing one member of the entity's procurement team off against another.

Informal communication between procurement evaluation personnel and interested parties could also prejudice the integrity of the evaluation. WDC's Procurement Policy requires that all communication is formal (written/typed) and electronically recorded.

“A public entity should record all communications that seek clarification with a participant, including any clarifications presented by the participant, so that an audit trail is maintained.”⁵

However, if exceptional circumstances exist or arise then specific approval must be given before any other lines of communication take place regarding the procurement. This approval will usually come from the Contract Manager. This may entail the staff member who is the point of contact arranging for others in the organisation to deal with technical queries.

Where contracts come up for renewal, current suppliers may be perceived to have an advantage in their knowledge of WDC and its requirements. WDC will put in place a formal process to govern contact with any current supplier when tendering or proposing a future contract. The current supplier must not discuss the requirements and contents of the new tender or proposal with WDC staff or members of the evaluation panel unless the discussion is part of the formal procurement process.

7.4 Fraud and Impropriety

⁵ Procurement guidance for public entities, 2008. Office of Auditor-General. Page 77.

Conducting procurement in a fair and transparent manner, according to these procurement policies, rules, and procedures, in conjunction with Council's internal controls should reduce the risk of fraud or impropriety.

7.5 Conflicts of Interests

WDC will take care that its decision-making processes cannot be challenged based on actual, potential, or perceived conflicts of interest.

All WDC elected members and officers involved in procurement processes and who have Financial Delegated Authority are required to declare any personal interests that may affect, or could be perceived to affect, their impartiality and where required, remove themselves from the decision-making process. WDC will maintain a Conflicts of Interest Register for both elected members and any staff associated with procurement processes. The Conflicts of Interest Register for staff is managed by WDC's Human Resources team. The Members' Interests Register is managed by WDC's Governance Services Team.

The FBC and PP also request confirmation that no conflicts of interest exist as does the Tender Evaluation Report.

The Local Authorities (Members' Interests) Act 1968 sets out the legal requirements for the declaration of elected member's interests.

Further guidance for WDC officers and elected members can be obtained from the following publications by the Office of the Auditor-General:

- Guidance for members of local authorities about the law of conflicts of interest (available at www.oag.govt.nz)
- Managing conflicts of interest: Guidance for public entities (available at <https://oag.parliament.nz/2020/conflicts>)

Guidance managing conflicts of interests and confidentiality can found at:

<https://www.procurement.govt.nz/procurement/guide-to-procurement/plan-your-procurement/managing-conflicts-of-interest-and-confidentiality/>

WDC's Conflicts of Interest Policy is available from Hubble.

<https://hubble.whanganui.govt.nz/site/strat/psd/policy/Conflict%20of%20Interest%20Policy/Conflict%20of%20Interest%20Policy%20-%202018.pdf?Web=1>

7.6 Liability

WDC will take a risk-based approach when they consider whether to agree to an exclusion or limitation on liability by a supplier (this can be an important aspect of achieving value for money).

If required, WDC will seek legal advice during the procurement process, particularly where non-standard documentation or terms and conditions are proposed or when a supplier proposes an exclusion or limitation of liability in their offer.

If WDC accepts an exclusion or limitation, the contract needs to be very clear about the scope and extent of the exclusion or limitation. In such a case, the Council should also take associated costs into account when considering that supplier's goods or services.

7.7 Intellectual Property

WDC will consider the value of any intellectual property rights and whether it would be more beneficial for them to be held by the supplier or WDC. Relevant factors may include the effect on the price of the contract and the ongoing ability of the parties to develop innovations.

WDC will:

- Identify all intellectual property likely to be developed or created during procurement.
- Be clear about the difference between what intellectual property is and what is said 'Commercially in Confidence'.
- Determine who should own any intellectual property.
- Seek legal advice on how to secure WDC's continuing right to use intellectual property as required – including if WDC procures the goods or services from a different supplier in the future.
- Seek legal advice on the interplay between intellectual property rights and confidentiality obligations.

7.8 Due Diligence

"We expect (WDC) to carry out due diligence of the preferred participants for high value, high risk, or complex procurements to ensure that the participant has the capacity and stability to fulfil all of the requirements of the contract.

Due diligence should be done only where the expected benefits outweigh the costs."⁶

⁶ Procurement guidance for public entities, 2008. Office of Auditor-General. Page 77.

7.9 Receipt of Gifts and Hospitality

WDC staff involved with procurement processes must be careful not to accept gifts from potential suppliers of goods and services that may be construed to have influenced their decisions during the procurement process. WDC requires the receipt of all gifts to be disclosed and to be recorded in the WDC Gifts Register.

WDC's Sensitive Expenditure Guidelines as well as Code of Conduct also give guidance on this and are available from Hubble.

Sensitive Expenditure Guidelines

<https://hubble.whanganui.govt.nz/site/strat/psd/policy/Sensitive%20Expenditure%20Guidelines/Sensitive%20expenditure%20guidelines%20-%20final%20version.doc?Web=1>

Code of Conduct

<https://hubble.whanganui.govt.nz/site/strat/psd/policy/Code%20of%20Conduct/Code%20of%20Conduct1.docx?Web=1>

8 Delegations and Approvals

8.1 Council Delegations

Elected Members (Councillors) have the ultimate authority to approve procurement within the powers granted to them under the Local Government Act 2002.

