

# Council Policy

## Procurement

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| <b>Effective Date:</b>       | <b>20 December 2024</b>                              |
| <b>Last Reviewed:</b>        | <b>2020</b>  |
| <b>Next Review Date:</b>     | <b>2027 (Three Yearly Review)</b>                    |
| <b>Document Number:</b>      | <b>Pol 21</b>  |
| <b>Responsibility:</b>       | <b>Group Manager, Finance and Corporate Services</b> |
| <b>Associated Documents:</b> | <b>N/A</b>   |

# 1. Purpose

To establish a framework of good procurement practice, accountability and sustainability that provides a consistent approach to procurement by Council.

## 2. Policy Objectives

The objectives of Kawerau District Council's procurement policy are to provide clear direction to management and staff in relation to the purchasing function and establishes a decision framework that:

- delivers best value for money over the whole life of the goods, services, works or assets;
- ensures purchases are made in an open and transparent manner with full and fair opportunity for all eligible suppliers;
- ensures adequate probity – integrity, equity and fairness
- minimises relationship costs, ongoing operational costs and consequential costs;
- demonstrates a positive local economic outcome and local employment opportunities.
- contributes to Council's sustainability objectives and also has regard to the economic, environmental, and social impacts over their life cycle;
- appropriately manages risk;
- promotes efficient purchasing practices and their continuous improvement;
- ensures Council's purchasing activities are managed in accordance with its statutory and legal responsibilities.

## 3. Principles

Council believes it is necessary to have a robust procurement policy in place so there is confidence and transparency in the procurement process and ratepayers are assured that processes are followed to ensure the best value for money is obtained. Also, by having a procurement policy staff are aware of the steps that must be taken when acquiring goods or services on behalf of Council.

To ensure procurement good practice Council's should align with The Government Procurement Rules (4<sup>th</sup> edition) and general industry best practice. The five principles of Government Procurement will be used to guide all procurement activity (per New Zealand Government Procurement Rules, Edition 4, 2019) which are as follows:

|           |  |
|-----------|--|
| <b>1.</b> | <b>Plan and manage for great results</b>   |
|           | <ul style="list-style-type: none"> <li>➤ Identify what you need, including what broader outcomes should be achieved, and then plan how to get it.</li> <li>➤ Set up a team with the right mix of skills and experience.</li> <li>➤ Involve suppliers early – let them know what you want and keep talking</li> <li>➤ Take the time to understand the market and your effect on it. Be open to new ideas and solutions.</li> <li>➤ Choose the right process – proportional to the size, complexity and any risks involved.</li> <li>➤ Encourage e-business (for example, tenders sent by email).</li> </ul>   |
| <b>2.</b> | <b>Be fair to all suppliers</b>  |
|           | <ul style="list-style-type: none"> <li>➤ Create competition and encourage capable suppliers to response.</li> <li>➤ Treat all suppliers equally – we don't discriminate (this is part of our international obligations).</li> <li>➤ Seek opportunities to involve New Zealand businesses, including Māori, Pasifika and regional business and social enterprises.</li> <li>➤ Make it easy for all suppliers (small and large) to do business.</li> <li>➤ Be open to subcontracting opportunities in big projects.</li> <li>➤ Clearly explain how you will assess proposals – so suppliers know what to focus on.</li> <li>➤ Talk to unsuccessful suppliers so they can learn and know how to improve next time.</li> </ul>                       |
| <b>3.</b> | <b>Get the right supplier</b>  |
|           | <ul style="list-style-type: none"> <li>➤ Be clear about what you need, and fair in how you assess suppliers – don't string suppliers along.</li> <li>➤ Choose the right supplier who can deliver what you need, at a fair price and on time.</li> <li>➤ Choose suppliers that comply with the Governments Supplier' Code of Conduct.</li> <li>➤ Build demanding, but fair and productive, relationships with suppliers.</li> <li>➤ Make it worthwhile for suppliers – encourage and reward them to deliver great results.</li> <li>➤ Identify relevant risks and get the right person to manage them.</li> </ul>   |
| <b>4.</b> | <b>Get the best deal for everyone</b>  |
|           | <ul style="list-style-type: none"> <li>➤ Get best <u>public value</u> – account for all costs and benefits over the lifetime of the goods or services.</li> <li>➤ Make balanced decisions – consider the possible social, environmental, economic and cultural outcomes that should be achieved.</li> <li>➤ Encourage and be receptive to new ideas and ways of doing things – don't be too prescriptive.</li> <li>➤ Take calculated risks and reward new ideas.</li> <li>➤ Have clear performance measures – monitor and manage to make sure you get great results.</li> <li>➤ Work together with suppliers to make ongoing savings and improvements.</li> <li>➤ It's more than just agreeing the deal – be accountable for results.</li> </ul> |
| <b>5.</b> | <b>Play by the rules</b>   |
|           | <ul style="list-style-type: none"> <li>➤ Be accountable, transparent and reasonable.</li> <li>➤ Make sure everyone involved in the process acts responsibly, lawfully and with integrity.</li> <li>➤ Stay impartial – identify and manage conflicts of interest.</li> <li>➤ Protect suppliers' commercially sensitive information and intellectual property.</li> </ul>  |