In general, this power is exercised by a resolution delegating to the Chief Executive to act.

These powers do (although consultation may be required) override the Council's intentions in either an Annual or Long Term Plan.

8.2 Chief Executive Delegations

The Chief Executive has the authority to implement all Council resolutions including procurement decisions originating from the Annual and Long Term Plans.

The Chief Executive also has the authority to expend unplanned and additional expenditures of up to \$200,000 per item. Although significant variations would be reported to the elected members via the quarterly revised estimate process.

The Chief Executive can delegate his authority to other Council officers via financial and non-financial delegations.

8.3 Financial Delegations

WDC's Financial Delegations Policy sets out the limits of financial delegation for individual members of the Council's staff. These limits must be complied with at all times.

The Financial Delegations Policy applies to budgeted expenditure only. Items of expenditure not contemplated in the Council's Annual or Long Term Plan require specific approval by the Chief Executive or Council as appropriate.

The Chief Executive is the only person who has the power to approve departures from the financial delegations.

WDC's Financial Delegations Policy is available from Hubble.

<https://hubble.whanganui.govt.nz/site/strat/psd/policy/Financial%20Delegations/Financial%20Delegations%20Policy%20-%20October%202020.pdf>

9 Procurement Processes and Reporting Requirements

9.1 Contract Manager

The Contract Manager (CM) is responsible for ensuring that WDC's procurement processes are adhered to from the beginning of the procurement inception, including internal reporting*⁷ and obtaining authorisation to procure (refer to 9.2 Full Business Case and Procurement Plan), through to the procurement or contract completion.

The CM is responsible for ensuring the contract is carried out correctly and that the procurement achieves all the required deliverables and objectives. (Please refer to the WDC Contract Management Procedure and Policy Statement for guidance: <https://hubble.whanganui.govt.nz/site/conmgt/Activity%20Management/WDC%20Contract%20Management%20Procedure%20and%20Policy%20Statement%20October%202019%20FINAL.pdf>).

Please note: "Engineer to Contract" is how the CM is defined in the NZS Conditions of Contract for building and civil engineering, so it is appropriate to use this title in these instances instead of "Contract Manager".

9.2 Full Business Case and Procurement Plan (FBC and PP)

All procurements that are over \$50,000 in value, or are less than but are high-risk/sensitive expenditure (see clauses 7 & 7.1), must have a FBC and a PP written by the CM and authorised by a Manager.

Note: High risk / sensitive expenditure includes, but is not limited to, expenditure with high public and/or political interest and visibility.

A **Full Business Case** details the need that has been identified, what is to be procured, the justification for the procurement (e.g. benefits to WDC and/or its stakeholders), the budget

⁷ See Procurement guidance for public entities, 2008. Office of Auditor-General, Keeping records, Page 17.

it is to be coded to and the financial analysis of the whole procurement, all of which supports the decision to procure.

A **Procurement Plan** details how the CM plans to procure, with the main objective being to obtain the best value for the whole of life of the procurement.

A Procurement Plan must include as a minimum:

- 1) A description of the goods or services to be procured.
- 2) The proposed procurement methodology to be used.
- 3) The proposed key tender specifications.
- 4) The proposed contract type.
- 5) Sources of funding for the contract.
- 6) An estimate of the expected tender price.
- 7) The project timetable.
- 8) A full risk and risk mitigation assessment.

Contracts for the value of \$300k and over, or that are less than but are high risk/sensitive expenditure, must have the FBC and PP referred to the C.E for approval of the PP before the contract goes out for tender or a request for quotes. This is so the proposed plan can be authorised by the C.E, and any discussions and changes to the plan made before tendering or requesting quotes.

Contracts for the value of **\$3.5M and over (Major Projects)** must also have the FBC and PP referred to the Council for approval of the PP before the contract goes out for tender. This is so the proposed plan can be assessed by the Council and any discussions and changes to the procurement plan made before tendering.

Note:

- Whilst the FBC has its own function for all contracts from \$50k up, in these instances, the FBC is a supporting document only.
- The FBC and PP must be approved by the relevant GM before going to the C.E.

9.3 Procurement Rules Based on Levels of Expenditure

When deciding on the correct process and method of procurement, the most economic option should be chosen, taking into consideration the cost of the actual procurement as well as the process for both WDC and the supplier.

The following lists the minimum procurement process requirements up to the various values of expenditure for goods and services.

The Local Government Act 2002, section 17a Delivery of services, must be exercised particularly for high-value contracts that are long-standing with extension options or renew periodically, usually through open market tendering or direct negotiation as appropriate.

<http://www.legislation.govt.nz/act/public/2002/0084/latest/DLM6236168.html>

Note: This includes the engagement of contractors and consultants.

\$0 to \$1k

- Up to \$1000 only - A verbal or written quote (e-mail may be appropriate).
- If the procurer does not have the appropriate Financial Delegated Authority, authorisation must be obtained from an appropriate Manager.
- Direct payment (cash or Council credit card) or;
Non-direct payment (purchase orders are to be raised wherever appropriate).

\$1001 - \$10k

- A formal quote is required (e-mail may be appropriate).
- If the procurer does not have the appropriate Financial Delegated Authority, authorisation must be obtained from an appropriate Manager.
- Direct payment (cash or Council credit card) or;
Non-direct payment (purchase orders are to be raised wherever appropriate).

\$10,001 to \$49k

- A formal quotation is required (e-mail may be appropriate), usually from a minimum of three suppliers, but a single supplier may be acceptable e.g. if there is only one supplier available.
- If the procurer does not have the appropriate Financial Delegated Authority, authorisation must be obtained from an appropriate Manager.
- High risk/sensitive expenditure must be referred to the Chief Executive.
 - A FBC and PP must be produced by the CM and authorised by the appropriate Manager.
 - The FBC and PP are referred to the C.E for approval of the plan before tendering or requesting quotes.
 - The CM's Recommendation Report is referred to the C.E for approval of the procurement evaluation before the award of the procurement.
- Non-direct payment must be used e.g. either a purchase order or agreed conditions of the contract.

\$50k to \$299k

- A FBC and PP must be produced by the CM and authorised by the GM.
- A formal quotation, tender, or proposal is required (e-mail may be appropriate), usually from a minimum of three suppliers, but a single supplier may be acceptable e.g. if there is only one supplier capable/qualified to do the work.
- High risk/sensitive expenditure is to be referred to the C.E..

- The FBC and PP are referred to the C.E for approval of the plan before tendering or requesting quotes.
- The CM's Recommendation Report is referred to the C.E for approval of the procurement evaluation before award of the contract.
- A contract is required for all procurements of \$50,000 and over.
- Non-direct payment must be used e.g. either a purchase order or agreed conditions of the contract.

\$300k to <\$3.5M

- A FBC and PP must be produced by the CM and authorised by the GM.
- The CM's FBC and PP are referred to the C.E for approval of the plan before tendering or requesting quotes.
- Unless special circumstances exist, competitive tendering via Tender Link is expected.
- The CM's Recommendation Report is referred to the C.E for approval of the procurement evaluation before award of the contract.
- A contract is required.
- Non-direct payment must be used as per agreed conditions of the contract.

Greater than \$3.5M – Major Projects

- The determining figure for this trigger point must be based on the Total Projected Project Costs (TPPC).
- A FBC & PP must be produced by the CM and authorised by the GM.
- The FBC & PP must be referred to the C.E and the Council for approval of the plan before tendering.
- Independent peer reviews and risk assessments must be considered.
- If it is considered that an independent peer-review is required, the review must be presented to Council.
- Wherever possible, the peer review panel should be invited to present their reports directly to Council.
- If it is considered by the CM and supported by their GM that an independent peer review would not add any value for WDC, this must be explained in the PP and agreed by the C.E and then the Council.
- Contract Managers must provide the Council with all consultancy reports on the contract, not just advice on what the reports contain.

- Unless special circumstances exist, competitive tendering via Tender Link is expected.
- Post the tender closing and the tender evaluation being completed by the Tender Evaluation Team (TET), the CM's Recommendation Report must be taken to the C.E for approval of the tender evaluation process and Recommendation before award of the contract. The ChC.E will give final authorisation to award the contract.
- The project should be assessed throughout the procurement against the original FBC and the PP as approved by Council.
- Clear and transparent reporting must be provided to the Council regularly on the progress of the project – for example through the design, award, construct, and delivery phases where applicable.
- A contract is required.
- Non-direct payment must be used as per agreed conditions of the contract.

Special Notes:

- If the TPPC is under the \$3.5M threshold but the lowest or preferred submitted tender, together with all projected costs, is over the \$3.5M threshold, a report must be presented to Council to request either;
 - a) That Council accepts a report “for their information”, and that the rest of the above process, post peer-review conditions, will be adhered to,
 - b) or
 - c) That WDC declines all tenders and retenders following the Major Projects process.
- If the TPPC is over the \$3.5M threshold, but the lowest or preferred tender is under the threshold, the CM must proceed as started e.g. continue to follow the >\$3.5M Major Projects process.

9.4 Procurement Planning

When considering the most appropriate method of procurement, in addition to adhering to WDC's procurement principles, rules, strategies and objectives, an analysis should also be given to:

- **Costs** - What are the costs of our procurement; is it a small, medium, or large project or procurement?
- **Context** - What type of agreement or relationship is required? Is it a short or long-term project? Is the acquisition immediate or delivered over a period of time? What level of complexity does the project have?
- **Market Environment** - What is the current market environment; are there multiple suppliers? Or are there only specialist suppliers?

- **Routine or Non-routine** - Is the purchase a routine or non-routine purchase; if routine, what previous procurement method was used? Was this the best option or does it need reevaluating?
- **Specific Requirements** - Are there any specific requirements of the procurement process; for example, are there Waka Kotahi NZ Transport Agency requirements for roading projects funded in part by the Waka Kotahi NZ Transport Agency?
- **Risk** - What is the political sensitivity of the goods, service, or project we are procuring? Are there risks around accountability by the supplier to supply WDC with goods and/or services of the desired quality and standard? What are the consequences of poor quality goods, services, or performance?