## 4. Scope

This policy covers activities associated with the purchasing of all goods, services and works by, or on behalf of the Kawerau District Council. It applies equally to the Council, the Leadership Team and other staff – permanent, temporary or contract.

The policy does not apply to the following activities:

- Employment payments (excluding the engagement of contractors and consultants to supply services).
- The purchase, disposal or leasing of land or buildings (except for the design, construction or refurbishment of buildings).
- Sale or disposal of Council assets.
- Financial instruments, including investments and loans.
- Grants, gifts, sponsorship, koha and donations.
- Payments to Government and regulatory bodies, including taxation and levies.
- Court awarded or negotiated settlements.

Council may depart from this policy to undertake urgent procurement required to provide emergency assistance and welfare relief.

Activities funded through the National Land Transport Programme will follow the Waka Kotahi New Zealand Land Transport Agency procurement procedures.

Any departure from this policy due to an emergency or any specific funding process departure must be fully justified and documented and approved by the Chief Executive Officer.

## 5. Definitions and Guidelines

### 5.1 Definitions

**Council** – means the Kawerau District Council (KDC).

**Emergency** – an event which results in one or more of the following:

- Staff, public, supplier, property and equipment in immediate risk
- Significant impairment of Council delivery of service if Council fails to respond promptly.
- A declared or undeclared response to an emergency as defined in the Civil Defence and Emergency Management Act 2002.

**Probity** – means the quality of having strong moral principles, by acting ethically and fairly.

**Procurement** – the process of acquiring and delivering products, services and works (including refurbishment and new construction).

**Public Value** – means getting the best possible/available result for the money spent, including total costs and benefits.

**Staff** – means all members, office holders, managers and employees of Kawerau District Council.

**Supplier** – A person, business, company or organisation that supplies or can supply goods, services or works.

**Total Value** – means value of the supply agreement over its entire term.

## 5.2 Procurement Methods

Council has considerable discretion on how it procures goods and services. However, staff have a responsibility to manage Council's resources in an efficient and effective manner, and in accordance with its obligations under legislation for sound business practice, due diligence, probity and fairness. This policy takes these principles into considerations when council is undertaking any procurement.

Council will follow the policies as set down in this document however, there will be instances where these will not be followed, such as:

### 5.2.1 Urgent Requirements

It is recognised that there may be times when due to time constraints that it is not practical to follow the policies for procurement. However, any departure from these policies must be authorised by the Chief Executive Officer and must be granted by the Chief Executive Officer in writing.

Expenditure incurred in the event of an emergency, must be in accordance with the appropriate emergency expenditure procedures rather than the requirements of this policy.

### 5.2.2 Joint Initiatives

Council may elect to participate in a range of syndicated or joint procurement activities. The Bay of Plenty Shared Services (BOPLASS) Procurement Group has jointly achieved enhanced value for its member authorities in the procurement of goods and services such as insurance services and office supplies.

### 5.2.3 Negotiated Supply Arrangements

There may be instances where it can be shown that the best outcome for Council, without compromising obligations as to fairness, avoiding monopolies, and the like, can be achieved through the negotiation of a longer-term supply agreement.

#### 5.2.4 Sole Agency (Exclusive Supplier)

Sole Agency is the situation where there is only one exclusive supplier for a specific product, for example for certain pumps if you need a replacement part there is only one exclusive supplier in New Zealand who can provide that part. To not use the specified part could compromise warranties or be more costly to change to a different product. In these situations, a letter confirming the sole agency as an exclusive supplier will be obtained, to support this except.