A useful procurement tool for ensuring probity is maintained throughout the procurement planning and process period, is the Probity Checklist:

<https://www.procurement.govt.nz/assets/procurement-property/documents/probity-checklist.pdf>

9.5 Peer Review

A peer review is a process of subjecting the author's documents, design, and/or specifications to the scrutiny of others who are experts in the same field.

During the procurement planning phase, it must be identified if, for technical or specialty reasons, or if the procurement is a "Major Project" (greater than \$3.5M in value), whether or not a peer review is required.

9.6 Procurement Approaches

The major proportion of goods and services purchased by the Council is routine. Some of the main objectives in procuring goods and services are to achieve the highest value and quality for the best price, with the lowest risk. Therefore, WDC's most commonly used procurement approaches are:

- RFX Single Stage - Public Tender.
- RFX Single Stage – Private Tender – usually from pre-approved suppliers for similar works or specialist providers.
- RFX Multi-stage tender – Public EOI/ROI followed by selected tenderers invited to a private (or “closed”) tender.
- Request for Quotes (for low value/low-risk items).

Other procurement approaches include, but are not limited to:

- Direct Negotiation and Appointment – usually from specialist suppliers.
- Preferred Supplier Agreements.
- Panel Contracts.
- Procurement methods for collaborative contracting, e.g. alliancing / Public-Private Partnerships (PPP).
- All-of-Government Contracts.
- Emergency Procurement.

In some cases, it may be appropriate to split a project up into smaller elements. Examples of this include, but are not limited to:

- where each stage of a project requires different skills that are not possessed by a single company, or
- where a budget is spread out over several years and does not allow the project to be completed in one year.

However, it is not permitted to split a project up into smaller elements simply to make use of simpler forms of procurement processes e.g. direct payment or purchase orders.

9.7 Using External Agencies

When deciding which procurement process to use, consideration should be given as to whether outside agencies can provide a suitable vehicle through which to select a supplier, for example:

- TenderLink – e-Tendering

This the most commonly used vehicle for WDC procurement (and all of LGNZ). WDC has a portal at: <https://portal.tenderlink.com/whanganui>

- AoG – All-of-Government Contracts.

9.8 Procurement Methodologies

WDC's most commonly used procurement methodologies are:

- Weighted Attributes Models
- Price Quality.
- Lowest Price Conforming

The [Weighted-Attribute's model](#) is the most common procurement model used in public sector procurement. This model seeks to balance the trade-off between price and quality, and it can be used for goods or services. Under this model, the criteria are weighted to reflect their relative importance. Each criterion in the tender or proposal is scored, and each is multiplied by the relevant weighting to give a weighted score. The weighted scores for each tender or proposal are added up to find the highest scoring tender or proposal. Some weighted-attribute models weight all the evaluation criteria, including price, while others only weight the non-price criteria. If weighting price, it is important to carry out some level of sensitivity analysis as part of the weighting process to ensure that the price weighting is appropriate. For example, if the price weighting is too high, the evaluation effectively becomes a lowest-price conforming model.⁸

[Price Quality](#) should be used where the specified outputs can be priced by the supplier(s) and where the purchaser determines that best value for money will be obtained by selecting the supplier(s) that offer the best combination of price and quality as set out in the RFP.⁹

[Lowest Price Conforming](#) is the most basic procurement model and has the strongest emphasis on price. With this model, the lowest-priced tender or proposal is selected once a prerequisite level of quality is met. It is applicable where additional quality over and above a minimum threshold is not important (that is, it does not offer greater value for money).¹⁰

Note: The OAG and Waka Kotahi NZ Transport Agency evaluation process of LPC tenders is different. The OAG's instructions are to evaluate the non-price attributes first, whereas the Waka Kotahi NZ Transport Agency evaluates the priced component first. Therefore, if your contract is funded by the Waka Kotahi NZ Transport Agency their process must be followed (please refer to the Waka Kotahi NZ Transport Agency Procurement Manual*).

⁸ See Procurement guidance for public entities, 2008. Office of Auditor-General, Keeping records, Page 62.

⁹ Waka Kotahi NZ Transport Agency Procurement Manual, 2019, 5.1 Supplier selection process, 6.5 Supplier selection methods, Appendix C Supplier selection methods.

¹⁰ See Procurement guidance for public entities, 2008. Office of Auditor-General, Keeping records, Page 62.

* Waka Kotahi NZ Transport Agency Procurement Manual, Appendix C *Supplier selection methods* contain further details (and details the evaluation procedure that must be followed).

Procurement manual for activities funded through the National Land Transport Programme:
<https://www.nzta.govt.nz/resources/procurement-manual/>

Other common procurement methodologies include:

- Direct Negotiation
- Purchaser nominated price
- Quality based
- The target-price model
- The Brooks' Law model.

The target-price model (not be confused with the term “target cost”, which is used in alliance contracts) is useful when it is difficult to define the scope of the work in the tender documentation or in situations where the budget that is available is the main constraint. In such instances, the public entity would be likely to receive a range of tenders or proposals and prices that are not easily compared, and that may exceed the available budget. The solution is for the public entity to make the potential suppliers aware of the available budget (the “target price”) as a guide for defining the scope of the services desired, and then inviting potential suppliers to specify what they can do for that price. The focus of the evaluation is then on the quality and quantity of the services to be provided rather than price.¹¹

The Brooks' Law model assesses proposals on the basis of technical merit. The highest ranked supplier is invited to discuss the proposal, contract, terms, and fees. The terms of reference and the contractual and legal requirements are reviewed to ensure a mutual understanding. When agreement on fees is reached, the supplier is appointed. If no agreement on fees is reached, the second ranked potential supplier is invited to negotiate. The process continues until a satisfactory agreement is negotiated. A supplier once rejected, should not be recalled for further negotiations.¹²

9.9 Direct Negotiation

In some cases, it is appropriate to negotiate directly with a single supplier. Circumstances when this method may be appropriate include where there is limited competition in the market or when a specialist supplier exists. When Direct Negotiation is contemplated it is important to be clear before entering into a negotiation, as to what the product or service required is and what a fair price would be for the goods or services.

9.10 Emergency Procurement

¹¹ Procurement guidance for public entities, 2008. Office of Auditor-General. Page 63.

¹² Procurement guidance for public entities, 2008. Office of Auditor-General. Page 63.

An emergency procurement is where an unforeseen event necessitates a quick response to prevent harm to individuals, or damage and/or loss to property. One example would be the event of a civil defence emergency requiring a quick procurement of goods or services to prevent flooding or further damage. Another example would be in the event of an epidemic, endemic, or pandemic.

Therefore, in an emergency, it may not be possible to satisfy the principles of open competition throughout the process as it may be necessary to dispense with parts or almost all of the procurement process in order to react quickly to genuinely unforeseen events.

Emergency procurements must be approved by the Chief Executive, or any two ELT members only if the Chief Executive is reasonably unable to be contacted.

Post the emergency any emergency procurements must be fully reported to Council at the earliest opportunity by the group General Manager, with particulars provided about the reasons for the emergency procurement approval.

10 Forms of Contracts

Contract templates are located in Hubble in the “Templates” area, under “Contracts and Standards”.

10.1 Short Form Contracts

For purchases over \$50,000, purchase orders may still be raised but must have the terms and conditions and/or specifications documented for the goods or services being procured, and a contract is required. This will provide a greater level of protection for WDC.

Simple contracts may be used in the appropriate circumstances only, such as low-risk procurements. The form of contract should be a Government Model Contract (GMC) for Services, Goods, or Lite for goods and services. Templates are located in Hubble as well as on the Government procurement website:

<http://www.procurement.govt.nz/procurement/for-agencies/government-model-contracts>

Many suppliers have supplier supplied contracts. These could be a goods or services contract or a sale and purchase contract. When these are provided as part of a quotation or tender they should be carefully examined to ensure they do not have the effect of changing the outcome desired by the Council. Advice from the Council’s WDC’s legal officer should be sought if necessary.

If there are specific requirements or risks, such as Waka Kotahi NZ Transport Agency documentation requirements or potential failure of the supplier to deliver the product or service and this is likely to lead to public criticism of Council or have a serious effect on the delivery of other Council services or projects, the use of a more formal form of contract is required regardless of the contract value.

10.2 NZS (New Zealand Standards)

For contracts for the value of \$100,000 or more, the most commonly used forms of contract are the various NZS contracts, such as:

NZS3910:2013 Conditions of contract for building and civil engineering construction.

NZS3915:2005 Conditions of contract for building & civil engineering construction (where no person is appointed to act as the engineer to the contract) – please note: this is rarely used.

NZS 3916:2013 Conditions of contract for building and civil engineering - Design and construct

NZS3917:2013 Conditions of contract for building and civil engineering - Fixed term

The templates are located in Hubble, Templates, Contracts and Standards.

10.3 Other Contract Forms

Other standard forms of contract which are commonly used include the following:

- ACENZ – SFA - Short Form Agreement for Consultant Engagement (2019)
- ACENZ – CCCS - Conditions of Contract for Consultancy Services (2017)
- NEC New Engineering Contracts - NEC3 and NEC4
- Contract for Quantity Surveying Consultancy Services (CQSCS)
- Agreement for Architects Services (AAS) 2018
- Agreement for Architects Services Short Form 2018
- Agreement for Architects Services Small Projects 2018
- AS 4910-2002 General Conditions of Contract for Supply of Equipment with Installation.

10.4 Preferred Supplier Agreement

Preferred supplier agreements are a contract for the supply of particular goods and/or services that are sourced from a supplier that is preferred in terms of being a company that WDC would like to do business with.

Preferred supplier agreements should only be entered into after a competitive procurement process has been followed to ensure fairness, best value for money, and that all other WDC principles, rules and policies have been considered. On agreement by both parties on the price and delivery conditions, a preferred supplier agreement may be entered into by the Council if the aggregated procurement spend across the Council for the goods and/or services is estimated to be greater than \$10,000 per annum or the requirement for the goods and/or services are likely to be over at least three years.