### 5.3 Types of Quotation

Quotations are used in most circumstances when procuring goods and services. The objective is to achieve value for money. There are different types of quotations that can be used, and selection will be determined by the procurement value and level of risk. These types of quotation include:

|                                      |   |
|--------------------------------------|---|
| <b>Verbal quotations</b>             | Verbal quotations provide a quick and convenient way of exploring the market and determining availability and price for low value, low/medium risk goods or services.   |
| <b>Written quotations</b>            | Written quotations follow the same principles as verbal quotations. As the value of these goods or services are higher, there should be documentation to support the quotes for the goods or services.  |
| <b>Request for Quotation (RFQ)</b>   | A formal means of seeking quotations from the market for goods or services where price plus other terms and conditions form part of the main selection criterion.   |
| <b>Request for Information (RFI)</b> | 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. <sup>1</sup>   |
| <b>Request for Proposal (RFP)</b>    | 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 the outcomes are important, rather than the process the supplier follows to deliver them. |
| <b>Public Tender Process</b>         | The <b>public tender process</b> is inviting tenders or proposals through a public notice. A formal process seeking tenders from the market to provide goods and services where the public entity specification or requirement are clearly defined.         |

## 6. Policy Statement

### 6.1 Compliance with legislation and public law

Compliance with legislation is mandatory in all procurement activity.

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

<sup>1</sup> Definitions per Office of the Auditor General Procurement Guidelines

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

Council's fundamental public law obligation is always to act fairly and reasonably, and in accordance with the law. This imposes a higher standard of conduct than that which applies to the private sector. Public law obligations could apply to any aspects of a procurement process – including the pre-selection of potential tenderers. Council as a public body must meet the legitimate expectations of prospective tenderers.

## 6.2 Conflicts of interest, gifts and hospitality and maintaining confidentiality

As part of the general obligation to act fairly, staff must also take care that their decision-making processes cannot be challenged on the basis of actual or perceived bias, particularly in relation to conflicts of interest. There are formal requirements for the disclosure and management of conflicts of interest.

Council requires its staff to declare any personal interest or relationship which may affect, or could be perceived to affect, their impartiality in any aspect of their work. Any declarations will then provide the basis for deciding the steps needed to manage any potential conflict of interest.

Under no circumstances should a procurement process allow a staff member to receive preferential treatment in a contracting situation. No gifts, hospitality, or other incentives from suppliers submitting a tender (or are likely to submit a tender) are to be accepted by Council staff involved during a tender process.

Council should take particular care in its handling of commercially sensitive information. Council will also need to consider its' obligations under the Local Government Official Information and Meetings Act 1987, as these obligations may affect Council's capacity to give comprehensive assurances about the protection of sensitive information. Legal advice may, at times, be required on how to reconcile duties of this nature with Council's contractual or common law obligations to maintain commercial confidentiality.

## 6.3 Risk Management of Procurement Process

Risk is inherent in any procurement activity. Council's approach is to manage risk so that it is acceptable from a contractual and delivery point of view, to ensure that ratepayers are not exposed to significant unmitigated risk and future liability.

All Council staff are responsible for identifying and managing or mitigating risk effectively through each stage of the procurement process within their respective areas of responsibility. Council will also promote a "risk aware, risk prepared" culture to all its staff and managers.

By ensuring that procurement is conducted in a fair and transparent manner, the risk of fraud or impropriety should be reduced. Also, following the procurement policy and

procurement procedures, and having appropriate internal controls in place, will assist this.

Council must ensure that each staff member or agent involved in a procurement process has the required skills for the type and level of procurement.

For NZTA contracts, the guidelines as provided by NZTA (NZTA Procurement Manual) must be followed to ensure funding assistance is not put at risk.

When engaging an agent, Council also needs to ensure that an experienced staff member with the necessary delegated authority works with the agent. Council's own procurement policies and procedures should be used during the procurement process.

Staff will comply with applicable financial delegations when procuring goods or services.

Staff must also comply with legislation which limits their procurement authority or governs their internal delegation practices.

## 6.4 Procurement Application and Thresholds:

To achieve Council's procurement objectives and to enhance professional integrity, accountability and probity, all purchasing activity within Council shall be undertaken in accordance with the full procurement policy. Different procurement methods are to be used depending on the total value of the goods, services or works and the risk involved as follows:

| Estimates Total Value (excl GST)   | Up to \$10,000 | \$10,001 to \$25,000 | \$25,001-\$100,000 | Greater than \$100,000 |
|--|----------------|----------------------|--------------------|------------------------|
| Direct Procurement (verbal and written quotes)   | ✓              | x                    | x                  | x                      |
| Written Quotes – 2 to 3 quotes   | ✓              | ✓                    | x                  | x                      |
| Request for Quotes (RFQ) – formal process requesting quotes, a minimum of 3 written quotes | ✓              | ✓                    | ✓                  | x                      |
| Request for Information (RFI)  | ✓              | ✓                    | ✓                  | x                      |
| Request for Proposal (RFP)   | ✓              | ✓                    | ✓                  | x                      |
| Public Tender  | ✓              | ✓                    | ✓                  | ✓                      |