11 Non-procurement Activities

For the purpose of the Rules the following activities are deemed not to be procurement activities:

- a. Employing staff (excluding the engagement of contractors and consultants).

- b. Disposals and sale by tender.
- c. Investments, loans, guarantees.
- d. Gifts, donations and any form of unconditional grants.
- e. Statutory appointments.
- f. Mayoral/Council appointments to organisations.
- g. Core Council legal matters.
- h. Public Prosecutions as defined in section 5 of the Criminal Procedure Act 2011.

12 Supplier Selection

12.1 Tender Evaluation Team (TET)

The Tender Evaluation Team (TET) usually consists of a minimum of 2 people, but often up to 4 people (although there is no limit to the team numbers), whom evaluate the received tenders in accordance with the conditions of tender (e.g. lowest price conforming, weighted attributes, price quality etc.), to determine the best supplier for the contract.

The TET will reach their decision by individually scoring against the stated requirements, and then as a team discuss the scores to reach a consensus view.

Within the team there needs to be a thorough collective knowledge of the scope of the work, the industry, tender documentation and the tender evaluation process.

In cases of sensitive or specialist procurement, it would be expected that an independent or specialist person(s) outside of the Group or Council would be invited to be on the TET.

The TET assign a Chair. The roles of the TET Chair include:

1. Responsible for recording all evaluation decisions and finalising scores.
2. Preparing the tender evaluation report.
3. Preparation and supply of conflict of interest forms.
4. Preparation of the rationale for why a tenderer failed.
5. Explanation of errors and actions taken.
6. Preparation of recommendation and justification.
7. Providing a de-brief session to unsuccessful tenderers (when requested by an unsuccessful applicant).

The TET's scoring sheet must be completed, signed and be an attachment to the Recommendation Report.

For further expectations and guidance regarding a TET, please refer to the OAG's Procurement guidance for public entities, page 75.

<http://www.oag.govt.nz/2008/procurement-guide/docs/procurement-guide.pdf>

12.2 Evaluation of Tenders Received

Tenders received must be evaluated following the rules of the tender evaluation process stated in the procurement documents.

Additionally, the following must be taken into account when evaluating the tenders received:

- **Cost** - This includes the total cost over the life of the goods and/or services to be supplied, and against the budgeted expenditure for the procurement
- **Price** - This includes price improvement through bulk buying, available discounts and potential leveraged discounts in addition to price stability and sustainability over the life of the contract.
- **Conformance** - Supplier ability to conform to the specifications stipulated in the tender.
- **Ability to deliver** - This includes the supplier's previous track records, the experience of their personnel and their level of resources.
- **Quality** - The quality of goods or services being procured.
- **H & S** - The Health and Safety record of the supplier.
- **Supporting the local economy** - Can the Buy Local Premium be applied?
- **Sustainability** - Does the supplier meet the sustainability criteria and clauses of WDC's tender and contract specifications and how do they rate? Does the supplier value sustainability and how do they propose to foster this in addition to WDC's tender and contract specifications?
- **Other** - All other relevant factors and specifications of the procurement to be considered.

13 Late Tenders

For all contracts valued at \$300,000 or over, or that are less than but are high risk/sensitive expenditure, the issue of a late tender or quote is assessed by the CM and their Manager for their acceptance or decline and referred to the C.E for consideration and decision.

Guidance from AOG is as follows:

"Expectations

We expect a public entity to accept a late tender or proposal only in exceptional circumstances. The tender or proposal documents should clearly state whether the public entity will receive late tenders or proposals.

As a general rule, a public entity should accept late tenders or proposals only if:

- it can be certain that there is no possibility of unfair advantage;
- the late participant has no knowledge of other tenders or proposals; and
- the late tender or proposal conforms in all other respects to the criteria set out in the tender or proposal documents."¹³

Guidance from Waka Kotahi NZ Transport Agency for tenders with Waka Kotahi NZ Transport Agency funding and therefore rules, is as follows:

¹³ Procurement guidance for public entities, 2008. Office of Auditor-General. Page 69.

“Late Tender Submissions shall not be considered, and shall be returned unopened, unless it can be shown to the Council's complete satisfaction that all reasonable steps were taken to ensure the Tender Submissions was submitted on time, and that at the closing time for the Tender Submissions, the particular Tender Submission was no longer within the Tenderer's control. The Council will have the sole discretion as to whether to accept a late Tender Submission.”

Late tenders are evaluated for their acceptance, or not, on a case by case basis.

As WDC is now online tendering, this means tender submissions are electronically uploaded and not manually delivered by courier, supplier employee or any other means of physical delivery. As envelopes are no longer received, tenders cannot be returned unopened. The new process is that RFX documents are uploaded to electronic tender boxes on TenderLink. The electronic tender boxes automatically lock at the set closing date and time so late tenders are unable to be submitted. A late tender can then only be e-mailed and must be done so to the Senior Procurement Officer (SPO) only.

If the late tender or quote is not accepted by the CM and/or C.E, whichever is appropriate depending on the value of the contract, the electronic files are not opened and not forwarded by the SPO to the CM or TET.

As the majority of WDC's suppliers are local companies, it can be very difficult to “be certain that there is no possibility of unfair advantage” or that the “late participant has no knowledge of other tenders or proposals”, especially if a late tender is received on a Monday, being that WDC's standard closing day is a Thursday at 4.00pm.

The tenderer is advised by a formal letter from the SPO of the decision, the reason for the decision, and if not accepted, that their files have not been opened and recorded but have been deleted due to being excluded from the tender process.

If a tenderer has a genuine need for the tender closing date to be extended, this can be requested in writing to the CM, and if agreed, actioned almost immediately by the SPO and all tenderers benefit from the extension.

14 Faxed or E-mailed Tenders

Posted or e-mailed tenders are as a rule, not accepted. Any allowance otherwise must be specified in the tender documents.

15 Preferred Supplier Register

A WDC Preferred Supplier Register has been developed for minor unplanned or reactive maintenance. WDC goes through a tender process in selecting suppliers for the Preferred Supplier Register. Successful tenderers will be listed as a preferred supplier for three years, with an automatic right of renewal for a further three years, subject to their performance.

The register will be subjected to audit processes and should be reviewed annually by internal departments and at least every three years by ELT.

The Preferred Supplier Register differs from a Preferred Supplier Agreement. (Please see clause 10.4).

16 Supporting the Local Economy

16.1 Broader Outcomes

Whanganui District Council values supporting and achieving the benefits of Broader Outcomes through our procurements. This means working with suppliers, wherever possible, that contribute to any or all of the four Broader Outcomes categories, to create better public value from every dollar we spend.

The key priority outcomes of the 'Broader Outcomes' have been identified as:

- Environmental
- Social
- Economic
- Cultural

The rules and guidance around applying these elements, which include procuring in more sustainable, inclusive and beneficial ways, primarily for the benefit of NZ residents, is by incorporating Broader Outcomes into procurement documents (RFx's).

Where an RFx is evaluated using any weighted evaluation methodologies, the Broader Outcomes will be included in the weighted criterion. The minimum percentage to be applied is 16%.

Where an RFx is evaluated using the Lowest Price Conforming methodology or is a Request for Quote, we will also ask interested parties to demonstrate how their company can contribute to these factors, primarily for Whanganui, but also for New Zealand as a whole, as part of their non-priced attributes.

- This may not make up part of the pass / fail components of the tender – this will be at the discretion of the Contract Manager.
- Where it does not affect the tender evaluation results, the information will still be used for reporting purposes and to inform WDC as to how they may be implemented in the non-price attributes pass/fail criteria in the future.

Examples of Broader Outcomes include, but are not limited to, the following:

Environmental:

Positive sustainable outcomes, ethical supply chains, waste management, health and safety policies and processes, climate change processes and initiatives, low carbon footprint.

Social:

Positive benefits to residents, paying the living wage as a minimum, upskilling our workforce through training and apprentice programmes. Equal employment opportunities policies.

Economic:

Positive economic benefits to the city, district, and/or New Zealand, opportunities for local businesses or contractors. Using local and/or national supply chains.

Cultural:

Positive impacts on our resident’s cultural identity, values, and sense of belonging. Culturally intended business partnering or training programmes. Company collaborative cultural programmes.

For further information regarding Broader Outcomes, please visit <https://www.procurement.govt.nz/broader-outcomes/>

16.2 ‘Buy Local Premium’

A “local company” or “local supplier” shall be defined as a Whanganui owned or operated and based company.

WDC recognises that there is a benefit to the community from purchasing locally and has adopted the following guidelines as part of the Procurement Policy:

- That local suppliers are given every opportunity to provide quotes or tenders to WDC.
- That for non-roading related work (or roading work that is not Waka Kotahi NZ Transport Agency subsidised) and where the tender evaluation is by the Lowest Price Conforming method, a Buy Local Premium may be provided for in the tender evaluation specifications.

The Buy Local Premium can be applied to appropriate tenders or quotes evaluated using the Lowest Price Conforming evaluation model:

When applied, where more than one supplier is equal on non-priced attributes, preference will be given to the local supplier. When suppliers are equal on non-priced attributes the Buy Local Premium will be applied as follows:

- 1) For procurements of up to \$100,000 in value, the tendered or quoted price from a supplier deemed "local" by WDC, will be allowed a reduction of 5% in price for evaluation purposes only.
- 2) For procurements of over \$100,000 in value, the tendered or quoted price from a supplier deemed "local" by WDC, will be allowed a reduction of \$5,000 in price for evaluation purposes only.

Where Waka Kotahi NZ Transport Agency funding is involved, the Waka Kotahi NZ Transport Agency does not allow the “Buy Local Premium” to be applied.

17 Records for Audit and Accountability Purposes

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

The value and risk of the procurement will determine the nature and amount of documentation that is desirable.

Note: The same rules apply for Request for Quotes.

For audit purposes, WDC will keep adequate records to:

- Show that it followed due process and observed the basic principles.
- Establish that it identified and appropriately managed any potential conflicts of interest issues.
- Record queries and responses to queries during the tender process e.g. NTT's.
- Record the outcomes of meetings during the procurement process.
- Record responses to queries from unsuccessful suppliers and /or Minutes of debrief meetings.
- Record Minutes of Debriefs.
- Record plans for any subsequent procurement.