- Ideally in the first instance purchases of less than \$10,000 should be sourced from suppliers designated as '**preferred suppliers**' where such preferred supply relationships have been established as a standing arrangement. All "**preferred suppliers**" will be reviewed annually to ensure that they have continued to provide quality and value for residents
- Council's preferred or default method for procurement is "public tender" as it provides the least risk to the organisation. However, there is a cost associated with

this process and therefore it will be used for those contracts that exceed the stated amounts in the threshold table. At any time if a procurement is of high significance, risk or sensitivity the procurement shall be by “public tender” to reduce the risk associated with this procurement.

- The Chief Executive is delegated to approve contracts without going to public tender or obtaining three competitive written prices for reasons of practicality and/or market conditions. Any approved exception greater than \$50,000 are subject to a report being provided to the next Regulatory and Services Committee meeting summarising the contract and reasons for not going to public tender.
- Approval for the purchase of goods, works or services including the acceptance of tenders shall be in accordance with the staff member’s delegation. Any purchase exceeding the Chief Executive’s delegation will go to Council for approval.
- Summary details shall be provided to the next Regulatory and Services Committee meeting for any cases when any acquisition of goods, works or services valued at \$50,000 or more is undertaken.
- For New Zealand Transport Agency (NZTA) subsidised activity Council is obligated to follow the NZTA Procurement Manual.
- Where Council has commissioned and paid for the establishment of intellectual property, Council retains the ownership of that property unless the contract specifically states otherwise
- Council has a commitment to sustainability and environmental protection. This will be pursued by promoting purchasing practices which conserve resources, save energy, minimise waste, and will protect the environment and human health whilst maintaining environmental safety and quality.
- From time to time a review process shall be undertaken by the Leadership Team to ensure that Council's policies for procurement are being followed.

## 6.5 Tender Evaluations

The tender process and rules should be:

- fair to all tenderers;
- determined before the tender process starts;
- communicated clearly to prospective tenderers; and
- followed consistently.

The contract documents used for major physical works and therefore the vast majority of KDC contracts will be the model documents prepared based on NZS 3910: 2013, Conditions of Contract for Building and Civil Engineering Construction (Contract Model).

Council will upfront ensure that the requests for tender are the clear and consistent, without options or variations that make it difficult to compare tenders. Council will endeavour to ensure that tender decisions are not required during December, given this is the holiday season.

When staff are undertaking an evaluation of a tender, they will need to consider the following principles:

- When assessing a procurement proposal, staff should consider the “whole of life” cost (also referred to as Total Cost of Ownership) of the goods or services it is procuring. Often, the acquisition cost of a product is only a small proportion of this total cost of ownership.
- The Lowest Price Conforming Tender and Weighted Attributes models are the most commonly used evaluation models in Local Government. However, NZTA has now replaced the Weighted Attributes model with the Price Quality model which will only be used for NZTA contracts.
- In a two-envelope evaluation (e.g. price and non-price attributes) the non-price attributes will be evaluated in isolation and signed off by the evaluation team prior to opening the pricing envelope. It is important when asking for pricing information in a submission that the information received is comparable across the submissions.
- The nature of the procurement and the outcomes you require will determine which evaluation model is most appropriate.
- For non-price attributes Council will consider:
  - Health and Safety
  - Relevant Experience
  - Relevant Skills
  - Methodology
  - Localism

The tender evaluation team will comprise the staff principally responsible for the contract as well as the responsible Manager. The Manager responsible for the contract will undertake any contract negotiation and approval of variation(s). The communication of any contract negotiation will usually be with Council’s representative for the contract.

Late tenders will not be accepted except in exceptional circumstances. The Chief Executive will consider and decide on any requests to accept a late tender.

All awarded tenders are monitored against project schedules.

The extension or re-definition of any contract that increases the originally approved contract sum, and where that original sum is beyond the delegated authority of the Chief Executive, shall be presented to the Council for approval. It is acknowledged that where the additional costs of a service or project are small in relation to the costs of preparing specifications, seeking tenders, and contractors preparing their bids, an approved contract extension will often be preferred to a new or separate tender process.

## 7. References and Relevant Legislation

1. New Zealand Government Procurement Rules
2. Local Government Act 2002
3. The Controller and Auditor-General Procurement Guidance for Public Entities
4. The New Zealand Transport Agency’s Procurement Manual
5. Council Policies

- a. Fraud and Corruption Policy
- b. Sensitive Expenditure Policy
- c. Staff Conduct Policy