For accountability purposes, WDC will keep the following records of the procurement process as part of the contract files:

- Full Business Case.
- Procurement Plan.
- Any additional approval to proceed e.g. Council Meeting Minutes.
- Tender estimates e.g. Schedule of Prices.
- Pre-estimate of liquidated damages (if intended to be included in the Conditions of Contract).
- EOI, RFP or RFT documents.
- Copy of tender advertisement.
- Notices to Tenderers.
- Records of any other contact with interested parties including responses to queries and notes of any meetings with interested parties.
- Received RFx's.
- Tender Evaluation documents.
- Recommendation Reports
- .
- The Chief Executive, Deputy Chief Executive, and GM's approvals and declines of Recommendations.

- Letters of acceptance and decline to all tenderers.
- Electronic and hard copy signed contracts.

18 Legal and Ethical Considerations

WDC has a fundamental public law obligation to always act fairly, ethically and in keeping with the law. WDC will act, and be seen to be acting, in an open manner, observing legal and ethical standards, principles and behaviour throughout the procurement process.

Relevant legislation may include, but is not limited to:

- The entities enabling legislation;
- Commerce Act 1986;
- Consumer Guarantees Act 1993;
- Contracts (Privacy) Act 1982;
- Contracts Enforcement Act 1956;
- Contractual Mistakes Act 1977;
- Contractual Remedies Act 1979;
- Crown Entities Act 2004;
- Dumping and Countervailing Duties Act 1988;
- Electronic Transactions Act 2002;
- Fair Trading Act 1986;
- Frustrated Contract Act 1944;
- Illegal Contract Act 1970;
- Judicature Act 1908;
- Land Transport Management Act 2003;
- Local Authorities (Members' Interests) Act 1968;
- Local Government Act 2002;
- Local Government Official Information and Meetings Act 1987;
- Minors Contract Act 1969;
- Official Information Act 1982;
- Privacy Act 1993;
- Public Audit Act 2001;
- Public Bodies Contracts Act 1959;
- Public Finance Act 1989;
- Public Records Act 2005;
- Sale of Goods Act 1908;
- Sale of Goods (United Nations Convention) Act 1994.

19 Review of the Procurement Policy

After each Triennium and election, the following matters should be specifically reviewed together with this document and its application to the LTP process:

- The delegation to the Chief Executive to accept tenders.
- The acceptance or not of late tenders.
- The acceptance or otherwise of the Waka Kotahi NZ Transport Agency expedited procedure limits.

Appendix 1 - Related Policies and Documents

The following related policies and documents are referred to within this guide and should be read in conjunction with this document:

- WDC Long Term Plan
- WDC Annual Plan
- WDC Financial Delegations Policy, available on Hubble
- WDC Sensitive Expenditure Guidelines, available on Hubble
- WDC Risk Management Policy and Framework, available on Hubble
- WDC Code of Conduct, available on Hubble
- WDC Fraud and Corruption Policy, available on Hubble
- Infrastructure particular standards and guidelines (refer to Infrastructure Manager)
- WDC Elected Members' Register of Interests
- WDC Key Management Register of Interests
- WDC Conflicts of Interest Register
- Construction Contracts Act 2002
<http://www.legislation.govt.nz/act/public/2002/0046/latest/DLM163059.html>
- Government Procurement Rules
[Government Procurement Rules | New Zealand Government Procurement and Property](https://www.procurement.govt.nz/procurement/templates/)
- Government Model Procurement Templates
<https://www.procurement.govt.nz/procurement/templates/>
- Land Transport Management Act 2003
<http://www.legislation.govt.nz/act/public/2003/0118/latest/DLM226230.html>
- Local Government Act 2002
<http://www.legislation.govt.nz/act/public/2002/0084/latest/whole.html>
- Local Government Act 2002 – section 17a Delivery of services
<http://www.legislation.govt.nz/act/public/2002/0084/latest/DLM6236168.html>
- Ministry of Business, Innovation and Employment (MBIE): Government Procurement Rules
<https://www.procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-rules/>

- NZS Contracts
<https://www.standards.govt.nz/get-standards/buy-or-subscribe-to-standards/>
Templates in Hubble, Templates, Contracts and Standards folder.
- Waka Kotahi NZ Transport Agency Procurement Manual
<https://www.nzta.govt.nz/resources/procurement-manual/>
- Office of the Auditor General: Guidance for members of local authorities about the law of conflicts of interest
<https://oag.parliament.nz/2007/conflicts-members>
- Office of the Auditor General: Managing conflicts of interest: Guidance for public entities
www.oag.govt.nz/2007/conflicts-public-entities
<https://oag.parliament.nz/good-practice/conflicts-of-interest>
- Office of the Auditor General: Procurement guidance for public entities
<http://www.oag.govt.nz/2008/procurement-guide/docs/procurement-guide.pdf>
- The Australian & New Zealand Government Framework for Sustainable Procurement
www.apcc.gov.au